New Approaches to the History of International Law

UPENDRA BAXI*


I. PREFATORY

Because the history of international law still remains a singularly underprivileged field of studies, the editors of Cambridge University Studies in International and Comparative Law deserve warm felicitations for nurturing the publication of two exceptional works by Anthony Anghie and Gerry Simpson. Conscientiously researched, elegantly written, and marked by a high order of critical imagination, these works extend the power of the notion of ‘redemptive history’. Both Anghie and Simpson implicitly subscribe to Walter Benjamin, for whom ‘history’ is ‘the subject of a structure whose site is not homogenous, empty time, but the time filled by the presence of the now [Jetztzeit]’. The practices of writing ‘redemptive’ history acquire the edge of cogency in the ‘eternal present’ within which the ‘historical’ makes sense through the ‘past’.1 Both the books illustrate the practice of redemptive history in terms of reading the past of international law, which was ‘never written’.

On another register, Anghie and Simpson stunningly carry forward, and indeed go much beyond, the genre pioneered by Charles Alexandrowicz at three ‘peripheral’ world order locations – Krakow, Chennai, and Sydney. I dedicate this brief review essay to the luminous memory of my distinguished friend and one-time colleague at Sydney University. Charles had the courage of his conviction, in a wholly pre-postmodern era, that defiantly legitimated the telling of the stories of the making of modern international law from non-Eurocentric perspectives. Charles and I had many differences that surfaced in the University of Sydney Law School's Grotian Society papers, especially as concerned classical Indian anticipations of the ‘modern’ international law; he briefly responded to these in his contribution to the *British Yearbook of International Law*, while I wrote for the *Indian Yearbook of International Law* that Charles himself pioneered while at the University of Madras. I therefore

---

* Professor of Law, University of Warwick.

sense and share the caveat-acknowledgement of his legacy in both Anglie and Simpson. Yet re-situating Charles’ work alongside Anglie and Simpson may be worthwhile at least from the standpoint of critical legal theory and postcolonial scholarship, including the TWAIL (Third World and International Law), a genre that relates to peoples in struggles and communities of resistance everywhere in a hyper-globalizing world. Given this, I suggest that the series editors and the Cambridge University Press eventually facilitate translation of these works, at least coequally in the official languages of the ‘great powers’ and the ‘outlaw states’.

2. ALTERNATE APPROACHES

The enormity of the scope of their project forbids any simple overview of histories that Anglie and Simpson construct. The constant caveats concerning the discursive objects – what their books are not about – clarify the original authorial intent and facilitate readerly grasp, though my own reading suggests otherwise. Both the authors fully acknowledge specific disciplinary boundaries and burdens. Yet ‘the zones of indiscernibility’ (to adapt a phrase by Giorgio Agamben) between the disciplines of international law, relations, and organization here constantly irritate.

Anglie and Simpson share themes common to the nascent tradition of the histories of the making, and unmaking, of international law – sovereignty, equality, self-determination, and legal controls over the use of force within the contexts of positivism and naturalism, universality, and historical particularity. In recent years alternate approaches have contributed imaginative ways of narrating both the ‘past’ and ‘history’ of international law and relations (to evoke a germinal distinction of Benjamin). However, the works under review present some crucial points of departure.

‘Sovereignty’ and ‘equality’ – these two key words have always constituted the gourmet diet of historians of the making of modern international law. Both Anglie and Simpson, each in his own way, revisit, as already noted, the narrative abundance of normative, institutional, and politically situated analyses. Given the state of art, it did not seem quite possible that the transcripts of the historical effects of equality and sovereignty would offer any further prospect for critical exploration. The extraordinary violence of the foundational moments of the making of modern international law is rather well known and the stories concerning its reiterative repressive violence have also been told often, especially recently in terms of constitution of subjectivity/subjection. Numerous insightful narratives of the Siamese twins colonization and imperialism also abound. The practices of violent social exclusion and of epistemic racism embedded in the making of both modern and contemporary (or, if you like, the postmodern, ‘postcolonial’, and ‘globalizing’) law, relations, and organization have often been archived from the vantage point of critical race, feminist, and post-feminist narratives. Reading the canonical texts of international law already constitutes the habitus of diverse historiographical acts and practices of reading.

