

Book Review

ONUMA YASUAKI, *INTERNATIONAL LAW IN A TRANSCIVILIZATIONAL WORLD* (Cambridge University Press, 2017), 711 pages.

Reviewed by Jutta Brunnée*

We find ourselves in times of profound uncertainty and possibly epochal change in international affairs, brought about by an amalgam of long-standing and recent factors. Historical grievances have simmered in large parts of the world regarding the preferences and inequities baked into international society and, for present purposes, international law. By and large, Western countries have been beneficiaries, shapers, and defenders of the existing international order. Nonetheless, an apparent backlash has erupted in many Western states against the growing reach and perceived intrusiveness of international law and institutions. Layered onto these dynamics are the many challenges posed to the still state-centric international legal order by economically powerful, technologically advanced, or willfully destructive networks of non-state actors. Finally, we are witnessing the rise of major regional or even global powers outside the “West,” China, India, Iran, and Turkey being among them, along with a resurgent Russia. Their ascent, coinciding with the apparent decline or retreat of major Western powers, such as the United States and the United Kingdom, portends re-configurations in the international legal order.

It is as yet unclear what the new order will be, but several possibilities are being mooted and actively pursued by some. Russia has called for a “post-West” world order.¹ China has declared its intention to take a leadership role on climate change,² to “be the keeper of the international order,”³ or even to lead a “new world order.”⁴ Indeed, in 2016, China and Russia released a joint declaration—in English—on “the promotion of international

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1. Lizzie Dearden, *Russia's Foreign Minister Calls for 'Post-West World Order' in Speech to Global Leaders*, INDEPENDENT (Feb. 18, 2017), <http://www.independent.co.uk/news/world/europe/russia-post-west-world-order-lavrov-munich-security-conference-nato-trump-putin-ukraine-syria-assad-a7587006.html>.

2. See Justin Worland, *It Didn't Take Long for China to Fill America's Shoes on Climate Change*, TIME (June 8, 2017), <http://time.com/4810846/china-energy-climate-change-paris-agreement/>.

3. Charlotte Gao, 2018: *China Vows to Be the Keeper of International Order*, DIPLOMAT (Jan. 2, 2018), <https://thediplomat.com/2018/01/2018-china-vows-to-be-the-keeper-of-international-order/>.

4. Zheping Huang, *Chinese President Xi Jinping Has Vowed to Lead the "New World Order,"* QUARTZ (Feb. 22, 2017), <https://qz.com/916382/chinese-president-xi-jinping-has-vowed-to-lead-the-new-world-order/>.

law” that sketched a much thinner, sovereignty-focused, understanding of international law than what Western states had come to take for granted.⁵ In November 2017, as a result of the UN General Assembly’s defiance of the preferences of the Security Council, an Indian judge was elected to a seat on the International Court of Justice (“ICJ”) that had been widely assumed would be filled by the re-election of a British judge.⁶ As a result of this election, the ICJ, for the first time ever, will be without a judge from the United Kingdom.⁷ The historical significance and the future implications of these developments were not lost on Western leaders, particularly in Europe. France’s President, Emmanuel Macron, has signaled his intention to step into the global leadership gap,⁸ notably on climate change.⁹ Then German Foreign Minister, Sigmar Gabriel, sketched three possible scenarios for a new global order. He described the first as a “Westphalian system 2.0,” a return to “the wrestling of sovereign states for [the] hegemony and balance which shaped the period between the end of the Thirty Years’ War and the end of the Second World War.”¹⁰ The second possibility, according to Gabriel, is a new “bipolar order dominated by the competition between two [new] superpowers,” China being one of them.¹¹ Gabriel’s third, and preferred, scenario is a multipolar order, governed by binding rules.¹² According to Gabriel, Germany and others should defend their values and advocate for “greater legal regulation of international relations,” given that “international law is an elementary precondition for equal participation in interna-

5. Press Release, Ministry of Foreign Affairs of the Russian Federation, The Declaration of the Russian Federation and the People’s Republic of China on the Promotion of International Law (June 25, 2016), http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698.

