series of assemblages of knowledges, regulations, protocols, standards, objects, and human desires and capacities that come together in often fleeting combinations to constitute the reality that law is supposed to govern – the non-legal world.

*Mariana Valverde**

Author's Response

Fleur Johns, *Non-Legality in International Law: Unruly Law*, Cambridge, Cambridge University Press, 2013, 259 pp., ISBN 9781107014015
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For those whose principal workplace employments are reading, writing, listening, and talking, the arrival in the mail of an object that one can plausibly be said to have made is akin to an encounter with alchemy. The sense of this thing having arrived from elsewhere, or resulted from some magical transmutation, is all the more acute when the labour of the thing's making has been interrupted or protracted. Thoughts thought and words written in the past have an alien cast upon re-reading, all the more so as time passes and other matters jostle to front of mind. So I found upon the initial delivery to my door of *Non-Legality in International Law: Unruly Law* ('*Unruly Law*') in 2013. At that time, I was reminded too how much we lawyers thrive on this experience: the receipt of missives, instructions, and dispatches from some 'afar' more or less of our own evocation.

Reading Richard Joyce's, Roberto Yamato's, and Mariana Valverde's keen and generous comments on *Unruly Law*, I have a renewed sense of this encounter. How much more bountiful the book seems in their thoughtful rendering. For what more could one hope than to have one's pages so marked up; to partake of such a back-and-forth, inviting more: one in which no one text '[ever] arrive[s] at its destination ... [a]nd ... this is not negative, it's good, and is the condition ... that something does arrive'.[1] In the spirit of these engagements, I will here scribble a little more and send on.

These remarks will focus on three provocations put forward in the preceding review essays. I will respond, first, to Richard Joyce's request for 'further reflection on what it might be possible to do'. I will next take up Roberto Yamato's critique concerning the book's inattention to 'the international' and hence its 'not remembering the particularity of that "commonality" that is the condition of possibility of those different legal fields and practices making the non-legal'. Finally, I will address Mariana Valverde's remark that 'it is not clear how much is achieved by drawing distinctions between the "pre-legal", the "post-legal", the "infra-legal" and so on', while welcoming her foregrounding of the book's departure from prevailing sociolegal traditions.

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1 J. Derrida, *The Postcard: From Socrates to Freud and Beyond* (1987), 121.

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It is a magnanimous reader who asks a writer for more, after carefully and attentively working through a couple of hundred pages. I am grateful for Richard Joyce's invitation, framed as follows:

> [I]f each actor's role is to attract a certain responsibility, perhaps the book should attempt to provide some (possibly provisional) grounds for how such an actor might approach [the] question [of what is to be done] in the different contexts examined.

The focus of *Unruly Law* is, however, less the 'to be done' than the 'doing' of international legal work, as Mariana Valverde highlights. It is a disciplinary convention in the international legal field, and indeed in sociolegal scholarship, to propose 'tak[ing] things forward' along a clearly signposted track. Here are complicities to be shed; there are non-repeatable errors; now, this is how to 'take things forward': so run the final pages of many a scholarly article or book. *Unruly Law* is not without such directions. Avoid 'ethical solipsism', Chapter Two enjoins, and assume some responsibility for 'legal envelope-pushing ... [with] a lethally sharp edge' (pp. 57, 67). '[D]e-link the experience of deciding on/in the exception from the sovereign state', Chapter Three instructs (p. 101). Those worried about global corporate power must engage the 'mundane, technical terms' of deal-making, Chapter Four advises (p. 152). '[Resist] prevailing imperatives of service provision and outcome delivery, however pressing the demands', and experiment, Chapter Five counsels (p. 183). Approach dead bodies' 'management' in disaster relief situations as controversial political work: work of 'making and remaking a public', Chapter Six advocates (p. 214).

Nonetheless, much of the content of *Unruly Law* is concerned with amplifying, annotating, and burrowing through work *already ongoing* across international legal fields, both the spectacular and the diminutive. The book eschews the question 'what is to be done?' by reference to the 'doings' in which we are all so assiduously engaged (international lawyers, that is, in intimate collaboration with many who would not so identify). To Richard Joyce's question, seeking a better 'grip' on how responsibility might be exercised, the book responds: take a look around; who knows what is to be done, but this is some of what international law is doing ('other than itself', as Mariana Valverde observes, but also in and of itself).

