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Toxic Comfort Blanket: Imperial Delusion in Modern Britain

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The development of the Eurocentric ‘law of nations’

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Jennifer Pitts
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The development of the Eurocentric ‘law of nations’

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ne of the most difficult things for modern observers to grasp when contemplating the Enlightenment is the yawning gap between the language associated with it and the behaviour of some of its adherents. Enlightenment philosophy is often credited with putting reason at its core, arguing against, among other things, superstition and prejudice. It also emphasized liberty and equality, and is said to have sparked the late eighteenth-century revolutions in North America, France and Haiti. For all these reasons, many appear puzzled by the spectacle of enlightened figures who enslaved other human beings whom they deemed inferior, who championed the “rights of man” but had no problem seizing, by conquest, the land of people who had done them no harm—conquerors supposedly guided by reason who claimed (unreasonably one could say) to have “discovered” the land on which those unoffending people had lived for generations. The disconnect underlines those who see things through the eyes of the oppressed of that time, or who may wish to look on the Enlightenment as an unalloyed source of the good.

While the Enlightenment (in all its different incubations) nurtured anti-racist sentiment, promoted personal liberty, made room for religious tolerance and provided a critique of cruel forms of punishment, like any extremely powerful idea or concept, it had negative effects that went along with the positive. Indeed, it can be difficult to grasp that features endemic to the system of thought—the impulse to categorize and put things into hierarchies, and the faith in the capacity to measure scientifically, as well as the very notion of progress—contribute to the need to classify not only ideas and things but also, alas, groups of people. Scholars have noted that it provided a basis, for those so inclined, to create a “science” of race and racial hierarchies that often justified the domination and ill treatment of people classified as belonging to inferior ranks in Conceptions of Race and the International: Law and empire. Jennifer Pitts, a professor of Political Science at the University of Chicago, brings her considerable erudition to the task of analysing one of the eighteenth- and nineteenth-century Enlightenment’s most important projects: the development of the modern law of nations, which we now call International Law. Pitts’s treatment effectively shows that, not surprisingly, the project contains the same mixed effects that went along with the positive.

After moving beyond its grounding in natu-

ral law, heavily influenced by Christianity, the modern law of nations turned towards “positivism”, that is to say it came to be defined as the system of treaties and agreements that brought a form of order among European imperial powers. This development did not matter. There was ambivalence about the current regime of International Law, including whether or not it exists as “real” law at all, it is safe to say that most people agreed that nations voluntarily agreeing to abide by certain norms is a salutary thing. This is especially so since today, all recognized nations can, in theory, participate in the system of International Law on equal terms.

That was not the case in the precursor to our current regime of international rules and regulations. The texts that made up the law of nations, most famously described by theorists like Hugo Grotius, Samuel Pufendorf and Emer de Vattel, were European in origin and, as Pitts says, “addressed to other Europeans”. But the laws derived were not based solely on what was happening among Europeans. As Pitts shows, the law of nations “theoretical questions and conceptual categories reflected the extent and significance of European states’ and other agents’ relations and activities outside Europe”. Through this process, the law that Europeans created for themselves was made to apply to peoples and countries around the globe, whether those people and countries wanted it or not. As Pitts explains: “The law of nations proved a powerful political discourse in the context of European commercial and imperial expansion, in at least three respects. It supplied justifications for the actions of imperial states and their agents: from the conquest of territory, to the seizure of other powers’ ships, to the imposition of unequal or discriminatory trade regimes. It also furnished resources for the critique of abuses by imperial states; it had, as international law still does, both “imperial” and “counter-imperial”, critical, or emancipatory dimensions. Third, law of nations discourse could obscure the imperial nature of European states: for instance, by conceptualizing the states of the international legal community as territorially compact peoples rather than the sprawling and stratified global empires that the most powerful of them were.”

In other words, the law of nations was a complicated tool of empire.

As they pursued imperial expansion, Europeans (Pitts mainly confines her study to Britain and France) encountered many different peoples who had their own mores, religious beliefs, their own forms of law, all differing variously from those of European societies. These differences were interpreted in terms of levels of civilization. Pitts does not discuss it, but the thinking was described neatly by Scottish and French Enlightenment figures who propagated a “stadiatal” theory of the development of mankind from hunters, pastoralists, agriculturalists to the final commercial and industrial phase. Those living in societies that operated within the system of the law of nations took a “linear view of progress that figured European civilization, and European commercial society, as the vanguard or the telos of world history, as at once unique and model for the rest of the world”. “The law of nations”, Pitts writes, “was one of the most important discourses in which Europeans articulated Europe’s claim to be the unique bearer of universal values.” Having reached the final stage of development, Europeans were entitled to rule the world.

It is very hard now to see all of this as any-thing other than an elaborate cover for “might makes right”, the very maximal that law, and governments based on law, were supposed to replace. If I am able to build a better house than you are able to build, why should it follow that I have the right to drive you from your home, tear down your house, and build my own? Doing that, just because I can, requires no system of morality or ethics to back me up; it’s merely the logic of desire and force.

When European powers began to expand into territories outside Europe, they needed to justify taking control of territory and ignoring, or at the very least putting in a subordinate position, whatever rules governed the societies they encountered. And, in practice, where the society stood along the continuum of stages of development did not matter. There was ambivalence about the how the law of nations should apply to the Ottoman Empire, India and China, societies very different from those the Euro- pean colonials encountered when they came to the Americas, for example. In each case, the non-European nature of these people justified treating them differently. People living in the “hunter” stage were deemed “savage” and subjected to episodic extermination and imperial administration. What of the ancient civilizations in Asia? Montesquieu pronounced all “Oriental” nations decadent and “despotic” and, “thus, the antitype to international law and diplomacy”. Not granting recognition to

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diverse political arrangements gave European governments a simple way of excluding non-Europeans, whatever their stage of development, from the presumptive benefits of international society.

