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Book Reviews

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BOOK REVIEWS

Agreeing and Implementing the Doha Round of the WTO. Edited by Harald Hohmann. Cambridge; New York: Cambridge University Press, 2008. Pp. x, 504 ISBN978-0-521-86990-4. UK£70.00; US$126.00

Agreeing and Implementing the Doha Round of the WTO is one of the first scholarly works produced to assess the progress of the Doha Round of negotiations under the World Trade Organization. This collection of essays includes contributions by scholars and practitioners alike from Europe, America, and Asia, and attempts to balance views from both developed and developing nations. The aim of the volume is to lay out what has happened in the Doha Round of negotiations so far, to assess the progress of discussions, and to analyze their importance for the future development of world trade law.

The book is divided into four parts, each addressing a particular issue. The first part of the book contains essays on development policy, with two chapters devoted to examining this issue from a European Union perspective and a "developing nation" perspective. Part one also includes an article on the need for domestic policy development, in conjunction with trade liberalization, in order to eradicate poverty. The final article discusses the WTO dispute settlement system as a body for implementing the special and differential principle.

Part two addresses the issue of trade policy, including articles assessing what has been achieved so far with the Doha Round and what the future of the talks hold. Part two also includes essays on competition law and how it could be dealt with outside the WTO framework, the interaction between liberal globalism and socio-economic and human rights, and the chemical industry's views on the progress made in the Doha Round. Part three examines the WTO dispute settlement mechanism, looking at its history and its present incarnation and also includes chapters that discuss the competence of WTO panels in relation to environmental issues and the role of legal aid in the WTO dispute settlement process.

Part four examines trade in relation to health, the environment, and social standards. Essays discuss human rights, labor standards, and a possible climate change regime under the WTO. This part also includes articles examining the relationship between free trade and the environment and the WTO measures which may provide protection in the realm of food and health safety. A final chapter is devoted to the conclusions of the editor.

This book provides an excellent survey of some important issues surrounding the Doha talks. Of particular interest are chapters that provide the perspectives of both developed and developing countries on the same

issue. There are several chapters that provide an excellent history of certain aspects of WTO development as well as the progress of certain issues through the Doha Round of discussions. To a scholar familiar with the basics of the WTO and its negotiations, this book provides excellent detail.
However, this book is not for someone new to the scholarship of international trade issues, in general, or the WTO, in particular. Articles provide very little in the way of introduction to the WTO, its institutions, and its processes. Many articles assume a basic familiarity with the jargon and issues of international trade policy. Readers without this background may find themselves looking for a primer on the subject in order to be able to appreciate the substance of the book.
Overall, this book is a useful addition to an international trade policy collection. It provides essays on a broad range of topics and from a variety of perspectives. While potentially overwhelming for a person beginning their studies on the WTO, it provides excellent detail and discussion for the advanced scholar. Although it suffers from some organizational and editorial issues, the book provides a great deal of interesting and relevant information on the topic of the WTO and the Doha negotiations.

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The Principality of Monaco: State, International Status, Institutions. By Georges Grinda. Cambridge; New York: Cambridge University Press, 2007. Pp. xx, 208. ISBN: 978-9-067-04219-2. UK£38.00; US$75.00

The Principality of Monaco is a small independent city-state surrounded by France on three sides and the Mediterranean Sea to the south. Monaco has a rich legal and political history. It is a constitutional monarchy and principality that has been ruled by the Grimaldi family since 1297; the State's sovereignty was officially recognized by the Franco-Monegasque Treaty of 1861. The genesis of this book is the 2002 revision of Monaco's constitution and the Franco-Monegasque Treaty of 24 October 2002. These two events reinforced the Principality's statehood by resolving issues of sovereignty and the risk of a vacancy on the throne. Under the constitutional revisions, approved by the treaty, only a member of the Grimaldi line can assume the throne, thereby resolving concerns that Monaco could potentially

become a French protectorate. This book is in some ways a celebration of these two events, but it is also much more.

The Principality of Monaco: State, International Status, Institutions is an English translation of the 2005 book by Georges Grinda entitled *La Principauté de Monaco: l'Etat, son StatutIinternational, ses Institutions.* The author focuses his analysis on Monaco's constitution, but also discusses the monarchy, government, National Council, Crown Council, State Council, legislative system, and courts. In this, his fifth book on the government of Monaco, Grinda presents an analysis of the nature of government in Monaco from the perspective of an experienced insider.