Even so, incredibly, both Anglie and Simpson, each in his own distinctive way, produce new narrative itineraries of reading the landscapes of the evolution of ‘modern’ and ‘contemporary’ international law and the astonishingly versatile forms of their doctrinal and institutional development. Anglie insists, with formidable evidence, that the ‘colonial history of international law is concealed even when it is reproduced’, and Simpson likewise confronts this in terms of the regime of ‘legalized hegemony’ manifest in the ‘reciprocal’ and dialectical relation between ‘great powers’ and the ‘outlaw states’. Both these narratives speak to the uncertain promise of international law, relations, and organization, in all the plenitude symbolized by the current crises of the ‘terror wars’ that, all over again, reproduce the ‘outlaw’ as a constitutive category, in the early years of the twenty-first century, in terms of the future making of the complex and contradictory heritage (Anglie, chapter 6, and Simpson, chapters 10 and 11). Thus, in their works emerge some new narrative futures – a stunning achievement, indeed.

In critiquing the older traditions of historiography of international law and relations, they advocate ‘alternative ways of writing history’ (Anglie, p. 12; Simpson, pp. 11–12). Anglie urges us to ‘rethink the prevalent history of the discipline in ways that move away from the major schools of international jurisprudence’, namely ‘naturalism’, ‘positivism’, and ‘pragmatism’ (p. 151), each associated with ‘different paradigms of international jurisprudence’ (p. 11). He also insists that we attend closely to the task of the ‘telling of alternative histories’ – ‘histories of resistance to colonial power’, ‘history from the vantage point of peoples who were subjugated to international law’, and the ‘unique histories of non-European peoples’ (p. 8). Simpson likewise challenges the ‘linear’ narrations of the older traditions, and argues for the development of a ‘theoretical intellectual history’ of international law and relations that would address the ‘struggle between the two conceptions of international society’, the pluralist and the anti-pluralist (p. 231; see also chapter 3). Reading both the works together suggests the problematic character of the dominant theoretical constructions of international law, relations, and organization and some alternate approaches to conceptual, normative, and institutional histories.

2. Simpson develops the caveats almost as a minor art form.
3. Simpson explicitly acknowledges his situatedness within the English tradition of ‘doing’/‘thinking’ international law (p. 250).
7. I desist from voluminous citations, save as concerns the feminist approaches to draw attention to the works of Hilary Charlesworth, Martha Nussbaum, Ruth Buchanan, and Anne Oxford, and as concerns critical race theory geese in a recent work by Patricia Tulit, State Law and Resistance (2004).
3. SOME ISSUES OF METHOD

At first sight, we stand confronted with the problematic of naming the difficult boundaries and borders of several disciplinary formations. The learned authors invite us to remix the already intertwined disciplinary traditions in modes that even further fuse the borderlines between disciplinary logics of international law, relations, and organization. I do not quite now how the cognoscenti may receive this solidary gesture of 'cross-dressing', as it were. I may not here pursue the issues that thus arise.

Nor may I further pursue the questions well beloved of professional historians concerning the ways of periodization. To take a simple example, neither the third period in Simpson nor the periods of the emergence of imperialism in Anghie provide any safe descriptive harbour. Available histories of the Cold War caution against collapsing several moments into a single period: its early, middle, and late phases provide different histories of superpower rivalry, politics of catastrophic cruelty, and the accelerated normative developments in the sphere of human rights. Anghie himself remains acutely conscious of the fact that the long durée history of colonization (from 'roughly 1870 to 2003') insufficiently periodizes the varieties of colonial experience (p. 12).

Acts of periodization remain further inescapably influenced by their framing categories. These categories in turn entail master frames, a summary gesture situating Anghie in a frankly Foucauldian and Simpson in the Gramscian strain may not be entirely unfair, especially because it brings to view 'materiality' — that is, harnessing the potential of normativity — as well as anomic, that specifically entrench the pursuit of global power and profit by the 'great powers'. In Simpson 'materiality' emerges in terms of the constant negotiation of the 'forces in world politics' with, and 'institution-building, inter-disciplinary struggle, and rhetorical contestation' (p. 15); in Anghie it emerges in terms of the classical forms of colonization and the resistance to neo-colonialism in normative histories of the New International Economic Order and permanent sovereignty over natural resources, the regimes of international financial institutions and development aid, and ethnic wars in the 'new' nations. Anghie notably addresses the changing profiles of 'materiality' via recourse to the variegated notion of 'exploitation'. Simpson, too, finally adds to his illuminating discourse concerning the various histories of production/reproduction of 'juridical' inequality the plenitude of 'existential inequality'.