Pitts’s account of the eighteenth- and nineteenth-century progress of the law of nations reminds us that in the past, as today, people did not always have one voice on the law. Respected theorists challenged the dominant exclusionary strand in law of nations principles, arguing for a truly “universal” application of the laws that would “bind European states in their actions with [at least] Asian commercial ones”. Vattel, perhaps the most influential of nations theorists, claimed in his famous *Le Droit des gens* that the law included “non-European states in both hemispheres”. But his “heavy reliance on European practice as the source of detailed accounts of legal norms”, his “tendency to reinsert the exclusion of Muslim states on the grounds of their supposedly habitual violence”, and his “account of the state as a moral community that effaced the imperial quality of the major European powers” worked against the development of a truly universal law of nations. Edmund Burke, among others, tried to move “the boundary of exclusion further along a spectrum of development”, with societies designated as “savage” still excluded. Abraham Huyssenruyt Anguett-Duperron, in discussing the application of the law of nations, was even more sympathetic to non-Europeans, launching a “profound critique of European provincialism and racism”, but his work had “little impact in its day”.

Pitts tells a familiar story about the nineteenth century and the rise of scientific racism, though her account would have been even better had she more directly engaged with and analysed racism as a phenomenon. Musing on “civilization and barbarism” hardened into the language of “sociology and legal positivism” that masked the naked power employed in service of empire. Despite the tremendous amount of violence that the imperial powers unleashed on the world, Europeans continued to feel, throughout the century, that they had the “right to adjudicate international legal norms and to deploy violence in an administrative (rather than political or legal) mode over those societies [they] deemed not yet candidates for legal inclusion”. This was not so long ago. The world is still dealing with the legacy of the way the law of nations was constructed. Pitts’s history of the strengths and weaknesses of those early (often) failed efforts may help us develop a law of international relations that will bring about the “greater justice and equity” that critics of the eighteenth- and nineteenth-century law of nations hoped to find. Fortunately, there are many more diverse voices to be heard on this subject, and Murphy’s account outlines how key figures in the Leave camp, many of whom had shown little interest in the Commonwealth, were quick to pronounce the parrot not to be dead “just resting”. In *The Empire’s New Clothes* Murphy takes the story further, providing both scholars and a wider readership with an expert analysis of the uses and abuses of the Commonwealth as myth as distinct from its reality. With a sardonic wit and a keen eye for absurdities that readily lend themselves to Pythonesque retelling. Murphy’s study dissects how an organization long on lofty platitudes but short on resources and concrete recent achievements has evolved since the mid-twentieth century. As a leading scholar of decolonization in Africa and of the British monarchy’s dense historical entanglement with the Empire and Commonwealth, Murphy is ideally placed to provide what is a uniquely well-informed and readable assessment. The unpalatable truths he lays out, moreover, look certain to cement his persona non grata status among the small band of “true believers” – a group whose dedication to Commonwealth issues stands in stark contrast to the pervasive uninformed interest among the vast majority of people in Britain, for whom the Commonwealth has long meant little apart from the periodic Games and its routine appearance in the Queen’s Speeches and media coverage of royal visits to member states.

This wide-ranging study pays careful attention to the monarchy’s devotion to the Commonwealth, impressive though the contribution of progressive issues such as opposition to white minority rule in Rhodesia and apartheid in South Africa, its internal divisions, and its laudable ideals and proclamations that many Commonwealth countries have routinely violated. Above all, however, *The Empire’s New Clothes* deftly underscores the recurrent links between British engagement with its imperial legacy, the Commonwealth, and the European project. Murphy charts the twists and turns spanning the early post-war period up to the early 1960s, when many leading Labour and Conservative figures viewed commitments to the Empire/Commonwealth as a geopolitical priority that was both preferable to and in competition with European ties, to growing disenchantment with a Commonwealth that appeared to threaten British interests. By the time Britain finally gained entry into the EEC in 1973, the Commonwealth was not only increasingly undermined by centrifugal forces but had also become synonymous in domestic politics with unwanted non-white immigration in Britain. The 1948 British Nationality Act had enabled colonial and Commonwealth subjects to freely enter, work and settle in Britain, but the open door was gradually shut through a series of immigration restriction acts and changes to nationality legislation passed between the 1960s and 1980s.

By the early twenty-first century, the Commonwealth had long since shed its negative association with mass migration while the European Union steadily gained it. So, too, had the British Empire’s memory been revived yet again by Conservative and Eurosceptic voices and media outlets as a legacy Britain could be proud of and linked up with arguments about the Commonwealth’s future promise for a post-Brexit Britain. Written in the wake of the 2016 referendum and framed by it, Murphy’s account outlines how key figures in the Leave camp, many of whom had shown little interest in the Commonwealth before (or had contemptuously belittled it, as Boris Johnson did in 2002 when suggesting in the *Daily Telegraph* that the Queen loved the Commonwealth “partly because it supplies her with regular cheering crowds of flag-waving piccaninnies”), breathed new life into the mythical Commonwealth parrot’s shaky hold on its perch, Murphy concludes with a call for more immediate action: “Our old comfort blanket has become toxic. It’s time to grow up and set it aside”. This timely intervention makes a highly persuasive case to do just that. While the UK is unlikely to leave the Commonwealth, the benefits of abandoning the misleading notions attached to it are all too clear.