NOT JUST THE HISTORIANS: ANNE ORFORD'S INSIGHTS AND THE SUSPICIONS BETWEEN INTERNATIONAL LAW AND PHILOSOPHY

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International Law and the Politics of History is nothing short of cri de coeur directed at international lawyers and historians, the two disciplinary co-conspirators in international law's so-called turn to history. Rather than embracing what appears to be a mutually beneficial model of interdisciplinary collaboration, Anne Orford instead sees international lawyers as evading their responsibilities as decisionmakers—and indeed makers of both the discipline and its underlying norms—and historians as self-satisfied purveyors of truths that they themselves know are contested and instrumental. As much as she blames historians for acting with blinders, her main audience is international lawyers (mostly the academic ones), whom she implores to be true to their realist—and in some cases critical—sensibilities. Those commitments stem from our training as problem-solvers, international law's own doctrinal engagement with history, and key intellectual influences of the twentieth century, and accept that law is political "all the way down."[1] As a result, international lawyers have the skills to engage in normatively oriented decisionmaking and scholarship rather than seeking some external validation from historians.

Orford's thesis and framework have important implications for all of the "international law and . . . " methodologies and approaches that have taken root in the last generation. These include those developed in the 1990s— international law and international relations (IL/IR) and law and economics (L&E)—as well as the more recent sociological and anthropological approaches. These methods occupy a space primarily within the discipline of international law, even as some scholars have training, or even a primary academic home, within the cognate discipline. All can be credited with bringing new insights into our understanding of international law, seeing international law in its real-world context in a way that formalist or purely doctrinal approaches never can. Yet one might also sense the underside identified by Orford—that legal scholars are seeking validation of various normative moves by recourse to (social) science, with its supposed rigor (especially the quantitative branches of IL/IR and L&E) when it comes to showing how law makes a difference (or not) in the real world.[2]

A newer interdisciplinary collaboration also has much to learn from Orford's

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1. ANNE ORFORD, INTERNATIONAL LAW AND THE POLITICS OF HISTORY 315 (2021).

2. Koskenniemi has already leveled this critique at IL/IR. *See* Mark Pollack, *Is International Relations Corrosive of International Law?: A Reply to Martti Koskenniemi*, 27 TEMP. INT'L & COMPAR. L.J. 341–54 40 (2013).

critique and warning. Primarily emerging in the last decade, this collaboration seeks to bring international law and what is best termed "international political morality"—political and moral philosophy's scrutiny of international structures and institutions—into a closer conversation. The collaboration builds on the common interest of the two fields to theorize and develop principles, norms, and institutions for a more just world order. Unlike the other interdisciplinary methodologies noted above, international political morality has no comfortable home in one discipline but pushes both disciplines in directions many within them resist. Its very newness—will it indeed be just a fad?—invites us to consider the lessons of Orford's critique of the turn to history.

I. A "HERMENEUTIC OF SUSPICION" BETWEEN PHILOSOPHY AND INTERNATIONAL LAW

Philosophy and international law have never been strangers. Just within the Western canon, one need look no further than Grotius for an international lawyer whose norms were defended in philosophical terms, or Kant for a political philosopher who saw the law of nations as central for his vision of a just state and world. But for the most part, their relationship in modern times fits Orford's (borrowing from Duncan Kennedy) model of a hermeneutic of suspicion.[3] Felix Cohen's observation of eight decades ago that legal scholarship seeks refuge in concepts at the expense of analysis of the ethical determinants and consequences of legal decisions remains regrettably apt.[4] Lawyers trained in the positivist method—or more generally those seeing their role as arguing solely using prescriptive methods ("sources") used by international courts—have seen little use for appraising legal rules for their moral (or even jurisprudential) grounding. While, as Orford points out, historical work is part of an international lawyer's method (e.g., in searching for and selecting state practice or travaux préparatoires for interpreting custom and treaties), moral-philosophical work is not. Some schools have overtly ethical assumptions—whether the New Haven School's emphasis on human dignity as the goal of legal decisionmaking or the enlightened positivists' search for community interests—while avoiding deeper inquiries into global justice.[5] For too many lawyers, even as they recognize moral issues within their field, deployment of philosophy (unlike history) seems too abstract and far from their self-perceived mission of developing, interpreting, or advocating for certain legal rules.