Grinda begins each chapter of this highly accessible book with an introduction to the topic that situates it both historically and within the local contemporary culture. As the Plenipotentiary Minister of European Affairs for Monaco, Grinda has had personal experience with Monaco's interaction with regional European governmental institutions. In this book, Grinda assumes the role of cultural ambassador, explaining the vagaries of the unique city-nation state of Monaco. Grinda's diplomatic experience lends an important and distinctive perspective and may be why this book is not exactly what a reader might initially expect.

This book differs in key ways from traditional introductions to the law of a country such as *French Legal System* (2nd edition, 2006) by Catherine Elliott, Eric Jeanpierre, and Catherine Vernon or *Introduction to French Law* (2008) edited by George A. Bermann and Etienne Picard. The typical introduction to a foreign legal system has sections on civil procedure, criminal procedure, and other practice-oriented legal topics. By contrast and as implied by the full title, *The Principality of Monaco: State, International Status, Institutions,* this book focuses on governmental structure, international relations, and institutions instead of systematically covering legal issues by type of law.

Although it is not a legal research guide, it is a valuable tool for researchers searching for legal and political information on Monaco.

[1] Currently, there are not many legal research guides that focus on Monaco, and even fewer are in English. Perhaps the most comprehensive online guide is the "Monaco" chapter in the *Foreign Law Guide* by Thomas

[1] The best source of recent Monegasque law such as codes and the official gazette is probably the official government website at http://www.monaco.gouv.mc or Legi Monaco Juris at http://www.legimonaco.mc.

Reynolds and Arturo Flores.[2] While Reynolds and Flores provide a subject-by-subject listing of the sources of Monegasque law, Grinda instead focuses on the intersection of law and government.

Researchers will find that this book incorporates background information about the political structure into a textured analysis of the functioning of the state. They should not expect a list of basic political facts such as those found in the annual *Political Handbook of the World* or *The Statesman's Yearbook*. Similarly, *The Principality of Monaco: State, International Status, Institutions* addresses Monaco's constitution without being an annotated constitution such as *Lumb & Moens' The Constitution of the Commonwealth of Australia Annotated* (7th edition, 2007), by Gabriël A. Moens and John Trone.

Because Grinda's book includes features from various types of publications, it can be a reference to researchers who want to know where to find certain types of legal and government information about Monaco. Grinda discusses the history, function, and status of the Monegasque State. He provides an excellent overview of the constitution, important treaties, government structure, origins of the State, and Monaco's status in the international community. The book contains extensive citations to source documents, and following the three page bibliography, there is a section entitled "Documentation," which provides a brief annotated list of official sources and where to find them. As annexes to the book, the author provides the full-text to both the Constitution of the Principality of Monaco and the Franco-Monegasque Treaty of 24 October 2002 in English translation. *The Principality of Monaco: State, International Status, Institutions* is a good choice for those interested in the legal history of Monaco, the international status of Monaco, the constitution of Monaco, or the structure of Monaco's government. While a researcher could find some of this information in other publications and web sites, this book provides a unique insider perspective on Monaco's place in the international community. It is a well-suited choice for a college, university, or law school library.

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[2] The *Foreign Law Guide* at http://www.foreignlawguide.com is a subscription service. An extensive search also yielded the basic Library of Congress legal research guide to Monaco at http://www.loc.gov/law/help/guide/nations/monaco.php and an LLRX guide to the micro-states at http://www.llrx.com/features/microstates-.htm#Monaco.

The Prohibition of Propaganda for War in International Law. By Michael G. Kearney. Oxford; New York: Oxford University Press, 2007. Pp. xiii, 274. ISBN: 978-0-19-923245-1. UK£60.00; US$145.00.

Kearney's book is a self-described effort to move the prohibition of propaganda for war from the footnotes of academic literature to the forefront of international law discourse. To this end, Kearney seeks to provide the "comprehensive analysis" he asserts is missing from, and necessary to, a full understanding of the meaning and scope of such a prohibition's proper position in international law. Creating accountability, he asserts, is the next logical step in the development of international law and a necessary measure in the prevention of war. His efforts have produced a book that is a valuable perspective on an issue that has been marginalized for far too long.