6. See James Landale, *How UK Lost International Court of Justice Place to India*, BBC NEWS (Nov. 21, 2017), <http://www.bbc.com/news/uk-politics-42063664>.

7. See Owen Bowcott, *No British Judge on World Court for First Time in Its 71-Year History*, GUARDIAN (Nov. 20, 2017), <https://www.theguardian.com/law/2017/nov/20/no-british-judge-on-world-court-for-first-time-in-its-71-year-history>.

8. See Josh Lowe, *Who is More Powerful? France Can Take Leadership Role as America Retreats, Say Organizers of New Forum*, NEWSWEEK (Aug. 2, 2017), <http://www.newsweek.com/donald-trump-emmanuel-macron-french-power-645366>.

9. See James McAuley, *France’s Macron Takes Lead in Climate Change Battle, with the U.S. Absent*, WASH. POST (Dec. 12, 2017), https://www.washingtonpost.com/world/frances-macron-takes-lead-in-climate-change-battle-with-the-us-absent/2017/12/12/2da019aa-de88-11e7-b2e9-8c636f076c76_story.html?utm_term=.92a4dc5d170c.

10. Sigmar Gabriel, Ger. Foreign Minister, *Europe in a Less Comfortable World: Why Europe Needs a New Foreign Policy*, Speech at the Berlin Foreign Policy Forum (Dec. 5, 2017), <https://www.auswaertiges-amt.de/en/Newsroom/berliner-forum-aussenpolitik/909376>. Note that there also is an active debate in Germany on the future of the “trans-Atlantic relationship.” Whereas Gabriel assumes that trans-Atlantic relations will *not* recalibrate even after the end of the current presidency, a group of foreign policy experts has published a *Trans-Atlantic Manifesto*, emphasizing the enduring importance of the trans-Atlantic axis. See *In Spite of It All: America*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/world/europe/germany-united-states-trump-manifesto.html> (an English translation of the Manifesto); see also Steven Erlanger, *German Foreign Policy Experts Warn Against Anti-Americanism*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/world/europe/germany-trump-anti-americanism.html>.

11. Gabriel, *supra* note 10.

12. *Id.*

tional relations” by smaller states and middle powers.¹³ In stark contrast, to the extent that any vision for the future has been articulated by members of the current U.S. administration, it is for a world that is “not a ‘global community’ but an arena where nations, nongovernmental actors, and businesses engage and compete for advantage.”¹⁴ Britain, meanwhile, is pursuing an exit from the European Union and, as a result, its leadership professes general optimism about the country’s future as a “more global and outward looking” state.¹⁵

Onuma Yasuaki’s *INTERNATIONAL LAW IN A TRANSCIVILIZATIONAL WORLD*¹⁶ could not have been published at a more fitting moment. Some of the developments sketched above occurred after the writing and publication of his book; others are central to the book’s preoccupations.¹⁷ Onuma paints a sweeping picture of why international law, and international legal scholarship, must change. “By the end of the twentieth century no treatise or textbook of international law written by an Asian international lawyer in Asia” had been published by Cambridge or Oxford University Press, Onuma observes on the opening page, notwithstanding the fact that “Asians occupy more than half of humankind.”¹⁸ With his new book, Onuma sets out to break this pattern, enter the discursive space dominated by English speakers,¹⁹ and substantiate his conviction that the “excessively West-centric tendencies in the contemporary study of international law” must be overcome.²⁰

To this end, Onuma urges international lawyers to adopt a historically informed, long-view perspective on international law, sensitive to the imperatives of its transnational and transcivilizational legitimacy. According to Onuma, such a multi-faceted, but integrated, perspective is crucial to understanding both the limitations and the potential of international law at a time at which global society “is changing from a longstanding West-centric one to a multi-centric and multi-civilizational one.”²¹ Hence, meaningful study of international law can no longer limit itself to the (“judicially cen-

13. Sigmar Gabriel, Ger. Foreign Minister, Speech at the Celebrations Marking 100 Years of the German Society of International Law (Mar. 16, 2017), <https://www.auswaertiges-amt.de/en/Newsroom/170316-bm-dgjr/288636>.