Even the more critical approaches to international law from the later twentieth century—whether the New Stream or Third World Approaches to International Law (TWAIL)—have kept their distance from political philosophy. Although they unearth power, hegemony, and colonial imprints on international law and advance a certain vision of global justice, critical scholars generally do not engage with contemporary ethical theory by philosophers. Instead, as I once wrote, the field

3. ORFORD, *supra* note 1, at 5–6.

4. Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 36 COLUM. L. REV. 809, 809 (1935).

5. *See* STEVEN R. RATNER, THE THIN JUSTICE OF INTERNATIONAL LAW: A MORAL RECKONING OF THE LAW OF NATIONS 22–24 (2015).

"often vacillates between a skepticism, even cynicism, of ethical inquiry as somehow hegemonic . . . or at least a subterfuge for advancing each side's power," consistent with the hermeneutic of suspicion and an easy (or cheap) move given the academic homes or the philosophers—"and a generally unarticulated commitment to egalitarianism."[6] *International Law and the Politics of History* generally praises this scholarship for its insights about international law, but it remains widely untethered to philosophical thinking about global justice writ large.

Among political and moral philosophers, until the last few decades or so, inquiry on global issues was generally limited to a few issues—notably distributive justice and just war theory.[7] The former emerged in the long shadow cast by Rawls' *A Theory of Justice*, while the latter was a result of the Vietnam War. This landscape has changed. Work turned at first to broad debates over global justice like cosmopolitanism vs. nationalism, especially the responsibilities of individuals and states to foreigners, with distributive justice still seen as the leading problem.[8] More recently, philosophers have turned to specific issues of international political morality, including title to territory, secession and self-determination, refugees and migration, climate change, and international trade.[9]

Yet even when political philosophy ventures into the international realm, it has too often seemed plagued by its own hermeneutic of suspicion. Ideal theory—still a dominant model of thinking—deploys a mode of reasoning whereby the practical arrangements that humans have derived for their global interactions, including international law, are marginal to theorizing about ideal arrangements.[10] In short, because international law emerges from a political process, involving compromise and power, it cannot undergird or rebut an ethical position. To the extent it is discussed at all, international law becomes simply a vessel for "delivering, institutionalizing, or enforcing a previously derived ethical position," analogous to the "machine" that, in Orford's view, is the role for international law as viewed by historians.[11] Philosophers may also see law and institutions as irrelevant to global

6. *Id.* at 25.

7. *See, e.g.*, THOMAS W. POGGE, REALIZING RAWLS (1989); MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS (5th ed. 2015). For exceptions, see ALLEN BUCHANAN, SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC (1991); TERRY NARDIN, LAW, MORALITY, AND THE RELATIONS OF STATES (1983).

8. For key examples, see ONORA O'NEILL, BOUNDS OF JUSTICE (2000); IRIS MARION YOUNG, RESPONSIBILITY FOR JUSTICE (2011); DAVID MILLER, NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE (2007); Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFFS. 113 (2005).

9. *See, e.g.*, ANNA STILZ, TERRITORIAL SOVEREIGNTY: A PHILOSOPHICAL EXPLORATION (2019); ANDREW ALTMAN & CHRISTOPHER HEATH WELLMAN, A LIBERAL THEORY OF INTERNATIONAL JUSTICE (2009); Simon Caney, *Just Emissions,* 40 PHIL. & PUB. AFFS. 255 (2012); AARON JAMES, FAIRNESS IN PRACTICE: A SOCIAL CONTRACT FOR A GLOBAL ECONOMY (2012).

10. For an explanation of ideal theory, see Laura Valentini, *Ideal vs. Non-ideal theory: A Conceptual Map*, 7 PHIL. COMPASS 654 (2012). For an example of one extreme, see G.A. COHEN, RESCUING JUSTICE AND EQUALITY 229–73 (2008).

