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The Paradox of the Validity of Peremptory Norms in the Postmodern Sphere: Reconsidering the Dialectic of Natural Law and Positivism in the Formation of Fundamental Norms of International Law

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1. Round 1

1.1. Reviewer 1

Reviewer:

The second introductory paragraph states that “if State consent were the sole criterion, explaining normative superiority and non-derogability would become difficult.” This proposition is central to the article, but the treatment of positivism is too general. The manuscript should distinguish strict voluntarist or consent-based positivism from more sophisticated positivist approaches grounded in customary law, secondary rules, institutional recognition, systemic legal validity, or broader social practices of legal actors. Without such differentiation, the natural law–positivism dichotomy risks appearing overly schematic, and the proposed concept of “constrained intersubjective validity” may seem to resolve a binary that has been presented too simply.

In the paragraph beginning “The completion of the International Law Commission’s work in 2022 marked a turning point,” the manuscript should clarify the precise legal and methodological status of the Commission’s conclusions. At several points, the article appears to treat them as though they constitute binding criteria against which judicial reasoning must be measured. The author should explain whether the conclusions are being used as a codification of existing law, a form of progressive development, an authoritative methodological framework, or an analytical benchmark. This clarification is necessary because the manuscript later assesses the International Court of Justice’s reasoning by reference to these criteria.

The paragraph formulating the main research question asks “how peremptory norms can possess legal validity under conditions in which claims of universality confront postmodern critiques of metanarratives, power, and the production of knowledge.” The term “validity” should be defined more precisely because the manuscript uses it in several overlapping senses, including legal existence, normative superiority, legitimacy, institutional recognition, and epistemic justification. These

dimensions are related but not identical. The author should state explicitly whether "validity" is being used in a strictly juridical sense or as a broader composite concept, because this choice directly affects the meaning and originality of "constrained intersubjective validity."

In Section 3.2, the sentence stating that the underlying norm "may be customary, treaty-based, or grounded in general principles of law" requires particularly careful formulation. The manuscript should distinguish between a treaty rule binding only its parties and a rule of general international law that may be reflected, evidenced, or crystallized through treaty provisions. Because this distinction lies at the heart of the article's two-stage methodology, any ambiguity concerning the relationship between treaty norms and general international law could weaken the doctrinal foundation of the argument.

The concept of "argumentative density" introduced in Section 3.3 is potentially valuable, but it currently remains too metaphorical. The manuscript should operationalize the concept by specifying criteria for independence, diversity, convergence, and representativeness of evidence. For example, the author should explain whether multiple documents repeating the same institutional formula should be treated as independent evidence, how regional diversity should be assessed, how dissenting State positions should affect the evaluation, and whether temporal continuity matters. Without such criteria, argumentative density may be difficult for other researchers or judges to apply consistently.

In Section 4.1, the paragraph on Barcelona Traction states that obligations erga omnes and jus cogens are not synonymous, but the doctrinal relationship between them should be explained more fully. The article should clarify whether every peremptory norm necessarily generates obligations erga omnes, whether every obligation erga omnes derives from a peremptory norm, and whether the answer depends on distinguishing the norm itself from the obligations arising under it. This clarification is especially important because the manuscript later treats the distinction between normative status and relational consequences as one of its major contributions.

In Section 4.2, the sentence "the Court emphasized the right to self-determination and recognized its peremptory status within its reasoning" should be refined through a closer reading of the Court's formulation. The article later acknowledges that the Court referred to self-determination in the context of foreign occupation. That contextual qualification should be introduced immediately rather than only later. The author should examine whether the Court recognized the entire right to self-determination as peremptory, only its application in situations of foreign occupation, or a particular core dimension of the right. This distinction is crucial to the article's argument about scope.

The paragraph discussing Judge Tladi's declaration should explain more systematically why separate judicial opinions matter within the proposed model. If institutional consolidation is one of the four components of constrained intersubjective validity, the article should identify the different evidentiary weight of majority judgments, advisory opinions, separate opinions, declarations, international institutional documents, and State pleadings. A reasoned hierarchy or typology of institutional materials would make the proposed framework more operational and would also strengthen the article's broader emphasis on evidentiary quality.