14. H.R. McMaster & Gary D. Cohn, Opinion, *America First Doesn't Mean America Alone*, WALL ST. J. (May 30, 2017), <https://www.wsj.com/articles/america-first-doesnt-mean-america-alone-1496187426>.

15. Theresa May: “UK Will Have a Brighter Future after Brexit,” ITV (June 1, 2017), <http://www.itv.com/news/2017-06-01/theresa-may-brighter-future-for-uk-with-tory-brexit-plans/>.

16. ONUMA YASUAKI, *INTERNATIONAL LAW IN A TRANSCIVILIZATIONAL WORLD* (2017). Following the approach of the author, I use the Japanese convention of writing the family name first, followed by the given name.

17. Indeed, Onuma has long been concerned about the West-centric history and development of modern international law. See, e.g., ONUMA YASUAKI, *A TRANSCIVILIZATIONAL PERSPECTIVE ON INTERNATIONAL LAW* (2010); Onuma Yasuaki, *When Was the Law of International Society Born?*, 2 J. HIST. INT’L L. 1 (2000).

18. ONUMA, *supra* note 16, at 1.

19. *Id.* at viii, 86–87.

20. *Id.* at x.

21. *Id.* at ix.

tric”) study of its sources and the interpretation of the norms that flow from them that predominates in mainstream textbooks.²² Onuma is adamant that international law must be liberated from “ahistorical positivism”²³ and understood in its social context. International law should be seen not as a set of “*adjudicative norms*” but as a “*justificatory, legitimating and communicative tool*.”²⁴ Such a perspective, he argues, allows international lawyers to appreciate the importance of a much broader range of “cognitive bas[es] and processes” than the traditionally recognized “sources,”²⁵ and a much broader set of participants than states and other “subjects” of international law (as traditionally conceived).²⁶ Since law depends on and must generally align with the “*normative consciousness*” of state and non-state actors around the globe, including “*ordinary citizens*,”²⁷ a truly legitimate international law must overcome the still prevalent assumption that “*what is Western {is} global or universal*.”²⁸ According to Onuma, some progress notwithstanding, its enduring West-centrism has hindered the international legal order’s transcivilizational legitimacy.²⁹ However, given the current reconfiguration of global society, he argues, genuinely transcivilizational legitimacy is now indispensable if international law is to hold sway.³⁰ Hence, the key task for the study of international law is to narrow “the gap between the West-centric ideational power structure and the emerging Asia-centric material power structure” of the world.³¹ INTERNATIONAL LAW IN A TRANSCIVILIZATIONAL WORLD is Onuma’s contribution to this task.

22. *Id.* at x. The upshot is that there is little real exchange of views and perspectives, and relatively little impact of non-English (and perhaps French) language scholarship on international discourse. A similar phenomenon has been observed, albeit for slightly different reasons, with Russian international law scholarship. See Maria Issaeva, *Does “Russian International Law” Have an International Academic Future?*, EJIL: TALK! (Sept. 21, 2015), <https://www.ejiltalk.org/does-russian-international-law-have-an-international-academic-future/>.

23. ONUMA, *supra* note 16, at 26; see also *id.* at 161.

24. *Id.* at 8.

25. *Id.* at 103.

26. *Id.* at 186–92.

27. *Id.* at 9.

28. *Id.* at 22; see also *id.* at 57. The extent to which this assumption is misguided has been illuminated by several recent books, including: LAURI MÄLKSOO, *RUSSIAN APPROACHES TO INTERNATIONAL LAW* (2015); ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* (2017); *COMPARATIVE INTERNATIONAL LAW* (Anthea Roberts et al. eds., 2018).

