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Review Essay

Is Another World Possible?

*By Guy Fiti Sinclair**

Becoming International. By Jens Bartelson. Cambridge, UK: Cambridge University Press, 2023. Pp. xii, 467. Index.

Boundaries of the International. By Jennifer Pitts. Cambridge, MA: Harvard University Press, 2018. Pp. xi, 294. Index.

Imperialism, Sovereignty and the Making of International Law. By Antony Anghie. Cambridge, UK: Cambridge University Press, 2005. Pp. xx, 356. Index.

International law today feels less like a source of stability in the world than a record of its unraveling. From Russia's invasion of Ukraine to U.S. President Trump's threats to annex Panama and Greenland, from U.S. airstrikes on Iran and alleged drug boats in the Caribbean and Eastern Pacific to Israel's protracted bombardment of Gaza, from Trump's upending of the liberal trade order to his radical defunding of international institutions—the sense that the world has veered wildly off course has become pervasive. That international law appears powerless to reverse this course, and may indeed be complicit in it, has also become a matter of public knowledge and discussion.[1] Yet if international law is in crisis, is that crisis new, or is it simply the re-emergence or re-enactment of older patterns?[2] And if the latter, are there any grounds to hope that it might serve as an instrument of reform and betterment in the world?

The three books reviewed here invite us to see today's disorder, in international law as well as the world at large, as the continuation of empire by other means. Jens Bartelson's *Becoming International* investigates how, beginning in the sixteenth century, the "international realm" was "conceptualized into existence and became taken for granted" (Bartelson, pp. ix, 9). Jennifer Pitts's *Boundaries of the International* [hereinafter *Boundaries*] examines the "ideological and political work"—the justifications, distortions, and occlusions—performed by international law during the eighteenth and nineteenth centuries, with implications for its

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[1] *See, e.g.*, Linda Kinstler, *Are We Witnessing The Death Of International Law?*, Guardian (June 26, 2025), *at* https://www.theguardian.com/law/2025/jun/26/are-we-witnessing-the-death-of-international-law.

[2] *See* Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 Mod. L. Rev. 377 (2002).

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present-day reception and efficacy (Pitts, pp. 1–2). Both books owe thematic and intellectual debts to Antony Anghie's groundbreaking *Imperialism, Sovereignty and the Making of International Law* [hereinafter *ISMIL*], which covers a similar timespan to Bartelson but is closer in some ways to the approach adopted by Pitts.[3] Each of these books suggests that empire has never disappeared from international law, only mutated through shifting arrangements of dominance and subordination. But if that is so, then perhaps the very frameworks we rely on to make sense of the present—international law, sovereignty, the idea of an international realm itself—may blind us to the possibility of imagining a better world.

This essay compares the three books under review along three dimensions: the approaches they take to understanding international law's relationship to empire; what voice and agency they grant, if any, to non-European actors and other dissident voices in shaping the international legal order; and the extent to which they view empire as ineluctably embedded in international law today. I highlight these issues because the stories we tell about international law's origins and ongoing formation play a vital role in alternately opening up or foreclosing possibilities for the future. As I will show, the books diverge in important respects over these central questions, with profound implications for how we might begin to imagine and construct a more just and emancipatory international order.

I. International Law's Imperial Origins

All three authors locate the problem with international law (or in Bartelson's terminology, the "international realm") in its imperial origins, though they differ in what that means. For Bartelson, the characteristic feature of the modern world is precisely its *international* makeup, which he begins by defining as the "division of humankind into nation-states." In particular, he aims to challenge what he sees as a "broad agreement" among scholars that the international realm emerged "only by superseding imperial forms of rule which had previously been dominant"—that is, that "the world was imperial before it became international" (Bartelson, p. 1). Existing narratives pinpoint this transition to different emblematic moments: the Peace of Westphalia, the Congress of Vienna, the Paris Peace Conference, or the Bandung Conference. Bartelson examines and dismisses each of these possibilities in turn, contending that the effort to "locate the historical origin of the international realm is a futile exercise that merely risks reifying that realm into an abstract thing" (Bartelson, p. 5). Instead of such "*transitionist*" narratives, Bartelson argues in favor of an "*emergentist*" account, according to which the international realm emerged "as a consequence of sustained efforts to make sense of relations between polities from the onset of European imperial expansion to the end of decolonization" (Bartelson, p. 5 (emphasis in original)). As such, the international realm "is better understood as a continuation of the imperial world by other means rather than its historical successor" (Bartelson, pp. 5–6).

[3] Bartelson cites Anghie in only five footnotes, and on each occasion as one in a series of references. Jens Bartelson, Becoming International (2023). In contrast, Pitts acknowledges Anghie's influence directly, singling out *ISMIL* as a "landmark" in the critical historiography of international law. *See* Jennifer Pitts, Boundaries of the International 16 (2018). It is worth noting, however, that Pitts's doctoral thesis and first book focused on the treatment of empire in eighteenth and nineteenth century European political thought. See especially: Jennifer Pitts, A Turn to Empire (2005).

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Facially, at least, this argument bears some similarity to Anghie's. Like Bartelson, Anghie depicts the encounters between different societies during European imperial expansion as formative of international law, and views present-day international law as an extension of imperial relations. His argument, well known to most scholars of international law by now, is that "colonialism was central to the constitution of international law in that many of the basic doctrines of international law ... were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation" (Anghie, p. 3). Yet in focusing on the colonial encounter between European and non-European peoples, Anghie's thesis is diametrically opposed to Bartelson's. The latter depicts the international realm as "an accidental outgrowth of European power politics into alien contexts" and as "originally a regional order which has taken on imperial features as a consequence of being globalized" (Bartelson, p. 221).[4] In contrast, Anghie aims to show how international law's colonial origins created "a set of structures"—including the civilizing mission and what he terms "the problem of cultural difference"—that "continually repeat themselves at various stages in the history of international law," including in the present day (Anghie, pp. 3, 311).

