

Studi e Ricerche

Diritto, Politica, Economia – Gaetano Morelli Lectures Series

The Present and Future of *Jus Cogens*

edited by
Enzo Cannizzaro



SAPIENZA
UNIVERSITÀ EDITRICE

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In copertina: Andrea Mantegna, *Trionfo della virtù* (1502) [particolare], Museo del Louvre, Parigi.

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Preface

This book gathers the contributions presented to the first edition of the *Gaetano Morelli Lectures*, held in the Spring of 2014.

In presenting this initiative, also on behalf of my colleagues, Paolo Palchetti and Beatrice Bonafè, I wrote:

“The aim of the *Lectures* is to offer conceptual tools for appraising controversial knots of international law in its continuing development. There is a lot of sense, in our view, for doing this. International law is one of the branches of legal science where the pressing need for change goes hand in hand with the persistence of its basic legal paradigms. It is this unique blend of theory and practice, of tradition and innovation, which makes international law so challenging and ultimately explains its ongoing intellectual fascination”.

This sentence condenses our shared view of the *Lectures* and, more generally, our vision of legal research, as an incessant collective reflection capable to shake continuously our most consolidated ideas and preconceptions.

This is the reason which led us to choose *jus cogens* as the topic for the first edition of the Lectures. *Jus cogens* is not only a “classical accomplished” of international law. It is, first and foremost, a litmus test for its future development, situated at the crossroad from where diverse perspectives depart: one which leads back to the traditional bilateralist conception; another, at the other end of the spectrum, which leads to new and still unexplored territories, where the common values of mankind unfold all their potentialities.

Jus cogens appears thus to be a fascinating yet treacherous topic, perpetually in search of a legal paradigm able to capture all its infinite implications. The two general courses have thus been entrusted to leading scholars: Prof. Pierre-Marie Dupuy and Prof. Christian Tomuschat. I am personally indebted to them, not only for accepting this invitation and lending their talent and their passion to this initiative, but also for enthusiastically endorsing the overall cultural mission entrusted to the *Lectures*. The publication of this book, freely accessible to every scholar all over the world, now offers the possibility to read these two major contributions of two *Maestri* of the international legal science.

I am also grateful to Prof. Giorgio Gaja, who was Gaetano Morelli's pupil and succeeded to him on the ICJ bench forty-two years on, for his introduction. The book is completed by two short Chapters, by Beatrice Bonafè and by myself, which may give an account, albeit in a cursory and concise way, of the challenging discussion that took place in the final seminar class.

A final word does not seem to be fully inopportune, with regard to the scholar after whom the *Lectures* have been named. As I wrote one year ago:

“The idea to convene in Rome on a yearly basis to discuss key issues of contemporary international law is naturally connected with the glorious Institute of International Law of “*La Sapienza*”. The story of this institution has accompanied the development of international law in the XX Century, to which the members of the Institute have considerably contributed. Naming the Lectures after Gaetano Morelli is thus more than an individual tribute; it is a collective acknowledgement to a legal tradition, which we intend to renew and to innovate every year, brick after brick”.

This resolution appears to be the most opportune, on the eve of the second edition of the *Lectures*.

Rome, May 2015

Enzo Cannizzaro

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This book gathers the contributions presented to the first edition of the Gaetano Morelli Lectures, held in the Spring of 2014 on “the Present and Future of Jus Cogens”. The first two Chapters reproduce the two general courses by Christian Tomuschat and by Pierre-Marie Dupuy. Two short Chapters, by Enzo Cannizzaro and by Beatrice Bonafé, address topics dealt with in the final seminar class.

Enzo Cannizzaro is full professor of international law and European Union law at the Sapienza University of Rome. He has been visiting professor at Universities and scientific institutions in Europe and the United States. He is a member of the editorial board of the “Il diritto dell’Unione europea” and member of the scientific board of the “European Journal of International Law” and “Diritti umani e diritto internazionale”. Among his most recent books: “The Law of Treaties Beyond the Vienna Convention”, Oxford University Press, Oxford, 2012 and the textbook “Diritto internazionale”, Giappichelli, Torino, 2014.

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