

claims, it is a further merit of the book that it points to many of the complexities in the relation between international law and global justice scholarship. Ratner's appeal to the latter to take the separate value of peace into account is a welcome suggestion for a largely utopian contemporary literature.

Whether the framework of *Thin Justice* will convince practitioners and mitigate concerns of disobedience seems questionable. International law's injustice is hardly the central reason for non-compliance; rather, it seems that some actors just do not care about normative arguments. The success of an interdisciplinary project bringing together law and ethics crucially depends on the possibility of a mediation between different concepts. Here, *Thin Justice* might initiate a dialogue across the variety of beliefs and concepts. As such, it seems a promising start. Sometimes, however, it might be enough to mind the gap between different concepts and understandings, rather than trying to close it.

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Arnulf Becker Lorca. ***Mestizo International Law: A Global Intellectual History 1842–1933***. New York: Cambridge University Press, 2015. Pp. 420. US \$134 (paperback US \$41.99). ISBN: 9780521763387.

One of the more fundamental contemporary shifts in the discipline's understanding of international law and its history is a refined sense of the plurality of its object. Not in the somewhat outworn sense of the governance literature's use of plurality or pluralism in order to conceptualize diverse norm-making entities and (transnational) legal sources in times of economic globalization but, rather, as the idea of a selective imposition and diverging application of international legal rules. The many recent attempts to explore such a plurality seem to be driven by an increased awareness of what is commonly referred to as 'biased' or 'hegemonic' rule making and interpretation or so-called 'double standards'.

This refined sense for plurality comes with two principal assumptions: first, the idea that international law is perceived and conceptualized very differently in various regions and places and that national traditions and economic preferences matter and determine the behaviour of policy making and academic elites¹ and, second, that for a long time, if not up until today, the application of general international law, behind a unified façade, is, in practice, dependent on the affiliation of legal subjects to a certain category of states or nations, with the result that some nations in practice are less equal than others. In more concrete terms, basic distinctions, such as the ones between 'civilized' and 'non-civilized', 'centre' and 'periphery', function as fundamental background distinctions with massive inclusive or exclusionary implications in a seemingly universalized legal practice.²

While Arnulf Becker Lorca's sophisticated book *Mestizo International Law* is clearly rooted in this intellectual tradition, it explores a new and highly ambivalent historical dimension of the plurality of international law. Rather than reconstructing late 19th and early 20th century international law as a one-way European imposition on Asian, Eastern European and Latin

¹ M. Koskenniemi, *The Gentle Civilizer of Nations* (2001).

² G. Gong, *The Standard of Civilization in International Society* (1984); A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004), at 56ff.

American nations, the book focuses on how international lawyers from these non-European regions ‘appropriated’ international law in order to reform international legal rules in line with their own foreign policy agendas. Rather than solely portraying non-European politicians and international lawyers as passive objects of discursive structures created in European capitals, Becker Lorca observes how international law changed through being used by Latin American, Ottoman and Asian elites as a counter-hegemonic strategy. For Becker Lorca, the lasting result of this historic process of non-European ‘appropriation’ of the language of international law is encapsulated in the title of his elegantly written book – *Mestizo International Law*.

A key role in this story is played by a group of international lawyers whom Becker Lorca calls ‘semi-peripheral jurists’, defined as ‘(a) generation of non-Western international lawyers (who) studied European international law with not only the purpose of learning how to play by the new rules of international law that Western powers imposed on them, but also with the aim of changing the content of those rules’ (at 49). These lawyers came from ‘semi-peripheral’ states, such as China, Japan, Russia, the Ottoman Empire and Latin American states. In *Mestizo International Law*, states form part of the ‘semi-periphery’ once they are recognized as sovereigns by the 19th-century great powers, but they do not fully belong yet to this exclusive circle. Becker Lorca takes the core/semi-periphery/periphery terminology from Immanuel Wallerstein’s famous World System Analysis. Wallerstein’s tripartite distinction between core/semi-periphery and periphery builds on dependence theorists, and Karl Polanyi’s economic theory. In a nutshell, according to Wallerstein, states in the core have a dominant position due to their particular economic and military leverage. Economically, the core, using more advanced technological devices, is able to manufacture complex products. Both semi-periphery and periphery communities are being used by the core to provide raw materials and to consume surplus production. Semi-periphery states attempt to join the core and, at the same time, already constitute a core in their relation to the periphery.³ While the book uses Wallerstein’s world system’s theory in a rather loose fashion, ‘semi-peripheral jurists’ and their ‘sensibilities’ work as a highly productive leitmotif throughout the monograph.