11. Ratner, *supra* note 5, at 3; ORFORD, *supra* note 1, at 282. For more on the "vessel approach," see Steven R. Ratner, *International Law and Political Philosophy: Uncovering New Linkages*, 14 PHIL COMPASS e12564, at 3–4.

justice on the mistaken view that they make no difference to how global actors will ultimately behave, a skepticism invented by some political realists.[12]

II. AN INTERDISCIPLINARY "TURN"—OR A NOD?

International law's suspicion of ethical theory developed by philosophers is only beginning to dissipate. Early moves by Fernando Tesón, Mortimer Sellers, and Brad Roth have been supplemented by other international lawyers, such as Evan Criddle, Oisin Suttle, Frank Garcia, and this author (nearly all based at law schools in the U.S./U.K./Canada).[13] The American Society of International Law finally sponsored a panel on interdisciplinary approaches to global justice. Other international lawyers, such as Jutta Brunnee, Stephen Toope, and Samantha Besson, have turned to legal philosophy (rather than ethics or political philosophy) to ground the legitimacy or authority of international law.[14]

On the other side of the ledger, some philosophers have made international rules the direct subject target of their work or integrated them in different ways into moral theories.[15] Pushing against the grain in their field, which still prizes ideal theory, they have engaged with international lawyers willing to play ball. The American Philosophical Association has welcomed discussion of international law;[16] the University of Oslo now offers a course for doctoral students on the topic. These scholars have moved beyond seeing international law as merely a vessel for their ethical views, but as informing, in various ways, the derivation of those theories to begin with—a point to which I will return later.

The interdisciplinary collaboration is more like a set of waves—hardly a tsunami. The hermeneutic of suspicion remains, in my view, the dominant model. But the very newness of this collaboration makes Orford's challenge even more

12. *See* Allen Buchanan & David Golove, *Philosophy of International Law*, *in* THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW 868 (Jules Coleman & Scott Shapiro eds., 2002).

13. *See, e.g.*, EVAN J. CRIDDLE & EVAN FOX-DECENT, FIDUCIARIES OF HUMANITY: HOW INTERNATIONAL LAW CONSTITUTES AUTHORITY 1–5 (2016); OISIN SUTTLE, DISTRIBUTIVE JUSTICE AND WORLD TRADE LAW: A POLITICAL THEORY OF INTERNATIONAL TRADE REGULATION 332 (2018); GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: OPPORTUNITIES AND PROSPECTS 3 (Chios Carmody, Frank J. Garcia, & John Linarelli eds. 2012); Ratner, *supra* note 11, at 2.

14. *E.g.*, JUTTA BRUNNÉE & STEPHEN J. TOOPE, LEGITIMACY AND LEGALITY IN INTERNATIONAL LAW: AN INTERACTIONAL ACCOUNT 5–6 (2010); Samantha Besson, *Justifications of Human Rights*, *in* INTERNATIONAL HUMAN RIGHTS LAW 22 (Daniel Moeckli, Sangeeta Shah, & Sandesh Sivakumaran eds., 3d ed. 2017).

15. Scholars in this group include Alejandro Chehtman, Andreas Follesdal, David Lefkowitz, and Carmen Pavel. In addition, legal philosophers have turned to foundational questions about international law, e.g., the nature of customary international law and the meaning of the rule of law at the global level. Scholars in this vein include Nicole Roughan, John Tasioulas, and Jeremy Waldron. Andreas Follesdal & Steven R. Ratner, *Introducing David Lefkowitz's Philosophy and International Law*, EJIL:TALK! (Nov. 4, 2021), https://www.ejiltalk.org/introducing-david-lefkowitzs-philosophy-and-international-law/.

