DOI: 10.14324/111.2052-1871.114

BOOK REVIEW

Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press, 2018)

Pages: 304. £32.95. ISBN: 9780674980815

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A profoundly important development in international legal scholarship has been a 'turn to history' which has questioned standard narratives, confronted problematic legacies, and recovered forgotten visions.[1] Far from being a passing curiosity, the critical engagement with the origins of the international legal order has become more sophisticated over the past two decades and has shown no signs of slowing down. For proponents of this meta-project, and those participating in the discussion Jennifer Pitts's *Boundaries of the International: Law and Empire* (hereinafter '*Boundaries'*) provides an invaluable contribution to the debate. Nuanced in its analysis, accessible in its prose, and riveting in its narrative, *Boundaries*[2] is strongly recommended both for experts and for beginners interested in how histories of empires founded upon juridical inequality are vital in understanding the contemporary international legal order, ostensibly founded upon formally equal sovereign states.

A key aspect of *Boundaries* is that Pitts tells the story of international law as a political scientist specialising in the history of empire and political thought, rather than a scholar with an internal perspective emanating from within the field of international law. Thus, instead of exclusively focusing on publicists who are considered to be authoritative legal sources, Pitts analyses such figures as Emer de Vattel, Frederik von Martens, Henry Wheaton, Travers Twiss, and John Westlake, alongside other contributors to the law and empire debates. This group consists of some of the most canonical figures in Western political thought, including but not limited to Montesquieu, Edmund Burke, Jeremy Bentham, and John Stuart Mill, who are rarely considered by international lawyers despite their prominence elsewhere. This cast is joined by figures who are largely forgotten today but who were highly important in

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[1] For a recent collection exemplifying the diversity of this 'turn', see Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (CUP 2018).

[2] Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press 2018).

their own times including: the orientalist Abraham Hyacinthe Anquetil-Duperron; the admiralty judge William Scott, Lord Stowell; the jurist and parliamentarian Sir James Mackintosh; and the historian, Muslim convert, and critic of empire Henry EJ Stanley. As such, *Boundaries* is formidable in its comprehensive contextualising of modern international legal thought above and beyond orthodox narratives.

Moreover, *Boundaries* is a welcome intervention in the ongoing methodological debate between intellectual historians and critical international lawyers over the meaning of international law's European and exclusionist origins. While the former have sought to avoid anachronism through highly contextualised readings of the field's canonical publicists and the limited intellectual resources available to them, the latter have emphasised the inherently anachronistic ways in which law (especially the common law tradition) links otherwise unrelated events as a means of articulating allegedly timeless principles.[3] As such, while intellectual historians are generally sceptical of directly associating early modern thinkers with present global inequalities, critical international lawyers, namely those belonging to the Third World Approaches to International Law movement, often view this link as an essential starting point for analysis.[4] In light of this debate, Pitts offers an effective (if less than explicit) synthesis of both positions through a rich contextual history that is cognisant of how legal ideas bear consequences which extend far beyond the lifetime of formative theorists. In doing so, the author avoids judging historical actors against contemporary normative standards, at the same time as showing how the chauvinist pronouncements of those same historical actors may still be found within today's political discourse on international inequality.

Directly connected to its methodological strengths, *Boundaries* is also highly innovative in its choice of subject matter. Here, Pitts notes how accounts of international law's imperial origins tend to either focus on sixteenth and seventeenth-century figures such as Francisco de Vitoria and Hugo Grotius or on the field's disciplinary and institutional expansion in the late-nineteenth/early-twentieth centuries. As such, she helps to fill an important gap in the literature by focusing primarily on

[3] Anne Orford, 'On International Legal Method' (2013) 1 London Review of International Law 166, 172-73.

[4] cf Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005); Ian Hunter, 'Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations' in Ian Hunter and Shaunnagh Dorsett (eds), *Law and Politics in British Colonial Thought: Transpositions of Empire* (Palgrave Macmillan 2010) 11-29.

eighteenth and early-nineteenth century developments. While this period is generally viewed as marking the transition between an universalistic natural law tradition and a more limited, yet predictable, legal positivism tradition (the shift being either a good or bad development depending on one's conception of law), *Boundaries* deeply complicates this account. According to Pitts, this era witnessed the rise of critical legal universalisms that condemned practices of colonialism, which were justified through earlier natural law discourses of 'barbarism'/'savagery', and called for the greater inclusions of non-European peoples and traditions. However, these positive developments failed to survive a parochial nineteenth-century process of disciplinary consolidation. Under the dubious label of 'positivism', complete international subjectivity was consigned to a 'Christian', 'European'/ and 'civilised' 'family of nations', which in turn legitimised the domination of those which it excluded. By and large, *Boundaries* is the story of the rise and fall of lost international legal visions that were far more open and inclusive than anything that existed before or since.

