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Sleepy Side Alleys, Dead Ends, and the Perpetuation of Eurocentrism

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My reading of *The Oxford Handbook of the History of International Law*, edited by Bardo Fassbender and Anne Peters, has undoubtedly been framed by my own field of research. This field is not international law, but the historical anthropology of Russia and Eurasia and includes changing legal practice in a context of increasing global connectedness. My review is therefore not intended to relate the *Oxford Handbook* to the wider historiography of international law, which I leave to other contributions in this symposium; it is meant to offer an external perspective on the question of Eurocentric analysis. The editors of the Handbook have identified Eurocentrism as one of the key challenges to overcome in the study of international law.

On the whole, and even if some of my remarks are critical, the *Handbook* struck me as wide in scope and rich in detail. It approaches the history of international law from various perspectives, including concepts, regions, and individual actors. The recurrent feeling of having identified an issue that does not receive sufficient attention usually evaporates a few hundred pages further down when you find a whole section or chapter on the subject. The book, in this sense, is disarmingly detailed and exhaustive.

The *Handbook*'s key objective is to overcome Eurocentric analysis and write an alternative history or, more precisely, alternative histories of international law. The introduction describes existing accounts as incomplete because they ignore not only the ruthlessness and destructiveness of European impositions but also most legal relations that did not involve Europeans, and legal norms that did not survive and become part of today's body of international law. These aims are not only laudable and important but also backed up on the level of research design: the book includes a large number of legal experts from all over the globe, which is unusual for collaborative projects in the field of international law.

Yet, there are a number of issues surrounding the question of Eurocentrism. In what follows, I concentrate on the book's ambition to write a non-Eurocentric history of international law, arguing that, from my own disciplinary perspective, I perceive a certain discrepancy between this ambition and its implementation.

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One of the first things that struck me about the book is that, unlike historians, legal scholars seem to have a fairly clear idea of what international law is: namely, a written, systematically arranged set of international rules and norms that came into existence in the 17th century (the Westphalian order) and has, since then, developed into a modern, globally accepted, system of international relations.

This understanding of international law is undoubtedly influential. After all, it is the basis for most interactions between states today. At the same time, it poses the problem of reading history backwards, of taking the post-1945 system of international law as a starting point and asking the question of how we got to this point. In newer accounts of international law, including this book, this examination is no longer done in chronological order, simply moving from period to period. As Kintzinger points out in his chapter on pre-Westphalian Europe, the historiography of international law does not just explore the past of a current present any longer, but focuses on the genesis of current ideas of international normativity (at 609). This move towards ideas and individuals, however, does not solve the problem that international law continues to be examined in terms of a linear narrative, a trajectory from A (early modern history) to B (1945 and beyond).

An alternative history of international law would have to focus on the rules and customary practices by which states and other independent political entities operated at certain periods in history, bilaterally, multilaterally, or within sub-regions of the globe. Which rules and norms, for example, governed the Persian Empire's interactions with the Moghul Empire in South Asia? How did the vast nomadic steppe empires of inner Asia view and organize their dealings with the Russians, Ottomans, Persians, and Chinese? Over the last 20 years, historians of the Russian Empire have developed an awareness that these territorial units and their rulers never understood their interactions with Moscow and (later) St Petersburg as a tributary system; such an understanding was little more than a Eurocentric assumption by Russian imperial elites who imposed and popularized their own interpretations.

Admittedly, inner Asian interactions between states and state-like compounds may not have had a major impact on today's international law – and I stress the word 'may' because there is simply not enough research on the subject – but for a historian, the governing norms (fixed or not fixed, as they may have been at certain points in history) are just as important a part of the history of international law as the principles by which early modern European powers regulated their encounters. Similarly, oral cultures and habitual practices, which social, legal, and historical anthropology have been examining for decades as a key part of legal culture, form an important aspect of international legal relations in many parts of the world. With their focus on formal legal institutions and documents, however, most legal scholars have ignored these. A truly non-teleological, non-Eurocentric account of international law, however, cannot limit itself to a history of the road towards today's international law, but must also be a history of sleepy side alleys and dead ends.

