Buchbesprechungen

***Tzouvala, Ntina*: Capitalism as Civilisation – A History of International Law.** Cambridge Studies in International and Comparative Law, Vol. 142. Cambridge: Cambridge University Press, 2020. ISBN 978-1-108-49718-3 (hardcover). 230 pp. £ 85.-

Over the past two decades, critical histories of international law have proliferated, bringing renewed scholarly attention to the imperial roots of international law. However, in recent years, amidst a broader debate on methods in legal history, some scholars have challenged the historical scholarship's focus on imperialism from leftist, and especially Marxist, perspectives. Adopting a critical yet comradely stance, this group has sought to ensure that the focus on imperialism does not obscure the structuring role of capitalism in fostering diverse forms of domination manifested through and within international law. With her book, Ntina Tzouvala has placed herself in the vanguard of this emerging community of scholars. Though somewhat limited in its empirical findings, this work makes a significant methodological and theoretical contribution to the literature – a contribution with which scholars will have to contend for years to come.

Tzouvala sets out to demonstrate the role of international law in reproducing the conditions for global capitalist expansion. To do so, she traces the consistent deployment of the 'standard of civilisation' as a mode of international legal argumentation from the late nineteenth century to today. She argues that, despite evolving understandings of what constitutes 'civilisation' and the declining use of the term over time, argumentative patterns based on 'civilisation' have persisted unchanged. She explains that '[t]his pattern of argument establishes a link between the degree of international legal personality that political communities are recognised as having and their internal governance structure' (p. 2). The author further identifies an indeterminacy underlying arguments based on the 'standard of civilisation': they constantly oscillate between two seemingly incompatible positions. On the one hand, the 'logic of improvement' promises equal rights to non-Western political communities on the condition that they undertake reforms to comply with the requirements of capitalist modernity. On the other hand, the 'logic of biology' forever defers the recognition of formal equality on the pretext of immutable differences between the West and the rest of the world.

For Tzouvala, this tension underlying 'civilisation'-based arguments arises from an inherent contradiction in capitalism. She argues that, as a global system of production, capitalism tends towards combined and uneven development. Specifically, she explains that capitalism homogenises societies by

spreading institutions and legal forms necessary for its establishment and reproduction, while simultaneously increasing inequality between centres and peripheries. According to Tzouvala, the 'standard of civilisation' emerged in the late nineteenth century as a functional response to this peculiarity of capitalism. As a mode of international legal argumentation, it offered a way 'to make sense of and regulate a world shaped and reshaped by these dynamics of unequal, yet global, capitalist development' (p. 4). Tzouvala thus depicts the argumentative oscillation between exclusion and conditional inclusion as reflecting capitalism's tendency to produce homogeneity and divergence concurrently. She concludes that the persistence of this argumentative pattern since the late nineteenth century reveals 'civilisation' to be a structure within the discursive system of international law, a structure that has resisted both disciplinary change and the will of individual lawyers. She ultimately attributes the structural character of 'civilisation' as an argumentative trope to international law's continuing role ensuring the reproduction of capitalist relations of production.

Tzouvala inscribes her work firmly within a Marxian tradition. However, she seeks to reconcile approaches grounded in Marxian materialism with critical approaches influenced by post-structuralism, post-modernism, and post-colonialism. Her ability to draw on such eclectic influences to produce an innovative and coherent account of international law constitutes one of the great successes of this work. The author rejects materialist understandings of law as merely a superstructure, a simple reflection of an underlying economic base. In so doing, she affirms law's relative autonomy from economic relations and accepts a criticism that critical legal historians have often lodged against Marxist historical works. Still, Tzouvala warns against what she sees as the misplaced focus of critical legal histories on indeterminacy and contingency. She thus calls on legal scholars to 'think […] in terms of patterns of argumentation that persist despite historically contingent legal developments' (p. 6). Here, Tzouvala echoes a recurring criticism of leftist and materialist scholars against post-structuralist approaches: that it is insufficient to merely conclude that law is indeterminate and legal outcomes contingent. As Samuel Moyn and Justin Desautels-Stein have recently argued, truly critical histories should push further and explain '*why* outcomes accrued as they did, precisely when they might have been different'.[1] Still, Tzouvala's achievement lies less in her causal explanation for international law's complicity with forms of domination, than in the tools she offers scholars to engage critically with legal texts.