16. *See Pacific Division Ninety-First Annual Meeting Program*, AM. PHIL. ASS'N, https://cdn.ymaws.com/www.apaonline.org/resource/resmgr/Pacific_2017/P2017_Meeting_Program.pdf (last visited Jan. 17, 2023).

relevant. Does the new interdisciplinarity contain the seeds for the pathologies of the turn to history? I write this perspective as an insider, one who has encouraged collaboration across disciplines. That may make my application of Orford's framework somewhat biased.

III. A HERMENEUTIC OF REALISTIC EXPECTATIONS?

As an initial matter, my sense is that scholars working in this new space appreciate that their spheres of inquiry will inevitably differ in core respects. First, philosophy will often be more abstract and foundational than law, with its focus on existing practices and institutions. A good philosophical argument about the morality of the international order is grounded in principles and intuitions; a good legal argument is more clearly grounded in and constrained by legal sources, precedent, and practice. The former prizes novelty for its own sake, while the latter dares not ignore prior trends of decision, in the words of the New Haven School. Second, the two fields treat the messiness of real life quite differently. Some philosophical arguments rely on necessary and sufficient conditions, where one counterexample may defeat an otherwise sound argument. The legal scholar, on the other hand, accepts that every rule is in some way over- or underinclusive, with the goal of prescriptive scholarship to find a reasonably workable rule. Third, international lawyers and philosophers often differ on the role law should play in the international system: The former resigned to the role of power and politics—indeed seeking to engage with them—and the latter seeking to blunt their influence.[17] And fourth, philosophers and international lawyers come with different skill sets, the former bathed in theory, while the latter will (or should) have a deep grasp of the content of existing rules, their implementation, and the workings of international institutions.

This up-front differentiation in the methods of the two fields could, on the one hand, produce a hermeneutic of suspicion. But it can also result in the division of labor seen in a good partnership, marriage, or business. Each party knows what the other has to offer, but each also knows that its own intellectual tasks cannot simply be outsourced to the other. From this starting point, Orford's general framework allows us to unpack those expectations on both sides of the divide.

A. The Lawyers

Engagement by international lawyers with international political morality seems less at risk of turning into an outsourcing of our normative commitments to some apparently objective outside discipline than one might think. We recognize the obvious—that philosophical approaches to global order themselves vary, whether about the moral worth of individuals across borders (e.g., from strong to weak cosmopolitan or to anti-cosmopolitan), the justification for the state, or other core matters. We are under no illusion that philosophers have discovered a single moral truth that will validate our views about where the law is or needs to go. Indeed, we can hardly even assume that philosophers have thought about many issues of interest

17. The first three points were first expressed to me by David Luban (Professor of Law & Philosophy at Georgetown Law) at a conference in Ann Arbor, Michigan in 2017.

to us. If, for example, international lawyers disagree about the ramifications of various interpretations of "fair and equitable treatment" in international investment law, they cannot assume that philosophers are even aware of the issue.[18]

Rather, those of us looking to philosophy to inform our thinking about international law let it do so in three modest but important ways.[19] First, philosophy offers a set of analytical tools to explore core questions about the structure and rules of international law. To take international economic law as an example again, philosophical work offers a rigorous way of arguing about who should bear the benefits and burdens of transnational economic interactions, whether trade, investment, or finance. Such foundational work can open up space for lawyers to realize which box they are thinking within, channel and structure discussions, propose new legal norms or institutions, or adjust the existing ones.

Second, legal scholars generally work from the professional standpoint that wants international law (either an existing or proposed norm or institution) to *matter*—to make a difference to decisionmakers, often simplistically characterized as getting their compliance. Norms that can be defended in terms of their legitimacy, fairness, or justice stand a better chance of providing international actors good reasons to respect them. Those actors have reasons for respecting law beyond the fear of adverse consequences for violations, or an appeal to respect for the law as law, and a good reason to appreciate the consequences of altering the law. And where the law lacks such a defense, we have good reasons to change some rules, as well as guideposts for that change. In that sense, like the turn to history, our goal is instrumental, but it is not aimed at simply supporting any position we happen to (furtively) endorse, but rather at appraising various existing or proposed rules with an eye to prospects for observance. This intellectual task recognizes that lawyers do more than what Orford sees as their telos: "trying to persuade people to see the patterns that you see in the material that the community of international lawyers currently treat as legally relevant and intelligible."[20] Rather, they need to persuade those "people"—who extend way beyond other lawyers—that the rules are worth following. Even if many in the international legal "community" regard moral argumentation as ultra vires, the full targets of our arguments do not.

