
Book Reviews

Nathaniel Berman. ***Passions et ambivalences. Le colonialisme, le nationalisme et le droit international.*** Paris: Pedone, 2008. Pp. 476. €48.00. ISBN 9782233005342.

This book is the second of a new collection called 'doctrine(s)', edited by Emmanuelle Jouannet (Professor of International Law at Paris I and Deputy Director of the Centre d'étude et de recherche en droit international/CERDIN). The first one was dedicated to Martti Koskenniemi's works. This second volume brings together seminal articles, by Nathaniel Berman and translated from English, which deserve, without a doubt, to be presented to a French speaking public under this label 'doctrine'. All articles are underpinned by a consistent line of thought which is epitomized in Emmanuelle Jouannet's presentation. Far from being a mere description of the content of Berman's articles, or a kind of hagiographic introduction, her presentation contains elements of explanation, be they personal or more linked to the academic or political environment, which prove to be very useful in order fully to grasp the richness and the complexity of his analyses. Indeed, Nathaniel Berman can hardly be classified into ready-made categories of legal doctrines. Being inspired by different disciplines, among others history and psychoanalysis, he offers a truly original perspective on colonialism and nationalism which sheds light on international law and, more precisely, on the conditions under which these political phenomena have been tackled by case law, diplomats, and legal scholars.

Contrary to those who have tried to put some order or coherence into the legal treatment of international crises stemming from nationalist claims, he unveils the paradoxes or contradictions contained in international law

materials and discourses alike. At first glance, the main peculiarity of his approach rests on his attempt to explain paradoxes and contradictions by resorting to a conceptual toolbox very rarely utilized in the field of international law. The reference to 'passions', 'fantasy', 'desire', and 'ambivalence' could indeed sound very strange for those who are familiar with the legal or political terminology. Psychoanalysis and cultural studies provide the intellectual background which allows one, not only to deconstruct past discourses about nationalism and colonialism, but also to envisage a treatment of nationalist conflicts (an example being the status of Jerusalem) that seem to be intractable within the conventional framework of legal instruments and positivist ideas. But the main contribution lies in his accurate analysis of past events and the linkages he makes with the management of new crises. Indeed, it is quite difficult to explain the blindness, the (unconscious) repetition of behaviour towards nationalist claims, by resorting to a classical analytical framework even when this has proved to be flawed or ineffective. That is the reason why explanations based on our human condition, passions, and ambivalence seem to be so relevant but also troubling for legal scholars, who are more accustomed to referring to interests, costs/benefits calculus, or even values for explaining the elaboration, interpretation, and implementation of legal norms.

Ambivalence appears to be a powerful concept when examining colonial issues. Berman considers that ambivalence refers to the inability to get rid of ideas, passions, or relations which are nonetheless condemned or denied. Such a notion can explain the Janus-face of colonialist discourses and the fact that condemnations of colonialist practices coexist with the defence of the liberal and progressive side of colonial enterprises. In the same vein,

ambivalence might well be used in order to better understand the current justifications of international trusteeship. The comparisons made between the debates on self-determination and minority rights in the inter-war period and after the Cold War further strengthen his main argument. Indeed, he points to an unconscious discursive structure underpinning them, which can hardly be explained by existing paradigms (positivism, sociological objectivism, pragmatism and legal formalism...). He favours instead explanations based on history, culture, and psychoanalysis which highlight the paradoxes and ambiguities of the relationship between colonial powers and their possessions. In doing so, he refutes case-by-case and ad hoc explanations by unveiling trends, recurring themes, and approaches, such as the theme of 'liberty through surrender and subordination', which was significant in the pleadings before the Permanent Court of International Justice in the '*Nationality decrees issued in Tunis and Morocco*' case, where the vocabulary used in the pleadings revealed the unconscious European desire towards the Orient and an enduring feeling of superiority justifying its civilizing mission.

Post-modern thinking infuses some of his reflections, notably when he dismisses the relevance of clear-cut distinctions like the distinctions between international law and empire, nationalism and internationalism. The coexistence of different logics in the international system (Christian[dom], Westphalian, Imperial, and Cosmopolitan), and the dismissal of any idea of linear and progressive development in history and even legal thinking can also be viewed as a mark of post-modern thinking. He reminds us that no term is inherently positive or negative (interdependence was also used in order to perpetuate colonial ties) while pinpointing the continuity between Versailles and Munich in the management of territorial disputes and contradictory claims. Last but not least, far from being a mere reaction to nationalist passions and conflicts, he considers that international law is part of the picture. International law does not fall out of the blue, but participates in the political realm in the construction of the 'other'. In a way,

nationalism and 'legalism' must be viewed as co-constitutive.

