Christopher R. Rossi. ***Whiggish International Law: Elihu Root, the Monroe Doctrine, and International Law in the Americas.*** Leiden: Brill | Nijhoff, 2019. Pp. 1547. €99. ISBN: 9789004389182

Whiggish International Law combines a careful study of the lawyer and statesman Elihu Root (1845–1937) and his interpretations of the Monroe Doctrine with an examination of the use of history in both the practice of international law and histories of the discipline. The book opens with a description of Root's presidential address about the Monroe Doctrine at the eighth annual meeting of the American Society of International Law (ASIL) in Washington DC, 22 April 1914. First articulated in December 1823 by the US President James Monroe in his seventh annual State of the Union Address, the Monroe Doctrine espoused a position of US neutrality vis-à-vis European conflict and rejected the right of European powers to further colonize any countries in the Western Hemisphere. By the time of the ASIL meeting in 1914, where 12 consecutive sessions were dedicated to discussions of the Doctrine, critics seriously questioned its on-going relevance. Not only were European states less of a threat to the increasingly powerful United States, most Latin American states were themselves stable and no longer in need of protection from colonial conquest. In addition, Latin American states from Chile to Argentina and Brazil increasingly equated the Monroe Doctrine with the United States' own brand of imperialism. This was a justified position, as between 1898 and 1903 alone the United States would gain control over Hawaii, the Philippines, Puerto Rico and Guam, amongst other territories. In his Presidential address, Root sought to combat such perspectives by elaborating an anti-expansionist interpretation of the Monroe Doctrine. He emphasized its unilateral and non-reciprocal nature, describing it as an instrument of national self-protection that stood against 'grandiose schemes of national expansion' (at 2). This 1914 position of Root's was not only ahistorical but, as Rossi observes, contradicted Root's own earlier readings of the doctrine, wherein he had linked the Doctrine to hemispheric unity and to the idea that the United States would claim only those rights and privileges that were the prerogative of 'every American republic' (at 2).

Rossi uses this 'implicit act of presentism' to introduce Herbert Butterfield's *The Whig Interpretation of History.* He argues that Root's deployment of the Monroe Doctrine is 'exemplar' of Butterfield's 'historiographical complaint as extended to the methodology of international law in Latin America and the contested recreations of its past' (at 12). Published in 1931, *The Whig Interpretation of History* is a 130-page tract on the nature of historical writing in the 19th century. In it, Butterfield takes aim at what he called 'the whig view of history', the 19th-century tendency of historians such as Lord Acton to write history as the teleological progression of the human race towards moral and political enlightenment. Instead, he warned that real 'historical understanding is not achieved by the subordination of the past to the present, but rather by our making the past our present and attempting to see life with the eyes of another

century rather than our own'.[1] It should not, in other words, be deployed for presentist ideological motives or judged by the anachronistic values of the historian's own time.

In *Whiggish International Law* Rossi 'refreshes Butterfield's influential idea of whiggish thinking' (at 12). He expands upon Butterfield's notion of 'whiggishness' to make an intervention into both the history of international law, specifically in regard of Elihu Root and his interpretations of the Monroe Doctrine, *and* the use of history in 'methodology and juridical practices of international law' (at 15). In so doing, Rossi seeks to reveal how 'historians and practitioners of international law' have both constructed and legitimized 'teleological understandings of international law based on abridgements of history' (at 12). His idea is not to 'straighten out disheveled historical facts' about Root or the Monroe Doctrine but rather to use this history as a vehicle to warn against the 'simplistic and unexamined habits of historical chronicling' (at 15) that have accompanied international law's 'historiographical turn'. For Rossi, this is an endeavour that is not just historiographic but which 'imparts valuable lessons for international judges' (at 14) for whom questions of periodization are pertinent to disputes over contested sovereignties. Given Rossi's aim, in this review, I will primarily focus on *Whiggish International Law*'s conceptual framing as an intervention into debates about the use of history across the disciplines of law and history.

Delivering the first Sir Herbert Butterfield Lecture at Queen's University, Belfast, on 29 April 1983, the historian G. R. Elton offered a critique of Butterfield's *The Whig Interpretation of History* that speaks usefully to the questions of historical method raised in Rossi's book. Elton thought that the Whig history Butterfield so fiercely attacked was 'really lawyer's history' rather than history as practised by Butterfield's contemporaries.[2] For a lawyer, Elton argued, 'the latest meaning of an event is the only meaning to matter . . . the doings of the past signify only inasmuch as they persist into and have life in the present'.[3] Elton's reading of lawyers' thinking concerned their use of history in their practice of the law, rather than their reflections on its history as a discipline. Within contemporary conversations, however, the notion persists that lawyers are concerned with the past only for its use in the present, and that historians seek to remain detached from present concerns. These perceived differences have led to no little amount of methodological tension in the writing of histories of international law.

