Establishing Norms in a Kaleidoscopic World. By Edith Brown Weiss. Leiden Pocketbooks of The Hague Academy of International Law Vol. 39, Brill, 2020. Pp. 544.
doi:10.1017/ajil.2021.40

Is there such a thing as international law? In the course of a century and a half, many responses have been given to the skeptic's query. In addition to referencing the ways planes fly or packages travel from country to country, it might also be possible to point to the annual production, since 1923, of the *Collected Courses* of The Hague Academy of International Law. At least since 1929, the Academy has invited an established international lawyer to produce a "general course" to an audience of students beginning or aspiring to begin a career in the field. Many have made lifetime friendships with those met at The Hague, later coming to reminisce about who was the celebrated jurist who gave the general course that year. From an empirical, sociological perspective, there is not the slightest doubt about the existence of international law as an "invisible college" of lawyers who travel around the world addressing legal problems that the general course is expected to put in some larger intellectual context. For anyone worrying whether there really "is" an international law, it should suffice to go to the "general course," with the photograph of its holder, handily available as empirical proof that there are lawyers with their practices, addressing legal rules that strive to cover the whole of humanity. To the extent that international law is phenomenological—that is, exists to the extent it is *seen to* exist—the nearly century-long stream of Hague courses should dispel any lingering doubt about the ontological question—though it of course leaves open other questions about relevance and direction.

Being invited to give the general course is one of the highest forms of recognition that can befall an international lawyer. The fact that it is given and published annually is also a challenge. For surely, a "general course" must remain relatively unchanged year after year. The whole context of international law cannot be imagined anew annually; it would be even harder to develop a new theory for each year. How then to avoid simply parroting what previous lecturers have said? How to justify annual publication? Although some of the courses have indeed left their mark in the academy and are referenced (at least in Europe) decades after they were given (those by Scelle, for example, perhaps Virally, Ago, McDougal, Fitzmaurice, Chaumont, to mention only some of the Cold War era), that is not usually the case. A reasonable compromise might be to produce briefly one or another of some three to four standard ways of giving an overall perspective, and then to concentrate on a theme or themes in which the lecturer has special experience. This latter way is also followed in the 2017 course by Edith Brown Weiss. After a brief general discussion of "theories" and "sources" she elaborates a soft, political-science-inspired notion of "norm" that then carries the weight of the many separate topics united by hardly more than their being presently taken as important in the practice of international institutions. Hence the word "kaleidoscopic" in the title. The general view of the course is taken from a proto-sociology perspective of the complexity of the global world that Brown Weiss treats under the broad notion of legal pluralism (p. 61). This allows her to make the standard point about the proliferation of the subjects of the field (though states still have a "continuing role" to play, p. 506), as well as the ways in which the complexity can be regulated by "norms." The rest of the course then brings together such various and somewhat disparate technical items as climate change and geoengineering, transparency and anti-corruption, cyber space, digital currencies, and the internet. A normative angle on this busy world of technical cooperation is opened by the author's concern over intergenerational equity, the various actions that have to do with the management of the Anthropocene, as well as what this reader found the most interesting part of the course—three chapters on a synthetic view on "accountability."

The five-hundred-page paperback issue of the course produces a view of international law as a specialist discipline devoted to the management

of technical problems about the creation, application, and implementation of what the author, following work in U.S. international relations departments, calls "norms." Formal distinctions between "legal rules" and other standards are unable to articulate the manifold and often unorthodox ways in which normative effect is today attained, interpreted, and implemented. What, then, are the "norms"? According to Brown Weiss, they "reflect shared values" that appear differently in different fields of international cooperation. She identifies four to five norms whose scope extends over most of international law—cooperation, avoidance of harm, dignity (covering human rights law, not treated here separately), intergenerational equity, and accountability. Non-use of force appears in one of her lists but then no longer in the rest of the course. With this view, Brown Weiss joins with a common-sense, liberal neo-naturalism that sees the legal system's ultimate reference point in common values somewhat in the manner of the general courses given by Dupuy (2000) or Cançado Trindade (2005). Beneath the sociological pluralism of the world, there is a deeper unity that is expressed in this course as common values, those again translated into the political economy notion of public goods, subject to constant adjustment of their public and private components. Justifiably, environmental aspects are foregrounded throughout. Brown Weiss is perceptive enough to realize that mere reference to shared values remains indeterminate and question-begging, and she notes the fact that there are some who seek to present their special values as universal ones (pp. 62–63, 496–99). But who these "some" are, and what their alternative to the lecturer's preferred values might be, is not discussed further. One surmises they are those same actors who are responsible for international law being in "crisis" (pp. 491, 506) or even "under attack" (p. 506)—points to which I will return. Nevertheless, and somewhat disappointingly, she never enters the problem regarding the identification of values that are "shared" from those that are merely pretended. By not looking further into that problem, she can then set aside any effort to distinguish "law" from the rather endless talk in international institutions about values and common interests; law may now become whatever consensus has been attained among leading actors in an institution and the procedures set up to implement it. Process and technical expertise become central for making real the "values" supposed to lie behind the kaleidoscopic world.