In Chapter I, Pitts provides a comprehensive overview of recent critical developments in international law, history, and international relations as a means of setting the stage for five chapters detailing multifaceted intellectual engagements with questions of law and empire. A key figure here is the Polish jurist CH Alexandrowicz whose writings in the 1950s-70s emphasised the historic equality of European and non-European nations that was denigrated by nineteenth-century colonialism, but which was revived with twentieth-century decolonisation. While Pitts is clear that Alexandrowicz's portrayal of inter-cultural equality is not entirely accurate (discourses of legal inequality did in fact pre-date nineteenth century colonialism), there is still value in revisiting his work as a critique of the idea that international law is inherently a tool of domination.

Chapter II details characterisations of the Ottoman Empire as a lawless 'other' to the emerging European states-system. However, these narratives of 'oriental despotism' were challenged in various ways by sympathetic Europeans with personal experiences in the non-European world. These included Sir James Porter's invocation of legal diversity as a critique of Ottoman 'lawlessness' and Anquetil's focus on the self-serving interests of European profiteers which motivated exclusionary legal discourses as normative justifications. Chapter III then turns to the influence of the Swiss jurist Emer de Vattel and his 1758 treatise *The Law of Nations*. While Vattel has

long been associated with the transition from natural law universalism to the morally agnostic tolerance of ideological diversity, Pitts shows how Vattel should be understood not as a 'proto-positivist', but as a natural lawyer whose normative emphasis on pluralism made the defence of small states (including Vattel's native Swiss Canton of Neuchâtel) a matter of universal moral obligation. Yet despite this universalistic championing of the marginalised, Vattel was nonetheless predominantly focused on Europe and was quite hostile in his characterisation of non-European--especially Muslim--societies.

Chapter IV explores the late-eighteenth century heyday of critical legal inclusion through the efforts of Edmund Burke and William Scott, Lord Stowell, which centred on the former's condemnation of the cruelty of the British East India Company against local populations and the latter's admiralty court decisions involving non-European parties. Unlike later nineteenth-century publicists who considered European customs and practices to be the exclusive sources of the law of nations, Burke and Scott maintained a far more critical perspective on legal universalism in this capacity. For these thinkers, the universal law of nations did not prioritise the West and actively recognised non-European practices, concepts, and traditions relating to public order and governmental authority as sources of law that were just as valid as anything created by Europeans. While one should not overly romanticize these figures, especially Burke (whose Indo-European equality scheme was scarcely applicable to indigenous communities in Africa or the Americas), they nonetheless represented the possibility of hybrid juridical synthesis in the formation of a legal regime that is more reflective of the world's cultural diversity.

In explaining the loss of these inclusionary opportunities, Chapter V shifts to the early-nineteenth century, where Vattel's authoritative status was challenged by a historicist critique of the timeless universalism of the natural law. While Robert Ward, the first scholar to adopt such an approach, embodied the non-chauvinist ethos of eighteenth-century critical universalism, this was quickly undone by James Mackintosh who used historicist legal theory to proclaim European superiority. This new exclusionist historicism was deployed against attempts by non-Western actors, including Hamdan Khoja in Algiers and Lin Zexu in China, who invoked the universalist ethos of European legal treatises (namely Vattel's) to critique Western imperialists as violators of their own ideals regarding the equality of nations.

Finally, Chapter VI shows how this early nineteenth-century discourse of Eurocentric legal historicism became hegemonic in the latter half of this century. Centring on Victorian Britain, Pitts describes the dominant sensibility as one where:

> …the European law of nations was a global legal system in embryo, other nations were lawless in so far as they failed to participate in the European system, and…a key task of European jurists was to construct a process by which these others might be granted admission to the European global legal community.[5]

In detailing the triumph of this sensibility, *Boundaries* shows how these exclusionary presumptions informed the consolidation of international law as a field during this era. Here, despite the availability of inclusive formulations of the law of nations, the writers of authoritative treatises invested in distilling international law into a 'science' were deeply self-limiting in their selection of sources owing to a normative goal of centring Europe as the sole source of law-based progress. In concluding, Pitts offers broad reflections as to how the contemporary global order may be reconceptualised in light of these histories.

