

Rose Parfitt. ***The Process of International Legal Reproduction: Inequality, Historiography, Resistance***. Cambridge: Cambridge University Press, 2019. Pp. 534. £95. ISBN: 9781316515198

In J. M. Coetzee's celebrated novel *Elizabeth Costello*, the hero, the fictional novelist Elizabeth Costello, delivers a lecture titled 'What is realism?' in which she states the following:

There used to be a time when we knew. We used to believe that when the text said, 'On the table stood a glass of water', there was indeed a glass of water, and a table, and we had only to look in the word-mirror of the text to see them.¹

Could one plausibly paraphrase Elizabeth Costello to say that there was a time when international lawyers thought that concepts such as 'sovereignty' and 'conditions of statehood' transparently stood for real world experiences that those concepts simply mirrored in words? The response to this question is most probably a resounding no. Well known as this word-to-world discrepancy may be, however, what it tells us about international law is not straightforward.

Rose Parfitt's important, carefully researched and brilliantly written book explores one of the most significant examples of such discrepancies in international law, namely, the doctrine of sovereign equality. What makes the book particularly interesting is that unlike most critical works, Parfitt does not merely offer 'knowledge in the form of exposure'² with a view to making the internal inconsistencies of the doctrine of sovereign equality visible; she also provides a highly plausible interpretation, according to which those inconsistencies are not accidental instances of incoherence of international law or the distortion of otherwise 'pure' rules by power politics, but an integral part of the disciplining project carried out in the name of, and through, international law.

To make this point, Parfitt resorts to the concept of international legal reproduction, which she defines as 'the process through which new subjects of international law are brought into being and later disciplined by more "successful" members of the so-called international community' (at 12). The book then investigates the process of international legal reproduction in various contexts, ranging from the transformation of the Chinese Empire into a 'sovereign state' to the indigenous struggle for self-determination in different parts of the world (at 133–144, 418–446). But the book's primary case study concerns the Abyssinia Crisis and its lessons for international law. Parfitt claims that Ethiopia's less-than-full sovereign status in the League was not an aberration of the doctrine of sovereign equality but an integral part of international law's normal functioning. In her reading, sovereignty has always been contingent

¹ J. M. Coetzee, *Elizabeth Costello* (2004), at 19.

² Kosofsky Sedgwick, 'Paranoid Reading and Reparative Reading or You're So Paranoid, You Probably Think This Essay Is about You', in E. Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (2003) 123, at 138.

upon a system of individual legal subjectivity involving a set of rights and duties necessary for the operation and expansion of capitalism (at 154–222). The well-known *Island of Palmas* award, whose definition of sovereignty is frequently quoted in the international legal literature, is a good illustration of this dynamic.³ While the emphasis is usually placed on the award's framing of sovereignty as 'the exclusive right to display the activities of a State', Parfitt focuses on what is presented in the award as 'the corollary duty' to that right, which includes the obligation to protect 'the rights which each State may claim for its nationals in foreign territory' (at 88–90). As Parfitt clarifies, those rights were 'negative' rights pivoting around 'the liberty of the individual to buy and sell commodities, including her own labour-power, on the "free" market, and in doing so to accumulate resources without threat of compulsory, state-sanctioned redistribution' (at 151). Based on a meticulous survey of a wide range of historical episodes (Russia, the mandate system, etc.), Parfitt claims that rather than talking about the 'economization of sovereignty' in some contexts as described by Antony Anghie, it would be more accurate to conclude that 'being economised' is part of the very definition of sovereignty (at 202–203, 219).

One of the hallmarks of important books is that they leave readers wanting more. Parfitt's book is no exception in this regard. With respect to the central theme of the book, a closer examination of the mechanics of the international legal reproduction would have been interesting. A fruitful line of inquiry, in keeping with the book's conceptual framework, would have been what Althusser described as 'the reproduction of the conditions of production'⁴ and the complicity of international legal scholarship in that process.

On a methodological level, one could wonder whether Parfitt, in viewing the doctrine of sovereign equality as something inherently in the service of the operation and expansion of capitalism, is not assuming much more historical consistency and continuity than any social project would be capable of providing. As Martti Koskenniemi points out:

Recent post-colonial histories share the intuition that something about present inequality and violence bears an inheritance of the past. They focus on the many ways in which international law has been implicated in colonialism and imperialism. But I am doubtful about the existence of a single 'tradition' of international law that would have passed through history as an instrument of European predominance and could be indicted as responsible for today's injustice. There is as much reason to be sceptical of that proposition as of histories that used to depict international law as a carrier of liberal and humanitarian progress, a 'Grotian tradition'. The relations between law and international power are much more complex and involve contradictory ideas about what 'international law' or even 'law' is and how it can be used.⁵

Parfitt's approach is all the more remarkable given that she explicitly subscribes to the Foucauldian genealogy: treating the doctrine of sovereign equality as if the latter

³ *Island of Palmas Case*, 4 April 1928, RIAA, vol. II, 829–871.

⁴ L. Althusser, *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses* (G. M. Goshgarian trans., Verso 2014), at 46–52.

