
Citation:

Green, A (2021) David Lefkowitz, *Philosophy and International Law: A Critical Introduction*, Cambridge: Cambridge University Press, 277 pp, pb £22.99. *The Modern Law Review*. ISSN 0026-7961
DOI: <https://doi.org/10.1111/1468-2230.12619>

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David Lefkowitz, Philosophy and International Law: A Critical Introduction, Cambridge: Cambridge University Press, 277 pp, pb £22.99

When drafting my PhD proposal in 2012, I boldly and incorrectly declared the philosophy of international law to be ‘largely unexplored’. Like many enthusiastic postgraduate students raised on the Anglo-American jurisprudential canon, I was convinced that in public international law I had discovered an area that was wholly new, within which I could easily make my mark. The depth of my mistake was quite swiftly revealed to me: international legal philosophy was, and had been for many hundreds of years, a rich – if somewhat idiosyncratic – intellectual discipline. Nonetheless, however glaring my mistake, it was perhaps understandable at the time. Although analytical political philosophers had been writing on global justice for several decades by 2012, the major legal theorists to which I had been introduced were chiefly concerned with ‘domestic’ or ‘municipal’ law. In 2020 the state of Anglo-American legal philosophy is quite different: my belief may have been naïve in 2012 but it would be downright foolish to hold the same view today. Indeed, international legal philosophy now represents such flooded intellectual terrain that even the most enthusiastic student may find themselves drowning under the sheer volume of scholarship. Like global justice within political philosophy, international law is now firmly in fashion with legal philosophers.

It is into this busy field that David Lefkowitz offers *Philosophy and International Law: A Critical Introduction*, as the latest volume of the *Cambridge Introductions to Philosophy and Law*. That series has an impressive legacy, boasting such titles as Matthew Kramer’s magisterial *Objectivity and the Rule of Law* (Cambridge: Cambridge University Press, 2007) and Liam Murphy’s *What Makes Law* (Cambridge: Cambridge University Press, 2014), which I reviewed for the MLR in 2015. I mention this, not just to recommend those superb texts to anyone interested in legal and political theory but also to put into appropriate context what can only be described as my disappointment at the somewhat limited contribution made by Lefkowitz’s new monograph.

The text is excellently written, exhibiting the author’s typical clarity of expression and intellectual rigour. Given his background in international legal theory, Lefkowitz is also eminently qualified to undertake this work: his research on the philosophical complexities of inter-state law evinces far more than another analytical ‘jurisprude’ dipping his toes into the murky waters of international relations. It is to the credit of *Philosophy and International Law*, moreover, that it covers several topics one would expect to find in a book aimed at introducing students to the theory of public international law. These include the Rule of Law in international relations (Chapter 5), the legitimacy of international legal institutions (Chapter 6), human rights (Chapter 7), international humanitarian law (Chapter 8), crimes against humanity (Chapter 9), and secession (Chapter 10). There are also discussions of justice in international trade law (Chapter 11) and universal jurisdiction (Chapter 9), which include some valuable philosophical reflections.

Unfortunately – and this provides the primary cause of my disappointment – there is also a great deal missing that strikes me as essential to even the most rudimentary ‘critical introduction’. Absent, for example, is any real discussion of treaty obligations and customary principles, which comprise international law’s two most important and distinctive structural elements. This omission is particularly puzzling given Lefkowitz’s previous scholarly contributions (for example: Lefkowitz, ‘(Dis)solving the Chronological Paradox in Customary International Law: A Hartian Approach,’ (2008) 21(2) *Canadian Journal of Law and Jurisprudence* 129). Moreover, notwithstanding its discussion of secession, *Philosophy and International Law* remains silent on broader theoretical questions related to statehood, such as the nature of (and limitations upon) state sovereignty: a concept which does not even have an entry in the book’s index. Of course, no single text can cover *everything* relevant to international legal theory – that expectation would be unrealistic. However, given the fundamental importance of these issues, the omission is glaring. When combined, for example, with the conspicuous absence of international environmental law (which could hardly be more topical) and

the omission of various key pieces of historical and contemporary literature (more on this below), *Philosophy and International Law* leaves me wondering whether it was ever truly intended to provide the critical introduction promised by its subtitle.

The question is prompted by the first three chapters the book, dedicated respectively to the legal philosophy of John Austin (pp.8-19), H.L.A. Hart (pp.20-39), and Ronald Dworkin (pp.40-72). Within a self-styled critical introduction to the philosophy of international law, such detailed treatment seems somewhat out of place, given that the work undertaken by these thinkers focused almost exclusively upon national legal orders. Dworkin, for example, wrote only one paper on international law, and even that was published posthumously ('A New Philosophy for International Law' (2013) 41(1) *Philosophy & Public Affairs* 2). There is, admittedly, some merit to considering the views of Austin and Hart, both of whom denied the existence of an international legal order, even if their importance is now largely historical. It is generally accepted, for example, that Hart was wrong to characterise international law in the way that he did, whilst Austin's 'command theory' of law is almost universally considered to be mistaken. However, what would otherwise be an eccentric preoccupation with these three thinkers becomes quite bizarre when one notices that *Philosophy and International Law* completely omits all discussion of legal scholars such as Herman Heller, Hans Kelsen, Hersch Lauterpacht, and Lassa Oppenheim. The positivism of Kelsen and Oppenheim, the natural law arguments of Lauterpacht, and the work on sovereignty undertaken by Heller, are not only impressive philosophical contributions in their own right but also provide far more sustained reflections upon international law than anything penned by either Austin or Hart.