Pitts, too, begins from an understanding of international law as being "in important respects a product of the history of European imperial expansion" (Pitts, p. 2). Positioning *Boundaries* as a "critical history of international law," informed by "a postcolonial sensibility," in the tradition of Anghie and Martti Koskenniemi, her interest lies in international law's potential to have a positive effect (Pitts, pp. 15–16). If that law merely comprises "a set of institutions and discourses developed at least in part to sustain and justify the domination by a handful of Western European states over much of the rest of the globe," then how can it possibly "hope to win the allegiance of those whose societies historically suffered under those institutions?" (Pitts, p. 2). By examining international law's ideological effects "with respect to relations between the imperial powers of Western Europe and states and societies outside Europe," Pitts hopes to illuminate its continuing deployment "to obscure dynamics of domination by the Global North over the Global South" (Pitts, pp. 1–2, 27). Her narrative traces a broad shift from a (mostly naturalist) law of nations in the eighteenth century which incorporated some non-European societies, albeit with some ambivalence, to a (mostly positivist) international law in the nineteenth century comprising members of the European family of nations that were deemed to meet a racialized standard of civilization.

Becoming international, *making* international law, *boundaries* of the international: each of these books proposes a different metaphor to explain the imperial origins of today's international order. Bartelson's title evokes *emergence*, described in rather passive terms as "the process through which the world became international" (Bartelson, p. ix). Anghie adopts the arguably more active metaphor of *construction*, as he seeks to lay bare the fundamental dynamics underlying the making of international law. Pitts in turn defines her project in *cartographical* terms, as aiming to map "the shifting boundaries of the international, and their justifications," charting international law's "contours and limits," and examining "alternative efforts to navigate the tensions between international law's universal

[4] It is notable that Anghie cites Bartelson's book, *A Genealogy of Sovereignty* (1995), as an example of a recent work in which "colonialism features only very incidentally": ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 35, n. 5 (2005).

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aspirations and its particular European features" (Pitts, pp. 4, 8, 27). As starting points for their distinct methodologies, these metaphors have profound implications for the stories they tell and the conclusions they reach.

The three books under review accordingly offer very different answers to the question of how we should do the history of international law.[5] *Becoming International* draws on Nietzsche and Foucault for a genealogical approach that focuses on the conditions of emergence of the international realm at multiple points in time, instead of seeking a single point of origin. This is an avowedly *intellectual* history, professing to pay resolute attention to the changing meanings of the concepts of "empire" and "state" at different periods in time. As Bartelson recognizes, there are some inherent difficulties with applying this methodology across multiple centuries and settings, as his key terms may be used interchangeably, may mean completely different things, and are often contested (Bartelson, p. 12). He claims to resolve these problems by making indirect inferences "based on how authors have conceptualized political authority . . . in ways that imply the existence of something international," and by focusing on "how notions of authority, legitimacy and recognition have travelled across oceans and centuries and have taken on new meanings as a consequence of being reappropriated for different ideological and political purposes" (Bartelson, pp. 13–14). Whether these moves convincingly resolve the challenges Bartelson himself has identified, or instead just shift them into new territory, remains doubtful.

Whatever the soundness of its method, *Becoming International* unquestionably represents a monumental achievement, canvassing a truly impressive variety of thinkers and texts spanning half a millennium and multiple source languages. In the first of his historical chapters, focusing on the expansion of European empires in the sixteenth and seventeenth centuries, Bartelson analyses the works of an array of Spanish and French humanists—many of whom will be unfamiliar to most international lawyers—as well as Grotius and members of the Salamanca School. His chapter on the late eighteenth and early nineteenth centuries surveys the thinking of some better-known international lawyers (Vattel, von Martens, Wheaton) while also encompassing political thinkers (Paine, Burke, Constant) and the writings of diplomats from several European countries.[6] Reflecting on the rise of nationalism in the nineteenth and early twentieth centuries, Bartelson discusses the ideas of the most prominent international lawyers of the age (Wheaton again, Bluntschli, Lieber, Fiore, Westlake, Oppenheim, Lorimer), as well as a selection of European philosophers (Hegel, Mill, de Tocqueville, Michelet, Renan, Meinecke), historians (Ranke, Treitschke) and political actors (Mazzini, Lord Acton, Lenin, Wilson). In his last historical chapter, examining claims to self-determination in the post-World War II period, Bartelson widens the lens even further to encompass the writings of anti-colonial leaders in the Global South, together with those of Western international lawyers, social and political scientists, and post-colonial theorists who reflected on the emergence of "new" states at this time.

With little space available to provide deep contextualization, it is often difficult to distinguish the ideas of the many thinkers examined in each period of *Becoming*

[5] *Cf.* Ian Hacking, *How Should We Do the History of Statistics?*, *in* THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY 181, 181–95 (Graham Burchell, Colin Gordon & Peter Miller eds., 1991).

[6] These chapters owe an evident (and acknowledged) debt to Koskenniemi's recent work: MARTTI KOSKENNIEMI, TO THE UTTERMOST PARTS OF THE EARTH: LEGAL IMAGINATION AND INTERNATIONAL POWER, 1300–1870 (2021).

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International, or to see how any individual's thinking may have changed over time. Nevertheless, Bartelson manages to identify broad discursive structures at each stage. For example, he argues that competing (and mutual accusations of) ambitions to "universal monarchy" in Europe during the early modern period were channeled into territorial expansion outside Europe, leading to the "construction of a global political space," which in turn "created the preconditions for rival claims to universal sovereignty" (Bartelson, p. 69). Provocatively, Bartelson claims that the result was a conceptual bifurcation between "a system of states in Europe" and "an external arena of colonial empires" (Bartelson, p. 69). Similarly, he contends that revolutionary and counter-revolutionary discourses conceptualized empire in two distinct ways—contrasting an older land-based form, associated with post-revolutionary France, with the newer maritime form "based on overseas commerce," associated with Britain—and thereby ended up arguing both for and against imperial rule (Bartelson, p. 93). Nineteenth-century nationalist movements, far from being incompatible with empire, were in fact bound up with it: "imperial relations were reproduced on a global scale by turning the nation-state into *the* template of political order" (Bartelson, p. 165 (emphasis in original)). Yet here, too, Bartelson concludes that imperial rule was inescapable, as the international system became "an empire in its own right *by replacing rather than containing* the imperial aspirations of the West" (Bartelson, p. 212 (emphasis in original)). (More later on the puzzle of what this could mean.)