⁵ Koskenniemi, 'What Should International Legal History Become?', in S. Kadelbach, T. Kleinlein and D. Roth-Isigkeit (eds), *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel* (2017) 381, at 385.

possessed an inalterable essence is difficult to reconcile with Foucault's lesson that rather than an 'essential secret' lying behind things, genealogical inquiries are bound to reveal the secret that things have no essence.⁶ It is one thing to claim that 'the conditionalities [have] *always* been attached in the theory and practice of international law to the assumption of sovereign rights' (at 189, emphasis in original). But for a genealogist who does not believe in the myth of linear, unbroken, thoroughly coherent history, postulating that those conditionalities have always been at the service of a particular disciplining project could call to mind the tourist who claimed to have discovered in a provincial museum 'the skull of Voltaire as a child'.⁷

Another methodological question that Parfitt's reading of the doctrine of sovereign equality raises has to do with a problem faced by every functionalist explanation: even if one were to agree that the doctrine in question has had the *effect* of furthering capitalism, that effect alone could not explain why the doctrine came into being or continues to exist.⁸ The problem with such functionalist explanations is that they postulate an intention without positing a subject holding that intention.⁹

These remarks detract nothing from the importance of Parfitt's book. An intellectually curious international lawyer will learn a tremendous amount not only about the critical history of sovereign inequality, but also about other conceptually intriguing themes, such as how to operationalize Althusser's concept of interpellation in the context of international relations, or about Walter Benjamin's much-referenced, yet poorly understood, philosophy of history. Parfitt is also a brilliantly strategic writer: she anticipates the all-too-easy objection that what she is offering is not international law by grounding her arguments in traditional international legal materials. The importance of this strategy is lost on many critically minded international legal scholars writing today, but it is based on a simple lesson that 'for the transgression to work, it must be played out against a background of normality'.¹⁰

In Coetzee's novel mentioned above, Elizabeth Costello continues her reflections on realism as follows:

But all that has ended. The word-mirror is broken, irreparably, it seems. . . . The bottom has dropped out. We could think of this as a tragic turn of events, were it not that it is hard to have respect for whatever was the bottom that dropped out – it looks to us like an illusion now, one of

⁶ Foucault, 'Nietzsche, Genealogy, History', in J. D. Faubion (ed.), *Michel Foucault: Aesthetics, Method, and Epistemology* (1998) 369, at 371.

⁷ Quoted in F. Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (1981) at 139.

⁸ J. Elster, *Nuts and Bolts for the Social Sciences* (1989), at 123 ('Let us suppose that we have found that a given norm makes everybody better off than they would be without it. There is still a big step to the conclusion that the norm exists *because* it makes everybody better off.' Emphasis in original).

⁹ Jon Elster, 'Un historien devant l'irrationnel: Lecture de Paul Veyne', 19 *Information sur les sciences sociales* (1980) 773, at 786. One possible response to this objection can be found in Foucault's works. As Foucault famously stated, '[p]eople know what they do; they frequently know why they do what they do; but what they don't know is what what they do does'. Personal communication from Foucault to Hubert Dreyfus and Paul Rabinow, quoted in H. L. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (2nd ed. 1983), at 187.

¹⁰ U. Eco, *How to Travel with a Salmon, and Other Essays* (Transl. W. Weaver, Harcourt Brace & Company 1994), at 224.

those illusions sustained only by the concentrated gaze of everyone in the room. Remove your gaze for but an instant, and the mirror falls to the floor and shatters.¹¹

Whether readers of Parfitt's book will be able to keep any respect for the doctrine of sovereign equality is hard to tell. What is certain is that they will have a hard time looking at sovereign equality in the way that has sustained the illusion of sovereign equality for so long.

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Jérémie Gilbert. **Natural Resources and Human Rights: An Appraisal**. Oxford: Oxford University Press, 2018. Pp. 224. £70. ISBN: 9780198795667

My interest in the book under review has a lot to do with my core research interests in international investment law. Modern investment treaties owe their origins to concession contracts in the natural resources sector and the need to complement contractual protections with another layer of international safeguards which the concession-holder could invoke in case of a dispute. The statistics from the International Centre for Settlement of Investments Disputes (ICSID), the principal forum for investor–state dispute settlement, invariably identify natural resources as the area responsible for a large share of investor–state disputes. Gilbert's book seeks to draw a bigger picture; a picture where commercial activities in the natural resources sector are examined not through the lens of investment treaties and arbitration but through that of human rights. The book starts on a sombre note. We live in an age of a rapid growth in the exploitation of natural resources, increased pollution, diminishing biodiversity, climate change and, above all, the ever-intensifying pressure to control the planet's remaining resources. In this quest 'for what is left', Gilbert posits that international human rights law (IHRL) can play an important part by facilitating the sustainable management of natural resources. The task he commits himself to in the book is twofold: to make a case for IHRL as a vehicle to address numerous concerns over the human utilization of natural resources, and to document and highlight the negative impact the exploitation of natural resources has on human rights. The book most certainly succeeds in the latter. It is Gilbert's faith in the capacity of IHRL to mitigate and prevent the adverse effects of the

¹¹ Coetzee, *supra* note 1, at 19–20.