While clearly passionate about his topic, Kearney constructs his argument with a composure that underscores his points with intellect rather than emotion. His analysis is sound and supported by extensive footnotes that connect the reader to multiple sources of law drawn from history and the present that, true to the traditional process of the development of international law, establish evidence of international standards which, Kearney argues, should be codified by the International Law Commission to recognize a prohibition of propaganda for war, or, at least, a crime of incitement to aggression. The norms, according to Kearney, have generally been adequate; the problem is that they have not been enforced. Kearney provides a history lesson in the international development of the prohibition of propaganda for war in which he focuses not only on the more obvious sources, such as treaties, non-governmental resolutions, and resolutions of the League of Nations, but also places a strong emphasis on the analysis used by national and international criminal tribunals to address the issue of propaganda's contribution to the wrongs they seek to redress. This collective jurisprudence in fact becomes the mortar of his argument that a prohibition against propaganda for war, although not yet clear precedent, is by analogy already firmly entrenched in an important part of the international legal community. Kearney also examines the goal of those who established the International Military Tribunal and notes that it explicitly created accountability not only for those responsible for the events of the time, but also for those whose actions [propaganda] created an environment in which such events were possible.

Kearney also looks to the General Assembly of the United Nations for evidence of recurring resolutions and declarations that, he argues, established an obligation on the part of states to abstain from the use of propaganda for war. Kearney thereby seeks to establish a custom of condemning propaganda for war through the resolutions and declarations of the General Assembly of the United Nations. He acknowledges that the persistent hesitation on the part of Western democracies, together with the 1976 adoption of the International Covenant on Civil and Political Rights by the General Assembly and the end of the Cold War, eventually led to the end of the passage of resolutions addressing propaganda for war. However, he states this is evidence that the Assembly apparently considered the Covenant sufficient to address the issue. Kearney agrees that Article 20(1) of the International Covenant on Civil and Political Rights is the most significant provision dealing with propaganda for war in international human rights law, and herein lies the heart of the book. He discusses its perceived weaknesses, the primary two of which are the lack of a definition of propaganda for war and the perceived threat to freedom of expression. He disposes of the matter of risk to freedom of expression by not only pointing out that is a freedom that is expressly protected by the convention, but also by drawing a distinction between individual speech and governmental speech. He ultimately identifies the two rights as complementary to each other, rather than in contradiction with one another, as a result of the greater individual freedoms that result from judicious enforcement of such a prohibition.

The lack of a definition of propaganda for war requires more of his attention and, even after his thorough analysis, remains an unresolved issue. However, he can be forgiven for this because his purpose is not to pin down definitions for terms such as "propaganda" and "war," but rather to provide an understanding of each within the context of the phrase "propaganda for war," and this he does well. Kearney is not content to accept the position of the delegates in support of Article 20(1), some of whom were satisfied with the notion, "I'll know it when I see it." He instead examines the issue in more detail, drawing on the debates to identify the two distinct elements of propaganda for war as "incitement to war" and "the repeated and insistent expression of an opinion for the purpose of creating a climate of hatred and lack of understanding between the peoples of two or more countries, in order to bring them eventually to armed conflict."

In his analysis of the years that ensued after the passage of Article 20(1), Kearney reviews how individual nations have interpreted and applied the prohibition of propaganda for war and, in doing so, reaches two conclusions. First, he confirms his conclusion that a prohibition of propaganda for war is not a violation of the right to freedom of expression. Second, he rejects the notion that there are inadequate resources to which

nations may turn for an appropriate definition of propaganda for war. In fact, he asserts, the failure of states to define the term precisely is a violation of the obligation of nations to observe international law and serves to misinterpret and misapply the Article, which in turn leads to "an intolerable undermining of the entire international human rights framework."

Ultimately, Kearney argues, the difficulties in pinning down a definition should not stop us from moving forward with developing a resolution to the issue. Specifically, Kearney proposes, there should be included "a distinct crime of direct and public incitement to aggression in the Rome Statute of the International Criminal Court." His proposition, while politically provocative, is timely and therefore relevant and deserving of our close attention. Kearney presents this as an "opportunity for the reinvigoration of the principal at hand." His assertion is based upon the premise that if an act is illegal under international law, then so is "incitement intended and likely to lead to that act." Kearney supports this principle with several examples in both international and state law.

Kearney makes the logical point that even if he is unsuccessful in what he advocates, the issue will continue to be raised for review in the International Criminal Court. He advocates enforcement of violations of the prohibition through the International Court of Justice as a forum for hearing cases which, he feels, the Human Rights Committee has neglected to address, and additionally states the necessity for state legislation giving effect to Article 20(1) of the Covenant.