29. See, e.g., ONUMA, *supra* note 16, at 53, 83–84 (commenting on the West-centric ideational, cognitive, and interpretive frameworks that underpin international law). Elsewhere in the volume, Onuma provides an array of examples, drawn from different issue areas. See, e.g., *id.* at 282 (on the efforts, notably, of European international lawyers to advance notions of jus cogens and constitutionalization in international law); *id.* at 334–35, 344, 348–50 (on the predominantly Western preoccupation with rules of nationality, diplomatic protection, and state responsibility that advance the interests of transnational corporations and foreign investors); *id.* at 361–62, 369, 407–08, 414–16 (on the West-centric origins and “universalistic” discourses of human rights law and the “human-rightization” of global politics); *id.* at 442–43, 452, 470–72, 475 (on the enduring West-centric features of international economic law); *id.* at 632, 636, 642, 651–60 (on Western recourse to arguments revolving around humanitarian interventions or self-defense against terrorist attacks to justify the use of force abroad).

30. *Id.* at 87.

31. *Id.* at 6.

The book is written in an easily accessible, sometimes almost conversational style,³² eschewing overly technical language and heavy footnoting³³ and highlighting broad themes and trends rather than the details of doctrinal or interpretative debates. These style choices align with two considerations. First, Onuma hopes that, among those interested in international politics or international relations, his readership will include lawyers and non-lawyers alike.³⁴ Second, Onuma's primary goal is not so much to analyze international law's content in minute detail as it is to illuminate its evolution and present-day function in global society. Accordingly, all chapters in the book adopt a historical, transnational, and transcivilizational approach.

The book is organized like a conventional textbook. It begins with several general chapters that provide, respectively, an overview on the historical evolution of international law (Chapter 1), the processes through which international law is made (Chapter 2), the participants in the international legal system (Chapter 3), the responses to violations of international law (Chapter 4), and questions of jurisdiction and nationality (Chapter 5). It then focuses on a selection of more specialized topics: human rights (Chapter 6), the global economy (Chapter 7), the global environment (Chapter 8), conflict resolution and dispute settlement (Chapter 9), and the regulation of force and international peace and security (Chapter 10).

In its substance, however, Onuma's book is anything but conventional. The chapters on the evolution, lawmaking processes, and participants of international law trace its West-centric history and develop a markedly different understanding of international law than that found in standard textbooks, an understanding that I consider more closely below. The remaining chapters serve to illustrate and substantiate Onuma's arguments concerning the enduring and pervasive West-centrism of contemporary international law. He drives this theme home not only in the chapters that trace the evolution of value-laden topics like human rights, the global economy, environmental protection, or the use of force, but also in his discussion of seemingly technical topics, such as the rules on diplomatic protection, the law of state responsibility, and dispute settlement.³⁵ These chapters paint a rich, informative picture of core areas of international law, useful for anyone looking to better understand the way in which the deeply engrained bias has strained international law's legitimacy.³⁶ While many of the particular de-

32. See, e.g., *id.* at 535–36 (observing: “Where there are people, conflicts (or disputes) will arise. Even between spouses or lovers, or between people of the same faith in churches or temples, there may be differences in interests and values.” (footnotes omitted)).

33. Most footnotes offer additional observations, rather than conventional source information.

34. *Id.* at vii.

35. See, e.g., *id.* at 425 (observing that “international legal norms on the protection of the rights of aliens, diplomatic protection, and the law of state responsibility are leading examples of institutions of international law serving . . . [the] West-centric capitalist economy”).