To be fair, some contributors to the *Handbook* do explore the dead ends. They tell us about the ancient Chinese world order, the rules of behaviour between the princely states of India, or the African kingdoms prior to the arrival of the Europeans. Sahli

and El Ouazzani's chapter on Arab countries persuasively argues that international law can be understood as a universal normative arsenal that has shaped affairs between independent political entities (not just 'states' in the modern sense) both before and after the Treaty of Westphalia (at 386). Unfortunately, however, in most chapters the analysis of this normative arsenal beyond the beaten path is very sparse. While ancient systems of interaction are usually mentioned, they are not analysed in any detail. Nijman's chapter on minority rights, for example, first attacks the widespread use of the Peace of Westphalia as the starting point for international law debates, calling it the 'myth of 1648' and adding that minority rights actually date back to 4th–6th century Asia Minor, but then moves on to discuss such early histories in one paragraph and concentrate on minority rights in two treaties: Westphalia and Versailles. The religious minorities examined are all from central Europe.

This is surprising, given the book's promising ambitions. In the introduction, the editors explain that the book is designed to approach international law as legal relations between autonomous communities (that is, not simply as interactions with and reactions to Europe), and also to take those legal experiences that were discontinued into consideration. This is precisely what I mean by a history of dead ends. However, on the pages that follow such non-Eurocentric discussions are the exception rather than the rule.

Many contributions, in fact, do not pay much attention to the dead ends at all. The way in which they try to avoid the Eurocentric trap is by discussing contributions from Latin America, the Ottoman Empire, Africa, or East Asia to international law as it is now. Some of these discussions are intriguing, such as the suggestion that the Ottoman *ahdnameler* (unilateral pledges granted by Ottoman rulers) served as blueprints for later 'unequal treaties' in East Asia (at 447). Gathii's chapter not only discusses African contributions to international law, but also reviews a number of studies that have exposed the international legal system as a tool for the exploitation and subjugation of colonies. Africa thus emerges in international law debates in two capacities: as contributor and victim. And yet these debates do not grant it any legal agency outside its relationship with Europe and therefore constitute just a milder form of Eurocentrism.

Perhaps this is excusable. In a section that points to the imminent end of the Eurocentric world order (at 24), Fassbender and Peters remind the reader that 'the history of international law since the sixteenth century has been characterized by a global expansion of Western ideas, and with it of Western domination'. And if indeed you understand international law in those terms, it is hard to avoid Eurocentrism. You cannot talk of a diffusion of European ideas, accompanied by ruthless exploitation, if you take Europe out of the equation. Europe and 'the West' in general are key players in this debate, whether we like it or not. And what this volume does very nicely is to show that they were multi-faceted and diverse players. The chapter on North America is particularly striking in this regard, as it gives an astute analysis of the divergent development of US views of international law from various European ones. In this and several other cases, the book questions and deconstructs the notion of 'Western law'.

A degree of Eurocentrism, then, might be unavoidable in this book. Some might even point out that any book using rational methods of categorization and analysis is ultimately rooted in Enlightenment thinking, and thus inherently Eurocentric. Yet, while it would be difficult to write a truly non-Eurocentric history of international law, it would have been advisable to integrate the history of norms governing legal relations outside Europe fully into the main conceptual part of the book. As it stands, the *Handbook*'s overall design and structure is one of its most heavily and unnecessarily Eurocentric features.

More precisely, in the chapters highlighting actors and themes in international law (at 27–379), non-European regions mainly stand out for their absence. There are a few scattered references here and there, but on the whole the narrative misses the opportunity to move beyond European debates. Like the chapter on minorities, Kolb's analysis of the concept of the individual examines a succession of European treaties, conventions, and declarations. What is more, the author's claim that care for the individual only came late in the evolution of morality since it required a high degree of civilization (at 337) is also deeply teleological and Eurocentric. Why would history move in one particular direction (towards individualism in this case)? Such Enlightenment-inspired ideas of 'progress' have lost their appeal in the social sciences since at least the 1970s. The problem is that people's lived realities in many parts of the world do not reflect such a development – and hardly because they are not 'civilized'. While Fassbender and Peters rightly argue against the existing 'grand narratives of progress' (at 20), time and again these narratives make an appearance in individual chapters of their volume.