Kearney is successful in his goal that the book will stimulate discussion among its readers. There is no doubt that it will do so; it is a significant contribution to this debate and could serve as a valuable resource for the leaders of our country. Whether it will contribute to the future development of international law remains to be seen. Regardless, the text of his book, together with the supporting (and sometimes contrasting) footnotes and extensive bibliography, combine to create a comprehensive source of all of the international laws relevant to a discussion of prohibition of propaganda for war in international law, and the book is therefore additionally successful as an important reference tool for those seeking an outline of the scope of the prohibition in the international law context. As an aside, readers will also find it interesting to read about Kearney's brief review of the history and techniques of propaganda for war, including the exploitation of emotion and intellect through the selective presentation of information and the use of

persuasion. His analysis serves to inform us not just as academics but also as voters and conscientious citizens.

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Finding Solutions for Environmental Conflicts: Power and Negotiation. By Edward Christie. Cheltenham, UK; Northhampton, MA; Edward Elgar Publishing, 2008. Pp. xvii, 335. ISBN 978-1-84720-070-9. UK£75.00; US$140.00

Written as part of the New Horizons in Environmental Law Series, Edward Christie's *Finding Solutions for Environmental Conflicts: Power and Negotiation* presents an analysis of how to use alternative dispute resolution (ADR) to settle environmental conflicts. In the introductory chapter, the author reviews the history of environmental law and chronicles the development and structure of ADR. There is an analysis of how the litigation and ADR approaches will differ in how they solve environmental conflicts. In his initial comparison between ADR and litigation, Mr. Christie states, in litigation, "judges adjudicate on disputes and impose a binding decision on the parties" while in ADR, "the dispute resolver's role is to assist the parties to resolve their conflict by finding their own solution through a negotiated agreement." This chapter also sets the stage for the rest of the book by explaining the reasons why ADR should be considered in environmental conflicts.

Following the introduction, Mr. Christie structures the book into three parts. The first part discusses environmental decision-making, enforcement of environmental legislation, and public participation, and shows how the United States, United Kingdom, and Australia each have addressed the relevant issues in legislation, regulations, and case law. Chapter two explores the cross-disciplinary aspects of environmental conflicts, including traditional questions of law and scientific findings that affect decisions in such conflicts. Knowledge power, which is the concept that understanding the legal or scientific facts for a particular conflict gives a participant a level of power in settling the conflict, is introduced in this chapter and discussed in further detail in subsequent chapters. In chapter three, the author discusses aspects of participation in environmental conflicts and how the different countries have responded to either encourage or discourage public participation. It explores concepts such as knowledge of indigenous peoples and freedom of

information legislation and how they affect participation. The last chapter in this part provides a detailed analysis of the enforcement of environmental laws in the three countries and how the enforcement can impact moving from a litigation model to a negotiation or ADR model.

Chapters five through nine represent the second part of the book and focus on specific issues relating to environmental conflicts. The topics covered include sustainable development, protection of endangered species, control of hazardous waste, and biotechnology. These chapters discuss how the regulation and legislation in the U.S., U.K., and Australia have developed to address these diverse issues. There is also a chapter relating to environmental impact assessment and how legislation requires that environmental impact be evaluated and reported. Each of these chapters concludes with a comparison of how litigation and ADR approaches to the issue and highlights the positive aspects of ADR.

In the final chapter, Mr. Christie presents a model for ADR in environmental conflicts. It is a step-by-step approach to resolving such a conflict. Seeing each step as a distinct phase, which requires a different type of dispute resolution, Mr. Christie gives a clear description of the different techniques of dispute resolution that will best apply in each phase. In addition to the process, he stresses the importance of the dispute resolver having the necessary scientific or legal knowledge depending on the type of conflict and the stage in the resolution problem.

Finding Solutions for Environmental Conflicts: Power and Negotiation is a well-written book that provides the reader with a clear understanding of the issues that generally arise in environmental conflicts, how those issues are addressed through litigation and the administrative decision-making process, and how using ADR can produce more equitable and long-lasting solutions. With a background in ecology, environmental law, and mediation, Edward Christie is knowledgeable about the subject of the book and has the expertise needed to tie the distinct areas together. The book includes prolific references, as well as a table of cases and a table of authorities, which are helpful given the detailed discussion of the environmental statutes, regulations, and cases from the U.S., U.K., and Australia. Written as a practical guide for environmental practitioners, this book can also be useful for students of environmental law or ADR, because it provides information on a variety of environmental law topics and shows how ADR can be used to address them.

