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# *Liberal Internationalism, Radical Transformation and the Making of World Orders*

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Oona A. Hathaway and Scott J. Shapiro, ***The Internationalists: How a Radical Plan to Outlaw War Remade the World***. New York: Simon and Schuster, 2017. Pp. 608. US \$30. ISBN: 9781501109867.

## 1 Introduction

In a highly readable and often immersively engaging book, Yale law professors Oona Hathaway and Scott Shapiro have narrated a long history of international law's ideas about war with one primary goal in mind: using history to excavate the 1928 Paris Peace Pact's central importance in the building of a New World Order. They seek to protect the gains of this New World Order and to use their method of 'looking back' to draw attention to the current threats to the 'postwar consensus on the illegality of war' and to 'chart a path ahead' (at 415–416). The book's narrative spans an impressive temporal and geographic range, beginning briefly with a hot summer day in Paris in 1928, then back to a night in 1603 off the Strait of Singapore, right up to the contemporary period, focusing on the South China Sea in 2015, Crimea in 2014 and Iraq and Syria from 2014 to today. The authors narrate the ideas and biographies of 'fathers' of the Old and New World Orders including the familiar (Hugo Grotius, Carl Schmitt, Hans Kelsen, Hersch Lauterpacht) and the less well known (Nishi Amade, James T. Shotwell, Salmon Levinson). It is these great men, categorized as either 'Interventionists' or 'Internationalists' who, through force of will and the faith in their ideas, coupled with elite access and sometimes frenetic writings, changed the course of legal order in the world.

This cast of characters is arranged as heroes and villains ('arraigned' may be more appropriate for the latter) in the epic, transformational struggle to displace one 'universe' with another (at xv). The object of this progressive struggle was the 'outlawry of war' – its prohibition, casting it out from the legal toolkit of sovereign state policy,

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consigning it to a dark past of interstate violence. It is important to bear in mind that this ‘struggle’ is one that is openly engaged with by the authors themselves, not simply the jurists and ideas men they seek to portray. This is history in the service of clear normative commitments.

The book’s monumental spatio-temporal reach, epic narrative and archival mastery in the first two parts, and its empirical turn in the final, third part, invite cross-disciplinary dialogue and insights that require us to step outside the comfort of disciplinary enclosures and unnecessarily bounded specialization. The book justifies reflection and debate not just among international legal scholars but also among colleagues in history, international relations and political science. It achieves what its marketing material promises: genuine provocation through the boldness of its vision. Holding these values in the frame, then, I explore in this review essay the authors’ upfront normative commitments to the New World Order, focusing on questions of method and theory in international law’s historical and empirical ‘turns’.

Following a summary of the book’s structure and principal arguments, I examine the implications of narrating history in epochal form, highlighting the promises and pitfalls of such ‘progressive’ accounts, and then interrogate the turn to empirical data as a way of understanding the New World Order. I argue that the ‘bird’s eye view’ (at 311) that dominates the perspectival orientation of the book’s third part performs what Donna Haraway identifies as a ‘god-trick’ of appearing to see everything from nowhere.<sup>1</sup> I draw upon interdisciplinary insights from science and technology studies (STS) to invite reflection on what is at stake when we use ‘science’ to see the world with this kind of eye. Such ‘scientific’ ways of knowing are attempts to ‘prove’ through ‘attestive witnessing’ and claim to transcend politics, but STS scholars have long demonstrated that there is always a politics to the production of knowledge.<sup>2</sup>

In the next section, I attend to some of the more obvious gaps in their narrative, focusing on the decolonization revolution and more ‘radical’ world reordering movements and then address the endurance of justifying war through law. I close with reflections upon the following questions: how might we complicate the authors’ totalizing vision of old and new universal systems of world order; what constitutes a legal revolution and how, and by whom, is it made; and how might we engage in these questions of knowledge from a position that recognizes its dynamic force in mediating difference in this protean world?

## 2 Summary of the Book

In the book’s introduction, we learn that the Old World Order was defined ‘by the belief that war [wa]s a legitimate means of righting wrongs. War was an instrument

<sup>1</sup> Haraway, ‘Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective’, 14(3) *Feminist Studies* (1988) 575.

<sup>2</sup> Attestive witnessing refers to the ‘proof’ – by seeing, demonstrated before one’s eyes – that emerged in the scientific revolution and is analysed in S. Shapin and S. Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life* (1985) and explored further by B. Latour, *We Have Never Been Modern* (1993). For a poignant, but much later, representation of the aesthetics of this ‘revolution’, see J. Wright, *An Experiment on a Bird in the Air Pump* (1768) in London’s National Gallery.

of justice' (at xv). Part I's exposition of the legal thinking underpinning the Old World Order begins with 'Hugo the Great' not only because he is 'generally considered to be the "Father of International Law"' but also because 'he is the preeminent philosopher of war' (at xix). Grotius' theorization of war is contextualized with reference to his defence of Dutch extraterritorial activities in an emergent mercantile capitalist world. And so we learn that in order to avoid the creation of 'destabilising legal uncertainty for merchants' the laws of war would follow the 'Might-is-Right' Principle. This meant that success would create legal rights in war, so requiring that title to booty, for example, would transfer when property was seized in war (at 23). The principle would also be applied to conquests: sovereignty could be acquired through the wresting of territory from another state, thus conferring the right to rule its inhabitants. War was the judge, and those 'not engaged in the fight d[id] not need to know the legal details of the dispute', though Grotius applied a caveat: the principle only applied to 'formal' wars – that is, interstate conflicts commenced by formal declaration (at 24).

From the account of this 'Father', the authors guide us through the war-as-legitimate Old World Order. In what is a short but striking chapter on 'manifestos of war', the authors' absorbing mastery of archival documents is richly demonstrated, offering what they argue is a 'glimpse into an alien world'.<sup>3</sup> Vignettes from their archive give a sense of the bases upon which war could be justified, which included debt collection and the enforcement of treaty provisions even when concluded under duress – that is, through 'gunboat diplomacy' (at 51). For instance, they consider 'the very first published war manifesto printed in 1492', which justifies the Holy Roman Emperor Maximilian I's right to wage war against the French 'rooster' king Charles VIII on the basis that Charles stole Maximilian's wife, claiming her as one of his 'hens' (at 38–39). Having noted this spectacular example, they record that their collection demonstrates reliance upon self-defence in 69 per cent of manifestos and that violations of international law constitute 35 per cent of justifications (at 43).

It transpires that war may have been 'legal' but that 'sovereigns rarely, if ever, went to war unless they could assert that their cause was in some way just' (at 33). Here, the authors appear to assert a universal aspect of war – that the 'decision to go to war always requires justification': 'Waging war always entails the assertion of a *right*' (at 32; emphasis in original). Further, they acknowledge that, while war 'may appear to epitomise the absence of law and order ... in the Old World Order, war *was* law and order' (at 33; emphasis in original). But in this Old World Order it was impossible to adjudicate between these manifestos – between just and unjust wars – and so, again, Might had to be Right (at 55). I return to the theoretical implications of recognizing the sovereign right and enduring practice of justification in the last section of this review essay.