But at the same time, its personal and intellectual inclinations are not always far from modern thinking and humanism. Indeed, ambivalence also applies to legal scholars, including Nathaniel Berman. But it could be said that the kind of reflexive thinking he has undertaken is inherent in a postmodern stance insofar as the critical deconstruction of legal thinking and the proposal of innovative solutions for dealing with nationalist claims do not amount to a normative attitude. For instance, the simple demonstration of the commonalities between past colonial practices and new forms of international administration of territories does not lead Berman to condemn the international administration of Kosovo. This is for him an opportunity to give a brilliant demonstration of the difficulties that Kouchner underwent in the first years of his mandate for UNMIK in gaining legitimacy from the Albanian and Serbian populations, something he had to negotiate and renegotiate on a number of occasions and which shows that legitimacy in a divided world can only be provisional and can never be taken for granted.

Berman does not intend to provide a new paradigm for understanding the history of international law, but rather aims to reintroduce a kind of heterodox thinking to the discipline. The invitation he addresses to international legal scholars, to look back critically into the history, is certainly valuable. Indeed, the combination of thorough legal analysis and in-depth knowledge of history, including arts and literature, is of added value for analysing the legal treatment of nationalist claims and imperial practices today; it would moreover prevent incorrect judgments, notably those concerning the 'innovative' solutions proposed to deal with so-called '*sui generis*' situations.

What is less convincing is his plea for a more culture-oriented international law for keeping its sociological utility. For this claim, he does not actually provide arguments which could defend his approach against the criticism already made with respect to the New Haven School and its policy-oriented approach. Also

disturbing is the fact that he does not explain why certain doctrines and not others seem to be more appealing for diplomats and political authorities under certain circumstances. The way that passions are mediated by politics is a problem that is not really tackled. In her introduction, Emmanuelle Jouannet rightly identifies a methodological difficulty which is not resolved in a totally satisfactory way: how we can draw conclusions about collective agency when the starting point of the analysis is anchored in a discipline, i.e. psychoanalysis, which implies an individualist methodology. If Berman acknowledges the existence of mediation between nationalist claims and legal solutions leaving room for politics, there is no systematic analysis of the relationship between a peculiar doctrine (for instance the modernist doctrine of Redslob) and its political environment. For what reasons exactly does the modernist reappraisal of nationalist passions seem to prevail at one moment and why, at other moments, does the so-called realist and pragmatic approach impose itself as the condition for 'peaceful change', as in the cases of Czechoslovakia and Ethiopia before the Second World War and more recently in the case of Kosovo.

Perhaps a reflection on ideology as a vehicle between the legal and the political spheres could overcome this difficulty. Yet, a sociological analysis of legal and political actors' behaviours could add some flesh to the bones. In the article which analyses the reference to the non-interference principle during the civil war in Spain and the war in Bosnia-Herzegovina, the comparison is mainly founded on a comparison based on texts and discourses and is not sufficiently connected to the realities on the ground and the diplomatic power game. A policy is also the result of political confrontations and influence which have nothing to do with ambivalence, which is related to the psyche of individuals and thus not really fitted for studying collective decisions. Moreover it cannot explain why the non-interference principle was invoked in Bosnia and not towards the former Yugoslavia.

Nonetheless, this book is breathtaking for its richness, brightness, and insights. It can also be added that the originality of the ana-

lysis is reinforced by the writing style, notably when Berman makes up dialogues between characters holding different views on a topic (see especially when he puts on stage Inis Claude and Lloyd George speaking about the significance of 8 May 1945, and George Bush and Osama Ben Laden as discontents of the international law system). The excellent quality of the translation by Lucie Delabie, Maire Blocteur, Leila Choukroune, Céline Clerfeuille, and Olivia Harrison (under the supervision of Nathaniel Berman and Emmanuelle Jouannet) deserves also to be mentioned here.

Barbara Delcourt

Professor, Université libre de Bruxelles

Email: bdelcou1@ulb.ac.be

doi: 10.1093/ejil/chp014