Bartelson's determined focus on the *conceptualization* of international relations comes into starker relief when reading *Becoming International* alongside *Boundaries*. Given that Pitts covers a significantly shorter time span, her cast of characters is understandably smaller than Bartelson's. But this is also a matter of choice: by limiting the number of protagonists, Pitts can provide more biographical data to illuminate their motivations, spend more time examining the nuances of their thinking, and situate their ideas in relation to contemporary controversies in public discourse. In successive chapters, Pitts scrutinizes the ideas of two obscure English diplomats to the Ottoman Empire, showing how their published observations first informed the concept of oriental despotism, popularized by Montesquieu, and then provided the bases for critiques of it (Pitts, p. 53);[7] provides an extended analysis of Emer de Vattel's treatment of the relationship between nations and empires; and examines the pluralist approaches to the law of nations advocated by two public figures, the philosopher Edmund Burke and the Admiralty Court Judge William Scott. Pitts's last two historical chapters are the most wide-ranging, exploring transformations in the scope of the law of nations during the nineteenth century, particularly in the varied deployments of Vattel's *Droit des gens* and in the turn to historicism by British international lawyers. Even here, however, we gain considerably more insight into the backgrounds and intellectual projects of Martens, Wheaton, Maine, Westlake, and Lorimer, who make only fleeting appearances in *Becoming International*.

Just as importantly, Pitts discloses details of the political contexts and practices that shaped each of her protagonists' ideas. To take one example, Bartelson cites Vattel's conceptions of

[7] Pitts's account of Montesquieu developing "an ideological picture of European states as inherently anti-imperial, as the preserve of freedom, as forming a unique community of states capable of tempering their hostility through the law of nations and diplomatic flexibility" (PITTS, BOUNDARIES, *supra* note 3, at 53) resonates with Bartelson's argument that an "external arena of colonial empires" came to be distinguished from the European state system (BARTELSON, BECOMING INTERNATIONAL, *supra* note 3, at 69).

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the European balance of power, sovereign equality, civil war, and the right of intervention, noting their usefulness as justifications for imperial expansion. However, Pitts goes further in situating those ideas against the backdrop of the "cataclysm of the Seven Years' War" and reveals how Vattel's universalistic account of the state, being based on "a particular vision of human flourishing … closely associated with Swiss republicanism," could "serve an important ideological function in the context of European imperial expansion" by "render[ing] theoretically opaque the fact that some of Europe's most important powers were global empires rather than simply territorially bounded communities of citizens" (Pitts, pp. 68, 72–73, 79). In a similar way, Pitts shows how Burke's legal pluralism found expression in the impeachment of Warren Hastings, as the British Parliament sought to exert greater control over the East India Company; and how Scott's sympathetic views of the place of non-European societies in the law of nations were articulated in admiralty opinions on maritime controversies arising from the Napoleonic Wars. From Pitts, too, we learn how the preoccupations of Victorian international lawyers were shaped by a series of conflicts—the Crimean War, the Sepoy Rebellion in India, the American Civil War, and the Franco-Prussian War—only the last of which earns a passing reference from Bartelson.

In some ways, *ISMIL* might offer a fairer comparison to *Becoming International*, given their similar timespans. They also share a focus on several episodes in common: like Bartelson, Anghie's narrative begins in the sixteenth century; spends considerable time in the nineteenth century (his longest chapter); and dwells on the formation of post-colonial states in the post-World War II period. Unlike Bartelson, however, he also offers a lengthy chapter on the Mandate System of the League of Nations, and extends the narrative a little further, to analyze the rise of globalization and governance in the late twentieth century and the War on Terror in the early twenty-first. Yet this sequence of episodes reflects a very pragmatic, rather than conceptual, set of concerns. As he states in his introduction, Anghie's study stemmed from his experience as a research assistant on an inquiry into the highly destructive phosphate mining carried out in Nauru, first when it was a League mandate and then as a United Nations trust territory. From there, he was driven to investigate the debates on sovereignty that emerged in the Mandate System; further back, to explore the concept of trusteeship in Vitoria's thought that appeared in writings about the Mandate System, and nineteenth-century ideas about sovereign statehood that underpinned arguments against compensating Nauruans for the harms they had suffered; and then forward, to the consider the problems of sovereignty faced by Third World states in the immediate aftermath of decolonization, under the tutelage of international financial institutions implementing management technologies inherited from the Mandate System, and at a new "Vitorian moment" when these technologies merged with doctrines of self-defense and military intervention.

In each of his chosen episodes, Anghie begins with the practical problems addressed at the time in international jurisprudence. This requires him to pay careful attention to practices as much as theoretical sources, to legal techniques as well as doctrines. Accordingly, after tracing the core tenets of nineteenth-century positivism in the works of international jurists—including their circular definitions of civilization, sovereignty, and international society—Anghie examines the legal doctrines that facilitated assimilation of non-Europeans into the realm of international law through techniques of treaty-making, colonization, meeting the standard of civilization, and protectorate arrangements. In doing so, he reveals how these

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various techniques were conceptualized in ways that were inconsistent and logically incoherent (Anghie, p. 80). Likewise, Anghie connects the "particular conceptualization of sovereignty" instantiated in the Mandate System with "the mechanisms developed by international law to make this concept a reality," and demonstrates how the two are "mutually reinforcing and dialectic": "the elaboration and development of technique enabled the League lawyers to conceive of sovereignty in new ways, just as these new ways of understanding sovereignty called forth new techniques and new interdisciplinary projects involving law, administration, psychology and economics" (Anghie, p. 188).