Early histories of international law originating within the discipline itself sought to inform current application of legal principle. Many were anachronistic, and explicitly focused on the genealogies of doctrine. In his ground-breaking *Gentle Civilizer of Nations*, Finnish lawyer Martti Koskenniemi criticized this approach for its failure to reveal the complexity of past legal thought. He likewise took aim at histories that privileged the biographies 'of a few great minds' whilst failing to attend to the 'external pressures to which the doctrines of those men sought to provide responses'.[4] Instead, Koskenniemi advocated a contextual approach not dissimilar in nature to

1 H. Butterfield, *The Whig Interpretation of History* (1931), at 16.

2 Elton, 'Herbert Butterfield and the Study of History', 23 *Historical Journal* (1984) 729, at 734–735.

3 *Ibid.*

that developed by intellectual historians such as Quentin Skinner from the 1960s onwards.[5] A series of methodological reflections from both legal historians and legal scholars studying international law's history and its relation to present concerns have appeared since Koskenniemi's 2001 work. Anne Orford has, for example, rejected those who have concentrated 'on policing the idea that past texts must not be approached anachronistically in light of current debates'.[6] For Orford, the historiographical turn in law has not been an effort by legal scholars to 'do history' as the historian would but rather, to 'grasp the present function of legal concepts adequately'.[7] Koskenniemi later expanded upon Orford's thinking to argue that, whilst contextualism is important, it 'encourages a historical relativism and ends up suppressing or undermining efforts to find patterns in history that might account for today's experiences of domination and injustice'.[8]

Rossi enters into these debates about methodology with relish, using Butterfield's notion of 'whiggish history' to explore 'the tendency of historians and practitioners of international law to construct and legitimise teleological understandings of international law based on abridgements of history' (at 12). At the beginning of *Whiggish International Law*, he asks: 'If scholars and historians fall prey to whiggish tendencies, why should we think differently about international judges and arbitrators?' (at 14). The first chapter of Rossi's book offers an introduction to the Cambridge School of historical contextualism and its relationship with Butterfield and the English School approach from the field of International Relations. Throughout the rest of the book, Rossi offers multiple historical examples of international lawyers, diplomats and judges utilizing history in ways that can be categorized as 'whiggish'. His work stands as a reminder of the importance of critical reflection upon uses of history by historians and lawyers alike.

For Rossi, Root is a 'vehicle for restating the persistent whig problem through his magnetizing attempt to pull the Monroe Doctrine into a direction that alters the bearings of the whole subjects and its subaltern bearings' (at 51). Rossi's parsing of Root's re-deployment of the Monroe Doctrine is meticulous and fascinating. He shows very clearly, for example, how in his 1906 tour of Latin America Root sought to dispel Latin American fears of United States imperialism by restaging 'the whiggish narrative of the Monroe Doctrine as a purely defensive . . . enlightened and progressive statement of anti-imperialism' (at 101). This ran counter to the actual activities of the United States in the region. These included, amongst other examples, the United States' supervisory control over the construction of the Panama Canal and its engagement with Cuba

4 M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), at 8.

5 See Skinner, 'Meaning and Understanding in the History of Ideas', 8 *History and Theory* (1969) 3.

6 Orford, 'On International Legal Method', 1 *London Review of International Law* (2013) 166, at 171.

7 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), 1, at 6–7. Available at SSRN: https://ssrn.com/abstract=2821340.

8 Koskenniemi, 'Vitoria and Us: Thoughts on Critical Histories of International Law', 22 *Rechtsgeschichte* (2014) 119, at 123.

at the end of the Spanish-American War. In the latter case, Root had been actively involved in drafting the Platt Amendment, a rider to the 1901 Army Appropriations Bill which theoretically granted Cuba independence from the United States military occupation occasioned in 1898 by the war.[9] In reality, the conditions of military withdrawal established Cuba 'as a protectorate' of the United States guaranteed to 'promote United States hemispheric security interests and investment opportunities' (at 105). With aplomb, Rossi draws out these tensions between Root's 'staging' of the Monroe Doctrine, and alternative, Latin American interpretations of the nature of Western hemispheric international relations and agreements.