Both the texts present narrative tensions in the genre of the 'regressive' and 'progressive' Eurocentric discourses, a distinction that Žizek now constantly problematizes. Neither seems to have much direct use for the Marxian or socialistic traditions, at least in terms of constellations of histories of ideas that presented critiques of the bourgeois/imperialist theory and practice of modern international law, relations, and organization. The name of Ralph Tunkin, the leading theoretician of the Soviet approaches to international law, for example, does not even figure in the indexes of the two works! This omission, though not an uncommon gesture, to say the least, here remains rather disappointing. Further, it does not augur well for the future globalization of yuppies generations of publicists, already enslaved by Microsoft modes of thought that at a push of the cursor delete the entire histories of normative and strategic thought traditions, within which so much of the Third World reimaginings of the ends of international law stood also historically enwombed.

Also at issue remains the narrative tension concerning the authorship of international law norms, standards, values, and visions. More precisely put, how may anyone ever fully offer an impact analysis of the role of the 'publicists' in the shaping of the normativity and anomic of the marking/remaking/unmaking of histories of international law? In what ways, for example, may we square the becoming reticence of Anghie, who insists that it remains 'difficult to assess how the ideas of jurists like Alvarez and Hudson affected the formation of international law and institutions' (p. 155), with his devastating critique of the impact of Vitoria (chapter 1)? In a different vein similar questions inflect Simpson's narratives of performances of Rui Barbosa (pp. 142–4) and the several related instances of the early and later Third World-type intrusions that, however unavailly, humbled the registers of resistance. Simpson remains almost unerring in his accounts of liberal anti-pluralist publicists (pp. 235–53), raising again the issue of impact. Simpson remain especially puzzling some borderlines between freethinkers and the servants and savants that fashion the practices of both 'legalized hegemony' and the various anti-pluralisms. All this further raises the distinction between the 'ideologues' and 'free' thinkers, in their impact on the making/unmaking of international law normativity/anomie, to which I briefly refer in the next section.

4. UNDERSTANDING ANGHIE

Four figures of thought remain crucial to Anghie's work: Vitoria, colonization, imperialism, and development. Each of these represents (to evoke here a favourite phrase of Jürgen Habermas) 'continents of contested thought'. Anghie remains engaged not so much with the conceptual histories of the last three figures but rather with their effective histories of power. And even these remain foregrounded in his critique of Vitoria, so much so as to characterize the constituent elements of the Mandates system in terms of the 'universal human being' as 'postulated' by Vitoria (p. 165) and the narratives of the current face of imperialism and its war on 'terror' (chapter 6) as resurrections of the 'Vitorian moment'. This ironic figuration also then emerges as a whipping boy for Anghie. The difficult engagement with Vitoria, in sum, defines for Anghie the future tasks of constructing both a more adequate history of international law, relations, and organization and also the wherewithal for its reconstruction in terms of 'anti-imperialist' futures.

It is in this context that I now all too briefly examine the complex and contradictory relationship between Vitoria and Anghie. While I remain at home, as it were, with his critique overall, this congeniality poses at the same moment some difficult, even

---


10. Thus, for example, historians of globalization and world-systems (Immanuel Wallerstein, Giovanni Arrighi, Janet Abu-Lughod), decolonization and postcoloniality (Robert Young), human rights, and feminist, critical race theory, and subaltern historians may variously fault the learned authors, offering different periodization and framing categories.
On the register of sovereignty, Vitoria already remains deeply troubled by his own distinction between the authority to wage just war. The authority rests with a 'perfect commonwealth' and the Prince. Despite his final gesture endowing both with 'equal authority', he valiantly confronts the 'nub of the problem' concerning how may we determine the realms of the commonwealth from those of the Prince. If the former symbolizes a 'perfect community' which 'is complete in itself', the Prince remains only as a 'chosen' and 'authorized representative' of such a commonwealth. If Vitoria may be thought of as an early theorist of sovereignty he remains, in the contemporary idiom, deeply republican and cosmopolitan, thus complicating any summation of his normative justifications for waging 'just' wars. In the dimension of the history of ideas, it remains unclear whether Vitoria altogether disqualifies indigenous peoples as being wholly incapable of constituting a 'perfect community', even when these may remain bereft of the Prince.

