Toxic Comfort Blanket: Imperial Delusion in Modern Britain

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Might vs right

The development of the Eurocentric ‘law of nations’

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Jennifer Pitts
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O 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 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-slavery 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”.

The 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.

Pitts shows, the law of nations’ “theoretical and conceptual categories reflected the extent and significance of European states’ and other agents’ relations and activities outside Europe”. Through this process, 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, their law that Europeans created for themselves, their law, was 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 maximalist 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 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 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 a 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.
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 nineteen-century progress of the law of nations reminds us that in the past, as today, people did not always speak with 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”. Values persistently were on the march. Pitts’s account 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 supposed 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 Hyacinthe Anguett-Duperron, in discussing the application of the law of nations, was even more sympathetic to non-Europeans, launching a “profound critiqu 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. Murism 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 successes may help us develop a law of international relations that will bring about the “greater justice and equity” that critics of the eighteen- and nineteenth-century law of nations hoped to find. Fortunately, there are many more diverse voices to be heard on this subject. Pitts’s book shows that we might look again by Conservative and Eurosceptic voices to the EU or a meaningful global alliance as ill-suited 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 democracy, the rule of law and human rights, could manipulate the organization to bolster its international legitimacy. The Leicester 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 governor who supports Donald Trump together with keeping the Confederate battle cross on the state 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 Commonwealth, the benefits of abandoning the misleading notions attached to it are all too clear.

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 democracy, the rule of law and human rights, could manipulate the organization to bolster its international legitimacy. The Leicester 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 governor who supports Donald Trump together with keeping the Confederate battle cross on the state flag, is another example of the Commonwealth’s tarnished moral authority.

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