In his effort to trace long lines of continuity in international legal thought from Vitoria to the war on terror, Anghie inevitably paints with a broad brush at times. *ISMIL*'s reliance on secondary sources, too, can occasionally undercut its intention to focus on specific practices and techniques of international law. Anghie's first historical chapter—by his own admission something of an outlier to his main narrative—thus reads the "social and cultural practices of the two parties, the Spanish and the Indians," principally through the lens of Vitoria's writings, which themselves relied on second-hand reports from the Americas (Anghie, p. 15). His study of the Mandate System also draws largely on secondary sources (notably Quincy Wright's contemporaneous analysis)[8] and published League reports. Yet while this could run the risk of distorting his findings, Anghie deftly reads these sources against the grain, in the latter chapter connecting them with broader themes in the shift from formalism to pragmatism in international jurisprudence, as well as advances in psychology, sociology, public administration, statistics, economics, and other disciplines. Throughout the text, his steady focus on concrete problems of colonial governance helps to ground the narrative in specific legal and political practices.

II. Agency and Contestation in the International Legal Order

One obvious way the books' differing approaches affect their findings is in relation to the question of whether extra-European polities and peoples have exercised any agency in shaping the international legal order. Like *ISMIL*, the starting point of *Boundaries* is a set of political and legal practices, in particular those developed through centuries of diplomatic interactions between European powers and the Ottoman Empire. Published accounts of Ottoman society, written by European diplomats who had lived in Constantinople, informed a widespread perception of oriental despotism. It was therefore a commonplace in eighteenth-century European discourse "to portray the Ottomans as irreducibly alien . . . and therefore not full members of the European legal community" (Pitts, p. 35). But as Pitts shows, these portrayals did not go uncontested, and established practices of treaty making—not to mention documented appeals to the law of nations by Ottoman leaders—suggest that the Ottoman state had in fact "long been a part not only of the European political world but also of its emerging legal order" (Pitts, p. 35). Pitts describes the eighteenth century as "a period of particular fluidity in conceptions of the law of nations," when the notion of unified Christendom was weakening but the distinction between "civilized and barbarous" had not yet taken firm hold on European imaginations (Pitts, p. 20). Vattel thus included Muslim states in the family of nations, while at the same time depicting them as untrustworthy

[8] Quincy Wright, Mandates Under the League of Nations (1930).

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aggressors, and even Martens routinely treated the Ottoman state as a European power (Pitts, pp. 83, 123). In this context, the Ottoman Empire "consistently represented the most prominent fraught case" for the purported universality of the law of nations (Pitts, p. 22).

None of these discourses and debates feature in *Becoming International*. Despite citing scholarship demonstrating that the "external arena of non-European empires operated as a constitutive outside against which rudimentary international relations could unfold inside Europe" (Bartelson, p. 28), the only colonial empires that attract Bartelson's sustained interest are those of (Western) European states; not even the Ottoman state's formal induction into international society at the end of the Crimean War rates a mention. One possible explanation for this absence might lie in Bartelson's avowed lack of interest in legal and political practices. Another might be inferred from his rather tautological stipulation that his book "is self-consciously Eurocentric insofar as it argues that the Eurocentrism of international relations is *itself* European in origin" (Bartelson, p. 11 (emphasis in original)). But one could trace the evolution of European ideas while taking into consideration the factors that shaped them, including ideas from outside Europe and interactions with extra-European societies. Pitts's account makes it clear that the Ottomans "played a role of unparalleled importance as the defining marginal case of the European international order," and as such were central to European debates about empire and statehood. Bartelson's choice to disregard Ottoman interactions with (other) European empires presupposes that it was not a part of Europe, when this is precisely what was in question (Pitts, p. 28).

Part of the difficulty in Bartelson's project is that he never defines precisely what he means by his key terms, "empire," "state," and "international."[9] Nor is it always clear whether these terms are meant to correspond to conceptualizations found in each historical period, or rather his own conceptualizations of social realities in those periods; and if the latter, on what basis those conceptualizations are formed. On the one hand, for example, he acknowledges that "early modern writers did not conceptualize empire and state as categorically distinct forms of political association or rule," and argues that "indivisible authority" became "a defining characteristic of the state" during this period, making "any distinction between empires and states difficult to imagine and maintain" (Bartelson, pp. 28–29). On the other hand, he asserts that Latin American claims to independence in the age of revolutions "did not issue from anything like modern states, nor did they bring such entities into immediate existence" because they "still took place within a framework of hierarchical and imperial relations" and "did not contain homogeneous peoples or nations" (Bartelson, pp. 74–75). Here, Bartelson seems to be working with a highly idealized model of European statehood—enjoying indivisible authority, a homogeneous population, and complete equality with other states—against which the new states of the early nineteenth century and later can be measured and, inevitably, found wanting.[10] Of

[9] For example, after stating that the "international" is characterized by the "division of humankind into nation-states," he later announces that the same term will be used "either in a generic sense to connote relations between distinct polities across time and space, or in a narrow sense to describe relations between nation-states," BARTELSON, *supra* note 3, at ix, 11.

[10] This recalls Anghie's comment that under the Mandate System, it was "assumed that sovereignty existed in something like a linear continuum, and that every society could be placed at some point along this continuum, based on its approximation to the ideal of the European nation-state." ANGHIE, *supra* note 4, at 148.

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course, this also ignores the fact that European states were undergoing their own processes of violent homogenization at the same time, not to mention that many European states, even today, contain sizeable (and not infrequently oppressed) minorities.