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The Reception of English Law Abroad. By B.H. McPherson. Brisbane, Australia: Supreme Court of Queensland Library, 2007. Pp. xlv, 520. ISBN 9780975123096. A$88.00.

In *The Reception of English Law Abroad* describes the dissemination and adoption of English law throughout the British colonial empire. According to the author, the charters issued by the crown provided the basis for "many of the principles that determine the character of government and law in distant places at the present day." Likening the law to the English language, McPherson states that "transposing the law overseas produced different accents and usages involving adjustments and changes to many of its rules."

The author attempts to establish the basis for the unique manifestations of English law among the countries under British rule. Unlike other European imperial powers, which instituted their own national legal systems in their territories, McPherson claims that "England did nothing." Although there are many theories for this inaction, McPherson argues that "a free Englishman could not be bound by laws made without his consent or that of an assembly in which he was represented."

In so arguing, McPherson discounts two theories, namely, that colonists rejected English law and that English law was "incapable" of export outside of the English realm. He discounts the first theory, noting that the American War of Independence was a result of the colonist's belief that they had been denied the rights of Englishmen. In addressing the second theory, McPherson notes the instances of Wales and Ireland, specifically, the Acts of Parliament in 1536 and 1543 in the case of Wales and the *Case of Tanistry*, decided in 1608, in the case of Ireland.

The law as a "natural birthright," in practice, was transplanted by colonists and "later confirmed by legislation." Meanwhile, existing local legal systems, such as in India, were allowed to coexist with the transplanted English law. Indeed, McPherson describes English law as "peculiarly responsive to local circumstances of place and people," providing a basis for the development of local legal systems. But he also notes a number of contributing factors, i.e., land law, government, nationality, individual rights, and legislation. McPherson then dedicates succeeding chapters to each of these factors.

Land law, as a factor in the reception of English law, was based on sovereignty over territory, whether by conquest or cession, as a result of conquest or acquisition, or discovery and occupation, in which the crown sought to exercise governmental authority over the discovered land. The goal of the English was to establish friendly relations with the indigenous

inhabitants and negotiate the purchase of land. As a result, customary land tenures were largely left undisturbed. One of the issues addressed by McPherson is the private purchase of land from native owners, the title of which, he notes, was vested in the crown and acted as a burden on that title, because only the crown had "power to acquire the land or extinguish . . . [native] rights." To convey special privileges to English people residing abroad, including grants of land, the crown issued charters.

The next factor contributing to the spread of English law abroad was tied intimately to the first. Once land was granted to English settlers, the next logical step was the governing of those settlers. Because Parliament did not have the staff to supervise colonial possessions, the task fell to the crown. Governors were appointed and they initiated legislation to be passed by local, representative assemblies, subject to the British Constitution. Government in the colonies was to be exercised to English standards and local laws were not to be "repugnant, but . . . agreeable to the laws and statutes of England," including legislation and taxation. Parliament's power, generally, to enact laws extending abroad to the colonies was limited, based on the narrower principle that Englishmen could not be taxed without representation. However, the Council for Trade and Plantations exercised administrative review of local legislation.

Nationality was another factory contributing to the spread of English law abroad. The basis for nationality was feudal in nature, determined by birth in a place owing allegiance to the crown. As such, the subject owed loyalty to the crown and, in turn, the crown owed protection and peace through its government and laws. In addition to birth, British nationality could be acquired by Acts of Parliament and letters of denisation. Once attached, the status of a British subject was perpetual to him and his descendents. Without British nationality, individuals were prevented from owning, transferring, or inheriting land; exercising political rights and holding political office; and engaging in trade and shipping.

Individual rights, English liberties, or "natural rights of all mankind . . . the security of life, liberty and property" were transmitted to the colonies via charters, commissions, royal instructions, etc. In addition, they were re-enacted in local assemblies or imported under the doctrine of colonial birthright. These rights were recognized in both England, by the Privy Council and legal scholars, and her colonies. However, the unwillingness of Parliament to recognize these rights in North America was credited with the War for Independence and the loss of the American colonies.

Despite the birthright theory of English law, local adoption of common law was based, for the most part, on legislation. English law could be imposed in the case of captured or ceded territories (the conquest rule or cession rule). It could be introduced into a colony by an enactment of

Parliament. Finally, local legislative bodies could enact reception laws on their own initiative, as was most often the case.