Becker Lorca distinguishes between influential 19th-century jurists and ‘modern’ 20th-century international lawyers from the semi-periphery. Among the older generation Fedor Martens, Carlos Calvo, Luis Drago, Tsurutaro Senga and Sakuyei Takahashi figure prominently. These classical semi-peripheral jurists usually did not oppose the standard of civilization as developed and defended by jurists from the core. Instead, they accepted the implied Darwinist telos of evolutionary stages towards higher forms of ‘civilizations’ as such. Their strategy was to claim that their nations already had reached a level of civilization comparable to the core. Positivism, which during the second half of the 19th century became synonymous with a ‘scientific’ approach to international law, proved helpful to pursue that strategy. As Becker Lorca shows, the turn to positivism, which was deeply implicated in the imperial project, at the same time provided new opportunities for semi-peripheral jurists to discredit, or at least to downplay, the Christian and specifically European underpinnings of the various natural law approaches. Insurmountable religious and cultural obstacles on their way to full recognition as sovereign equals had to be removed, and formalist arguments were used to fulfil this task (at 55–56).

Particularly illuminating are the reflections on the issue of the universalization of international law based on the reconstruction of struggles of 19th-century semi-peripheral jurists. The book starts from the thesis originally developed by Charles Alexandrovicz that 19th-century European international law turned international law from a more universalist legal order into a regional one through its positivist focus on the practice of European powers (at 46–49). Legal relations with the non-European world, including colonization, were not considered to be an

³ I. Wallerstein, *World System Analysis: An Introduction* (2004), at 43–59.

integral part of that legal order by jurists from the core. Late 19th- and early 20th-century 'universalization', thus, was not only a process of semi-peripheral internalization of standards coming from the core, but also the result of challenging these special regimes Europe had established with its peripheries as not being in line with the idea of sovereign equality and other standards adhered to within the core.

Unequal treaties and ever more frequent Western military and economic interventions into their countries were at the centre of the formalist critique voiced by the non-European publicists. Rather than fighting the imposition of European standards on their communities, semi-peripheral jurists demanded to alter the particularly permissive and unequal standards developed for them by using the language of the jurists from the core (at 94–95). Through their innovative and counter-hegemonic use of that language, they not only contributed to the gradual universalization of European international law, but they also managed to change it significantly (at 140). To have unravelled and plausibly demonstrated this 'circular' historical process of universalization of international law in the late 19th and early 20th century is a major contribution to the field.

If Becker Lorca's differentiated universalization thesis is correct – and, in my view, his interpretation of the sources is persuasive indeed – a follow-up question comes to mind: can we infer from the counter-hegemonic use of formalist arguments in the 19th century that any legal system, once it is successfully construed as a unified legal order, has great problems to sustain the existence of internal discriminatory regimes denying formal equality? Or is the opposite true – namely that we can learn from the long struggles of semi-peripheral jurists that despite the perceived existence of a unified legal order, the core and its jurists under certain circumstances can over long periods within a professionally accepted discourse justify the existence of separate regimes by various argumentative strategies? Or does the truth lie somewhere in the middle, suggesting a reformulation of the question as follows: which dynamics determine the strength and effects of the counter-factual idea of formal equality in a legal order based on massive power asymmetries?