36. *Id.* at 86 (noting “the simple fact that non-Western people occupy some 90 percent of humankind”).

velopments traced by Onuma will be familiar to scholars of international law, the totality of the patterns he traces, and the linkages between them, cannot but leave an indelible impression on the readers.³⁷

I now turn to a closer examination of the general understanding of the international legal order that Onuma develops in the first three chapters of his book. Briefly put, Onuma wants readers to understand international law as “a social construct based on the accumulated understanding of law and other relevant ideas held by members of international society and domestic societies.”³⁸ This perspective entails freeing oneself from the positivistic, sources-based account that still dominates the thinking about international law. This standard account, according to Onuma, is West-centric only in part due to its origins in the rise of European states and their pursuit of colonial objectives.³⁹ Even if these origins were overcome, the standard account assumes the universality of a conception of law that, in fact, is particular to modern Western states.⁴⁰ Thus, international legal positivism’s “[c]ategorical differentiation between law and non-legal norms is a product of modernity,”⁴¹ as is its “excessive judicial centrism.”⁴²

Positivism’s focus on sovereignty and state consent may have come to be embraced throughout the world,⁴³ accounting in part for the success, and relative legitimacy, of treaty-based international law.⁴⁴ Yet, whereas Onuma sees promise in treaty-based and other collective law-making processes, he is deeply skeptical about customary international law, which, he argues, cannot be squared with positivism’s own consent-based assumptions and does not produce universal law.⁴⁵ He views customary law as a construct deployed by Western states to fashion globally valid rules—and to advance their substantive values—when “the progress of natural science and secularization in Europe” necessitated an alternative to assertions of “natural law.”⁴⁶ Yet, he argues, many customary norms’ claim to universal validity is flawed, undercut by the focus on the practices and views of a limited number of powerful, Western states,⁴⁷ combined with “fictitious notions of acquiescence and tacit (or inferred) consent to camouflage this lack of generality in state practice.”⁴⁸ Thus, the “*effectiveness of ‘customary’ law supported by the material and*

37. The historical patterns traced in note 29, for example, emphasize ways in which the Western focus of international law has persisted. See *supra* note 29.

38. *Id.* at 25.

39. *Id.* at 71–84.

40. See *id.* at 35.

41. *Id.* at 109–10.

42. *Id.* at 26; see also *id.* at 151.

43. See also ARNULF BECKER-LORCA, MESTIZO INTERNATIONAL LAW: A GLOBAL INTELLECTUAL HISTORY 1842–1933, at 54–60 (2014).

44. See ONUMA, *supra* note 16, at 131–35.

45. *Id.* at 153–63.

46. *Id.* at 149; see also *id.* at 71–74, 150, 154–55.

47. *Id.* at 156–57.

48. *Id.* at 158.

ideational power of major Western states eclipsed its lack of generality."⁴⁹ In turn, the West-centric study of international law has "virtually ignored" the fact that customary law has been but a "reflection of the power structure of international society," excluding the "non-Western nations making up the *overwhelming majority of humanity* . . . from the law-creating process."⁵⁰ Of course, this portrait of customary law may be somewhat overdrawn. After all, there are examples of customary norms that were shifted or even created through the involvement of non-Western states. One such example is the successful initiative of Latin American states in the 1930s to displace the prevailing Euro-centric definition of statehood, which had revolved around a standard of "civilization" and recognition by the existing states.⁵¹ Another example is found in the development and crystallization of the right to self-determination, pursued by the growing number of non-Western states in the UN following decolonization.⁵² Today, there are strong indications that it is much harder for Western states to dominate the creation of customary international law. One can point here, for example, to the current—thus far unsuccessful—efforts by a small number of powerful states to instantiate an expanded right of self-defense to justify military action in states that are "unwilling or unable" to counter threats emanating from non-state actors operating in their territories.⁵³ And yet, there is much in Onuma's withering account of customary law that rings true, hinting at how the tables could be turned in a reconfigured world and underscoring the urgency of his plea for a transcivilizational sensibility in international lawmaking.