[1] Justin Desautels-Stein and Samuel Moyn, 'On the Domestication of Critical Legal History', History and Theory 60 (2021), 308 (emphasis added).

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In the first chapter, which reads at times like a programme for future international legal scholarship, Tzouvala meticulously lays out her method grounded in a 'productive misreading' of legal texts. Building upon the work of Anne Orford, Tzouvala contrasts her own 'productive' reading with revelatory readings which she associates with doctrinal legal scholarship and conceptual histories. Tzouvala denies the fundamental premise of revelatory approaches: that applying the proper interpretative method – whether legal or historical – suffices to recover the correct meaning of a text. Instead, drawing on the work of the French Marxist philosopher Louis Althusser, she argues that all readings produce meaning by confronting a text to a particular *problematic.* A *problematic* is not merely a set of questions posed to the text, but an ideological structure within which a problem is set up. Approaching the text through a *problematic* enables the reader to render visible previously obscured elements of a text, aspects which come to the fore only in response to a particular set of concerns and presuppositions.

For Tzouvala, a distinctly juridical reading must consider the way concepts may be diverted from their ordinary meaning when used in a legal text or argument. Tzouvala thus sets out to analyse 'civilisation' as a concept embedded within the grammar and syntax of Western international law, a legal regime she views as having emerged in Europe in the late nineteenth century. Tzouvala observes that lawyers use concepts, not to convey a clearly delimited substantive meaning, but rather to argue about the legal consequences that attach to the concept. Tzouvala thus treats 'civilisation' as a mode of international legal argumentation about which rights, privileges, duties, and liabilities appertain to different political communities. As she explains, '[d]esignations such as "civilised", "uncivilised" or "semi-civilised" did not have a concrete meaning as such, but only as shorthands for what could be done to other political communities lawfully and what could not' (p. 14). This approach allows her to identify continued reliance on the argumentative pattern of 'civilisation' long after decolonisation when explicit references to 'civilisation' became rarer.

The first chapter goes further than merely expounding Tzouvala's methodological approach. Grounding her argument in a rich and lucid review of half a century of methodological controversies in legal scholarship, Tzouvala reveals the stakes of these debates. In the process, she lays the groundwork for new directions in critical international law. Critical scholars, especially those deeply engaged in theoretical debates, are often attacked for writing in abstruse and jargon-laden prose accessible only to an exclusive coterie of fellow critical theoreticians. Whatever the merit of this charge generally, Tzouvala successfully avoids this pitfall. Indeed, her limpid style and her

masterful exposition of methodological debates make the first chapter a valuable pedagogical resource.

Tzouvala applies her method of productive reading to legal texts from four pivotal moments in the history of international law. She first analyses the emergence of the 'standard of civilisation' as a response to the global expansion of capitalism in the late nineteenth century (chapter 2). The author then proceeds to examine how the League of Nations' Mandate System institutionalised the 'standard of civilisation' between the two world wars. She finds that, through institutionalisation, 'civilisation' became increasingly defined by an array of ostensibly objective indicators that marked a welfarist departure from the standard's liberal origins. However, according to Tzouvala, this evolution in the substantive understanding of 'civilisation' did not fundamentally alter the way international lawyers argued about the legal consequences flowing from 'civilisational' status (chapter 3). Tzouvala then considers the period of decolonisation and the *South West Africa* cases. She observes that, in successive rounds of pleadings, Ethiopia and Liberia retreated from a radical critique of racial capitalism in Namibia to improvement-based arguments alleging impermissible discrimination against 'exceptional' Africans. She argues that this retreat was inevitable because the two states founded their claims on the Mandate System and the 'sacred trust of civilisation' (chapter 4). Finally, she reviews the pervasive use of the logic of 'civilisation' in international law following the September-11th terrorist attacks through arguments on the use of force and the 'unwilling or unable' doctrine (chapter 5).