I remain unsure, however, that reading Root's thought as exemplar of the 'whig problem' is necessarily useful in and of itself. Root's continued re-articulation of the Monroe Doctrine certainly constituted an abuse of history for political ends. But is it not more important to understand Root's thinking in terms of an effort towards normatively orienting approaches to the doctrine? Root was not a historian, tasked with reconstructing the historical iterations of the Monroe Doctrine. To the contrary, he was making use of a version of the past – myth-making, so to speak – in order to construct and justify a particular world order. Rather than seeing international law's past as a series of failures of historical thinking, we can instead understand it, as Francesca Iurlarlo has elegantly phrased it elsewhere, in terms of the reality that 'one of the many successful projects of international law was (and still is) the ambition to order the world through histories'.[10]

It is the ambition of world-ordering – in this case towards greater justice in the aftermath of empire – that has motivated Third World Approaches to International Law (TWAIL) and the emergence of post-colonial legal scholarship. Rossi argues that 'present-centered imperial and postcolonial policing of narratives' has led to the obscuration of the complexities of 'international law's turn to Latin American history' by creating 'caricatures that play games on the dead' (at 56–57). The history of international law should not be made 'a present-centered hostage to ideology' (at 56) because it fails to allow for the complexities of the past and instead insists on a straightforward chain of historical narrative.

Whilst Rossi is certainly right to argue that 'whiggish thinking' obscures more than it reveals, I remain unpersuaded that the post-colonial scholars Rossi engages with are, in fact, guilty of the total historical malpractice he sees in their work. Take, for example, the work of legal scholar Antony Anghie, who comes in for particular criticism in Rossi's book. Rossi describes Anghie's arguments as embedded with 'elements of anachronistic thinking, or whiggish hanging judge narration' (at 30–31). Whilst Anghie's inquiry is most certainly – and explicitly – illuminated by his own context, his work is far more attentive than Rossi allows to the need to understand specific iterations of international law within their own contexts. Anghie's 2005 book *Imperialism, Sovereignty and the Making of International Law* explicitly challenged

[9] 31 Stat. 895–910, 56th Congress, Sess. II, Chap. 803 (1901).

[10] Iurlalo, 'International Legal Histories as Orders: An Afterword to Martti Koskenniemi's Foreword', 30 *European Journal of International Law* (2019) 1115, at 1116.

teleological and 'conventional histories of the discipline which present colonialism as peripheral, an unfortunate episode that has long since been overcome'.[11] The resulting study is not, as Rossi describes it, an 'anti-triumphal narrative' that simply flips the perspective. To the contrary, it is a nuanced exploration of the processes and contexts that generated particular understandings of sovereignty within certain historical practices of international law. Anghie's organization of his monograph into case studies – from an analysis of Francisco de Vitoria's thought through to the League of Nation's Mandates System and on to the 21st-century 'war on terror' – emphasizes the relationality of concepts rather than asserting an over-arching and linear chain of causation.

Building on his critique of Anghie, Rossi turns to the work of Anne Orford, describing her work on Vitoria, and James Brown Scott's use of Vitoria in the early 20th century, as 'emitting an almost desultory present-centredness' (at 34). This reading of Orford's argument suggests that Vitoria can be read only in the context of Vitoria's time. In the specific article Rossi decries, Orford certainly makes a clear distinction between the task of historians and the job of international lawyers, writing that '[t]he self-imposed task of today's contextualist historians is to think about concepts in their proper time and place – the task of international lawyers is to think about how concepts move across time and space'.[12] The chief object of her article is an exploration of 'the role that the past plays in . . . contemporary legal debates about the relevance of imperialism for modern international law'.[13] On this basis, she makes an argument for studying the way that Vitoria's thought was deployed in the 20th century to justify American empire. It is clear to Orford that doing so has ramifications for the present day because it illuminates a relationship between iterations of international law, free trade principles and informal American empire. In contrast, for Rossi, this linkage between Vitoria and the history of free trade is only possible when 'postcolonialists and liberals' embrace 'the straight-line causation and cherry-picking of historical events' (at 36). Whilst he acknowledges that Butterfield's approach to the past allowed for history's 'movement through time', he nonetheless argues that Orford and Anghie's constructions of the past are the product of political and presentist choices that eschew historical best practice. They are, in Rossi's eyes, guilty of 'whiggishness'.

Rossi criticizes both Orford's rejection of contextualism as well as her findings. It is true that Orford's notion that contextualist historians would shy away from her approach is not quite right. To the contrary, understanding how texts are utilized in different contexts seems to this historian to be part and parcel of the contextualist project. As historian Andrew Fitzmaurice has observed, an entire generation of Cambridge School historians – from Fitzmaurice himself to David Armitage, Richard Tuck and Jennifer Pitts – have explicitly sought to examine the past in order to understand

[11] A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

[12] Orford, 'The Past as Law or History? The Relevance of Imperialism for Modern International Law' (IILJ Working Paper 2012/2 / University of Melbourne Legal Studies Research Paper No. 600, 9 September 2011), at 2.