However, according to Onuma, the positivistic, sources-based account of international law is problematic not only because it is West-centric but also because it is "antiquated" and "theoretically incoherent."⁵⁴ Perhaps most importantly, it has been outpaced by the actual practice of international law, which embraces a much broader range of lawmaking processes and participants than the traditional view describes.⁵⁵ Hence, Onuma conceives of international law as a "social construct" rooted in international and domestic societies' "accumulated understanding of law."⁵⁶ Positivistic, West-centric international law, while it "came to be *globally valid in the formal sense*,"⁵⁷ was merely "a *pseudo law* or a *system of power disguised in the form of law*."⁵⁸ For

49. *Id.*

50. *Id.*

51. See BECKER-LORCA, *supra* note 43, at 305–52 (providing a detailed account of the changing definition of statehood, including accompanying rules concerning recognition and non-intervention).

52. See ONUMA, *supra* note 16, at 83–84 (commenting generally); see also *id.* at 202–06 (recounting the development of the right to self-determination through UN-based processes).

53. See Jutta Brunnée & Stephen J. Toope, *Self-Defence Against Non-State Actors: Are Powerful States Willing but Unable to Change the Law?*, 67 INT'L & COMP. L.Q. 263, 263–86 (2018).

54. ONUMA, *supra* note 16, at 104.

55. See *id.* at 104–05, 124, 129.

56. *Id.* at 25.

57. *Id.* at 57.

58. *Id.* at 83.

many in the non-Western world, this law was alien and “difficult to be characterized as *their law*.”⁵⁹ Only now is international law “*in the process of being accepted as the law of global international society in the civilizational sense*.”⁶⁰ This evolution, in practical terms, has been enabled in part by the wider range of interactive, globally inclusive lawmaking processes available today. Onuma credits treaty-based lawmaking and norm-setting through resolutions of the UN General Assembly and international conferences,⁶¹ and even of the UN Security Council with the trend towards more legitimate global lawmaking.⁶² There is no doubt that treaty-based processes allow for global, including non-state, participation, that the General Assembly has contributed significantly to injecting non-Western perspectives into norm development, and that the Security Council must reconcile Western and non-Western perspectives. It is difficult to argue, then, with Onuma’s conclusion that these norm-creating processes offer “more legitimate and realistic forums for creating universally valid international legal norms than the traditional norm-creating process of ‘customary international law.’”⁶³ Still, this “relative superiority” argumentation risks glossing over significant legitimacy concerns with respect to UN decisionmaking and, in particular, the continued domination of Security Council decisionmaking by its five veto-bearing permanent members.⁶⁴

In any event, the main point of Onuma’s review of contemporary international lawmaking processes is to demonstrate why the traditional notion of “sources” of international law is too narrow. Because “collective cognition” is crucial to international law’s existence and function,⁶⁵ he prefers to speak of the “cognitive basis and processes of international law,” a more comprehensive concept that, he argues, better captures the range of lawmaking practices and can account for the role of both state and non-state participants.⁶⁶ How, then, do we know when “law” emanates from these practices? Onuma advocates for a contextual and culturally sensitive understanding of law and, as we have seen, rejects the positivist quest for a bright-line distinction between law and non-law.⁶⁷ Yet, his argument is not that everything that is agreed upon in a collective process, say in a General Assembly resolution, is law. Rather, Onuma’s answer to the “how do we know?” question is that it is possible to identify law on the basis of five “common per-

59. *Id.* at 57; *see also id.* at 83–84.

60. *Id.* at 57.

61. *Id.* at 161–71.

62. *Id.* at 172–75.

63. *Id.* at 170–71.

64. Onuma does briefly avert to the problematic nature of the permanent members’ privileged position, but then moves on to conclude that the customary lawmaking process is “even worse.” *Id.* at 174–75.

65. *Id.* at 105.

66. *Id.* at 103–21.