To offer some more examples of Eurocentric discussions: the chapter on piracy and slave traders mainly tells us how, prior to the emergence of international law in this sphere, different Western states defined and dealt with these crimes. We do not hear a word about the regulation of the slave trade, for example, in early modern Asia (where such trade was rampant). More encouragingly, in the two chapters on peace treaties and international arbitration, we learn that the European law of nations was merely one of several regional subsystems; and one that imposed itself relatively late. This is a crucial point. Yet again, these chapters, as well as all the other ones dealing with actors and themes, then focus almost exclusively on the European sub-system.

The peace movements examined in the book are also mostly Western. It might have been helpful to open up the concept of peace movements towards national liberation movements (some of which pursued comparable goals), which would have widened the geographical and historical scope of the discussion. The links between Western movements and Indian, African, and Japanese ones are admittedly mentioned (at 213–214), but again they are not properly sketched out and analysed. Instead, the chapter, like many others, moves on to other research questions, for example, the fit of different peace movements into Kantian categories. In a volume whose primary aim is to write the history of international law from a non-Eurocentric angle, one should perhaps worry less about Kant than about networks and connections between movements across the globe.

It is also striking that Islam makes its first substantial appearance in the book in the chapter about religion. Christianity, by contrast, is all over the previous chapters. While this exposes the Christian legacy of the modern system of international law, it does not do the volume's overarching goals any favours. Islam, like many other religions, has a lot to say about most conceptual issues, from notions of the state and boundary disputes to ideas of the individual.[1]

More worryingly, the problem of implicit Eurocentrism affects the entire structure of the book. This structure seems to imply that first the important questions must be addressed: the genesis of states, treaties, borders, minority rights, and so forth. Once that is done, divergent voices from different regions and individuals can be added. Put differently, the structure of the book suggests that ideas and norms that originated in Europe are somehow region-free, whereas concepts and interpretations that originated elsewhere are geographical and cultural variations, even aberrations.

In the regional section of the volume, we then hear that there are different Japanese concepts of territory (*hanto v. kegai no chi*). And we learn about moral considerations in India that show striking similarities with the European 'Just War' doctrine (at 513–514). I cannot help wondering why these insights from Asia are not mentioned at all, let alone analysed, in the conceptual chapters on territory and war and peace. From an epistemological and methodological point of view, it is problematic to discuss concepts first (and stick to European debates), and then to move on to different regional discussions. In so doing, you end up excluding the regional voices from the conceptual debates.

Perhaps there are obvious reasons why insights from Japan and India are not included at the beginning. The chapter on territory was written by a scholar of international law who, due to his education at European universities, perhaps could not say very much about East Asian, South Asian, or African concepts. This possibility, however, only points to another problem, namely the geographical and cultural limitations of legal education. Expertise on non-European approaches to international law is, by and large, confined to non-European academic institutions. Western legal education, for its part, tends not to deal with alternatives or dead ends, as I called them earlier. Perhaps that is why these are almost completely absent from the conceptual part of the book.

This volume needs to be credited for an unprecedented effort at writing a less Eurocentric history of international law; for including regions, debates, scholars that, so far, have largely remained outside mainstream international law debates; and for providing the reader with a fascinating amount of detail on a wide range of subjects, regions, and individuals. Regardless of the book's commendable aims, however, many of its chapters do not quite deliver what the book set out to do. And most importantly, its very design and structure perpetuate rather than overcome Eurocentric analysis.

[1] See on that late appearance Samour, 'Is there a Role for Islamic International Law in the History of International Law?' in this volume, at 313.