Pitts also unearths dissident voices *within* the European tradition of international law in a way that might suggest some significant modifications to the theses advanced by both Bartelson and Anghie. In each period across the two-century span of her book, Pitts discovers European thinkers who challenged, in more or less fundamental ways, the prevailing popular assumptions about the barbarism of non-European peoples. These included an English ambassador to Constantinople, who reported that the Ottoman regime was "law-governed" and less despotic than some Christian states, and a French Orientalist who argued that the Ottomans respected the law of nations (Pitts, pp. 54, 57). In a crucial period bridging the late eighteenth and early nineteenth centuries, we learn, Burke insisted Indian society was "structured by dense webs of laws that the Europeans were obliged to recognize and respect" and "went to particular lengths to insist on the standing under the law of nations" of Indian princes (Pitts, pp. 99–100); Scott argued for "a kind of deferential asymmetry" in applying the law of nations, to the benefit of non-European states (Pitts, p. 113); and Jeremy Bentham contended that "the most fundamental precondition for global peace was that all states must emancipate their colonies," and thought that the countries of North Africa could be integrated into the international community (Pitts, pp. 142–43).[11]

Even more compelling are Pitts's accounts of three public figures of the mid-nineteenth century who expressed dissenting opinions on the application of international law to extra-European states.[12] Henry E.J. Stanley was "a gifted linguist, sometime [British] diplomat, and Muslim convert" who "denounced the hypocrisy of the discourse of civilization and its pernicious consequences for international law" (Pitts, p. 177). The London *Times* correspondent Antonio Gallenga similarly criticized the behavior of Europeans in relation to Muslim societies, including the system of consular jurisdiction in Egypt and the Ottoman Empire. Francis W. Newman argued that Indian principalities should be understood as independent states, toward which Britain owed treaty-based obligations. All this might be read to suggest, *contra* Bartelson, that a single, uncomplicated tradition of thought on empire and statehood is not to be found, even within Europe, and that any attempt to reconstruct such a tradition must accept responsibility for contributing to the "reification of the international realm" (Bartelson, p. 218). It might further suggest, against Anghie's thesis, that international law—even *European* international law—is not always and inherently in favor of empires; but perhaps also that, whatever emancipatory elements or dissenting voices it allows, the overall thrust of the law will inevitably reflect the interests of powerful states and economic actors.

[11] Pitts also notes that Bentham later took the view that European states "should stay out of each other's colonies," a change which "tracks a more general development in European thinking in this period," from "a universal vision of an international community that is not limited to Europe" to one "of equal states limited for the time being to Europe" that were also "global empires controlling vast territories and populations as they see fit." *Id.* at 144–45.

[12] Intriguingly, these views were all published in the decade between 1858 and 1868, just a few years before the founding of the *Institut de droit international*, which for Koskenniemi marks the disciplinary birth of international law. MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960 (2001).

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The question of extra-European agency in shaping the international legal order is most palpable in the theme of colonial violence and anti-colonial resistance, which runs through *Boundaries* and especially *ISMIL*, but is conspicuously absent from *Becoming International*. Bartelson distinguishes his own "*emergentist*" account of the international realm from "the *diffusionist* view according to which the international realm emerged and spread as a consequence of the imposition of European concepts such as sovereignty and nationhood on other peoples" (Bartelson, p. 6 (emphasis in original)). The analytical point here is that Bartelson wants to suggest that the willing (or even selective) embrace of European ideas and institutions by non-European elites was incompatible with their "imposition." By his own admission, his account emphasizes the "active and creative appropriation of underlying notions of legitimate authority by elites in the non-European world," which he contrasts with "previous accounts of the international system" that "portrayed the spread of the sovereign state as a result of the violent imposition of territorial modes of rule on heterogeneous and often recalcitrant colonial spaces" (Bartelson, pp. 221–22).[13] Colonial violence and anti-colonial resistance are thus excluded from Bartelson's account *by design*.

Moreover, it turns out that "creative appropriation" by non-European elites plays quite a minor part in the narrative of *Becoming International*. A curious feature of the text is how it describes the spread of ideas—which in Bartelson's telling takes place in one direction, from European to non-European societies—as occurring in a strikingly frictionless way. Early on, Bartelson claims that "the ideal of congruence of nation and state quickly spread across the world and issued in claims to national self-determination by colonial and peripheral polities at the end of the First World War" (Bartelson, p. 121). But how this "contagion" was effected, through what agency, and against (or shaped by) what resistance, is left unexplicated (Bartelson, p. 131). Apart from a handful of pages discussing the Creole independence movements, mostly focusing on Simón Bolívar, non-European elites do not really feature in Bartelson's account until the early twentieth century. By contrast, Pitts's chapter on the early nineteenth century highlights two elite figures, the Imperial Commissioner of Canton and an Algerian businessman and scholar, who both compiled translations of passages from Vattel in efforts to oppose European interference in their homelands (Pitts, pp. 137–41). Anghie, too, makes the point that European jurists in that century were aware of and recorded the diplomatic practices of a range of non-European states, including Benin, Ethiopia, Mali, Persia, Siam, Turkey, and China (Anghie, p. 58). Other scholarly works examining the role of peripheral and semi-peripheral elites in shaping nineteenth century international law supplement these accounts with considerably more detail and analysis.

Non-European actors make a stronger showing as *Becoming International* draws closer to the present day. W.E.B. Du Bois, Gandhi, a few other Indian and some Egyptian thinkers make brief appearances in Bartelson's account of the epochal changes brought about by World War I, including the establishment of the Mandate System. Yet even in this story, real agency appears to lie with the U.S. president, as Wilson is described as having "skillfully appropriated" Lenin's concept of self-determination, "[t]he swift global spread" of that concept—again unexplained—"testified to the success of Woodrow Wilson's wartime rhetoric," and he "fought to establish the mandates system" (Bartelson, pp. 152–54).

[13] *See also* BARTELSON, *supra* note 3, at 6, 78, 125, 173, 177, 215, 219–20.

