

*Non-Legality in International Law: Unruly Law.* By Fleur Johns. Cambridge: Cambridge University Press, 2013. 259 pp. \$99.00 cloth.

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*Non-Legality in International Law* is as successful as it is ambitious. Fleur Johns begins her disruption of international legal thought and practice with a simple observation: as a matter of course, when international lawyers make law, “they also make non-law,” which she defines as “understandings of what stands opposed to or outside the reach of legal norms” (p. 1). The resulting boundaries and categories—“the before, the after, the below, the above, the against and the despite” (p. 9)—shape the doctrines and practices of international law in ways that, until now, have largely been overlooked or accepted uncritically as natural or inevitable.

The heart of the book is the articulation and defense of a taxonomy of non-legality in international law. Johns identifies five categories or “knowledge practices” of non-legality: illegality, extra-legality, pre- or post-legality, supra-legality, and infra-legality. She provides a theoretical explanation of each category or practice that explains its particular characteristics and its relationship to the other practices, and she explores how each category operates in a specific international legal context. For illegality, that context is torture. For extra-legality, it is the detention regime at Guantánamo Bay Naval Base. Transnational cross-border financing of development projects illustrates the concepts of pre- or post-legality, while climate change provides the setting for explaining supra-legality. For infra-legality, Johns provides a close reading of the *First Responders Manual* for the management of dead bodies after mass disasters.

Johns does not suggest that these are the only contexts within which the various parts of her taxonomy of practices could apply. To the contrary, she emphasizes the nuances that allow them to overlap. Further, it is abundantly clear not only that the specific applications are representative rather than exhaustive, but also that the taxonomy itself—while plainly a significant scholarly achievement—is ultimately a set of tools. Her book is in part a call for further research and analysis, for the application and expansion of her taxonomy across the various topics that comprise contemporary international law.

Still, while each chapter is an important part of this larger structure of analysis, the individual chapters also make particular and incisive contributions to their specific topics. The chapter on torture, for example, is an important contribution to the critical

assessment of modern torture discourse, including the right not to be tortured. The chapter on Guantánamo advances a bold rereading of the Schmittian decision on the exception, “delink[ed] from Schmitt’s fetishism of the state and the person of the sovereign ruler” (p. 101). The chapter on dead bodies adds to other recent scholarship that specifically examines the subjects of natural disasters.

From a legal studies perspective, the introduction to *Non-Legality in International Law* is itself also a meaningful scholarly achievement. It puts the analysis that follows into a careful methodological framework that, while perhaps familiar to scholars in some fields, nonetheless pushes the envelope of international legal analysis, and does so in fruitful ways. Johns begins by situating her inquiry as building on the work of David Kennedy and Martti Koskenniemi on managerialism and governance in international law, although without necessarily endorsing their normative assessments. Next, she describes her own contribution as a “quasi-ethnographic analysis” of international legal language and practice, an inquiry aligned with the “turn to practice . . . in the study of social knowledge”—which, as she recognizes, has not been “widely or centrally” applied to international law (p. 23). Further, drawing on Pierre Bourdieu and Michel de Certeau, she presents the results of that analysis as examples of “tactical engagement” with international legal discourse. Finally, she describes the specific contextualizations of her taxonomy as a series of Foucauldian fictions or quasi-fictions about “non-legalising tendencies in international law,” with the goal of “thinking or doing otherwise within the international legal field” (p. 31). This complex yet compelling structure adds a layer of richness that distinguishes this book from the more typical analysis of international thought, practice, and institutions.

Throughout *Non-Legality in International Law*, Johns demonstrates the many ways that the overlapping categories of non-legality play a crucial role in the structure of international law and legal practice. She convincingly suggests that international lawyers have greater agency than they are willing to admit, that they employ a rich repertoire of “patterned practices of representation, argument and explanation across a variety of international legal issue areas” (p. 222), and that attention to the “negative spaces” of international law “could embolden . . . experimentation” (p. 223–24). By bringing all of these issues to the surface, Johns charts the path, not only toward a productive research agenda for critically minded scholars of international law, but also toward a more self-conscious, less anxious, and more experimental approach to international legal practice.

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