Of course, I understand and appreciate Anghi's critique in terms of histories of power and domination and the superb deconstructive trophy that Vitoria thus offers. At the same moment, I wonder whether this genre of reading may exhaust the 'Vitorian moment'. This remains no doubt mined in some performative enunciation informed by the hermeneutics of the Catholic Christian piety. But the ways in which Vitoria address Christian plenitude also alert us to similar tensions in traditions of pious interpretation, such as the differential traditions of Buddhism (that Anghi somewhat collapses) or even further the Shia/Sunni divergences concerning martyrdom.

This brief review essay may not proceed any further in highlighting some alternate understandings of the corpus of Vitoria. Even so, any reading of Vitoria that more rather than less presents his inaugural work as a source of contaminated origins of modern international law remains contestable. Is, after all, a reading that configures Vitoria as a source of justification for the production by the Theatro of the savage human rightlessness of the India the most compelling? Is his heroic defence of the rights of the Indians constituting, to reiterate, heresy (against the Pope) and treason (against the Emperor) only to be understood as furnishing the grammars of a new 'secular natural law' under which auspices the annihilation of cultural difference must necessarily thrive and prosper? Is Vitoria's invention of a new jus gentium necessarily flawed by his insistence on that order of jux cosmopolitanum that authorizes a minimal ordering of hospitality to strangers, or the ordering of respect by co-nationals for the non-injurious rights to entry, trade, commerce, and proselytizing intercourse? Is it, after all, the case that we read 'Vitoria's scheme' entirely as entirely legitimating 'the endless Spanish incursions into Indian society' (p. 21)? Is it, after all, the case that about 168 State Department lawyers who strove to fabricate and bolster justifications for the doctrine and practice of pre-emptive war and regime change as the harbingers of a 'new' international law remain, in any sense, the lineal descendants of Vitoria? Did Vitoria after all, at the end of the day, or rather the long night, fully enact the latter-day dictum of Alf Ross, who laceratingly

11. Rossi, supra note 5, at 116.
13. Ibid., at 301. Anghi himself notes this observation at p. 26 but does not have much use for it, after all.
14. Ibid., at 270.
15. Ibid., at 302. Vitoria describes its features as follows: it is not a 'part of another commonwealth', and has 'its own laws, its own independent policy, and its own magistrates'.

insoluble, questions concerning the acts of reading Vittoria, who hovered between treason and heresy in contesting both the papal and princely authority/authorship of the new international law normativity/anomie. Anghi's reading of Vittoria would have been more nuanced by engagement with other readings, especially that of Christopher R. Rossi, who suggests that Vittoria marks an inaugural paradigm shift of 'natural law in the direction of natural rights' and also further articulates 'a proto-sceptical critique of universality'. In saying this, I remain aware that Anghi may further contest Rossi's reading elevating Vittoria over Grotius or, as he puts it, the contrasting styles of 'scholastic' as opposed to 'humanist' approaches 'which legitimised imperialism using entirely different vocabularies' (p. 315). This, then, raises some unresolved issues concerning sociology of knowledge, which I do not directly here pursue; however, I offer only one instance illustrating the hazards of schematizing any narrative of Vittorian moment/project.

Anghi offers a reading that suggests that 'fundamental to Vittoria's argument' is the proposition that the 'Saracens are inherently incapable of waging a just war' and 'in essence only the Christians may engage in a just war' (p. 26, emphasis in original). Anghi thus summates Vittoria's position both in terms of Christianity and sovereignty (the latter because only sovereigns may declare and wage wars and non-European and indigenous people did not qualify as sovereigns). However, other students of Vittoria (including myself) may find his position to be far more nuanced.