<sup>3</sup> Such mastery provides an opportunity to reveal treasures from their archival mining, and in their accompanying website the trove is opened up for wider examination and reflection, allowing many more narratives to be drawn from the riches gathered together. However, for more critical reflections on the 'mastery' of archives and the allure and dangers of revelatory discourse from such documents, see A. Farge, *The Allure of the Archives*, translated by T. Scott-Railton (2013) (originally published as *Le Goût de l'archive* (1989)).

Finally, in this Part, the authors document the inevitable abuses that flowed from this legal entitlement to wage war, focusing on the ‘license to kill’ in war that included immunity from prosecution even if waging an unjust war (at 62); the prevalence and legal legitimacy of the already-mentioned practice of ‘gunboat diplomacy’; and the often perverse effects of impartiality, understood as the laws of ‘neutrality’.<sup>4</sup> In the closing ‘Coda’ for this Part, they remind us that Grotius ought not to be understood as an Internationalist – an incorrect analysis repeatedly made and based upon a partial reading of his writings. While he was not the Old World Order’s inventor, he was its greatest legitimator. He was an ‘Interventionist’ whose signal contribution ‘was to make the world safe for war’, even if he did seek to de-legitimate ‘bloody wars of annihilation’ referred to in the book as ‘hygienic wars’ (at 96).

We then transition to what constitutes the ‘bulk’ of the book, the 200 or so pages documenting the ‘transformation’ from Old to New World Order. Like its earlier part, this is largely rendered chronologically beginning with the tragedy of the ‘war to end all wars’ of 1914–1918 and ending with the post-war trials in the ‘Nazi Circus Town’ of Nuremberg. Sandwiched in between is some of the book’s most original contribution: an erudite retelling of an overlooked, wrongly dismissed American ‘outlawry of war’ movement spearheaded by such familiar names as John Dewey and, likely following this book’s publication, soon to be duly recognized figures as James T. Shotwell and Salmon Levinson. These architects of the outlawry movement were, unlike their Old World Order counterpart Grotius, the originators of a truly radical idea. These were inventors of new legal thought, but they had to struggle, often against the tide of events and the predominance of ‘secret diplomacy’, to have it installed in legal form.

Eventually, we learn, our heroes and their vision succeeded. Their success did not come only with the signing of the Paris Peace Pact on a hot summer day in 1928 and the almost immediate ‘falling apart’ of the renunciation of war embodied therein. It was ultimately because they succeeded in committing their ideas to legal form – a multilateral treaty – that they achieved the transformation of the Old to New World Order. This was because the Pact provided legal justification for the Allies not only to prosecute war against the Nazis but also, subsequently, to arraign them before an ‘international’ court. The Pact’s existence, therefore, became a legal resource for the Allies seeking victory in war and a monumental record of legal justice at its close.

No longer therefore are we to see the Paris Peace Pact’s language as merely a ‘scrap of paper’ with no real moral, let alone legal, force.<sup>5</sup> Precisely because the Pact was so succinct and brief, its language was easily adopted, adapted and transformed again from a blueprint for the ‘Argonauts’ (Winston Churchill, Theodore Roosevelt and Joseph Stalin’s self-styled moniker in the secret peace negotiations that were held in Yalta in early 1945) into what would eventually become the Charter of the United

<sup>4</sup> Though importantly they emphasize that ‘war crimes’ constituted an exception to this general license to kill.

<sup>5</sup> I allude here to the similarly elaborate archival examination of international law’s role in World War I by I.V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (2014), which refers to Germany’s incredulity that a ‘kindred nation’ like Britain would go to war with Germany over a ‘mere scrap of paper’ (42).

Nations (UN Charter), an organization whose primary purpose would be to entrench the already committed to outlawry of war. The Pact's provision of the legal premise for indicting Nazi 'war criminals' at Nuremberg would come via the sophisticated and highly attuned arguments of Lauterpacht who prevailed over his evil nemesis Schmitt.

In their second 'Coda', 'Hersch the Great' becomes the 'father' of this finally 'birthed' New World Order (at 303–305). He helped elaborate 'a photo negative of the Old World Order' with the rules now the opposite of Grotius' (at 304). To represent this transformation and consequent dichotomous, antagonist relation between the old and the new, the authors draw oppositional schematics in each of these Codas. In the Old World Order, the privilege to use force entailed a licence to kill, neutrality as impartiality, gunboat diplomacy and the rights of conquest; in the New World Order, the prohibition on force entailed aggression as a crime, sanctions now permitted, the absence of 'coerced agreements' and the illegality of conquest. As depicted in pictorial form, the diagrammatic direction of flows indicates to us that this legal privilege or prohibition led directly to these outcomes, though the authors make clear that it is not the legal form alone, but also legal activism, that causes the paradigm shift.

In Part III, we reach the hallowed ground of the New World Order, although, disconcertingly and utterly abruptly, this third part largely abandons our heroes to their newly revised legal–historical context and embarks upon an empirical, 'bird's eye view' representation of three identified periods: 1816–1928, 1928–1948 and 1949–2014 (at 311). The authors argue that '[s]tate behaviour did not change the moment the Pact was signed'. The Pact 'was not sufficient by itself' because whenever change is sought, it is never enough to pass a law and expect automatic compliance: 'Legal revolutions do not end with the passing of a law. They begin with them' (at 331). The revolution takes place through the operation of the compliance pull of law, and empirical evidence 'attests' to the success of this revolution. In this part, numerical statistics from the Correlates of War project and maps of this new order thereby 'prove' the radical transformation wrought by this 'outlawry revolution' (at 331).

Finally, the book closes with the spectre of Islamic State-ism and the radical otherness of its vision of world order. It is an aptly horrifying narration that evokes the classic 'clash-of-civilizations' narrative of utter irreconcilability. Sayyid Qutb is portrayed as the Grotius of the Islamic State with a dark, alien imagination of the world and law, not unlike the picture of the archaic and brutal Old World Order, but worse. This 'clash' between Old and New World Order visions, however, is not only represented by the ultimate other of irrational religious fanaticism but also by Russia and China as intransigent near rogue powers seeking a return to the legality of war. Donald Trump's America also poses a threat, but not in the same way, because:

[t]he success of the system depends on the willingness of the United States to continue to play a central role in maintaining the legal order in the face of these many challenges. Indeed, the greatest threat to the New World Order comes from those who wish to abandon this role and turn inward. Throughout the world, anti-internationalist sentiment is growing. ... For the world order built by the Internationalists to continue, America and its allies must maintain their commitment to the rules and institutions that underlie it' (at 419).

The authors accept that there is a ‘third option’ but it is the worst of all, represented by the inherently unstable period between 1928 and 1948 and would ‘generate chaos and disorder until a new, stable equilibrium arises’ (at 421).

The world order initiated by the Paris Peace Pact and reaffirmed by the UN Charter, they argue, was based on an understanding that every nation would be more secure and prosperous if nations cooperated with one another in pursuit of their shared goals. While this order is imperfect, it has brought about decades of ‘unprecedented prosperity and peace’ (at 419). In this world order, therefore, trade will continue to play ‘an essential role not only as a source of beneficial collaboration but also as a collective tool for constraining illegal behaviour’ (at 421). The use of trade as a collective tool makes reference to the communitarian force of ‘outcasting’ that the authors argue is so important in achieving the modification of state behaviour by peaceful means.