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Tellingly, the chapter ends in 1919, before colonized peoples began actively using the Mandate System themselves to delegitimize the administering states' claims to authority.[14] Similarly, Bartelson depicts post-World War II decolonization as taking place almost automatically—it was "made possible by making self-determination a universal right," which brought in its wake "a series of corresponding changes to the practices of international recognition," and the only resistance recorded is by some "colonial powers at the San Francisco Conference"—as if anti-colonial struggles never took place, and were never brutally suppressed by European colonial powers (Bartelson, p. 169).[15] Astonishingly, Bartelson quotes with approval a statement that decolonized states were at this time "being acknowledged more or less automatically because the new global political climate could not tolerate the institution of formal empire," and himself describes the post-war period as a time when "international recognition ... came relatively cheap" (Bartelson, pp. 169, 194).[16]

Bartelson's most substantive passage of engagement with non-European thinkers arrives late in *Becoming International*, where we read thumbnail accounts of the views of anti-colonial leaders from a range of Asian and African states in the 1950s and 1960s. The point here is to show how these leaders appropriated notions of self-determination, nationality, and statehood to support their own political ends. But this passage is then followed by an almost-equally lengthy discussion of the views of (roughly contemporary) Western social scientists and political scientists on modernization, development and nationalism in the Third World. A much shorter section considers the reactions of international lawyers to decolonization, although these are limited to a very few Western jurists.[17] Bartelson claims that these Western scholars were "largely supportive of the anti-imperialists" and that, together, these two groups were responsible for "the globalization of the international system *cum* empire" (Bartelson, pp. 172, 195). Indeed, Bartelson argues that this alignment of views effectively trapped anti-colonial leaders into the nation-state form, as they

> had eventually to accept that the nation-state had become the predominant form of political association in the modern world, and that this had happened as a result of a contingent confluence of their own concerns with those of Western political scientists and lawyers. (Bartelson, p. 208.)

Elsewhere, Bartelson describes colonized peoples in distinctly passive terms, as being "railroaded into this system by their leaders" and "sleepwalk[ing] into nation-states" (Bartelson, pp. 212, 231). It is difficult not to associate these descriptions with his earlier statement that some people were "sucked into" the international realm since, "once this

[14] *See generally* SUSAN PEDERSEN, THE GUARDIANS: THE LEAGUE OF NATIONS AND THE CRISIS OF EMPIRE (2015).

[15] Bartelson concedes, in a rather remarkable understatement, that decolonization took place "in a historical context that best can be described as highly averse to this kind of endeavor." BARTELSON, *supra* note 3, at 174.

[16] MIKULAS FABRY, RECOGNIZING STATES: INTERNATIONAL SOCIETY AND THE ESTABLISHMENT OF NEW STATES SINCE 1776, at 148 (2010), *cited in* BARTELSON, *supra* note 3, at 169. Fabry acknowledges that "the colonial countries faced armed revolts for independence," particularly in the immediate post-war period, but argues that, in "the later period when most colonies actually shed their dependent status," Britain and France "retreated from an overwhelming majority of their colonies of their own volition." *Id.* at 153–54. This chronology is obscured in Bartelson's more synthetic account.

[17] Unlike *ISMIL*, there is no mention here of C. Wilfred Jenks or Wolfgang Friedmann, much less Third World international lawyers such as R. P. Anand, Jorge Castañeda, S. Prakash Sinha, or Taslim Olawale Elias. *See* ANGHIE, *supra* note 4, at 200.

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process had gained sufficient momentum, becoming international was not an offer you could refuse" (Bartelson, p. 10). These are jarring conclusions that seem to go out of their way to ignore the widespread exercise of power—including through wars of counter-insurgency, violent repression, and other forms of coercion—by powerful states and economic actors in the post-war period. Moreover, given that Bartelson's narrative ends in the mid-1960s, he has little to say regarding post-colonial resistance through the campaign for a New International Economic Order, to which Anghie devotes almost a full chapter, and which frames Pitts's epilogue.[18]

III. Imagining Other Futures for International Law

These authors' approaches to questions of agency, opposition and resistance correlate closely with their respective views on the instruments available to imagine and construct an international legal order without empire. In this respect, an important difference between the narratives in these books, emerging from the different questions they seek to answer as much as the methodologies they adopt, concerns the place of non-state actors in relation to both empire and international law. Bartelson's decision only to track the conceptual relationship between empires and states means that he must disregard institutional forms that do not fit neatly into received definitions of those terms. There is some irony in this, as Bartelson acknowledges that other accounts of the emergence of the international realm "have been criticized for being state-centric and for neglecting the role of non-state actors in the expansion of that realm into other continents" (Bartelson, p. 4). In the early modern period, as he recognizes, empires existed alongside "an array of other equally complex amalgamations of political authority and community, such as composite monarchies, unions, and, most notably, *republics*" (Bartelson, p. 29). He also acknowledges the importance of corporations, asserting that European states "outsourced imperial expansion by delegating sovereign prerogatives to a range of intermediaries," including "trading companies and company states" (Bartelson, pp. 4–5). But this surely does not mean these entities were simply instruments of states, or that the attribution of quasi-sovereignty to them had no effect on how states and empires were conceptualized.

The contrast with *Boundaries* and *ISMIL* is again illuminating. Pitts makes the point that chartered companies had "shifting and ambivalent relations to their sponsoring states," even while entering into treaties and accords with extra-European societies on their behalf (Pitts, pp. 95–96). Furthermore, these activities and the exercise of other governance functions by these companies were "in some ways typical [of] early modern England's complexly 'interlocking matrix' of commonwealths, corporations, and associations, when the prerogatives of sovereignty had not yet been deemed the exclusive province of the state" (Pitts, p. 96).[19] Pitts's chapter on Burke's prosecution of Hastings centers precisely on a moment in which conceptions of statehood, empire, and other institutional forms were

[18] *See also* Umut Özsu, Completing Humanity: The International Law of Decolonization, 1960–82 (2023).

[19] Compare this with Bartelson's assertion that "European states were based on principles of indivisible sovereignty and territorial demarcation," in contrast to colonial empires which "presupposed that sovereignty was divisible and boundless in principle and possible to extend over vast spaces and discontinuous polities and populations." Bartelson, *supra* note 3, at 70.