In the second part of the book, the author leads us through the struggles of semi-peripheral jurists in the interwar period. He observes a shift from classical to 'modern' international legal discourse. Modern internationals tended to argue in favour of internationalization and against egoistic sovereignty, and they replaced formalist arguments with more pragmatic ones (at 232ff.). As Becker Lorca argues, this was a rather ambivalent shift for the projects of the semi-peripheral jurists (at 244–245). On the one hand, they could counter Western unilateralism by insisting on institutional solutions under the roof of the League of Nations. On the other hand, claiming absolute sovereignty and independence for the semi-peripheral state became more difficult when confronted with jurists from the core, who argued in favour of economic and political cooperation in the name of internationalization and 'community interests'.

Even though the end of the war in 1919 neither led to the complete abolition of the standard of civilization nor to a universal right to self-determination, it was the interwar period, during which central legal struggles of the semi-periphery eventually turned out to be particularly successful. Against the standard of civilization, notions of formal statehood and declaratory recognition had gained wide acceptance also in the core by the mid-1930s. Arguments based on allegedly superior forms of 'civilization' with regard to the semi-periphery were largely discredited by that time. Becker Lorca takes us to the debates in Geneva within the League of Nations regarding the admission of Ethiopia as a member state in 1923, to illustrate the gradual demise of the standard of civilization. He cites the Australian representative Joseph Cook, claiming that 'admitting Abyssinia might create an anomaly, as that country might ... examine and criticize countries whose civilization was more advanced than their own' (at 278). It was the French representative who successfully rejected this reference to civilizational hierarchies: '[I]t might

be unwise and dangerous to make classifications, which might re-open the way to prejudices of race, caste, colour and nationality' (at 279).

Despite the perpetuation of colonial structures under the League, *inter alia*, through the mandate system,⁴ discriminatory arguments referring to culture, religion and race had lost their traction at least in official meetings of the institution. In *Mestizo International Law*, these changes are the result of continuous struggles of the semi-peripherals to replace the old substantive criteria of European international law by formal attributes of statehood. To follow the author through the sites of these struggles in the League's Assembly, its Permanent Mandate Commission, the Hague Codification Conference (1930) and the Pan-American Conference in Montevideo (1933) is a highly instructive journey. Meetings with Alejandro Alvarez, Gustavo Guerrero, Constantin Sipsom, and Chao-Chu Wu in these venues help him to demonstrate that these semi-peripheral international lawyers still had a common project consisting mainly of fully recognized independent statehood and the prohibition of intervention. Among their opponents were famous modern European international lawyers from the core, such as Nicolas Politis.

Becker Lorca observes a new methodological approach of the modern semi-peripherals, now 'mediating between solidarity and individualism' even though the political project in essence remained the same (at 337). At times, however, Becker Lorca's insistence on a methodological shift in the arguments of his protagonists does not seem to be fully convincing. After all, formalism with its claim to treat like cases alike appears to have remained the main argumentative device to undermine substantive imperialist arguments, regardless of scattered cosmetic references to solidarity and internationalism. It should be added in this context that such strategic formalist 'appropriations' of the law by weaker entities inevitably also come with an affirmative and normalizing dimension as to the legal order as a whole.

This wonderful book ends with the 1933 Montevideo Conference and the strategic use of regional codification by Latin American jurists to advance their universal project of full independence of semi-peripheral nations from imperialist domination. Through the ultimately successful inclusion of the USA into the Montevideo Convention process, the achieved standard of legal equality based on formal statehood and the principle of non-intervention turned out to have a long-lasting influence on international law. Arguably, these struggles also shaped the battle for international law in the post-World War II decolonization period.⁵ But that is another story.

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Louise Chappell. ***The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy***. New York: Oxford University Press, 2016. Pp. 276. £64. ISBN: 9780199927913.

The book under review provides a unique analysis of gender justice in international criminal law. The author, Louise Chappell, professor in social sciences and international studies at the University of New South Wales, provides a meticulous and theoretically well-informed historical investigation of the implementation of gender justice (and its shortcomings) by the International Criminal Court (ICC) and what impact this might have for the future of the Court.

⁴ Anghie, *supra* note 2.

⁵ J. von Bernstorff and P. Dann (eds), *The Battle for International Law in the Decolonization Period* (forthcoming, 2017).