While *Boundaries* is highly extensive in the number of issues and thinkers that it covers, the selection represents only a small portion of the possible engagements within an era long neglected by international legal scholars. Given the limitation of the book's scope to Anglophone and Francophone figures, one is left to wonder in what ways did other European actors contribute to these debates.[6] This is to say nothing of how figures from beyond Europe can be incorporated into this body of narratives, especially given that Pitts's engagement with Khoja and Lin are some of *Boundaries*' most interesting observations. Recourse to intellectual hybridity as a tactic of resistance amongst colonised subjects has a long history and there remains much work to be done in accounting for the international legal dimensions of such practices.[7] Furthermore, *Boundaries* is largely (if not exclusively) concerned with legal relations between European and Asian empires to the exclusion of the Americas and Africa. While Pitts mentions Vattel's influence in this context, the narrative leaves out a number of

[5] Pitts, *Boundaries* (n 2) 152.
[6] For instance, there were deep anti-colonial presumptions within German conceptions of property law during this era. Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (CUP 2014) 218-23.
[7] On South Asia see Christopher Alan Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (CUP 2011).

important legal questions generated by new states in the Americas under a diverse array of circumstances in the period.

However, if there is one omission in *Boundaries* that can genuinely be described as a missed opportunity, it is the exclusive focus on British jurists in Chapter VI. While Pitts justifies this limited focus by invoking the greater political and legal influence of Britain as the world's foremost imperial power, a greater inclusion of late-nineteenth century Francophone theorists (and critics) of empire would have been a helpful addition. Such a comparative engagement would have been consistent with both the overall thrust of *Boundaries* and Pitts's earlier work on the evolution of liberal justifications for empire in British and French thought.[8] Moreover, it would have been a unique space for introducing otherwise lesser-known French-speaking thinkers to an English-speaking readership.

Nevertheless, given the scope of this work, this is a minor issue, especially considering the methodological contribution it provides to critical and history-oriented scholars of international law. As it currently stands, scholars working in these fields often find themselves in a dilemma in which reliance on traditional sources (namely the work of canonical publicists) reproduces Eurocentric presumptions, and yet expanding beyond these sources risks undermining the 'legal' character and credibility of one's intellectual output.[9] Yet, in reading *Boundaries*, this methodological struggle inspires hope as opposed to anxiety. Such optimism stems from the fact that international law's 'current historicizing moment'[10] can be understood, at least partially, as a welcome revival of eighteenth-century visions of critical legal inclusion across diverse societies. According to Pitts: 'This may make possible something like a return to the predisciplinary status of the law of nations as discourse available to a wider array of writers, thinkers, and publics'.[11] Thus, rather than simply being disruptive agitators in the face of international legal progress, those who question disciplinary rigidity, or even disciplinary virtue, belong to a proud intellectual tradition.

However, while the prospective recovery of this earlier eighteenth-century tradition invokes the idea of progressively reinventing contemporary international law, *Boundaries* can also be read as calling attention to deeper questions surrounding the

[8] Jennifer Pitts, *A Turn to Empire: The Rise of Liberal Imperialism in Britain and France* (Princeton University Press 2005).
[9] Rose Parfitt, 'The Spectre of Sources' (2014) 25 EJIL 297, 299.
[10] Pitts, *Boundaries* (n 2) 16.
[11] ibid.

very discourse of 'progress' in relation to international law. As Pitts has shown, the nineteenth-century re-tooling of international law in the service of colonialism was itself justified in the name of 'progress' both for the discipline and the world as a whole. What then should transformation-seeking international lawyers do in light of their field's long history of producing well-intended progress narratives able to justify exclusion and domination? Asking these questions is of paramount importance given the ubiquity of often uncritical 'progress' discourses in the doctrines, institutions, and mainstream culture of international law in its current form.[12] While there may not be any simple answers here, through its historically-grounded call for far less linearity and far more inclusion in our conceptualisation of these questions, *Boundaries* provides an indispensable resource for those seeking to account for international law's place in our imagination of the world and its possible futures.

[12] See Thomas Skouteris, *The Notion of Progress in International Law Discourse* (TMC Asser Press 2010).