Toxic Comfort Blanket: Imperial Delusion in Modern Britain

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The development of the Eurocentric ‘law of nations’

Might vs right

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BOUNDARIES OF THE INTERNATIONAL Law and empire

The development of the Eurocentric ‘law of nations’

One 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 unnerves 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 incarnations) nurtured anti-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—contributed 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 classed as ‘inferior’. In her book, Boundaries of 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, what we now call International Law. Pitts’s treatment effectively shows that, not surprisingly, the project contains the same mixed properties as its intellectual progenitor.

After moving beyond its grounding in natural 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 throughout the eighteenth and nineteenth centuries. It did not stop all war, of course, but it provided a framework for trade and settling disputes among nations—certainly an important step forward in human history. Despite much grumbling 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 agree 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 criticism 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 variably 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 “statal” 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 of 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 anything other than an elaborate cover for “might makes right”, the very maxim 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 European colonialists 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...
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 eighteen- and nine
teenth-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”.Various permutations of nationalism, from theivor 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 reinscribe 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 Hucmichthe Anquetil-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 nine
teenth 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 marked 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 administra
tive (rather than political or legal) mode over those societies [they] deemed not yet candi
dates 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 forums may help us develop a law of international relations that will bring about the “greater justice and equity” that crit
cisms 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. Pitts passed between the 1960s and 1980s.

The Empire’s New Clothes succeeds in exposing both the nakedness of myths attributed to a weak and insubstantial organization and in reminding us of the dangerous ends to which these can be deployed. Allowing Sri Lanka to host the 2013 Commonwealth Heads of Government Meeting at a time when the Rajapaksa regime had achieved international infamy showed how a state that egregiously violated what were oft-proclaimed core Commonwealth values, namely demo
cracy, the rule of law and human rights, could manipulate the organization to bolster its international legitimacy. The latter campaign’s narrow victory after including Commonwealth-related claims within its cache of false promises for Britain’s future after Brexit serves as another example of how it has been abused. The announcement in 2017 that the first United States-based branch of the Royal Commonwealth Society would soon open in Mississippi, with its chairman promising to be the Republican state gover
nor who supports Donald Trump together with keeping the Confederate battle cross on the national flag, is another example of the Commonwealth’s tarnished moral authority.

Although the Queen’s death might one day weaken the 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 Common
wealth, the benefits of abandoning the misleading notions attached to it are all too clear.