There is much good in such an approach. It offers students a realistic and up-to-date image of the tasks that lawyers are invited to accomplish as they step into the world of international institutions, private and public. They also receive some sense that professional international lawyering involves becoming a card-carrying member of a club that seeks the integration of global society beyond the limited (though important) strictures of the state. As a seasoned practitioner, Brown Weiss avoids slipping into what readers might resent as hopeless idealism, still succeeding to preserve a sense of movement and dynamism in the law. She achieves this by not dwelling in theoretical generalities but by ever referencing the latest reports, the most up-to-date projects at official and unofficial institutions. There is some interesting detail here on practical efforts to address climate change by geo-engineering technologies, on anti-corruption activities by international institutions, and on accountability of multilateral development banks. Students are bound to be engaged by her discussion of the international law response to the Rana Plaza disaster in 2013 (the collapse of a building in Bangladesh that housed several garment factories, killing 1,134 people) or the burning of tropical forests. No doubt, they are also keen to learn about what international law, the professional world they are aspiring to enter, might say about gene editing, managing solar radiation, or the uses of social media.

The best parts of the course engage in detail with such activities and projects. This is international law operating as an efficient technique of global governance. The wide notion of accountability put forward here offers a welcome reminder that whatever the "norms" or the expertise, it is actual people who operate the institutions and make choices. Unless they feel and

https://doi.org/10.1017/ajil.2021.40 Published online by Cambridge University Press

are made accountable for those choices, it is hard to see how any progress could be attained; the discussion of managing World Bank development projects and global supply chains shows this very clearly. But that perspective also creates a number of problems. Even in a long course, only some activities can be discussed with this intensity of detail, others must be left aside. Some readers are bound to feel awkward about the virtual absence of trade and investment law and the complete sidelining of everything having to do with the use of force or the law of armed conflict. Of course, these matters are amply treated elsewhere. But they are also ones in which students have much interest; as the course suggests a view of law as a supporter of public interests and shared values, one might have expected some discussion of how they are visible in its treatment of violence as well.

The larger issue is the justification of the chosen standpoint—that of law as a flexible instrument of managing problems of governance that includes all kinds of "norms" that appear relevant in a complex, "kaleidoscopic" world. These are precepts designed to protect commons and public goods and to give effect to such other notions dear to modern liberalism and political economy as "accountability," "legitimacy," "transparency," and "learning." I have elsewhere recorded my difficulties with imagining international law as an offshoot of empirical political science of this sort.[1] Here law is instrumentalized to serve the actors that dominate the most powerful institutions, as part of their projects. It is one thing to write that norms arise from "shared or common values, diverse cultures and traditions, legitimacy of process, accountability of participants, rapid and abrupt change, and threats to the unrepresented future," and another to say how to choose between the normative materials that participants in institutional debates claim to represent those things (p. 136). Under its modest and ad hoc appearance, the instrumental approach delegates that choice to the bodies that it identifies as central to management and governance. In doing this, it pushes political disagreement aside and exposes its bias to choose technical and small-scale solutions to problems that are often systemic and reflective of long-term distributional patterns. The extent to which governance involves struggle between different priorities, often expressed in conflicting types of expertise, remains invisible. The best parts of the course, as pointed out, concentrate on concrete themes such as climate change, corruption, and the distribution of profits in global supply chains. The modest and usually recommendatory and self-imposed accountability systems may indeed alleviate some of the more immediate difficulties. But they cannot address larger and long-term problems and tend to privilege the position of institutionally strongest actors. Law's critical power, the way it can be used to illuminate those wider structural issues, is lost.