The reader is therefore left with a stark choice between two oppositional universes, where war is either legal or illegal with the inevitable consequences for conquest, killing, impartiality and coercion. Ultimately, we must have faith that the New World Order, even with all of its problems, is ‘better to live in’ (at 422).<sup>6</sup> The optimistic reality that the authors have revealed in their history is that ‘[l]aw creates power’, and so if it ‘shapes real power, and ideas shape the law’ – as the example of their Internationalists suggests – ‘then we control our fate’ (at 423; emphasis in original); a normative rallying cry for an enchanting universal international law in these dark times.

### 3 On Narratives of Progress and the Empirical Gaze

Epochal accounts of international law’s progress are hardly unfamiliar to the discipline. They are characterized by identifying ‘hinges’ or ‘pivots’ upon which international law’s singular order ‘turns’. For Wilhelm Grewe, in his *Epochs of International Law*, it was with the end of World War I that the ‘classical’ system ‘gave way to a new law of nations ... modern international law’.<sup>7</sup> Likewise, for contemporary textbooks, World War I demonstrated that the ‘old anarchic system had failed’.<sup>8</sup> Such ‘evolutionary’ periodizations make sense of the world we inhabit today, signalling the progressiveness of these turning points. For instance, we can learn that the ‘[t]he UN Charter stands at the end of an evolution by which the rights of states to use force was progressively limited’.<sup>9</sup> Not only is this transparently good, but it can be buttressed by the observation that ‘international law facilitates the functioning of the international community, of which we are all a part, and on which we all depend’, ensuring a ‘stable and orderly international society’.<sup>10</sup> The progressiveness of these accounts is alluring

<sup>6</sup> In words that are disturbingly reminiscent of a critical lament on ‘the most we can hope for’. See Brown, ‘“The Most We Can Hope For ...”: Human Rights and the Politics of Fatalism’, 103(2) *South Atlantic Quarterly* (2004) 451.

<sup>7</sup> W.G. Grewe, *The Epochs of International Law* (2000 [1984]), at 575.

<sup>8</sup> M.N. Shaw, *International Law* (8th edn, 2017), at 22.

<sup>9</sup> Lesaffer, ‘Too Much History: From War as Sanction to the Sanctioning of War’, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (2015) 35, at 35.

<sup>10</sup> M. Dixon, *Textbook on International Law* (7th edn, 2013), at 3, 11.

and suggests that while World War I might have ‘undermined the foundations of European civilization’, that same civilizing force found pacific solutions to world order through new institutions and, importantly, the prohibition on the use of force.<sup>11</sup>

The book invites a rehinging of modern international law to the Paris Peace Pact and the outlawry movement by identifying the particular ideas and actors of American progressives that were eventually institutionalized in the UN Charter. Such progress was not immediate or immediately successful, but it ultimately prevailed. We are thus presented with a ‘whiggish’ history, the characteristics of which were first outlined in Herbert Butterfield’s influential book of 1931: a history of progress led by liberal and democratic heroes who had triumphed over conservative forces.<sup>12</sup> Such histories emphasize through oversimplified narratives (he calls them ‘abridgements’) ‘certain principles of progress in the past and ... produce a story which is the ratification if not the glorification of the present’.<sup>13</sup> To this extent, the genre of narrating progress is not disrupted by *The Internationalists*, it is simply rehinged, specifying the truly pivotal force of the Paris Peace Pact rather than the more general forces of institutionalism in the aftermath of war. While the authors acknowledge that the UN Charter was important, they argue that it marked less of a turning point than an opportunity to wedge open the door already opened by the outlawry revolutionaries.

There was, however, a more paradigmatic critique that emerged out of the experience of World War I, one that challenged the very ‘foundations of European civilisation’. In his searing critique, Paul Fussell saw the war as a disavowal of law’s enlightenment promise. The war had been ‘a hideous embarrassment to the prevailing Meliorist myth ... it reversed the Idea of Progress’.<sup>14</sup> In other words, it marked the end of European civilization. Modernity was inherently violent, and the false presentation of its enlightened nature had finally, catastrophically, been unmasked. This critique was similarly expressed by the massive transnational movements that emerged in the war’s wake. These radical movements proposed not only to legally prohibit war but also the whole system underpinning war variously identified as patriarchy, militarism, capitalism, colonialism and nationalism. The complex web of these violent systemic forces could not be disentangled from law; they mutually constituted each other and were called to account by revolutionary reordering during and in the aftermath of global war.

Such a critique, which seemingly inverts the hinge effect of World War I has significant implications for the way we understand the progress of history. Fussell writes:

<sup>11</sup> For critical reflections on narratives of progress in international law, see Weeramantry and Berman, ‘The Grotius Lecture Series “In the Wake of Empire”’, 14 *American University International Law Review* (1998) 1515; Kennedy, ‘International Law and the Nineteenth Century: History of an Illusion’, 17 *Quinnipiac Law Review* (1997) 99.

<sup>12</sup> H. Butterfield, *The Whig Interpretation of History* (1965). It could also, of course, be cast as a classic ‘church history’, to which Samuel Moyn so persuasively drew attention to in his now classic work on the rise of international human rights. See S. Moyn, *The Last Utopia: Human Rights in History* (2010), especially the prologue.

<sup>13</sup> Butterfield, *supra* note 12, at 2, preface.

<sup>14</sup> P. Fussell, *The Great War and Modern Memory* (2000), at 8.

‘No more could one think of a seamless, purposeful “history” involving a coherent stream of time.’<sup>15</sup> Yet, from this book’s account, we are invited to sustain and reinvigorate our belief in the evolutionary promise of international law’s progress. Partly, this is achieved by black-boxing the effect of the war; it obviously changed international law for the good because it marked the beginning of a shift from the Old to the New World Order, even if the driver of legal change is identified as the Paris Peace Pact and its activists rather than other pivot points in history. But another part of this continued faith in progress is achieved through the genre of ‘narrative’ itself.

As already noted, the narrative parts of the book restage for the reader the key features, ideas and events of the Old World Order (Part I) and the transformation of that world (Part II). This is a purposeful history that largely complies with the dictates of linear chronology, with necessary deviations where a ‘backstory’ is needed. For instance, in order to understand Japan’s legal approach to the use of force pre-World War II, the book skips back to the era of 19th century Western imperialism and the ‘uptake’ of Grotian ideas in Japan’s translation of international law through Western tutelage (see at 138–153).<sup>16</sup> Significantly, the authors themselves recognize the literariness of the form, demonstrated by their use of ‘Coda’ at the close of each of these parts, choreographing the ‘concluding part of a literary or dramatic work’.<sup>17</sup> It is in these two parts that the novelistic nature of their narrative reigns supreme, and it is where the critique of Fernand Braudel (of the *Annales* school) of such narratives finds purchase:

To the narrative historians, the life of men is dominated by dramatic accidents, by the actions of those exceptional beings who occasionally emerge, and who often are the masters of their own fate and even more of ours. And when they speak of ‘general history’, what they are really speaking of is the intercrossing of such exceptional destinies, for obviously each hero must be matched against each other. A delusive fallacy, as we all know.<sup>18</sup>

Braudel warns that there ‘is no unilateral history. No one thing is exclusively dominant’ but that, nevertheless, ‘these attempts to reduce the diverse to the simple ... have meant an unprecedented enrichment of our historical studies’.<sup>19</sup> Just one clue to this book representing an attempt at a universal history is an early statement from the book’s introduction: ‘[B]y recovering the now forgotten *universe* of pre-1928’, the

<sup>15</sup> *Ibid.*, at 21.