In Section 5.3, the sentence emphasizing "sensitivity to victims' experiences, attention to structural silences, and avoidance of equating the absence of a recorded voice with an absence of acceptance" raises an important but difficult legal issue. The author should explain how such considerations can influence the identification of jus cogens without displacing the State-centered criterion embedded in the existing legal framework. A distinction should be drawn between evidence that contributes directly to positive legal identification and critical evidence that evaluates the representativeness, inclusiveness, or legitimacy of the identification process. Making this distinction explicit would substantially strengthen the integration of feminist critique into the doctrinal framework.

In Section 6.3, the discussion of serious breaches should be expanded by addressing the threshold that separates an ordinary breach of an obligation arising from a peremptory norm from a serious breach that activates additional consequences. The manuscript should explain the relevance of gross or systematic failure and make clear that the peremptory status of the primary rule does not automatically establish the seriousness of every violation. This is particularly important because the article's central thesis emphasizes the need to separate normative status from legal consequences.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In the methodological paragraph, the manuscript states that "the research employs a descriptive-analytical and normative methodology," but this requires greater specification. The article should explain how descriptive analysis is distinguished from normative evaluation, how the author moves from positive law to theoretical critique, and how materials were selected from treaty law, judicial decisions, institutional documents, State practice, and scholarship. Since the article repeatedly stresses the importance of evidentiary quality, its own criteria for source selection, inclusion, exclusion, and weighting should be made more transparent and reproducible.

The paragraph beginning "In terms of originality, the article distinguishes among three analytical levels" identifies a particularly strong conceptual distinction among the existence of a rule, the peremptory character of that rule, and the legal consequences of that status. This tripartite distinction should be used more systematically as the organizing architecture of the article. Each doctrinal section and case analysis could explicitly identify which of these three levels is under consideration. Doing so would significantly improve internal coherence and would demonstrate that the proposed model is not merely terminological but actually structures legal reasoning in a distinctive way.

In Section 1.1, the sentence "Through the concept of value formalism, Kleinlein seeks to bring the two sides of the debate closer together" introduces a concept that is highly relevant to the article's thesis, but the discussion is too compressed. The author should explain more precisely what "value formalism" entails, how it differs from both classical natural law and strict positivism, and why the proposed notion of "constrained intersubjective validity" is not simply a reformulation of the same insight. The manuscript should specify what is genuinely added by the concepts of evidentiary quality, representativeness, institutional consolidation, contestability, and critical revisability.

In Section 1.2, the paragraph on Persian-language scholarship would benefit from a more systematic classification of the literature. Rather than stating generally that scholarship has moved beyond definitional issues, the author should identify distinct strands, such as studies on identification criteria, institutional consequences, human rights, environmental law, public order, and emerging claims of peremptory status. The research gap should then be derived explicitly from the limitations of these strands. This would make the originality claim more persuasive and reduce the impression that the gap is merely asserted.

In Section 2.1, the sentence "The consequences of peremptory norms are not limited to the invalidity of conflicting treaties" is correct in general terms, but it should be qualified more carefully. The manuscript should distinguish treaty-law consequences, consequences under the law of State responsibility, consequences associated with serious breaches, and consequences related to obligations owed to the international community as a whole. These categories do not arise automatically from one another. A more precise distinction at this point would also strengthen the manuscript's later insistence that peremptory norms, obligations erga omnes, and serious breaches must not be conflated.

In Section 2.2, the statement that "Natural law may therefore explain why normative superiority is justified, but it requires a supplementary mechanism for establishing the existence of a specific legal rule" should be developed conceptually. The manuscript currently risks reducing natural law to the proposition that morally important values should prevail. A stronger theoretical discussion should distinguish natural law as a theory of legal validity, a theory of practical reason, a theory of higher-order normative authority, and a rhetorical justification for fundamental norms. This would allow the article to identify more precisely which dimension of natural-law reasoning is being accepted and which remains insufficient for legal identification.

In Section 2.4, the paragraph beginning "Legal postmodernism is sensitive to claims of universality, purportedly neutral language, and legitimating metanarratives" groups several different intellectual traditions together. The article should avoid treating Lyotard, Foucault, and Derrida as though they advance a single coherent theory. It would be more rigorous to identify the specific methodological contribution borrowed from each thinker and then explain exactly how that contribution affects the identification of peremptory norms. The section will be stronger if postmodern critique is translated into concrete legal questions rather than remaining at the level of general theoretical vocabulary.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.