Even with the granting of independence, imperial statutes and legislative instruments often provided for the continuation of English law in former colonies. In addition, as British influence expanded throughout the world, English law was introduced. For example, on the issue of the slavery, Great Britain sought to suppress the slave trade in the early 19th century internationally, not only in Africa, but also in the Middle East and the Western Pacific Ocean. Commercial ventures and accompanying treaties with local political entities introduced English law to Africa, the Near East, the Middle East, and the Far East.

Generally, where the reception of English law occurred, the whole of English law was received. Exceptions to this rule were territories where other legal systems were already in place. Regarding the character of the law received, common law rules, under the birthright principle, were adopted as common law. If common law rules or English statutes were re-enacted locally, they were adopted as statutes. However, statutes adopted under general reception laws were adopted as common law.

Exception to the reception of English law existed. These exceptions were usually considered to be unsuitable to local conditions. They were more often legislative in nature, since common law was considered a form of natural law. The received law could be expressly repealed; deemed inconsistent or repugnant to local customary law, so as to force the received law to cease to operate; or revised.

In addition to the law itself, judicial administration in the colonies was usually based on a court system patterned after the English court system. Finally, key to the reception of English law was the educating and training of lawyers. The development of lawyers was limited to learning from practitioners or self-study. Opportunity for either was limited in the colonies. Some seeking to study the law returned to England to study at the Inns of Court, while others articled, attached themselves to practicing attorneys, or "read with leading counsel at the bar." However, legal texts were limited until the publication of Blackstone's *Commentaries on the Law of England*, which was widely published and disseminated.

This book is an excellent historical overview of the basis for the reception of English law throughout the world, especially in jurisdictions that were at one time subject to English rule. It is thoroughly documented, not only with footnotes throughout the text, but also with a table of cases. In

addition, it is accessible with an index of names and places, as well as a subject index.

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The Power and Purpose of International Law, Insights from the Theory and Practice of Enforcement. By Mary Ellen O'Connell. Oxford; New York: Oxford University Press, 2008. Pp. 408. ISBN 9780195368949. UK£26.00; US$45.00.

Critics of international law have long claimed that it is not law at all, but merely reflects the practice of states acting in their own political or economic self-interests. These "realists" point to inadequate sanctions and weak enforcement of international rules as important evidence against the idea of international law as binding. In response, Professor Mary Ellen O'Connell's recent book, *The Power and Purpose of International Law, Insights from the Theory and Practice of Enforcement,* argues that both the existence and enforcement of meaningful sanctions demonstrate that states do believe that international law is binding, and "[i]nternational law's claim to be law is based ultimately on belief." (p. 9) In support of her thesis, O'Connell briefly traces the history of international law theory, enumerates the types of sanctions authorized by international law, and marshals substantial evidence of enforcement. In her systematic study of sanctions, unilateral, multilateral, international, and domestic, the author builds a convincing case in support of the legitimacy of international law.

The long-standing view that international law is not truly law received renewed attention with the rise of "neoconservative" American political thought in the early years of the new millennium and with the appearance of *The Limits of International Law* by Richard L. Goldsmith and Eric A. Posner in 2003.[3] In that book, the authors argued that international "law" mainly described the political practice of states and did not furnish an

[3] JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2003).

independent legal basis for constraining state action. Instead, international law simply provided a guide for states in pursuing their political self-interest. Weak sanctions and inadequate enforcement of international rules indicated that international law did not exert an independent pull on states to comply with its tenets.

One of the motivations for Professor O'Connell's book seems to have been to respond to the arguments, especially those relating to sanctions and enforcement, in the Goldsmith and Posner book. She devotes a lengthy section in her book to refuting systematically the arguments of Goldsmith and Posner. At the outset, O'Connell questions the use of an economic rational-choice method to evaluate state compliance with international norms. Goldsmith and Posner assume for the most part that individuals and states act rationally to maximize self-interest, an assumption that O'Connell notes is contrary to the "now-massive" literature on cognitive psychology, as well as independent evidence that individuals and states may on occasion disregard self-interest and act morally or altruistically. Goldsmith and Posner also discount as "cheap talk," statements by international actors that acknowledge the binding force of international law. In their view, when these statements come from representatives of governments, international organizations, or non-governmental organizations, they presumably amount to little more than political rhetoric. O'Connell criticizes this view as arrogant, because it values the authors' own assumptions about a speaker's beliefs more than the speaker's own explanations of the belief. Finally, she asserts that Goldsmith and Posner have omitted and mischaracterized the sources and methods of enforcement of international law, and much of her book is devoted to addressing those failings.