Compared to the audacity of the book's methodological argument, its empirical intervention appears rather timid. Few subjects have been as thoroughly studied in histories of international law over the past two decades as the 'standard of civilisation'. Besides the familiar subject matter, the sources upon which Tzouvala relies appear recurrently in the recent literature on imperialism and the history of international law. It is a testament to the pioneering nature of Tzouvala's method that she derives new insights from such well-trodden terrain. Still, as argued below, a more ambitious selection of sources could have strengthened both Tzouvala's empirical and methodological claims.

Among the book's most fascinating insights are Tzouvala's empirical conclusions regarding non-Western lawyering. Tzouvala concedes that attempts by non-Western lawyers to appropriate the concept of 'civilisation' for emancipatory ends helped national political communities escape formal political subordination. Yet she posits that anti-imperialist arguments based on 'civilisation' were structurally constrained to reinforce forms of domination rooted in capitalism. According to Tzouvala, non-Western international

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lawyers ultimately invoked the 'logic of improvement' to challenge the continued exclusion of their political community from 'full' sovereignty. She contends, however, that, by arguing that their political community met the conditions for 'full' sovereignty, non-Western lawyers effectively 'elevat[ed] capitalist modernity into the sole horizon of political transformation' (p. 83). For her, even the radical attempts to subvert the argumentative pattern of 'civilisation' – as exhibited in Ethiopia and Liberia's early pleadings in the *South West Africa* cases – proved unsustainable when founded upon legal rules structured by 'civilisation'. Through this argument, Tzouvala seeks to explain, in part, why national independence did not produce more emancipatory consequences in the formerly colonised world.

Tzouvala's narrow focus on formal legal arguments presented to audiences dominated by Western international lawyers undermines her claim. Arguments based on the Eurocentric conception of 'civilisation' existed within a diverse array of challenges to the subordination under international law of non-Western political communities. These challenges included appeals to non-Western conceptions of civilisation (such as those rooted in Chinese and Islamic intellectual traditions) as well as conservative and radical alternatives to capitalist modernity. In this context, it is doubtful whether most non-Western international lawyers truly 'subscribed to the "logic of improvement", wholeheartedly embracing the process of capitalist transformation' (p. 84). They may have very well deployed such arguments strategically as part of a broader struggle against imperialism.

Taking the Third World international legal agenda as an example, it is questionable whether 'civilisation'-based arguments like those in the *South West Africa* cases should be isolated from a broader programme that expressly sought to reshape the foundational principles of international law, to transform the global distribution of wealth, and to protect the freedom of national political communities to elect their own model of social and economic organisation. By overlooking arguments formulated by Third World lawyers in favour of the New International Economic Order, for example, Tzouvala misses an opportunity to elucidate whether 'civilisation' also structured arguments that challenged both colonialism and the Western-dominated global capitalist order.

Tzouvala depicts 'civilisation'-based arguments as emanating from non-Western professional lawyers who played the role of nationalist bourgeoisies. However, she largely ignores international legal claims formulated by non-lawyers or outside formal institutions. The author acknowledges that non-Western mass movements challenged extra-territorial jurisdiction and other curtailments on non-Western sovereignty in the wake of the Paris Peace Conference of 1919 (pp. 94-95). Yet, she does not analyse arguments pro-

duced by these movements to ascertain whether 'civilisational' logics permeated through to non-elite international claim-making. This too is a missed opportunity, for Tzouvala's reading method appears sufficiently versatile to apply to at least some forms of informal legal argumentation.

Ultimately, these minor shortcomings present a path for future scholarship to build upon this ground-breaking work. Tzouvala's monograph is ambitious, intriguing, and elegantly written. It is bound to leave a lasting impression on critical scholarship in international law.

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