Third—and this is more of a hope—engagement with political philosophy might encourage international lawyers to put their cards on the table regarding their moral assumptions and commitments. As Orford pleads with her legal audience, lawyers need to recognize that when they engage in normative and even descriptive scholarship, they often are already taking an ethical—or, for Orford, a political—position on issues of global justice or the nature of law and legal decisions.[21] In that sense, engagement with philosophy seeks to correct exactly the problem that Orford identifies with the turn to history—to get international lawyers to be honest about their moral commitments and priors. Philosophers writing about international

18. *See* Steven R. Ratner, *International Investment Law Through the Lens of Global Justice*, 20 J. INT'L ECON. L. 747 (2017).

19. For an elaboration of these ideas, see *id.* at 748–50.

20. ORFORD, *supra* note 1, at 250; *see also id.* at 224, 293.

21. *Id.* at 292–94.

political morality and international law offer a clarity about these commitments that most legal writing—even critical methods—lacks.

Yet the risk of outsourcing remains. International lawyers could defend or criticize rules or institutions for the consistency or inconsistency with a particular moral account quite carelessly or mechanically. They could "turn" to a theory of interpersonal ethics (e.g., concerning our duties as individuals to poor people outside our borders[22]) to defend or criticize legal rules or institutions—a serious category mistake.[23] Even if they have recourse to moral theories that claim to evaluate rules and institutions, they need to verify that the philosopher himself or herself has not made that category mistake—a critique that might be leveled at, for instance, the revisionist just war theorists who work from a starting point of interpersonal ethics.[24] And even if the philosophical account evaluates institutions without comparing them to people, as discussed below, they may engage in ideal theorizing that is too poor a fit to appraise the underlying morality of the law. In a word, the lawyer risks trying to put a round peg into a square hole. It may fit—or not—but the gaps between the two suggest a lot of the story is missing.

B. The Philosophers

Orford's scathing critique of contextual historians has both limitations and parallels when it comes to the philosophical work on international political morality. On the one hand, ideal theory shares the shortcomings identified by Orford in its "tone of certainty."[25] Having carefully argued a position from first principles, feasibility and inconvenient facts are left for another day rather than informing the derivation of the theory (though philosophers working in ideal theory do not simply ignore human nature). As a result, the insights of legal scholars who have studied the way rules actually work in practice can get short shrift. To cite a few examples: Some defenders of a far greater liberty of secession for disaffected groups—compared to international law's strong aversion to it—seem to downplay the risks associated with their positions.[26] They seek to enforce their position through institutions they regard as legitimate or impartial, like the World Court or the U.N. General Assembly, failing to appreciate the controversy-averse (and conservative) dynamics of the former and the central role power and politics have in the latter.[27] They thus fall short in considering whether the legal vessel can institutionally handle their theory. Some theories of the international trading system offer similar pathologies. They criticize existing rules and institutions against a completely impractical standard, assume a direct line of causation between those rules and global poverty or inequality, and ignore the possibility that other rules and

22. *See, e.g.*, Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFFS. 229, 229–31 (1972).

23. *See* Thomas W. Pogge*, Cosmopolitanism and Sovereignty*, 103 ETHICS 48, 50 (1992) (distinguishing between interactional and institutional morality).

24. *See, e.g.*, JEFF MCMAHAN, KILLING IN WAR 32–37 (Julian Savulescu ed., 2009).

25. ORFORD, *supra* note 1, at 319.

26. *See, e.g.*, ALTMAN & WELLMAN, *supra* note 9.