In addition to identifying the specific flaws she sees in Goldsmith and Posner's arguments, O'Connell emphasizes their context in the Bush administration's post-9/11 attempts to defend the "War on Terror."[4] During that period, Goldsmith served in the General Counsel's Office of the Department of Defense and then in Legal Counsel's Office of the Justice Department. In contrast to other attempts to defend the legality, under international law, of Bush-administration practices such as "harsh" interrogation techniques and extraordinary rendition, Goldsmith and Posner instead challenged the fundamental legitimacy of international law itself. Based on their economic analysis of state compliance with international law, they concluded that international law was merely descriptive of what states would do anyway and that it did not provide an independent basis for binding

[4] The so-called "Torture Memos" examined the legality under international law of "harsh" interrogation techniques used on suspected terrorists and enemy combatants.

states against their pursuit of self-interest. Instead, international law served merely as a set of guidelines, or a "special kind of politics," that states might or might not follow.[5]

O'Connell makes much of the dangers of publicly criticizing international law at all, contending that any criticism could encourage the actions of those who seek to evade external checks on their behavior. She explains her lengthy reply to Goldsmith and Posner's book as an attempt to dissuade "U.S. elites" from seizing on their arguments to justify noncompliance with international law. O'Connell's emphasis, however, is on various objections to Goldsmith and Posner's assumptions, arguments, and methodology; instead, she affirmatively champions the legitimacy of international law by tracing its deep intellectual roots and compiling evidence of substantial enforcement practice, with an emphasis on state practice in recent decades. O'Connell's thesis is that the very existence of sanctions for the violation of international norms, along with the considerable evidence of enforcement over the past decades, demonstrates the legitimacy and impact of international law.

For the most part, the author builds her argument clearly and efficiently. She begins her discussion of enforcement, however, in an uneven chapter on "classical enforcement theory." O'Connell's dilemma was to lay the intellectual foundations for her arguments on international law enforcement practice without distracting the reader from her larger themes with too much detail. To do justice to a basic intellectual history of international law would require substantial explanation, but spending even more time on background material than she does might sidetrack a reader impatient to get to the crux of her thesis on modern enforcement theory and practice. Although the historical background she provides is instructive, an unfamiliar reader might wish for more detail or for clearer links to the author's later points. The familiar reader, in contrast, may perhaps find this introductory overview very basic, in contrast to her later historical treatment of specific sanctions and enforcement practice.

The chapter recites a chronological history of the thinking of international law theorists on enforcement, summarizing basic philosophical themes. Beginning with Christian and Roman ideas about universally applicable principles of natural law, "just-war" theory formed the basis for early international law rules governing armed conflict. To have a just war, a state could not wage war solely to pursue its own political or commercial self-interest. The right to wage war was subject to higher principles; indeed, the ruler had to have "a just cause, right intention, and right authority." (p. 22) O'Connell briefly traces the development of just-war theory by summing up

[5] GOLDSMITH & POSNER, supra note 1, at 202.

the ideas of Cicero, Aristotle, Augustine, Aquinas, the Spanish Scholastics, and other just-war thinkers within the space of a few pages.

She highlights in more detail the philosophy of Hugo Grotius, the seventeenth-century Dutch diplomat, philosopher, and Christian apologist whose natural law theories laid the foundations of international law. In Grotius' view, the use of force could be legitimate, but it had to be proportional to the wrong, aimed only at the wrongdoer, intended to redress the wrong rather than to seek revenge, and ordinarily, serve only as a last resort in enforcing the law. O'Connell points out that most of these ideas still apply to the modern rules regulating force in international law. Despite some enduring themes from its natural-law beginnings, however, international law theory later evolved in another direction away from rules inherently applicable to all people and towards the positivist view in the nineteenth-century that sovereign states could create law binding on other sovereign states only by mutual consent.

O'Connell devotes most of her book to showing that sanctions and enforcement together manifest the belief of states in the binding force of international law. Sanctions serve a number of functions: identifying legally binding rules, coercing violators into compliance, and encouraging respect for international law, thus decreasing the need for actual enforcement. General compliance with international law rules demonstrates that states accept the legitimacy of those rules.