67. *Id.* at 43, 47–48, 109–10.

ceptions.”⁶⁸ These are that: (i) law provides a “*common prescriptive norm addressed to all members of society*,”⁶⁹ (ii) its prescriptions are “*just, legitimate, righteous, fair*” and therefore “expected to be applied in a uniform and consistent manner;”⁷⁰ (iii) it is “generally associated with *enforceability*,” the concept of which is wider than the West-centric notion of centralized enforcement;⁷¹ (iv) it is precise and determinate;⁷² and (v) it is associated with “judgment and decision by an authoritative third party.”⁷³

What is striking about these “common perceptions” of what is characteristic of law is how closely they align with criteria of legality commonly associated with Western rule of law thinking, such as generality, clarity, reasonableness, consistency, predictability, and congruence between law and official action.⁷⁴ Should we then conclude that Onuma’s concept of law is ultimately just as West-centric as the one he criticizes? Before I answer this question, I should acknowledge that my own “interactional” understanding of international law has much in common with Onuma’s. Thus, like Onuma, I understand law as a social construct, shaped through the interactions of a wide range of international actors, whose interactions are in turn shaped by the norms they generate.⁷⁵ Further, like Onuma, I consider the traditional “sources” account to be unduly narrow, obscuring the distinctive traits of legal norms and practices—indicators of legality such as the ones listed above.⁷⁶ In my own work, I have limited myself to the claim that these indicators of legality may well have originated in Western enlightenment thinking, but have come to be embraced in international practice as minimal prerequisites for legal interaction.⁷⁷ Their global acceptance is due in part to their thin, largely formal nature, enabling diverse actors to interact legally—transcivilizationally, as it were—without the need for *a priori* agreement on substantive values. I am heartened then, that Onuma appears to share my assessment that certain, relatively minimalist, markers of legality are universally accepted. Indeed, he specifically observes that it is reasonable to “assume that people in international society share a certain perception of law based on characteristic features associated with the accu-

68. *Id.* at 44.

69. *Id.*

70. *Id.* at 45.

71. *Id.* at 45–46.

72. *Id.* at 46.

73. *Id.* at 46–47.

74. See, e.g., LON L. FULLER, *THE MORALITY OF LAW* (1969).

75. See JUTTA BRUNNÉE & STEPHEN J. TOOPE, *LEGITIMACY AND LEGALITY IN INTERNATIONAL LAW: AN INTERACTIONAL ACCOUNT* ch. 1 (2010).

76. See Jutta Brunnée, *The Sources of International Environmental Law: Interactional Law*, in *THE OXFORD HANDBOOK OF THE SOURCES OF INTERNATIONAL LAW* 960, 963–66, 981–82 (Jean d’Aspremont & Samantha Besson eds., 2017).

77. See Jutta Brunnée & Stephen J. Toope, *Interactional Legal Theory, the International Rule of Law, and Global Constitutionalism*, in *HANDBOOK ON GLOBAL CONSTITUTIONALISM* 170, 177–80 (Anthony F. Lang & Antje Wiener eds., 2017).

mulated usage of the term and notion of law.”⁷⁸ One way to read this claim is that these perceptions have acquired a transcivilizational quality, notwithstanding their origin in Western thinking. However, Onuma’s argument may be stronger yet, seeing as he describes international law as emanating from the understandings of “international *and domestic* societies.”⁷⁹ He could be understood, then, as suggesting that domestic societies, in the West and elsewhere, share certain basic understandings of law. Onuma does not elaborate on this crucial point in any detail, which is regrettable given its obvious importance to a transcivilizational concept of law and his unique position to shed light on it.

Similarly, Onuma holds up a mirror to West-centric international law, but one wishes that he had offered more insight into non-Western views and non-Western scholarship on international law. Alas, and somewhat surprisingly, the primary and secondary sources listed in the book’s bibliography are predominantly Western, English-language sources.⁸⁰ It may be that a broader swath of non-Western sources is employed in his earlier writings.⁸¹ Or it may be that the main purpose of Onuma’s latest book was to document, and make Western international lawyers aware of, the patterns and limitations of the mainstream perspective. Still, the dearth of non-English language, and non-Western, sources—or a list of key sources from underrepresented parts of the world—may be something of a missed opportunity in overcoming the very one-sidedness that Onuma rightly criticizes.