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shifting in relation to each other. Anghie, too, examines the legal personalities of trading companies, their exercise of sovereign powers, and the doctrinal difficulties these activities posed for international jurists and parties to the Berlin Conference of 1884–1885. Anghie further traces the expanding colonial presence of European companies in the interwar period; the efforts by decolonized states to assert permanent sovereignty over their natural resources, notwithstanding the concessions granted to such companies before independence; and the emergence of a new "international law of contracts," "international commercial law," and "transnational law" through a series of arbitral awards in the post-war period.

International organizations also feature much more prominently in *ISMIL* than in either of the other two books. This is understandable with respect to *Boundaries*, as only a few dozen rudimentary international institutions—river commissions, international public unions, sanitary commissions—had been established by the end of the nineteenth century. As already noted, *Becoming International* avoids discussing the effects of the Mandate System, much less the wider League of Nations order, on conceptualizations of the international realm. Bartelson refers to post-war proposals for federal and confederal communities in vague terms, but quickly dismisses these as unserious responses to demands for independence.[20] The significance of international "co-operative arrangements," such as the Non-Aligned Movement and the Organization of African Unity, likewise remain nebulous. And practically all we learn about "international organizations in general and the United Nations in particular" is that they "were instrumental insofar as they functioned as clearinghouses for colonial polities aspiring to international legal recognition"—another formulation that makes the path to independence sound rather effortless, and only ever facilitated by those organizations (Bartelson, p. 175). In contrast, Anghie is careful to show how international organizations have shaped the sovereignty of Third World states in ways that render them "uniquely vulnerable and dependent," beginning under the Mandates and continuing through the operations of the Bretton Woods institutions and the UN Security Council (Anghie, p. 6).

More recent works extend *ISMIL*'s themes by expanding on the history of international organizations and corporations in shaping international order. These include studies by international lawyers, political scientists, sociologists, and historians, on (among other topics) the imperial dynamics of nineteenth-century and interwar institutions;[21] the role of post-war international organizations in making post-colonial states, molding their sovereignty, and mediating their relations with former colonial powers;[22] and the

[20] For different interpretations of this history, see ADOM GETACHEW, WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION 107–41 (2019); Frederick Cooper, *Federation, Confederation, Territorial State: Debating a Postimperial Future in French West Africa, 1945–1960*, *in* FORMS OF PLURALISM AND DEMOCRATIC CONSTITUTIONALISM 33 (Andrew Arato, Jean L. Cohen & Astrid von Busekist eds., 2018).

[21] *See, e.g.*, JOANNE YAO, THE IDEAL RIVER: HOW CONTROL OF NATURE SHAPED THE INTERNATIONAL ORDER (2022); VÉRONIQUE PLATA-STENGER, SOCIAL REFORM, MODERNIZATION AND TECHNICAL DIPLOMACY: THE ILO CONTRIBUTION TO DEVELOPMENT (1930–1946) (2020); REMAKING CENTRAL EUROPE: THE LEAGUE OF NATIONS AND THE FORMER HABSBURG LANDS (Peter Becker & Natasha Wheatley eds., 2020); PEDERSEN, *supra* note 14; PATRICIA CLAVIN, SECURING THE WORLD ECONOMY: THE REINVENTION OF THE LEAGUE OF NATIONS, 1920–1946 (2013); MARK MAZOWER, NO ENCHANTED PALACE: THE END OF EMPIRE AND THE IDEOLOGICAL ORIGINS OF THE UNITED NATIONS (2009).

[22] *See, e.g.*, EVA-MARIA MUSCHIK, BUILDING STATES: THE UNITED NATIONS, DEVELOPMENT, AND DECOLONIZATION, 1945–1965 (2022); VIJAYASHRI SRIPATI, CONSTITUTION-MAKING UNDER UN AUSPICES: FOSTERING DEPENDENCY IN SOVEREIGN LANDS (2020); GETACHEW, *supra* note 20; CORINNA R. UNGER,

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relationships of corporations to empires, states, and international law.[23] Many of these books bear the influence of *ISMIL*, whether directly or indirectly, acknowledged or not. They all suggest the importance of non-state actors for both the conceptualization and practice of international relations. They also demonstrate that some of Anghie's key insights apply well beyond the episodes and institutions he examines. To take one example, Anghie stresses the "unique circumstances of the Mandate System—unique because of the connection between sociology and sovereignty, and unique because it gave institutions access to the interior of the state" (Anghie, p. 155). However, recent scholarship has revealed that other institutions associated with the League—notably including the International Labour Organization—were also linking international law with techniques of public administration, economic management, and demographic and statistical calculation in similar ways, in states and territories not under mandatory control.[24]

If empire's tentacles extend into non-state actors as much as the state system underpinning international law, what possibilities are there for freeing international law from its imperial origins? Pitts makes the argument that studying the history of international law is essential to gain insight and "critical purchase" on "hierarchy in the international sphere" (Pitts, p. 191). This is not only because international law is such a powerful tool for "structuring and justifying hierarchy and domination, and ... occluding them," but also because it can provide "resources for critique and frameworks for envisioning greater justice and equity" between the Global South and the Global North (Pitts, p. 191). For Anghie, it is an open question whether it is in fact possible "to create an international law that is not imperial; that can ... further justice, increase the well being of humanity" (Anghie, p. 317). He expresses the hope that international law might be "transformed into a means by which the marginalized may be empowered," an instrument for limiting and resisting power (Anghie, p. 318). But the story he tells suggests a less hopeful conclusion: despite repeatedly disavowing an intention to be deterministic, at many points along the way he demonstrates that "colonialism is somehow pervasive, foundational" to international law (Anghie, pp. 243–44); that the "colonial origins of the discipline are re-enacted whenever the discipline attempts to renew itself" (Anghie, p. 313); that the dynamic of difference is "self-sustaining and ... endless" (Anghie, p. 4). In this light, it is striking that *ISMIL* closes on a very similar note to *Boundaries*:

> At the very least, I believe that the Third World cannot abandon international law because law now plays such a vital role in the public realm in the interpretation of virtually all international events. (Anghie, p. 318.)[25]

INTERNATIONAL DEVELOPMENT: A POSTWAR HISTORY (2018); GUY FITI SINCLAIR, TO REFORM THE WORLD: INTERNATIONAL ORGANIZATIONS AND THE MAKING OF MODERN STATES (2017); NITSAN CHOREV, THE WORLD HEALTH ORGANIZATION BETWEEN NORTH AND SOUTH (2012).