Even though enforcement is an integral part of a legal system, O'Connell argues persuasively that judging the nature and legitimacy of a law by its enforcement alone is problematic. In support, she draws convincing parallels to areas of domestic law that are poorly or inconsistently enforced, but that are regarded nevertheless as legally binding rules: e.g., traffic laws, tax laws, domestic violence laws, child support laws, and immigration laws. The enforcement of these domestic laws is notoriously lax or inconsistent, but no one would dispute their legitimacy as binding law. In domestic law, the mere existence of a sanction for violating the law is more important than vigorous and consistent enforcement. Similarly, O'Connell argues, if a sanction is possible for the violation of an international rule, that is evidence of the rule's status as binding law as well. Perfect enforcement is not necessary domestically or internationally as long as the rules are, in fact, subject to a possible legal consequence.

O'Connell scrutinizes the history and practice of states in applying the sanctions available under international law. "International law has been treated as binding by states throughout history: Claims are made on the basis of it; lawsuits are filed, and enforcement measures applied." (p. 4) She examines armed sanctions and countermeasures, distinguishing among

unilateral and multilateral, international and domestic sanctions, and she catalogs numerous examples for each type.

As the logical baseline for international law enforcement, the United Nations Charter in article 2(4) broadly prohibits a state from using force in its international relations. O'Connell emphasizes the significance of that provision in establishing positive law in the international community. Nevertheless, in the years since the Charter's adoption, the large number of inter-state armed conflicts has convinced some scholars that the Charter has not constrained states significantly in their use of force. In this view, if international law is based only on the consent of sovereign states, then conduct that is inconsistent with a rule could nullify its binding effect. O'Connell vigorously challenges the notion that the UN Charter has declined in its legal effect and instead finds significance in how states justify their use of force: they do not assert that the Charter is not binding, but instead claim that they are complying with one of its exceptions. It is the official positions of states that make positive law, O'Connell argues, so even the states that violate an international law rule can reinforce its legitimacy by claiming they are acting in compliance.

The main exception to the Charter's prohibition against armed force is self-defense, which O'Connell considers to be a type of international law enforcement, given the connection between self-defense and the historic right to use war to enforce international rules. A state may use force in defending itself only in response to an armed attack, if it notifies the UN Security Council, if the armed force targets the responsible state, and if the defense is necessary and proportional. Thus, the Charter does not authorize preemptive self-defense and authorizes unilateral action only until the Security Council acts.

With regard to collective armed measures, O'Connell vividly contrasts the "deeply held understanding in the international community that force should only be used as authorized by law" with intense interest by some in using force to enforce rules and further policy. (p. 195) The UN Security Council retains the authority to use force beyond self-defense, to maintain peace and security, but O'Connell asserts the need for greater certainty about what international norms should govern Security Council action. She explains the development of peacekeeping operations as the result of international interest and desire to respond to conflicts, despite Security Council inertia or disagreement. She does not, however, categorize traditional peacekeeping as an enforcement measure, because peacekeeping actions have the consent of the warring parties and peacekeepers take no coercive action to enforce a ceasefire. Her accounts of the tragedies in the former Yugoslavia, in Somalia, and in Rwanda vividly illustrate the shortcomings of traditional peacekeeping actions.

Although the Charter's language is quite broad, article 2(4)'s prohibition has been interpreted to mean only armed force. Other types of self-help by states, e.g., economic, political, or physical force not involving arms, are considered only countermeasures. Thus, actions that would otherwise violate international law, including low-level force, to respond to a prior violation of law no longer constitute "reprisals" under the classic definition, but are now deemed to be acceptable countermeasures. Countermeasures are now the primary means for states to enforce international legal rights, and states use them regularly. To be a legitimate means of enforcement, countermeasures must respond to a legal wrong, be proportional to the injury, and be aimed at inducing compliance. (p. 264)

Finally, O'Connell discusses the role of courts in interpreting and applying international law rules. Not only are domestic and international tribunals important in recognizing the existence of sanctions, but they also play an increasing role in applying them. The adjudications of courts and tribunals can authorize actions as legitimate sanctions and not just self-help actions of reprisal or revenge.

In contrast to the systematic and detailed treatment of her subject in the main body of *The Power and Purpose of International Law*, O'Connell's conclusion section is a bit thin and misses the opportunity to reinforce the book's central themes by pulling together all threads of her argument. Nevertheless, the reader comes away from the book with a solid understanding of the key ideas relating to the role and effectiveness of international law sanctions and ample historical evidence of enforcement practice. O'Connell's treatment of her subject overall is scholarly and thorough, and her book effectively answers critics who rely on the absence of meaningful legal consequences to question the fundamental legitimacy of international law.

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