Methodologically, one might quibble with a certain tension between the constructivist and realist strands in Onuma’s understanding of law’s role in international society. Although Onuma conceives of law as a product of social interaction that constructs and reconstructs the “social realities of the world,”⁸² he also appears to assume that it is power that ultimately matters, such that “law generally reflects the power relations in a society.”⁸³ Thus, while he questions what he calls the myth of the irrelevance of international law,⁸⁴ he observes that law “lowers the cost of hegemony.”⁸⁵ Although international law does not generally contain norms that would “decisively restrict” the interests of powerful Western nations, weaker states must accommodate these preferences, hoping that international law will nonetheless restrain the hegemon’s exercise of “naked power.”⁸⁶ However, the constraining power of law lies not in its legality as such, but merely in the

78. ONUMA, *supra* note 16, at 119; *see also id.* at 44 (observing that the “common perceptions are based on the accumulated usage of the term, ideas and institutions of what humanity has characterized as law”).

79. *Id.* at 25 (emphasis added).

80. *Id.* at 667–97.

81. *See, e.g., supra* note 17.

82. ONUMA, *supra* note 16, at 27.

83. *Id.* at 25.

84. *Id.* at 35.

85. *Id.* at 36.

86. *Id.* at 37.

“image of legality,” and the attendant “*image of legitimacy*,” that it projects.⁸⁷ It remains somewhat opaque how this account squares with Onuma’s observations elsewhere that international law’s legitimating and justificatory functions rest, *inter alia*, “on the widely shared perception that . . . [it] embodies the legitimate common interests and values of nations.”⁸⁸ The answer may be that Onuma’s realist-tinged account of international law is focused on its West-centric manifestations.⁸⁹ He suggests that the “common perceptions” of law he described are what causes law to be widely perceived as “a legitimate and useful institution.”⁹⁰ He does not, however, appear to accord these distinctive features of legal normativity an inherent capacity to constrain the actions of powerful actors. Instead, Onuma suggests that, if international law is to withstand the pending shifts in power away from the West, it must acquire the transcivilizational legitimacy that he calls for⁹¹—a process that is underway,⁹² but incomplete.

Where does Onuma’s sweeping reflection on international law leave us at this critical juncture in global history? He offers readers vivid illustrations of the challenges we face in making genuinely international, globally legitimate, law. The story Onuma tells is “gloomy,”⁹³ but not entirely bleak—he shows readers that progress has been made, and that the potential for transcivilizational law does exist. Indeed, seen from the vantage point of Onuma’s concerns, it is a promising trend that international legal scholarship has been increasingly interested in the history of international law,⁹⁴ in its West-centric features and their implications,⁹⁵ and in the need for careful comparative analysis of how much of international law is actually globally shared.⁹⁶ Onuma’s thoughtful book connects all of these threads, offering us a gentle yet forceful critique of international law and giving us a sobering but also inspiring assessment of the task ahead. The palpable transitions in the global order, sketched at the beginning of this review, should serve as a reminder of the urgency of Onuma’s advice.

87. *Id.*

88. *Id.* at 50.

89. *Id.* at 53 (observing that the current, Western-dominated state of international law raises “serious doubt as to the *global legitimacy of the prevalent concepts and frameworks of international law*”).

90. *Id.* at 47.

91. *Id.* at 87–88.

92. *Id.* at 83–84.

93. *Id.* at 28.

94. See, e.g., BECKER-LORCA, *supra* note 43; THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW (Bardo Fassbender & Anne Peters eds., 2012); MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960 (2002).

95. See, e.g., ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW (2004); SUNDHYA PAHUJA, DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY (2013); GERRY SIMPSON, GREAT POWERS AND OUTLAW STATES: UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER (2004).

96. See, e.g., MÄLKSOO, *supra* note 28; ROBERTS, *supra* note 28.