[23] DOREEN LUSTIG, VEILED POWER: INTERNATIONAL LAW AND THE PRIVATE CORPORATION 1886–1981 (2020).

[24] *See, e.g.*, SINCLAIR, *supra* note 22, Chs. 1–2.

[25] Compare with PITTS, BOUNDARIES, *supra* note 3, at 191: "If international law is a moral and political language we can hardly avoid, we can also try to better deploy it, in part by understanding its fraught past."

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This hopeful expression can offer only meagre comfort today as international law appears to play a shrinking role in public affairs, and its vocabulary is increasingly abandoned by political leaders.

Becoming International refuses even this limited measure of comfort, brooking no compromise with the current international order. From the outset, Bartelson announces his project as being "another attempt to set the historical record straight and get our ontological commitments right, saving us from the belief that the international world is cast in stone at a moment when it needs to be consigned to history for the sake of human flourishing" (Bartelson, p. 10). In his analysis, internationalism has made the whole world "an empire of states," inasmuch as the international system "aspires to be *universal,*" is "*boundless* insofar as a recognizes no special limits or outside," and "comes with a commitment to *multiculturalism* and toleration characteristic of pre-modern conceptions of empire" (Bartelson, p. 11 (emphasis in original)). It is unclear just why this particular list of features should make today's international system an empire; they certainly do not amount to a definition by which one could measure the accuracy of this claim. Bartelson admits that the international system lacks a single ruler, but claims that "the collective conviction that the international system is anarchic in character fulfills the same function of ruling humankind by keeping it divided in a state of war as well as any imaginable emperor of all the world would have been able to do" (Bartelson, p. 11). Notably, Bartelson never provides any more specifics about who exactly benefits from this putative "empire"—whether the Global North, a particular state, or global capitalist interests.

This all seems rather too abstract and depersonalized to be analytically persuasive, let alone politically useful. Bartelson is convinced that "formal empire vanished . . . because it had become redundant at a moment when the international system itself fulfilled old visions of universal rule" (Bartelson, p. 172). However, it is surely a mistake to think that formal empire has vanished or has become redundant: apart from the seventeen non-self-governing territories listed by the UN's Special Committee on Decolonization, many other peoples around the world live under conditions of more or less institutionalized imperial rule and foreign domination.[26] It is also odd to claim that "the final triumph of the nation-state occurred at the expense" of alternative forms of political association, given the continuing existence of all manner of "free association" arrangements between former colonies and colonial powers—not to mention supranational organizations (of which the European Union is the obvious exemplar), regional organizations, alliances, and other "multilayered forms of sovereignty" that have emerged over the past six decades (Bartelson, pp. 10, 208). It seems only possible to talk about the "final triumph" of the nation-state if one is exclusively interested in intellectual history, ignores the actual practices of international governance, and terminates the inquiry in the mid-1960s.

But Bartelson does not end his story there. *Becoming International*'s final chapter canvasses two imaginaries of world order that might offer "viable alternatives and a normative ground from which to contest the many excesses of the modern international world" (Bartelson, p. 23). Unfortunately, Bartelson never spells out what those "many excesses" consist of—his

[26] *See, e.g.*, DANIEL IMMERWAHR, HOW TO HIDE AN EMPIRE: A HISTORY OF THE GREATER UNITED STATES (2019); THE BASES OF EMPIRE: THE GLOBAL STRUGGLE AGAINST U.S. MILITARY POSTS (Catherine Lutz ed., 2009).

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methodology hardly allows this—and it is therefore difficult to tell whether the alternatives he examines provide sound bases for contesting them. Bartelson first reviews ontological and normative criticisms of the "global" and concludes its failure to produce "compelling cosmopolitan visions" of global authority and community is one reason for the resurgence of nationalisms around the world (Bartelson, p. 231). His second alternative imaginary, the "planetary," fares a little better, at least insofar as it provides a perspective from which one can see that the international realm is "coextensive with the empire of the human over the nonhuman world" and has "facilitated the exploitation and devastation of the latter by the former" (Bartelson, pp. 237–38). Consistent with his approach throughout, Bartelson examines the conceptualization of both imaginaries by analyzing the writings of other thinkers, with scant reference to material practices. Nonetheless, it is difficult to disagree with Bartelson's impulse to want to find "another sufficiently coherent worldview that is able to challenge the nation-state as the predominant locus of political authority," even if his normative conclusions remain hazy (Bartelson, p. 231).

Empire adapts, morphs into different shapes at different times—international, global, planetary—and maybe all at once. Taken together, these books cast light on the present moment of crisis in international law, and their different approaches provoke thought about how best to come to grips with its shifting relationship to empire. Some forms of imperialism, similar to those traced by Anghie from Vitoria to the Mandate System and into the early twentieth century, remain concerned with tutelage and reform. These forms make reference to international legal norms and are often carried out through or with the assistance of international institutions. However, more recently we have also witnessed the recrudescence of a much more brutal face of imperialism, intent upon the destruction and removal of civilian populations, without attempting to draw legitimacy from, or sometimes even mention, international law. Future historians of international law will need to explain this puzzling phenomenon, which is taking place just as humanity confronts its most existential crises.[27] In the meantime, it is perhaps more vital than ever to recognize the agency of the diverse actors that have shaped international law—not only because doing so would make our historical accounts more accurate, but more importantly because it is only by acknowledging the full complexity of international law's past that we can begin to imagine, and perhaps to enact, a different future.

[27] On a related paradox, see BRUNO LATOUR, DOWN TO EARTH: POLITICS IN THE NEW CLIMATIC REGIME (Catherine Porter trans., 2018).

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