<sup>16</sup> For an analysis that complicates the authors’ account, see Shahabuddin, ‘From Exclusion to Civilisation: “National Spirit” as a Response to Western Imperialism in Nineteenth Century Japan’, 2 *Jahangirnagar University Journal of Law* (2014) 15; Shahabuddin, ‘Nationalism, Imperialism, and Bandung: Nineteenth Century Japan as a Prelude’, in L. Eslava, M. Fakhri and V. Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Futures* (2017) 95. In both essays, the author makes the point that national spirit, which included the permissive approach to war making, arose out of Japan’s encounter with Western imperialism and predates Amande’s explicitly ‘international legal scholarship’. This is not necessarily counter to Hathaway and Shapiro’s account but should be added to the simplified narrative of Japan only developing a ‘Grotian approach’ to international law through tutelage and the uptake of foreign Western ideas.

<sup>17</sup> ‘Coda’. *Merriam-Webster Dictionary*, available at [www.merriam-webster.com/dictionary/coda](http://www.merriam-webster.com/dictionary/coda).

<sup>18</sup> F. Braudel, *On History*, translated by S. Matthews (1980), at 11.

<sup>19</sup> *Ibid.*, at 10.



authors identify the Old World Order as ‘the legal regime European states adopted in the seventeenth century and spent the next three centuries imposing on the rest of the globe’ (at xv; emphasis added). Here, then, is the return of a grand narrative, and this despite Francois Lyotard’s claim that the grand narrative had ‘lost its credibility’.<sup>20</sup>

Now there are many qualifications to the suggestion that this narrative marks the return to a once abandoned universal history, not least the fact that the authors appear to acknowledge the continued presence of radically other ways of representing and understanding the world, including Islamist and contemporary threats. But I pursue the point further to elaborate on an intriguing methodological novelty that manifests in the book and that might be fruitfully explored further by international lawyers. That is, the modification of, or perhaps better stated, the attempt to ‘perfect’, the art of universal historicizing by the incorporation of the science of the empirical. This turn, even if only by implication, seems to appreciate the fall of the grand narrative in the historiography of the late 19th century onwards. In particular, the book’s turn to ‘the empirical’ in Part III to document the eventual radical shift from Old to New World Order can be read as an attempt to overcome the past inadequacies of universal history by incorporating precisely those methods deemed to be so lacking in earlier accounts, namely ‘scientific rigour’. It should be borne in mind, in particular, that this critique of a lack of scientific rigour is at the heart of Braudel’s claim of ‘delusive fallacy’.<sup>21</sup>

What makes the book significant from this methodological perspective, then, is that it marks something of a return to the unifying narrative but one that seeks ‘perfection’ with the science of the empirical. So, the empirical method marks a progressive overcoming of past historiographical inadequacies. Such an approach could be said to be addressing the lament of past historians who saw the move away from grand narrative as part of a fragmentation of thought in historical knowledge. As Georg Iggers puts it, ‘[h]istory, like other fields in the social sciences and the humanities, is caught in an iron cage of increasing professionalization and specialization with all the limits they set on the imaginative exploration of knowledge’.<sup>22</sup>

Historical scholarship had narrowed its focus ‘without generating any unifying ideas, and the discipline broke into many isolated islands’. With this fragmentation, the discipline ‘lost any remaining consensus about the fundamental questions, problems, and themes of their discipline’.<sup>23</sup> So much could be said of, and has been written about, international law’s own fragmentation of thought, and this marks another reason for engaging in a sustained dialogue about the book. Interdisciplinarity is put

<sup>20</sup> J.-F. Lyotard, *The Postmodern Condition: A Report on Knowledge* (1984).

<sup>21</sup> For further examination of Braudel’s critique and the historiographical debates about narrative history, see White, ‘The Question of Narrative in Contemporary Historical Theory’, 23(1) *History and Theory* (1984) 1, especially at 8–10.

<sup>22</sup> Iggers, ‘Historiography in the Twentieth Century, Review of Lutz Raphael, *Geschichtswissenschaft im Zeitalter der Extreme: Theorien; Methoden; Tendenzen von 1900 bis zur Gegenwart* Munich: C.H. Beck, 2003’, 44 *History and Theory* (2005) 469, at 471, quoted in Christian, ‘The Return of Universal History’, 49(4) *History and Theory* (2010) 6, at 14.

<sup>23</sup> Christian, *supra* note 22, at 14.

into the service of countering the ‘iron cage’ of fragmenting knowledge. Thus, interdisciplinary insight is positioned as overcoming a disciplinary ‘lack’ producing a consensus, once more, of what the important questions are to ask in international law.

The book’s turn to the empirical as a solution to fragmentation provokes us to think about the implications of such a move – in particular, the reliance upon an ‘empirical eye’ and the ‘proof’ attached to ‘scientific’ ways of knowing the world. If we are called to the ‘redemptive force’ of science to sustain a universal vision of Old and New World Orders, we could consider how scientific knowledge itself is contested, critiqued and called to account. Scientific knowledge claims that it is pure because it has no politics; it is transcendent. It reveals through objective discoveries real and uncontested truths. The field of STS emerged to counter what were considered misleading – even outright false – claims about this ‘purity’ of science and the knowledge produced through empirical fact making. Scholars brought into focus the politics of the knowledge produced through scientific methods and practices.<sup>24</sup>

In a now classic feminist analysis of the objectivity claims made of scientific knowledge, the STS theorist Donna Haraway drew attention to the ‘god-trick of seeing everything from nowhere’, which she linked directly to the experience of ‘militarism, capitalism, colonialism, and male supremacy’.<sup>25</sup> While this god-trick is described as ‘visual’, she applies it to the artificial intelligence of data gathering, which produces the same illusion of being everywhere and nowhere, omniscient and transcendent. The empirical data used to demonstrate the progress embodied in the New World Order (Part III) becomes ‘proof’ of the success of the outlawry revolution (Part II). It is such a powerful mode of representation because it is enmeshed in our inheritance of the scientific revolution, of the rational, reasoned force of numbers and of their proliferating deployment and normalization in contemporary practices of governing, locally and globally.<sup>26</sup>

Claims, therefore, that conquest has disappeared and that trade and the lack of coerced agreements have been beneficial to economic prosperity can literally be ‘attested to’ by a reliance on categories and quantifications presented as fact. Through processes of categorization and classification, numbers can purport merely to reflect, mirror like, the world they document. However, lost below the imperial heights of this ‘synoptic’ gaze are the ‘objects’ of knowledge: the people rendered numerically or who are erased by not counting at all. And, like maps, such data has an ‘immutable’,

<sup>24</sup> Classic texts include T.S. Kuhn, *The Structure of Scientific Revolutions* (1996 [1962]); D. Bloor, *Knowledge and Social Imagery* (1991); B. Latour and S. Woolgar, *Laboratory Life: The Construction of Scientific Facts* (2013 [1979]); D. Nelkin, *Controversy: Politics of Technical Decisions* (1984); B. Latour, *Science in Action: How to Follow Scientists and Engineers through Society* (11th edn, 2003 [1987]); D. Haraway, *Simians, Cyborgs, and Women: The Reinvention of Nature* (2013 [1991]).