[13] *Ibid.*

the present.[14] Fitzmaurice also made it clear that critiques of contextualism coming from international law scholars such as Orford have rested upon misunderstanding. Contextual historians critique anachronism not for lack of concern with the present but rather in resistance to the use of the present to construct distorted understandings of the past. Scholars such as Lauren Benton, Lisa Ford and Randall Lesaffer have instead made the case for greater attention to the practice of international law beyond intellectual histories of doctrine or principle. That is to say, when writing histories of international law, it is not necessary to choose between an explanation of how principles of international law were developed in their particular past contexts and the extent to which these elaborations have persisted in the world today. Nor is it necessarily 'whiggish' to make the case for one, whilst also arguing for the other. A reading of Vitoria in this 20th-century context could be simultaneously historical in texture *and* relevant to the TWAIL project of understanding how 'imperialism is ingrained in international law as we know it today'.[15]

In *Whiggish International Law* Rossi seems reluctant to accept that this is possible, referencing Butterfield to suggest that 'the magnetic pull of whiggish historical fallacy' acts to dismiss 'careful self-critical awareness' (at 43). Indeed, Rossi is scathing about both Orford and Anghie's treatments of Vitoria in the 20th-century context, describing their connected conclusions about free trade as 'parochial manipulation' (at 36) guilty of being '*unnecessarily* anachronistic' (at 35). Although Rossi more favourably references the work of the historian and post-colonial theorist Dipesh Chakrabarty and the efforts of Walter Mignolo to analyse the Eurocentric disciplinary origins of international law, he nonetheless ultimately returns, via Butterfield, to the idea that the past is too unlike the present to be of guiding use to us. This notion recurs throughout *Whiggish International Law*, and is given present-day meaning in Rossi's concluding chapter on whiggishness in present-day practices of international law. Beginning with a comparison of the early 20th-century deployment of the Monroe Doctrine in the United States and China's contemporary claims to sovereignty over the South China Sea, Rossi examines a series of sovereignty claims based on historical circumstance and colonial *effectivités*. He argues that whenever the law makes recourse to the application of history, it ultimately invites controversy rather than satisfactory juridical decision-making.

Primarily, *Whiggish International Law* is a plea for critical self-awareness and a warning of the pitfalls of anachronism. For Rossi, 'the reclamation of history as a construct of future pathways in international law will benefit from a keen awareness of methodological abridgement' (at 193). Whilst this injunction is valuable, Rossi's associated methodological formulations about the nature or value of reading the past in relation to the present are not entirely persuasive. This is particularly true

[14] See Fitzmaurice, 'Context in the History of International Law', 20 *Journal of the History of International Law* (2018) 5.

[15] Gathii, 'Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy', 98 *Michigan Law Review* (2000) 1996, at 2020.

of his unforgiving and, at times, muddy criticisms of post-colonial legal histories. Nevertheless, students of the historiographic turn in international law will find that the book provides a detailed survey of discussions of the theory of historical practice across the disciplines of international law, history and international relations. So too will readers find a useful introduction to Elihu Root, an influential figure in the history of both the United States and international law. The book will certainly provoke further conversation about methodological practice across history and international law.

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Gina Heathcote. ***Feminist Dialogues on International Law: Successes, Tensions, Futures.*** Oxford: Oxford University Press, 2019. Pp. 256. £60.
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1 Introduction

Gina Heathcote's brilliant new text offers a timely and essential feminist analysis of key pillars of international law, namely sovereignty, authority, institutions and fragmentation. The author correctly identifies these pillars as surprisingly under-analysed in what is now an extensive field of feminist literature in international law; a field more typically addressed to specific regimes, such as human rights or the Security Council, or specific issues, in particular conflict and sexual violence in conflict. In *Feminist Dialogues on International Law*, the author looks behind and beneath regime- and issue-specific critiques to reveal enduring foundational obstacles to feminist methods in international law.

2 Successes?

Heathcote firmly situates *Feminist Dialogues on International Law* as an inheritor of the Charlesworth and Chinkin mantle, who first brought structural bias feminism to the study of international law and its precepts.[1] Structural bias feminism analyses the structures and foundations of international law: 'international law is both built on and operates to reinforce gendered and sexed assumptions'; 'in reality sex and gender are an integral part of international law in the sense that men and maleness

[1] H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (2000).
[2] *Ibid.*, at 18–19.