On the register of Christianity, Vittoria himself has considerable difficulty in resolving the first question, 'whether it is lawful for Christians to wage war'. His absolute affirmative response here rests on his summary disregard of Luther, 'who has left no nook untainted with heresies'. Vittoria finds little sense in Martin Luther's insistence that the 'will of God' authorizes equally the invasion of Turks of Christendom which 'it is not lawful to resist'. This, despite this gesture, discomfits haunts Vittoria in dealing with the question concerning the sufficiency of the Prince's subjective belief that the cause is just; if this were to hold, 'Even the wars of Turks and Saracens against Christians will be justified, since these peoples believe that they are serving God by waging them'. Surely, then, for Vittoria 'no God whispering into the ears of any Prince, whether 'heathen' or Christian' (including some current incumblings of the White House and Whitehall), may ever finally decide the terrains of ad ad bella, as well as those of jus in bello and jus post bellum. Indeed, Vittoria unhesitatingly condemns some Christendom-inspired belligerent justifications as 'nothing more than a fraudulent calumny concocted to justify persecuting non-Christians'. He accordingly advocates a series of objective deliberative criteria, which speak both to the sources of religiously sanctioned warfare and the situation of conscientious disobedience. In terms of the motifs of 'redemptive history', one is not quite sure whether an Anghi-type act of reading remains entirely compelling.
said that 'natural thought' is like a 'harlot' which anyone may 'rent for a night's pleasure'.

The latter question must be reformulated in entirely non-sexist terms and further transported outside the ensemble of crude practices of the vulgar Marxian habitus. How may we draw any distinction between state-fulled (ideologues, these hired hands who mouth justifications for imperialism) and state-free or freestanding thinkers and thought traditions (those that critique claims of sovereignty as exhaustive of tasks of justice)? And how may the erasure of such a distinction frankly serve the visions and tasks of redemptive history? If Victoria's scholastic corpus was merely a mask on the hideous face of incipient imperialisms, how may one avoid a nihilistic critique for any normative quest for ordering power and aggression in international relations?

Of course, one may pursue an iconoclastic critique to pursue some constructive, not nihilistic, aims. This is what Anghe does in two crucial textual moves. His celebration of the 'dynamic of difference' rejects (what Emanuel Levinas termed) 'the imperialism of the Same'. And he insists further on the potential for endless negation, rather than flat rejection, of international law (values, norms, and standards) on behalf, and even at the behest, of the continually oppressed subjects. Precisely on this register he embodies a Programmschrift of reconstruction in a Vitorian vein, divested of the overload of imperialist signatures. If so, it is not entirely clear why Anghe chooses a reductive reading of Vitoria that is not at the same time recuperative. To raise this question is not to dissociate myself from the radical impulse that presides over Anghe's privileged deconstruction of Vitoria; rather I suggest, in the companionship of Paul Ricoeur, that the 'defeat of knowledge' is the other side of working toward the recovery of meaning.

Moving perforce ahead, Anghe's narrative ventures at reading the devastating histories of the making of the 'modern' and 'contemporary' international law, relations, and organization remains especially compelling. He brings home the roles of imperialism in full play, and war, in the contemporary remake of international law. Chapter 3 constitutes the coup de grâce. No one, before Anghe, has so fully archived the history of the variegated reproductions of historic exploitation of the semiotic/materialist regimes of the 'sacred trust of civilisation'. His overall conclusion (p. 194) concerning the mandate system remains enormously compelling, as marking a narrative shift from the historic to the palseo-ontological:

we might see, almost, see it as in a fossil recording a crucial transition in the history of a species, a number of shifts in the history of international law: from sovereignty to government; from race to economics; from conquest to decolonization; from colonization to neo-colonization; from exploitation to development; and from England to France and the United Sates.