My point is not that Lefkowitz is wrong to discuss Austinian, Hartian, or Dworkinian legal philosophy, nor that those thinkers did not make interesting (if limited) contributions to the study of international law. Instead, my concern is that, within the confines of *introducing* international legal theory, the emphasis *Philosophy and International Law* places upon their work is wildly misrepresentative. Any student relying upon this book would be justified in concluding, just as I concluded in 2012, that the philosophy of international law necessarily begins with some version or other of the Hart-Dworkin debate. Nothing could be further from the truth and, insofar as it suggests otherwise, *Philosophy and International Law* does its readers a serious disservice. The exclusion of Kelsen, in particular, strikes me as deeply problematic. Omitting such important thinkers is not a luxury available to anyone charged with representing the state of any academic art, let alone when the target audience is, at least nominally, students.

Unsurprisingly, the true motivation for the first three chapters of the book appears to be Lefkowitz's own intellectual interest in Hart and Dworkin. As he states (2), he hopes to defend them from several critics before using their work to advance positive arguments of his own. This is, of course, a perfectly valid scholarly pursuit and, in my view at least, makes for an interesting research project. It is, however, hard to see how work of this sort provides appropriate subject matter for an introductory text, especially in an area of scholarship where the contributions of both Dworkin and Hart have been so peripheral.

Philosophy and International Law becomes significantly more topical after Chapter 3, turning to the international Rule of Law in Chapter 4 and the legitimacy of international legal institutions in Chapter 5. These are arguably the strongest parts of the book, with Lefkowitz's obvious enthusiasm for his subject matter shining through in a series of elegantly worded and incisive critiques. Admittedly, few of these discussions are particularly original. For instance, Lefkowitz cites the power imbalances between states and the dearth of international tribunals with compulsory jurisdiction as two important reasons to doubt that international relations are subject to the Rule of Law (pp.91-93). These sceptical arguments are well-rehearsed, appearing, respectively, in famous contributions such as Gerry Simpson's *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004) and Hersch Lauterpacht's *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933). Lefkowitz can perhaps be

forgiven for this lack of novelty: sometimes, the best arguments are the most straightforward and, in any event, lose none of their force for having been made before.

Chapters 8 and 9, which discuss international humanitarian law, crimes against humanity, and universal jurisdiction, constitute sound summaries of the relevant philosophical debates. Lefkowitz is particularly helpful as regards crimes against humanity, setting out the conceptual and normative issues surrounding their definition and enforcement in terms that bear clear relevance to contemporary doctrinal debates (pp.182-201). In a similar vein, Chapter 7 includes ten pages dedicated to the justification of international human rights norms and legal argumentation within international human rights institutions (pp.144-155). This shift in focus from the preceding and more abstract discussion about the concept of human rights as such (pp.131-144) will be particularly instructive for those who doubt that human rights theory has anything to offer the more concrete concerns of doctrinal lawyers.

Where *Philosophy and International Law* excels is in Lefkowitz's ability to present complex moral and political concepts clearly. Chapter 5 offers the best example: its discussion of legitimacy (pp.99-128) is precise and yet eminently readable. It will almost certainly assist students of international law who may be unused to grappling with more philosophical questions. My only complaint, once again, relates to absent literature. Lefkowitz discusses many relevant political theorists and philosophers, such as Thomas Christiano, Joseph Raz, and Allen Buchanan. However, he nonetheless omits centrally important contributions that focus explicitly upon international law itself, such as Thomas Franck, *Fairness in International Law and Institutions* (Oxford: Oxford University Press 1998), and Jutta Brunnée and Stephen Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge: Cambridge University Press, 2010). Such omissions risk implying that the contemporary greats of mainstream political philosophy are the only voices worth hearing as far as the philosophy of international law is concerned. But that is simply not the case. Franck, for example, despite being first and foremost a legal scholar, is credited with offering 'a pioneering effort...to apply Rawls's theory of justice to large tracts of international law, one that outdoes Rawls himself in its ambitions' (Samantha Besson and John Tasioulas, *The Philosophy of International Law* (Oxford: Oxford University Press, 2010) 5).

Unfortunately, this tendency towards myopia arises at several points within *Philosophy and International Law*. Chapter 11, which purports to examine international trade law, is almost wholly concerned with the more general issue of whether free trade is morally preferable to more restrictive international economic models (pp.231-255). There is very little concrete discussion of prevailing legal norms or institutions, with the World Trade Organisation, for instance, being referenced in a mere handful of paragraphs (pp.230, 244, 255-258). This is disappointing, given recent advances within the philosophy of international trade law, such as Oisín Suttle's *Distributive Justice and World Trade Law: A Political Theory of International Trade Regulation* (Cambridge: Cambridge University Press, 2018).

Omissions of this kind might have been excusable if Lefkowitz had acted so as to foreground the work of younger scholars, or those from more diverse backgrounds. Instead, *Philosophy and International Law* almost exclusively cites established voices within the Anglo-American philosophical canon – the vast preponderance of whom, it must be said, are both white and male. Such (mis)representations of the relevant literature might pass muster within analytical philosophy but they cannot be excused within international law, where the intellectual legacies of colonialism must remain at the forefront of one's mind. Ultimately, *Philosophy and International Law* does nothing to transcend this problematic tradition. Notwithstanding several passages of clear and useful analysis it focuses far too little upon the detail of the international legal system and far too much upon the handful of mainstream Anglo-American philosophers with whom Lefkowitz is interested in engaging.

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