Consider the range of conduct in evidence in relation to counter-terrorist torture: legal scholars admonishing the Bush Administration and cleansing consciences (p. 54), lawyers and officials engaging variously with the 'rule-bound "extra-legal" world' of the detention camp (p. 104); detainee Abu Zubaydeh refusing to answer questions mindful of 'techniques to be used later on other people' (p. 63). Take ongoing work relating to climate change: some are busy promulgating guidelines and standards at the IPCC (p. 162); others are engaged, widely and at multiple scales, in 'existing and planned experiments' in law and policy (p. 182). Register, too, the ambivalence towards any single action or set of actions: the grace, for instance, with which volunteers sometimes seem to enact 'governmental techniques' of managing the dead post-disaster (pp. 207–8, 200).

Unruly Law, too, is itself a 'doing'. This doing entails, in part, calling into question prevailing fixation on lighted pathways ahead, be they theoretical or evidence-based.

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We must fumble and fumbling is what we are doing; yet all our fumbling is not alike, ineffectual or unworthy of concern. By pocking and cross-hatching the flat, unending expanses of what has been cogently cast as international legal 'managerialism', the book tries to evoke a sense of possibility in the here and now, alongside recognition that '"possibilities" remain powers ... oppressive and possessive'.[2]

The sense of possibility as power leads directly to Roberto Yamato's 'problem' with *Unruly Law*: by his measure it 'keep[s] in place and possibly reinforc[es] (in its desire to expand the international legal repertoire), a certain – colonial – politics of the '*international*' (language and culture)'. For this, he has a remedy: the book should have illuminated 'the limits of the "international" that constituently supplements the legal practices and fields with which [it] engages', baring 'the politics of international legal language's process of universalization', above all that language's 'colonial' debts and investments.

Here, again, surfaces the strangeness of encounters that writers and readers routinely enact: this is, to me, a surprising critique. A sense of the book being in an international legal place or places, or within international legal language, was something that I always thought I had to work quite hard to sustain. One claim of the book is that the 'trans-disciplinary' sharing and swapping of characteristic techniques and key dramatic roles is critical to maintaining the 'commonality' of the discipline across divergent fields of international legal work (pp. 218–22). Nonetheless, that 'commonality' is, in relative terms, a meager and unsettled one, as Richard Joyce highlights. Those seen in Chapter Four acting on instruction of multinational corporate clients to bring a financing deal to closure might well struggle to accept their casting as collaborators with Chapter Six's shroud-bearing toe taggers and their shepherding experts, and vice versa.

Amid the unruly stories of rule that the book tells, the 'colonial process of universalization' of which Yamato writes is certainly at work. (His admonishment helpfully marks the book's unacknowledged debt to the work of Antony Anghie: a masterly rewriter of international legal records technical and scholarly.) Chapter Six's account of internationally mandated procedure surrounding dead bodies after disaster is one instance in which this is made explicit (pp. 211–12). Universalization is, however, a legal technique – and a form of politics – about which international legal scholars have already written rather a lot, with arguably declining purchase. It seemed important to me, in writing this book, to investigate other modes in which international law works. The deal-repetition that Chapter Four records, for instance, depends largely on practices that run against the universalizing grain: on shallow knowledge claims, premised on for-the-time-being modeling, and insistence on the sequestered 'life of the deal' (pp. 140–42, 135). Global structural replication is, in this context, effected through particularization and the narrowing of a legal field of vision. The same might be said of the densely packed legal hothouse of Guantánamo Bay, depicted in Chapter Three, the peculiar features of which have been replicated in immigration policy in Australia.

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2 J. Derrida, 'Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas', in *Writing and Difference* (transl. A. Bass, 1978), 79 at 97.