Crucial, too, remains his attendant conclusion (p. 195) that 'the enduring vulnerabilities created by the processes that by non-European states acquired sovereignty pose an ongoing challenge, not only to the peoples of the Third World but also to international law itself'. In this context, too, remain memorable Anghe's several instantiations of the celebration, notably by Lord Asquith, that install the English law merchant, in international arbitration, as the 'modern law of nature' (p. 226). Of particular poignancy remains Anghe's invocation of Fanon the colonized subject as a decisive site that seeks to 'embody history in his [her] person' (p. 308). No less pertinent remains, on an entirely different register, Anghe's insistence that creatively deconstructs the binaries between 'public' and 'private' international law corpus, text, and genre. To be sure, this 'boundary-crossing' remains important for some future narratives of the 'new' international law as well.

5. Decoding Simpson

Unlike Anghe, Simpson has no time for Vitoria, so much so that the name Vitoria does not even figure in his index! The intellectual history that Simpson narrates begins with a specific date: 1875. Simpson's major focus remains on various diplomatic and institutional histories that shaped the historic great powers' disdain for 'middle' and 'small' 'peripheral' powers, the violent exclusion of the 'enemy' and 'outlaw' powers, and the contribution that liberals (both pluralist and antipluralist) may have made to this discourse. His narrative is organized around historical constellations, which manifest a 'practice of willing into existence new legal regimes in moments of constitutional crisis in the international system' (p. x, and also pp. 11, 13).

This careful marker then enables Simpson to put to use the notion of hegemony in a versatile manner. Not content with the descriptive narration of many moments of agony and ecstasy of great power entrenchment of domination, Simpson insists that the form of international law itself remains grounded in and reproduces differential equality (see chapters 4-7.) Simpson does not have recourse to the form of analysis pioneered by Marx, Simmel, and also Luckas, but their 'brooding omnipresence' (to evoke a phrase of Justice Oliver Wendell Holmes Jr) remains unmistakable. Like a literary or aesthetic historian, a historian of international law may not simply offer a tableau of contents—the diverse exuberance of state practice and of the publicists—but ought also to strive to grasp the form within which contents may make sense. For Simpson, these tasks remain succinctly captured by the thematic of 'legalized hegemony'.

17. Ibid., at 266.
19. Central to Simmel's analysis was the notion of forming practices, the material labours of understanding multidimensional content within the stability of form, for Marx all this signified registers of a dialectic tension, even contradiction, between the forming practices themselves. See Baxi, supra note 9, at 122-3; and see also U. Baxi, Marx, Law, and Justice (1993), ch. 6.
Simpson articulates this framing category in entirely reader-friendly ways. In sum, legalized hegemony formats exuberantly provide for the 'realization through legal forms of Great Power prerogatives' (p. x). However, the category undergoes many a complex transformation. It encompasses, on the one hand, the historic and normative processes that compose and recompose great powers and their prerogatives, and the entire range of hegemonic intentions and enactments from 1875 onwards to the present moment, and on the other hand similar histriences of middle, small, and antagonistic powers. And Simpson privileges us by offering a magnificent ringside view of these developments.

Thus we hear variously about the distinction between 'political' and 'legal' hegemony, the fictional quality of equality in aid of hegemony, and 'soft legalism' that negotiates and offsets hegemony. Emblematic of his entire work remains, in my adaptation, Simpson's observation (at p. 163) that all developments in international law, while displacing as 'unlawful' the 'political hegemony of a single power', also 'set in place' the 'legalized hegemony of the Great Powers'. This stunning insight remains fully instantiated in some gifted narratives of 'willed creation' of new international law from 1875 to 2003. All this invites two reflections: on the discourse of hierarchical equality developed by Louis Dumont's classic work *Homo Hierarchicus* (that revisited, accompanied by great contestation, the study of the Indian 'caste' system) and also my differences with the other trope symbolized by John Rawls's more recent *The Law of Peoples* (that normativizes five types of society in world orderings) that finds rather short shrift in Simpson.

This narrative of 'legalized hegemony' raises as many questions as it answers. At an explanatory level, surely, the following questions still persist: why did the legalized hegemony of the great powers in the League of Nations era remain so peculiarly weak (p. 158)? how may one also explain the pre-eminent role of some 'small' powers (such as the Netherlands and Mexico, for example: pp. 98, 107, and 171–84)? how may we fully understand the counter-hegemonic role of the enemy and outlaw states? and where do we place the struggles for decolonization and self-determination as also the once-upon-a-time 'solidarity' of the Third World bloc of non-aligned and socialist states in any munificent narrative of legalized hegemony? How may we grasp fully the role of international law in the assorted production of the informed consent both within and outside the spheres of the great powers? I believe, on all these and related counts, that Simpson's work, read alongside Anghie's, holds considerable potential for the future practices of writing histories of international law.

