

Aside from these points, Palestini's book is of interest to the student of maritime delimitation who wishes to make their first foray into the complex topic of third states in relation to maritime disputes. The book is of interest also to the practitioner who needs a work collating the existing jurisprudence, both on the merits and on intervention. One should congratulate Palestini on a result that can also be a useful starting point for further study.

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Ntina Tzouvala. **Capitalism as Civilization: A History of International Law**. Cambridge: Cambridge University Press, 2020. Pp. 276. £22.99. ISBN: 9781108739559.

Perhaps for the first time since the inception of the discipline, the role of capitalism as a driving force in the development of international legal discourse is taking centre stage in general theoretical debates. Given the prospects of a lingering global climate catastrophe and ever more scandalous manifestations of inequality on this planet, it is about time. Whilst the systemic rivalry between communism and Western-style capitalism structured geopolitical thinking in the 20th century, critical – let alone Marxist – engagements with capitalism and international law were prone to be received as ideological support for Soviet- or Mao-style socialism. And after the Cold War in the moment of a perceived 'triumph' of the West and its economic elites, critical engagements with global capitalism were often considered to be on the wrong side of history. Nonetheless, critical, post-modern and post-colonial thinking in international legal discourse has become in the meantime an established academic counter-reaction against Western liberal triumphalism and the accumulating devastations created by a globalizing neo-liberal economic orthodoxy.

Within critical scholarship, however, the relationship between critical and post-colonial approaches to international law, on one side, and central insights of Marxism, on the other, was and perhaps still is by no means a straightforward one. This has to do, of course, with the tensions between the indeterminacy thesis promoted by critical scholars and Marxist theories insisting on more or less determinate structural linkages between (international) law and capitalist exploitation. It is one of the main objectives of Ntina Tzouvala's insightful book to build a bridge between Marxian insights and critical, post-colonial and feminist approaches to international law. In her words, 'taking seriously the Marxist critique of capitalism ... can offer a pathway to critiquing law's complicity with capitalist exploitation, environmental destruction and the devaluing of human life' (at 219).

The book undoubtedly offers a fresh reading of the standard of civilization in various historical epochs. Tzouvala manages to merge a range of existing critical historical

insights regarding the standard of civilization into a trans-epochal structural explanation of the concept of civilization in international law. In her reading, international legal arguments using this concept oscillate between 'a logic of improvement' and 'a logic of biology'. While the logic of biology implies that a certain community of human beings is different from the perceived European capitalist state run by white male elites because of race or gender ('dynamic of difference'), the logic of improvement implies that it can over time become a capitalist state comparable to the imposed European role model (the paternalistic 'civilizing mission'). At first sight, her examples – ranging from 19th-century colonialism, the League of Nations mandate system via the *South-West Africa* cases,<sup>1</sup> to the Iraq war and the 'unable or unwilling' doctrine – seem too diverse in terms of context and legal structures to build a coherent set of evidence for her main thesis. And, yet, in all her examples, the two broad logics identified are convincingly traced in international legal discourse and make for an original and insightful reading of famous scholarly exchanges and controversies. The individual chapters as such are an innovative and highly readable contribution to classic debates within our discipline.

Inevitably perhaps for a book of its length, the link between the 'logic of improvement' international legal norms and the inception of modern transnational capitalism at times remains somewhat unclear and diffuse. At the beginning of the book, the author points to the obvious 19th- and 20th-century legal candidates for linkages to capitalist structures, such as 'extraterritoriality' (unequal treaties), arbitration and, first and foremost, property rights as individual rights. Interchangeably, time and again, Tzouvala also refers to the 'state' as the main vehicle of legal structures facilitating capitalist structures in line with certain strands in Marxist theory. However, the concrete historical manifestations of modern capitalist structures through the interaction of specific domestic and international legal rules often remain under-explored in the various epochs dealt with in the book. Perhaps this is the price for a highly abstract and overreaching argument and a trans-epochal focus on the abstract umbrella concept of 'civilization'.

According to Carl Schmitt's and Hugo Preuss' contemporary depictions of 19th-century capitalist expansion, for instance, this first phase of economic globalization was facilitated through a peculiar mix of common inner European constitutionally guaranteed private economic freedoms and very basic international legal protections for economic activities abroad.<sup>2</sup> For both authors, the 19th-century constitutionally constructed global space for private economic activities was structured internally by international private law and *lex mercatoria* or 'the law merchant', which in their view was decisive for the flourishing of capitalist expansion. While merchants needed their home state and its legal system for these activities, effective state structures abroad

<sup>1</sup> *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Judgment of 18 July 1966, ICJ Reports (1966) 6.

<sup>2</sup> Depicting and cherishing the rise of a 'law of the world-economy', see H. Preuss, *Das Völkerrecht im Dienste des Wirtschaftslebens* (1891), at 450ff. Looking back in a more critically inclined way on these legal developments and Anglo/American dominance during this era, see C. Schmitt, *Der Nomos der Erde im Völkerrecht des Ius Publicum Europaeum* (1950), at 183–185.

were not necessarily required, apart from basic protections provided for by a law of aliens, unequal treaties or ‘gunboat diplomacy’. State structures abroad could even make economic expansion more difficult through formalized trade and investment restrictions. Related highly relevant legal issues in this context, of course, were unhindered access to natural resources and consumer markets abroad, often enforced through colonial conquest, ‘open-door’ policies and freedom of transport on the high seas (including the law of neutrality) – all of this backed up by the threat or use of military violence through a *ius ad bellum* and a right to ‘measures short of war’. To make things even more complicated for the 19th century, all these pertinent legal structures for global capitalist structures played out differently in international legal discourse through the various constructed echelons of the standard of civilization – namely, in the divergently construed legal relations of the great powers with so-called ‘non-civilized’, ‘half-civilized’ and fully ‘civilized’ peoples.

It is both a strength and a weakness of this wonderful book that the analysis of the ‘metaphorical’ usages of the concept of civilization, including its racialized, gendered and capitalist undertones and justifications, only rarely deals with these specific legal doctrines and their assumed capitalist usages. Regarding the ‘unable or unwilling’ doctrine, for instance, which is convincingly considered as the most current expression of a concept of civilization in international law, this would have required a broader genealogical analysis of the linkages between the *ius ad bellum*, the law of reprisals as well as the changing discursive notions of self-help and self-defence before and after the two World Wars and their concrete great power usages for capitalist purposes. Due to the trans-epochal approach chosen, a contextual reconstruction of more specific historical and legal structures and their concrete entanglement with capitalist structures would have exceeded the project.

In sum, this book provides us with a critical re-description of the concept of civilization in international legal discourse across time informed by Marxist, post-colonial and feminist theories, and, as such, it undoubtedly breaks new ground. As the author points out herself, she did not intend ‘to produce a theory of international law as a whole’ (at 220). With a view to one of its main theoretical objectives, however – namely, of bridging deconstruction and Marxist theory in international law – the concise monograph is a highly stimulating achievement. While acknowledging the indeterminacy of international legal concepts such as the one of ‘civilization’, it can demonstrate how racialized, gendered and capitalist background assumptions structured its usage over time. This book will certainly provoke new theoretical and historical research in this area. What more can you expect from an original contribution to the field?

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