<sup>25</sup> Haraway, *supra* note 1, at 581.

<sup>26</sup> Specifically on trade and development ‘indicators’, see Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’, 7(4) *International Journal of Law in Context* (2011) 401. For a US domestic account, see T.M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (1996). For a recent ‘global’ ethnography, see S.E. Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (2016).

universal and 'mobile' quality, appearing to travel, friction free, above subjective ways of knowing the world, belying the politics of their production.<sup>27</sup> As Benedict Anderson and Bruno Latour remind us, such ways of knowing the world are a testament – a literal representation – of the efforts to dominate and subjugate particular ideological perspectives.<sup>28</sup> Such ways of knowing remake the world.<sup>29</sup> In the context of this book, this remade world *makes* the outlawry revolution successful, ready for its heroes to be praised. Rather than rescuing the unifying grand narrative, then, the turn to empiricism calls attention to the powerful modes of imposing a singular vision and their politics of production.

So when schematics, graphs, maps and statistical records are displayed, we should recall that such choices of method can alienate by perpetuating the Western cultural narrative of the power of this 'true' objectivity. And such methodological choices, coupled with grand narrative, re-perform the 'synoptic gaze' of imperial power; they give the impression of a general view of the whole while denying their own partiality.<sup>30</sup> We would do better, Haraway advises, if we could write from a place of 'situated knowledge' that recognized not only our partiality but also the specificity and difference contained within categorization, homologization, numerical rendering and flattened-out mapping. In other words, there 'is a premium on establishing the capacity to see from the peripheries and the depths'. While we ought not to romanticize such perspectives:

they are preferred because in principle they are least likely to allow denial of the critical and interpretative core of all knowledge. They are savvy to modes of denial through repression, forgetting, and disappearing acts. The subjugated have a decent chance to be on to the god-trick and all its dazzling – and, therefore, blinding – illuminations. 'Subjugated' standpoints are preferred because they seem to promise more adequate, sustained, objective, transforming accounts of the world.<sup>31</sup>

We ought not simply to have trust, or faith, in numbers. The turn to a sweeping bird's eye vision of the (empirical) world denies its 'situatedness' and re-performs the god-trick of knowing others from a place privileged above. Sweeping vast swathes of humanity and experience into an objectified form has a particular kind of history and, therefore, responsibility. Where such 'objective evidence' is used to demonstrate Western, especially US, benevolence and enlightened leadership of a rule-based system, we ought to remember the violence that can be unleashed and legitimized through such ways of seeing and knowing.

<sup>27</sup> Latour, 'Visualisation and Cognition: Drawing Things Together', 6 *Knowledge and Society: Studies in the Sociology of Culture and Present* (1986) 1.

<sup>28</sup> *Ibid.*; B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (1991), especially ch. 10.

<sup>29</sup> On the making and remaking of worlds, see S. Jasanoff (ed.), *States of Knowledge: The Co-Production of Science and Social Order* (2004). See also N. Goodman, *Ways of Worldmaking* (1978); I. Hacking, *The Social Construction of What?* (1999).

<sup>30</sup> For the 'vivisectory violence' that this authorizes in the experimentalism of scientific expertise and development, see S. Visvanathan, *A Carnival for Science: Essays on Science, Technology, and Development* (1997).

<sup>31</sup> Haraway, *supra* note 1, at 584.

## 4 Third World Revolution and the Transformation of Legal Ordering

The book's third part and the turn to the empirical is problematic, then, because not only do we learn nothing of the forces, ideas, actors or heroes of revolutionary valour who came to make the outlawry of war a legal reality, but we also encounter this better New World Order as scientifically proven fact, even with all of its accepted limitations. If we narrated some of the forces, ideas and actors of the period between 1928 and 1945, and 1945 onwards – we would likely reflect on the authors' optimistic faith in the New World Order still further. Some of these figures and movements have called into question the foundational premises of the international legal order, and they have done so in sometimes radical, transformative proposals that have coincided with the greatest revolution in legal ordering, which never gets more than a passing reference in this book – the decolonization revolution.

This is where the narrative move, switching to a statistical register that justifies a sweeping, superficial account of the progressiveness and 'cooperative' promise of the New World Order, is so dubious. For instance, we are told that after 1945 'the number of states exploded', the 'British Empire collapsed' and an impressive list of new states 'emerged' (at 347). Here graphs, maps and trajectories of great power territorial 'shares' dominate, and we are left with an account that sees decolonization as having been 'clumsy' because of 'botched handoffs' and sloppy line-drawing by imperial powers. It is as if 'decolonization' happened to the Third World rather than being actively fought for, contested and violently suppressed.

The legal potentiality of this 'thirdness' that demanded a voice in the authorship of 'new international law' during the Cold War was a forceful driver of transformative proposals for legal change in the New World Order. These ideas and their actors constituted a departure from the world of secretive great power diplomacy and imperial dictat, as scholars are increasingly recognizing.<sup>32</sup> While 'Third Worldism' was not unified or absent contest and fissure, the anti-colonial struggle against Western racism, the continuing experience of economic oppression and the ever-present threat of violent interference by external powers did act as a coalescing force for the collective authorship of new orders of law.<sup>33</sup> And legal scholars increasingly point to the ongoing struggle for decolonization and revolutionary change that calls into question the idea that the Cold War era marked its emergence and the end of such radical transformation.<sup>34</sup>

Of particular relevance to the authors' argument is the Third World's historic redefinition of neutrality – as 'positive neutrality' or 'non-alignment' – so that the book's black and white narrative of the 'perils' of neutrality in the bad Old World Order

<sup>32</sup> See Special Issue 'The New International Economic Order', 6(1) *Humanity Journal* (2015) 1. See also M. Craven, S. Pahuja and G. Simpson (eds) with A. Saunders (asst ed.), *International Law and the Cold War* (forthcoming 2018).

<sup>33</sup> See further L. Eslava, M. Fakhri and V. Nesiha (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Futures* (2017).