27. *Id.*

institutions, if reformed, would better address their underlying concerns with the international order.[28]

On the other hand, whereas historians claim an empirical objectivity to their enterprise, untarnished by the politics of the present, philosophers—even those working in ideal theory—do not claim to be uncovering a single moral truth but rather making a good argument that is subject to contestation. And unlike historians, they would not deny that their work may serve partisan ends. I suspect this outlook also makes them more open than historians, in Orford's telling, to appreciating that legal scholars and scholarship play multiple roles, including advocacy.[29] Unlike historians, they do not see legal scholarship's place as limited to some sort of objective restatement of the rules.

More important for purposes of the interdisciplinary dialogue, a significant strand of recent work suggests a philosophical sophistication about international law—modesty, and not arrogance, about the relevance of their work for a cognate field. That strand has been called "institutional moral reasoning," moral thinking that takes into account, in various ways, existing international institutions (including the lack thereof) in justifying, criticizing, or theorizing the structure of the international political order.[30] As Allen Buchanan and David Golove put it, such a view stems from the perspective that to ignore those institutions leads to principles "inconsistent with existing institutional arrangements whose abandonment would be morally prohibitive . . . or because institutionalizing them would generate incentives that undermine the realization of other important principles."[31] Because institutional moral reasoning works with—and, to a certain extent, accepts as somewhat fixed—the practices of states and other actors, the resulting theories have a groundedness that offers a stronger basis for actual reforms of the system. They may not be easily feasible, but they are more translatable into new practices and norms than theories that ignore those practices.

Scholars with this perspective are open to seeing international law as a central institution to the international order (along with that most basic institution: the state), one whose often-inclusive process of formation endows it with a certain pro tanto moral weight.[32] As a result, they can recognize that the status of some norms as law could mean an acceptance by key global actors of a moral, and not merely a political, position. If the legal rules deviate significantly from the moral position of the

28. For scholars pointing out these shortcomings, see, e.g., Robert Howse & Ruti Teitel, *Global Justice, Poverty, and the International Economic Order*, *in* THE PHILOSOPHY OF INTERNATIONAL LAW 437 (Samantha Besson & John Tasioulas eds., 2010); see also Jeffrey L. Dunoff, *The Political Geography of Distributive Justice*, *in* GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW 153 (Chios Carmody et al. eds., 2012).

29. *See* ORFORD, *supra* note 1, at 255.

30. Buchanan & Golove, *supra* note 12, at 870.

31. *Id.*

32. *See* ANDREW HURRELL, ON GLOBAL ORDER: POWER, VALUES, AND THE CONSTITUTION OF INTERNATIONAL SOCIETY 313 (2007) ("[L]aw can be viewed as a sociologically embedded transnational cultural practice in which claims and counterclaims can be articulated and debated and from which norms can emerge that can have at least some determinacy and argumentative purchase.").

philosopher, they are open to revisiting one's theory and asking whether there is a good reason for the deviation—an exercise of the philosopher's task of reflective equilibrium.[33] They reject the realist assumption about international law and appreciate that it influences the way key actors like states behave regarding manifold issues.

The results thus far suggest more constructive work by philosophers than Orford suggests about historians. One approach makes international law's rules a direct target of inquiry. Just war theory established a key foothold with Michael Walzer's *Just and Unjust Wars*—whose account centers on the "war convention" but whose method is to examine how norms and rules work in practice, during war.[34] Others have sought to find a moral justification for states' decisions to make certain acts international crimes. Even as these theories have endorsed different grounds for criminalization, they grapple with the practices of states (including treaty-making), international tribunals, and others, in some cases offering a charitable reinterpretation of existing practices rather than some kind of top-down theory that remains oblivious to them.[35] Within human rights, while some philosophers see the law as ultimately ancillary to its morality, compelling accounts (e.g., by Allen Buchanan and Christina Lafont) place international human rights law at the center of a theory of human rights.[36] And in international economic relations, some are attuned to the international and domestic laws and practices—one standout being Leif Wenar's thoughtful examination of the resource curse and how to fix it given international law's effective license of corrupt leaders to pillage their country.[37]