If legalized hegemony stands for a mix of the combinatoric modes of persuasion, negotiation, and aggression, an obvious question arises concerning any bright lines of distinction that the gifted raconteurs of international law may after all draw among these. Paradigmatically, the question remains as to why great powers need to walk on the fragile crutches of international law at all, when overwhelming advantage lies in the practices of dominance without hegemony. Simpson offers at first sight an incredible thought: great powers 'are loath simply to step outside the law and use brute force', that while they make and remake law 'they rarely break it', and that they see 'themselves as acting under the shadow of international law' even if and often 'the shadow they see is their own' (p. x). Denuded of its ironic tone, this of course invites a dire confrontation from an entirely global subaltern or the globalized victim standpoint. And the 'shadow' metaphor invites an interesting reading on a Lacanian register that would trace the politics of intergovernmental desire in terms of the split subject, in which the 'normative jurisprudential world . . . has already crashed'. I do not know how far the Lacanian framework may offer different starting points for the theory of history of international law, relations, beyond the languages contrasting 'anarchy' with 'order', 'sovereignty', 'equality', and implicit in the kindred notions. Briefly put here, Anghie and Simpson discourses certainly provide grist to a Lacanian mill.

I remain unsure concerning Simpson's analytic, fully granting his call that the forming practices of international law, relations, and organization stand in need of demystification. Simpson suggests that we understand the ways in which 'a thin and fragile system of universal law applicable to all' stands always ruptured by the installation of 'two highly developed legal domains'. In the first domain 'the sphere of liberal transgovernmentalism or democratic peace remains the more persuasive and has more bite than in the classical model'. In the second, what prevails is a 'highly regulated sphere of intervention and exclusion', which variously permeates the development of international criminal law and the modes of eternally recurrent distinctions between the 'enemy' and the 'outlaw' states (p. 314). In this rather persuasive sense, Simpson after all seems to revert to Marx's analysis of the crisis-ridden dimension of the law-forming practices. However, two questions obstinately persist. First, in what ways may the category of legalized hegemony reconstitute the older traditions of writing histories of international law that variously authorized the description of the form in terms of the division between the law of peace and war, from Oppenheim to Friedman and beyond? Second, and rather vexatiously, remains the question as to how this category, or even the framework, may after all address the distinction between histories of international formative practices demarcated by the narrative tension between the 'law of peoples' and 'international law'.

6. Embarrassment of riches

The embarrassment of richeses of Anghie and Simpson herald a prospect for renewal for some future practices of writing of histories of international law, relations, and

---

20. Simpson’s narrative of the self-positioning struggles of the fledgling ‘middle’, ‘minor’, and ‘peripheral’ states or the ‘emergent political communities’ (pp. 175–84) remains of poignant contemporary relevance in the contexts of the two terror wars and now of the future histories of ‘legal controls’ over the emergent nuclear-power states (Iran and North Korea, for example). His contribution richly invites a hermeneutic of retrieval; in these halcyon days of the institutional renewal of the United Nations, Simpson provides valuable scope for revisiting various principles and procedures for a more egalitarian world order; see, e.g., pp. 175, 180, 183, and 184.


organization. Each in distinctive modes foregrounds new approaches to the forming/formative understandings of the past, present, and future international law. Both problematize the narrative traditions of conventional historiographies. In so doing, Anghie and Simpson give a kiss of life to the discipline of historiography of international law. Their precious, as well as precautious, narratives further alert us to some dangers of the practices of teaching international law, relations, and organization in the halcyon moment of hyper-globalizing and post-Fordist authoritarianisms. In the process, they also contribute, perhaps regardless of authorial intent, to a future tradition of critiquing pedagogic and research traditions, sufficiently informed by the disciplines of history of ideas and the global circumstance now informing, if not altogether constituting, the itineraries of sociology of knowledge production. We may, in the present conjuncture, ask no more from these inaugural moves.