<sup>34</sup> Orford, 'The Past as Law or History? The Relevance of Imperialism for Modern International Law', University of Melbourne Legal Studies Research Paper no. 600 (2011), noting, in particular, Anthony Anghie's scholarship, which I discuss further below.

becomes complicated, to say the least. With the prospect of total annihilation heralded by the nuclear age, many Third World actors marked out an alternative path for legal order that repeatedly called for disarmament to bring into legal reality the prohibition on the use of force. The capacity for great powers to wage war otherwise made the prohibition an illusory and duplicitous promise. Neutral actors therefore refused to be forced into the subjugated role of choosing sides not only as an assertion of equal dignity but also as a rejection of the totalizing force of ideological visions of stability and order.

Likewise, 'gunboat diplomacy' appeared to be finally consigned to history by the infamous miscalculations of the Anglo-French collusion with Israel in concocting a pretext for the invasion of Egypt to regain control of the Suez Canal in 1956. Yet the aims and purposes of such diplomacy – namely, coerced agreements – did not magically disappear with the institutionalization of the prohibition on force. Indeed, it was during the Suez Crisis that Egypt's leader, Gamal Abd el-Nasser, publicly condemned Britain, France and the USA for what he termed 'collective colonialism' – the clandestine economic 'diplomacy' that included Egypt's exclusion from international finance, freezing of assets and the withholding of canal dues despite continued use of the canal.<sup>35</sup>

These actions, from the perspective of the Western powers were permissible under the prohibitory framework. The USA believed itself to be 'sanctioning' Egypt to enforce the international control of the canal.<sup>36</sup> But Egypt and other Third World actors saw it as economic warfare that threatened the very survival of their newly won independence. In other words, here was an example of the interpretation of legal order being challenged and rewritten. This economic stranglehold was further 'enforced' by the policy of great powers agreeing to mutual defence pacts with neighbouring states in the Middle East. These provided for permanent British and American military presence in the region. The still expansive right to justify force on the basis of collective self-defence, coupled with the power to attempt economic isolation ('outcasting') of Third World actors demonstrates how the prohibitory framework might have enhanced the capacity of powerful actors to legitimize their grossly unequal economic power in their confrontations with the still decolonizing world.

Importantly, the Cold War period was marked not just by at least three competing visions of legal order (Soviet, Western and Third World) but also by the often overlooked creation of an integrated trade system that would come to pursue 'development' as universal faith.<sup>37</sup> Before such a system could be established, two problems had to be overcome: first, the creation of an international financial system and, second, the creation of a new supply of international credit for the devastated post-war European and Asian economies. As Diane Kunz puts it, the 'massive wartime

<sup>35</sup> See further C. Peevers, *The Politics of Justifying Force: The Suez Crisis, the Iraq War, and International Law* (2013); D.B. Kunz, *The Economic Diplomacy of the Suez Crisis* (1991).

<sup>36</sup> Egypt was relatively insulated from US economic sanctions because of its limited requirement for foreign exchange, Chinese provision of sterling and Indian aid.

<sup>37</sup> S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011).

destruction had a double-edged effect: generating the need for substantial rebuilding while ensuring that the ravaged nations could not develop domestic sources of capital'.<sup>38</sup> The USA won the argument with Britain over whether the international financial system would impose obligations on debtors and creditors; only debtors would have such obligations. And the overwhelming economic strength of the USA meant that their goals became international reality, with multilateral trade goals often being a guise for unilateralism.<sup>39</sup>

As Sundhya Pahuja argues, the pursuit of development and cooperation in the international trade system has promised to transform global inequality, yet the reality has seen this horizon of transformation recede ever further away. International law has legitimized an ever-increasing sphere of intervention in the Third World – from the transformation of the decolonization revolution into the developmental nation-state, radical claims to permanent sovereignty over natural resources (during the Cold War) subverted into the protection of foreign investors and the rule of law pursued as a development strategy.<sup>40</sup> Further, James Gathii notes that despite war's prohibition in the realm of foreign investment protection, war retains a significant legacy for former colonies as they have continued to resist and adapt to the coercive realities of the rules of international investment law.<sup>41</sup> In these ways, then, decolonization has not ended, and its struggles against the coercive force of legal order continue.

The radical potential of Cold War international law that manifests in what has often been characterized as an unstable non-judicial space of bipolar rivalry and the dominance of *realpolitik* could instead be described as crisis laden because of the transformational politics of attempts to rewrite the New World Order from the perspective of the 'subjugated'. The hollowing out of this radicalism is part of the narrative of the New World Order that does not necessarily need its heroes and villains but, instead, requires a proper accounting – in particular, recognizing that this order also authorizes experimental violence through its faith in scientific and legal progress.<sup>42</sup> Such a narrative complicates the binaristic modelling of 'Interventionists' versus 'Internationalists' and recognizes the multiple forms of violence that can be perpetuated by singular visions and universal claims.

Further, another powerful critique – that it was not just the legality of war, but also the 'war system', that needed to be outlawed – was made contemporaneous with the USA's 'outlawry movement' by women's peace movements, figures who fleetingly appear in this book but only as enablers and builders of Levinson's ideas. This critique of a system that included armaments, technological development and secretive military decision making was at once domestically and internationally oriented. Indeed,

<sup>38</sup> D.B. Kunz, *Butter and Guns: America's Cold War Economic Diplomacy* (1997), at 8.

<sup>39</sup> *Ibid.*, at 12.

<sup>40</sup> Pahuja, *supra* note 37, at 2–5.

<sup>41</sup> Gathii, 'War's Legacy in International Investment Law', 11(4) *International Community Law Review* (2009) 353.

<sup>42</sup> See H. Tilley, *Africa as a Living Laboratory: Empire, Development, and the Problem of Scientific Knowledge, 1870–1950* (2011).

transnational movements that supported this system's abolition transcended the time and place of American interwar progressivism.<sup>43</sup>

These radical and visionary attempts to 'outlaw war' as part of the paradigmatic challenge to capitalism, the state, colonialism, patriarchy and militarism emerged from grassroots activists, peace movements, workers, students and, most pointedly, given the book's gendered account, women. They were not limited to the period immediately following World War I but emerged throughout the heights of 19th-century imperialism and industrialization and continue today. Their ideas and activism demonstrate very different ways of understanding revolution and legal transformation that highlight the very narrow imaginary of what the authors consider revolution to mean for international law.<sup>44</sup> Many of these groups raised, and their arguments continue to raise, the permissive politics that pervades the justification of war precisely because the New World Order's legal prohibition has retained the magnificent latitude to determine the scope of exception.

## 5 Justifying War with Law

Finally, I return to the authors' observation that governments justify their right to wage war.<sup>45</sup> If we accept this general insight that justification tends to accompany military force, the authors wish us to understand that the principal, transformational distinction between the Old and New World Orders is effected by the drawing of a boundary between war as legal and war as illegal. At its simplest, the privilege to use force is diametrically opposed to the prohibition on force. We do not need to argue, at this point, that international law might be semantically ambivalent, that the words of the prohibition might be so vague as to be interpreted in multiple ways. Of course, we could say that. But, as Martti Koskenniemi points out in his now classic analysis of the structure of legal argument, we could say more.<sup>46</sup> That is, even where there is no semantic ambivalence – the words are 'clear' – 'international law remains

<sup>43</sup> As comparison, similarly parochial in its exclusive focus on one Western state, though nevertheless illuminating the long Western history of peace movements, see, e.g., M. Ceadel, *Origins of War Prevention: The British Peace Movement and International Relations 1730–1854* (1996); P. Laity, *The British Peace Movement 1870–1914* (2010).