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Expanding the repertoire of international legal technique is, furthermore, by no means the same as expanding the reach of international law; *Unruly Law*'s aspiration for the former does not correspond to an appetite for the latter. Indeed, as James Crawford's kind introduction makes clear, the book's wayward roaming could be read to undermine the project that estimable international lawyers are elsewhere pursuing, towards the 'completeness of international law as a system of law' (p. ix). The book's relative disinterest in conventional instantiations of sovereignty is likewise a mark of incongruity, as Richard Joyce observes. It is, therefore, interesting to find Roberto Yamato take aim, in this context, at 'sovereignty ... which works for the reduction of the singularities and heterogeneities of languages (and cultures) to "the hegemony of the homogenous"'. Doubtless, such reduction is discernible in *Unruly Law*, international 'non-legality' being a question that can only ever be stated in the prevailing language of international legality.[3]

Slippages, crossovers and contending readings – these are operations by which the strange disciplinary 'community' that *Unruly Law* assembles is held together, more or less; likewise the four of us. It is striking that all three reviewers to whom I am responding have opted to ratchet the book upwards and tease it outwards in their reading, away from the supposed 'modest[y] of its self-described "quasi-ethnography"'. (Recalling now the powerful deployments of the 'quasi-' in Foucault's work, and in relation to Derrida's, I wonder if this 'quasi-' might not be, on the contrary, rather self-important.)[4] Mariana Valverde is especially generous in carrying the book onto socio legal terrain not explicitly charted in the text, though vital to its creation. I agree with her that the book advances a 'post-sociological' view. She does have doubts about the book's schema of non-legalities, but is prepared to set these aside with a 'be that as it may'. Nonetheless (and finally), let me linger with this passing worry and take up her query concerning 'how much is achieved by drawing distinctions' between non-legalities.

Though the book refers to the five varieties of non-legality with which it deals, collectively, as a 'typolog[y]', the point of this labeling is not classification (p. 10). As Richard Joyce highlights so beautifully, the distinctions drawn in the book – above all, that between law and non-law – are 'elusive' and 'evanescen[t]'. They pose precisely the problem at which so many are shown to be busy working. The book's naming practices – marking illegality, extra-legality, pre- or post-legality, supra-legality and infra-legality – are concerned, rather, with generating a vernacular for 'practices that have no discourse' (p. 27).[5] The book seeks both to weave that vernacular into, and to draw it out of, the technical, normative, and workaday dialects in which international lawyers daily speak and write.

The naming of these five or six types of non-legality also has a focal effect. They suggest different degrees of intensity or vividness. The pre- or post-legality of choice, for instance, bears down with far greater force than the 'by the way' of the

3 Derrida, *supra* note 2, at 133.

4 M. Foucault, *The Order of Things: An Archaeology of the Human Sciences* (transl. A. M. Sheridan Smith, 1970), 321; R. Gasché, *The Tain of the Mirror: Derrida and the Philosophy of Reflection* (1986), 316.

5 M. de Certeau, *The Practice of Everyday Life* (transl. S. Rendall, 1984), 46.

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infra-legal. A further implication of tagging variants of non-legality – as *Unruly Law* does – is that this creates associations, where disciplinary resources for juxtaposition are slight. Attention to modes and archetypes of non-legality enables, for example, the following connection to be drawn:

> The entrepreneurial, self-governing warrior evoked in recent accounts of torture . . . is thus a close cousin of the transnational deal-maker depicted in [Chapter Four] whose choices are understood 'properly' to take place in a pre- or post-legal sphere (p. 150).

Once again, the drawing of such connections is not by way of projecting international law as a unitary whole, but by way of making the passages and investments of its work newly navigable.

The book's 'drawing [of] distinctions' through non-legality thus has three aims beyond the creation of durably separate categories: vernacular creation or infiltration; focal effect or foregrounding; and association or juxtaposition. Whether or what the book has 'achieved' in these three respects – per Mariana Valverde's query – will be up to readers. In any event, the fact that the 'infra-legal' might not prove durable as a 'distinct category of the "non-legal"' will not mark any non-achievement of its goals.

Having begun this response with open hands of thanks, I find myself closing it in a somewhat more defensive posture. These counterpoints ought not to be taken to diminish the welcomeness of Richard Joyce's, Roberto Yamato's, and Mariana Valverde's gracious engagements with *Unruly Law*. Indeed, in light of our exchange, it seems now newly possible to say, as I have once before in the pages of this journal, let's not stop here.[6]

Fleur Johns[*]

6 F. Johns, 'Review: Diversity and Self-Determination in International Law' (2003) 16 LJIL 656, at 669.

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