The last chapter addresses some recent challenges and attacks on international law. Multilateralism is on the decline; powerful states prefer bilateral agreements they can negotiate more advantageously, Brown Weiss rightly notes. Fragmentation, too, is identified as a challenge and linked with what she identifies as the controversy over universal values. Although she endorses the role of individuals and "bottom-up" approaches to the law, she recognizes that these have been at least in part responsible for recent attacks on international institutions and global expert power. In the end, she expresses hope that populist "disinformation" and the way mass judgments may undermine the rule of law might gradually dissipate as consciousness about the global and technological character of today's governance problems sets in (p. 501). Technological optimism is offered to students as the response to the present crisis. If states only were able to hold each other accountable for failing to take action to combat climate change, she writes, this "would encourage co-operation and efforts to avoid harm" (p. 504). I am doubtful. Trying to set up any such system would raise old debates about the power of some to impose norms on others. A much larger political transformation and redistribution of economic and negotiating

[1] *See, e.g.*, Martti Koskenniemi, *Miserable Comforters. International Relations as a New Natural Law*, 15 EUR. J. INT'L REL. 395 (2009).

https://doi.org/10.1017/ajil.2021.40 Published online by Cambridge University Press

power is surely needed. Present governance projects are likely to prevent such transformation; they operate as brinkmanship to safeguard that whatever happens with the global ecosystem will not lead to the loss of control over resources by those in governing positions. No doubt, technological innovations are positive. No doubt, soft norms and accountability proceedings will alleviate the most immediate problems, perhaps even for a long time. In its governance format as offered in this course, however, international law may remain unable to engage those students who have travelled longest to get to The Hague in order to find out what kind of change is needed in global institutions so that the values they mostly already share could finally be labeled "common."

MARTTI KOSKENNIEMI
University of Helsinki

The Oxford Handbook of Global Legal Pluralism. Edited by Paul Schiff Berman. New York: Oxford University Press, 2020. Pp. xiii, 1051. Index.

doi:10.1017/ajil.2021.39

In *The Oxford Handbook of Global Legal Pluralism*, Paul Schiff Berman, the Walter S. Cox Professor of Law at the George Washington University Law School, takes on the capacious concept and theory of global legal pluralism from a new direction. Having authored a monograph and law review articles that sketch out the descriptive and normative stakes of the field, Berman now brings together an impressive group of authors to wrestle with the expanse that is global legal pluralism.[1] At its best, the book offers fresh insight into the field by identifying thorny problems at its center and offering creative paths forward. At times, and perhaps fittingly for a book on pluralism, the multiplicity of voices can make for a discordant conversation. While Berman offers a helpful set of methodological and theoretical parameters, as an endeavor that celebrates a multiplicity of voices and substantive contestation, a book on global legal pluralism should hardly be expected to present a unitary perspective on the field. Sally Engle Merry explains that a legal pluralist frame reveals law to be "fragmented, inconsistent, and contradictory," offering the possibility of greater attunement to the local while at the same time risking increased oppression of the marginalized.[2] This volume presents examinations of each of these dimensions, which are equally applicable to global legal pluralism itself, in a variety of different registers.

The edited volume begins with Berman's thorough and careful explanation of the concept of global legal pluralism as he has defined it in his previous work. Many of the chapters also offer an exploration of global legal pluralism's key moves, which helps to get one's arms around the term and the theory. Global legal pluralism aims to decenter the state;[3] this "critique of state centeredness is meant to render visible the many normative universes of which the ones we associate with 'the state' are only a part."[4] It expands the set of law-producing actors, as well as sources of law, deemed worthy of study.[5] Global legal pluralism also adds an interactive

[1] *See, e.g.*, Paul Schiff Berman, *Global Legal Pluralism*, 80 S. CAL. L. REV. 1155 (2007); PAUL SCHIFF BERMAN, GLOBAL LEGAL PLURALISM: A JURISPRUDENCE OF LAW BEYOND BORDERS (2012).

[2] Sally Engle Merry, *An Anthropological Perspective on Legal Pluralism*, *in* THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM 170 (Paul Schiff Berman ed., 2020).

[3] Frédéric Mégret, *International Law as a System of Legal Pluralism*, *in* THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM, *supra* note 2, at 535.

[4] Peer Zumbansen, *Manifestations and Arguments: The Everyday Operation of Transnational Legal Pluralism*, *in* THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM, *supra* note 2; *see generally* Ralf Michaels, *Global Legal Pluralism and Conflict of Laws*, *in* THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM, *supra* note 2.

[5] *See generally* Wibren van der Burg, *Conceptual Theories of Law and the Challenge of Global Legal Pluralism: A Legal Interactionist Approach*, *in* THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM, *supra* note 2; Mégret, *supra* note 3; Michaels, *supra* note 4.