<sup>44</sup> For a rethinking of revolution and international legal order, see Kumar 'Revolutionaries', in J. d'Aspremont and S. Singh (eds), *Fundamental Concepts of International Law* (forthcoming).

<sup>45</sup> The same cannot necessarily be said of governments' 'uses of force', which can be conducted clandestinely as part of an exercise of domestic jurisdiction or simply denial. One could take historic or contemporary examples: the British imperial practice of declaring 'emergencies' during the 1950s and 1960s, thereby reconstituting the use of force as an internal matter not properly subject to international legal order; the Soviet practice of suppressing 'uprisings' such as the Hungarian Revolution of 1956, again on the basis of internalizing actions, bringing them 'down' to the domestic plane, or the USA's practice of deniability so infamously scandalized by the Iran–Contra hearings. For a wonderful, richly theoretical account of this media 'event', see D. Bogen and M. Lynch, *The Spectacle of History: Speech, Text, and Memory at the Iran-Contra Hearings* (1996). In addition, the same cannot also be said of 'threats to use force', which, though often semiotically requiring some form of speech to publicize the threat, can be made through clandestine acts or preparatory moves.

<sup>46</sup> M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2005), at 590.

indeterminate because it is based on contradictory premises’ – hence, participants ‘agree to supplement rules with exceptions, have recourse to broadly defined standards and apply rules in the context of other rules and larger principles’.<sup>47</sup>

The normative force of something as clear as an armed attack under Article 51 of the UN Charter is limited because there is always the question: ‘What about an imminent attack?’ The same reason that justifies the rule about self-defence also justifies setting it aside by the very rationale of the rule that is, as Koskenniemi explains, ‘the need to protect the state’.<sup>48</sup> In addition, we could add that the power that decides on this protection and authors the justification for this policy remains intact regardless of the paradigm shift claimed by the outlawry movement and the current prohibitory framework and its committed lawyers.

International law therefore oscillates between two poles: one that is ‘overlegitimizing’ and ready to be ‘invoked to justify any behaviour’ and the other that is simultaneously ‘underlegitimizing’ because it is ‘incapable of providing a convincing argument of the legitimacy of any practices’.<sup>49</sup> Importantly, this is not some scandal, structural deficiency or bad faith on the part of legal actors, but, rather, it emerges from ‘their deliberate and justified wish to ensure that legal rules will fulfil the purposes for which they were adopted’. The purposes of legal actors will conflict not just between themselves, or even internally, but also across time and therefore law must retain this indeterminacy. And so we are left with a different universal idea that ‘any prohibition is always also a permission (of what is precisely not prohibited), and the clearer the prohibition, the more unexceptional the permission.’<sup>50</sup>

While the authors recognize the threat posed to the New World Order of the self-defence exception swallowing up the rule, this is lamented as an unfortunate ‘growing reliance’ when facing up to the ultimate other – the terrorist. Yet their lament remains hanging: ‘If states can always invoke self-defence as justification to use force, then the prohibition on war becomes meaningless’ (at 416). Well, yes but also no. If we think how to normatively engage with this lament and with Koskenniemi’s analysis, we are drawn back to the system of war and, paradoxically given the authors’ clear commitments to international trade and cooperation, the destabilization of the basic premises of their argument.

Let us take the simple case of ‘conquest’, which the authors say is a ‘right’ when force is privileged and is illegal when force is prohibited. What is a system of conquest for? What is its purpose or aim? Economically, it could be to maximize revenues and appropriate foreign-owned resources (let us assume for the state, but the New World Order is marked by ‘the corporation’ as much as the Old). If the control of these resources can be effected without the need for territorial annexation or even ‘effective control’, we might hypothesize that the aims of conquest remain a feature of the New World Order, but under a different cover, through distinct legal means, and justified

<sup>47</sup> *Ibid.*, at 590–591.

<sup>48</sup> *Ibid.*, at 591.

<sup>49</sup> *Ibid.*, at 67.

<sup>50</sup> *Ibid.*, at 593.



upon apparently radically 'other' bases. So the prohibition might indeed make conquest illegal, but the demise of conquest might also be attributable to its loss of value within the legal order or to a shift in who practises such territorial 'control'.<sup>51</sup> And, further, it turns out that where a defensive justification of force is addressed to a 'fundamental' economic interest – perhaps the protection of the Panama Canal – the prohibition still permits the use of force to secure the aims of conquest if the state issues an acceptable justification. So what decides 'Right' could remain 'Might', as in the Old World Order. It will be justified, and its acceptance will depend on the politics of international law – its biases – which Koskenniemi has shown in subsequent writings produces institutional hegemony.<sup>52</sup>

It also turns out that conquest did not always, and does not always, have a purely 'economic' purpose, particularly when we recall the 'civilizing mission' or 'the standard of civilization'. Therefore, if the rather simplified account above does not raise sufficient questions of the authors' dichotomization and apparent causality of legal change, we could productively pursue another discipline-shaping analysis, namely Anthony Anghie's examination of the colonial origins of international law and their still-present orderings in our 'new world'.<sup>53</sup> Recall, first, the authors' argument that the 'regulation of armed conflict' is the 'defining feature of an international legal system' (at xix) and that, in order to define the Old World Order, reliance must be placed on Grotius' writings on interstate conflict. Theirs is, therefore, a rendering of the 'classical problem confronting the discipline of international law' – namely, 'the problem of how order is created among sovereign states'.<sup>54</sup> However, as Anghie writes, if we chose to re-examine the writings of another 'father' of the Old World Order, Francisco Vitoria, we would find that his arguments were aimed not at resolving this 'classical problem' but, rather, at the problem of colonial encounter in the 16th century – of creating a system of law that could account for relations between societies, which Vitoria perceived as belonging to two very different orders.<sup>55</sup>

To resolve the problem of order, which includes the justification of war, Vitoria produces a hierarchy structure between the sovereign Spaniards and the non-sovereign Indians, and international law is thought of as a bridge of the consequent difference. The now barbaric, uncivilized Indian is endowed with universal reason and is therefore capable of comprehending and 'being bound by the universal law of *jus gentium*' and can be 'subject to sanctions *because of his failure to comply with universal standards*'.<sup>56</sup> The identity of the Indian can thereby be effaced and replaced with 'the

<sup>51</sup> See Pahuja and Saunders, 'Rival Worlds and the Place of the Corporation in International Law', in P. Dann and J. von Bernstorff (eds), *Decolonisation and the Battle for International Law* (forthcoming). See also Ferguson, 'Seeing Like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa', 107(3) *American Anthropologist* (2005) 377.

<sup>52</sup> See, e.g., Koskenniemi, 'The Police in the Temple: Order, Justice and the UN – A Dialectical View', 6(3) *European Journal of International Law* (1995) 325.

<sup>53</sup> A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

<sup>54</sup> *Ibid.*, at 14.