A second approach by philosophers is, in a sense, even more welcoming of international law. It treats law as an input, in a broad sense, into a good moral theory. In recent work, Andreas Follesdal has joined the debate on the existence of duties of global distributive justice by arguing that the norms of international law and institutions create a global basic structure that is regulated by principles of distributive justice.[38] Robert Goodin has used international law principles of jurisdiction to show how states can extend the reach of their laws to those beyond their borders.[39] In these works, the authors take the rules as fixtures on the international scene that will serve an instrumental purpose in their moral argument. I would argue that their treatment of the rules constitutes an implicit endorsement of

33. *See* JOHN RAWLS, A THEORY OF JUSTICE 48–53 (1971).

34. *See* WALZER, *supra* note 7, at 3.

35. *See, e.g.*, David Luban, *A Theory of Crimes Against Humanity,* 29 YALE J. INT'L L. 85, 86–87 (2014); Alejandro Chehtman, *Revisionist Just War Theory and the Concept of War Crimes,* 31 LEIDEN J. INT'L L. 171, 182 (2018); Jiewuh Song, *Pirates and Torturers: Universal Jurisdiction as Enforcement Gap-Filling*, 23 J. POL. PHIL. 471, 471–73 (2015).

36. *E.g.*, ALLEN BUCHANAN, THE HEART OF HUMAN RIGHTS (2013); Cristina Lafont, *Sovereignty and the International Protection of Human Rights*, 24 J. POL. PHIL. 427 (2016).

37. LEIF WENAR, BLOOD OIL: TYRANTS, VIOLENCE, AND THE RULES THAT RUN THE WORLD (2016).

38. Andreas Follesdal, *The Distributive Justice of a Global Basic Structure: A Category Mistake?*, 10 POL., PHIL. & ECON. 46 (2011).

39. Robert E. Goodin, *Enfranchising All Subjected, Worldwide*, 8 INT'L THEORY 365, 367–69 (2016).

them.

Unlike historians of international law whom Orford chides for reading little international law scholarship,[40] and unlike those engaging in ideal theory, those philosophers invested in institutional moral reasoning are quite open to it. While less invested in the details of doctrine or practice, they follow major debates and key works. Yet this receptivity to the insights that international lawyers offer does not completely obviate Orford's concerns as applied to philosophers. Like historians, they will rarely have the grasp of the messiness of practice the way international lawyers do. As a result, they may come to rely on legal treatises, heavy on doctrine and court decisions that miss out on the nuances regarding how the law was actually treated by states and other actors. This state of affairs is a matter of choice: Philosophers are clearly capable of doing a deep dive into practice, as seen in the important work on just war theory by both David Luban and Adil Haque—perhaps no coincidence that both are philosophers based primarily at law schools.[41]

This brief sketch into international law and political philosophy's nascent engagement suggests, at a minimum, that Orford's sophisticated critique of the turn to history is not generalizable to all interdisciplinary collaboration (which I suspect would be the view of many critical legal scholars, if only because much interdisciplinarity originates in certain Western academies). We thus need to unpack other "turns," rather than assume that, say, law and anthropology, or IL/IR, or even L&E, are just refuges for nervous international lawyers. In the case of international political morality and international law, so far, it is possible for theorists in each field to recognize differences but still see what the other has to offer. Though the engagement is not risk-free, lawyers can integrate political and moral *theories* without retreating from their political and moral *commitments*—or denying their roles as decisionmakers, critics, and advocates. They can do what they are both trained and inclined to do, but with the tools for future thinking oriented toward global justice in a more candid and careful manner.

40. ORFORD, *supra* note 1, at 103.

41. *See, e.g.*, David Luban, *Just War Theory and the Laws of War as Nonidentical Twins*, 31 ETHICS & INT'L AFFS. 433, 433–34 (2017); ADIL HAQUE, LAW AND MORALITY AT WAR 4 (Timothy Endicott et al. eds., 2017).