<sup>55</sup> *Ibid.*, at 16.

<sup>56</sup> *Ibid.*, at 29 (emphasis added).

universal identity of the Spanish’ through ‘the disciplinary measures of war’. This ‘dynamic of difference’ continues to haunt international law in subsequent periods, not least in the ‘civilizing mission’ that has continued in distinct forms up to the present. Encountering difference, international law remains troubled and troubling.

Rather than tracing the problem of order as being one about interstate relations and the regulation of armed conflict then, Anghie’s analysis invites us to think about the prior question of how sovereignty was made and unmade and continues to be contested and challenged, sometimes violently or coercively through economics rather than ‘traditional’ actions of conquest, war or ‘gunboat diplomacy’. In common with Haraway, Anghie insists on the telling of alternative histories if international law is going to be ‘responsive to the needs of variously disadvantaged peoples’ – namely, that what is called for are:

histories of resistance to colonial power, history from the vantage point of the peoples who were subjected to international law and which are sensitive to the tendencies within ... conventional histories to assimilate the specific, unique histories of non-European peoples with the broader concepts and controlling structures of such conventional histories.<sup>57</sup>

With Anghie’s analysis in hand, let us return to the authors’ final part of the book about the disciplinary force of sanctions, the power of outcasting and the radical otherness of the world order of the Islamic State and other renditions of the Old World Order that ‘clash’ with the New World Order. Recall, trade is critical in this vision; it ‘plays an essential role not only as a source of beneficial collaboration but also as a collective tool for constraining illegal behaviour’ (at 421). And the authors are clear that, because international law is a system, one cannot pick and choose the rules, and the ‘world cannot juggle two inconsistent legal orders for very long’ (at 422). The other of the New World Order must be vanquished through exclusion from legal status. The clashing other becomes non-sovereign in so far as its actions are not recognized, and it is prevented from benefiting from the system of sovereign order that the (prohibitory) international legal system enforces. Such outcasting does not require the disciplinary measures of war save for if justified as defensively necessary of course.

These ‘new’ disciplinary measures are therefore different to Vitoria’s world of encounter – not war but sanctions, not conquest but coerced cooperation. Here, ‘international community’ can make good on war’s prohibition, it can enforce without war the singularity of legal order and it can thereby propose the transcendental overcoming of difference through a universal vision and system of control. So, the dynamic of community and exclusion is not just perilously taken up by totalizing villains like Schmitt, but it also appears discomfotingly present in the very heroic legacy that the book’s grand narrative has sought to re-vision for our dark times.

## 6 Conclusion

As ought to be obvious by now, *The Internationalists* is a dazzlingly provocative vision of how we got to where we are today and where we want to go. It raises important

<sup>57</sup> Anghie, *supra* note 53, at 8.

questions of theory and method in the historical and empirical turns that continue their sometimes dizzying performances in our discipline. It also warrants reflection both on the value of interdisciplinarity and on the politics of normative commitment. And, in a year in which the European Society of International Law has selected 'international law and universality' as the theme of its annual conference, the book provides a timely opportunity for considering this question of 'the universal' for academic scholarship, the stories we choose to tell and the ways we understand the worlds made through law.

This narrative is an epic: of heroes and villains cast in a struggle for the virtuous soul of the international legal order and its community. In this epic sense, it is trans-historical and thereby constitutes a universal rendering that leads us progressively towards a better future. Simultaneously, it is empirical and 'scientific'. This discursive form also signals a claim to universal knowledge and the concomitant progressive promise of scientific rationality and objective attestation. Method, here, reflects normativity and, in so doing, perhaps unintentionally, demonstrates that the choice of method is always political. If we choose one historical context for the transformation of law and legal order, we travel down one particular path to the present rather than another, and if we choose one systemic context for understanding the laws about war we are drawn away from other rules or principles that on another contextualization might be brought into the foreground.

The question of 'the proper context' remains an enduring one, involving the silencing or amplification of some ideas over others.<sup>58</sup> The proper context is not a question that is extraneous to our discipline, and we do not necessarily have to turn in constant pivotal motion to appreciate the politics and potential of method for illuminating the present troubles with legal ordering.<sup>59</sup> We could take responsibility for our own role in legal ordering by recognizing not simply the problem of order among states but also the 'dynamic of difference' that international law reflects and reconstitutes. The authors recognize that 'the postwar world has been far from peaceful' (at 352), but they insist that it is better than what came before and what threatens monstrously on international law's horizon. This dichotomization with its implication of clashes of 'other' worlds has the effect of authorizing the power of exclusion and the eradication of difference. The threatening other's ideas may be abhorrent, but the solution – to outcast – has its own genealogy and a discomfitingly close resemblance to the totalizing politics of community envisioned by some of the villains of the Old World Order.

Further, the promise of outcasting does not account for how the process by which such outcasting occurs remains something of a mysterious wielding of legitimate(d) power. The process is black-boxed, and its power is filed under the benevolent force of cooperative trade. This observation could also be made of the authors' account of the justificatory politics of the prohibition. The authors see the threat posed by the

<sup>58</sup> See Painter, 'A Letter from the Haudenosaunee Confederacy to King George V: Writing and Reading Jurisdictions in International Legal History', 5(1) *London Review of International Law* (2017) 7.

<sup>59</sup> Orford, 'International Law and the Limits of History', in W. Werner, A. Galán and M. de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (2015) 297.

self-defence exception swallowing the rule, but this is the result of the threat posed by Interventionists – Donald Trump or Vladimir Putin – rather than by Internationalists and the operation of the prohibitive framework itself. However, whether privileged or prohibited, the use of force remains the domain of the Sovereign. The prohibition fixes in place the right to classify, categorize and justify the pursuit of their interests and goals. Rather than a constraint on state behaviour, the assertion of a justified exception to the rule can be seen as a facilitator of war and violence so long as justification can be backed by power.<sup>60</sup>

This observation about the permissive force of the prohibition leads to something of an inversion of the authors' concluding optimistic vision. Recall that they observe, largely as a counter to international relations realists, that '[I]aw *creates* real power' (at 422; emphasis in original) and that, if it shapes real power and if ideas shape law, we control our own fate (at 423). In fact, we could also acknowledge that power creates law, that power shapes law and law shapes ideas and that those in power therefore control all of our fates. What is at stake, then, is not just the threat of renouncing the core commitments of the New World Order, as the authors argue. Also at stake is who has the power to create law to effect radical, transformational change. And we could look beyond this binary choice – of privileging power or law – to see the struggle not over 'power versus law' but, rather, over the meaning of power and law: who decides on their definition – how, when and where. This means we are not straitjacketed into rejecting or approving the purposes that drive this book but, rather, that we are called to account for the ways we choose to see the world and the prescriptions we offer in light of the narratives we present. And this draws us back finally to Haraway and her call for an ethic of responsibility in remaking the world through knowledge: 'Vision is always a question of the power to see and perhaps of the violence implicit in our visualising practices. With whose blood were my eyes crafted?'<sup>61</sup>

<sup>60</sup> Peevers, *supra* note 35.

<sup>61</sup> Haraway, *supra* note 1, at 585.