***Tourme Jouannet, Emmanuelle*: Le droit international, le capitalisme et la terre. Histoire des accaparements de terres d'hier à aujourd'hui.** Bruxelles: Bruylant 2021. ISBN 978-2-8027-6999-6. 412 pp. € 86,-

In her book, Emmanuelle Tourme Jouannet traces a European history of the intellectual and factual conditions of an international law with a capitalist dimension and its repercussions on the rights and duties of States and human beings in relation to land. She shows how the rules of international economic law and foreign investment law have contributed to the fact that land is today the object of an excessive financialisation that reaches the point of dematerialising it. The topicality and urgency of the book are illustrated by the fact that the 21st century is experiencing a genuine 'global rush for land' on the part of certain States and especially large economic actors in agribusiness and agro fuels. That is one of the central reasons why, as the United Nations' Food and Agriculture Organization (FAO) has shown in successive reports, we have never produced so much food in the world and yet the problem of hunger remains for 820 million people.

In recent years, critical studies have flourished on *histories* of international law and its *civilising mission*.[1] Trade, currency, labour, and sea are the most common categories for jurists to explore the historical relationships between international law and capitalism, with land as the catalyst for this history being, until now, a gap in the literature. Studies on land grabbing and appropriations are more common in the fields of History, Economics, and Social Sciences, being 'international law the great forgotten aspect of historical studies on land appropriation' (p. 54).

As for the research design, the book starts from the rupture with traditional collective forms of human relationship with the land, to discuss how it became a commodity based on the philosophy of John Locke and the practice of Enclosures in Great Britain, and how this conception of land was transported by (i) the international law of moderns in the 18th century, by (ii) the international law of 'civilized nations' and by European colonial laws in the 19th century until it was widespread to the world through (iii) the international law of global society. The *territorial domain of the State* and the *private property of individuals* are the two key statutes analysed in these different historical periods, and it is from them that the reader will verify the evolutions, but above all the *continuities*, of international law in the last three centuries. This historical exercise will allow the reader to understand where

1 Just as examples: Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021); Ignacio de la Rasilla, *International Law and History*: Modern Interfaces (Cambridge University Press 2021); Ntina Tzouvala, *Capitalism as Civilisation*: A History of International Law (Cambridge University Press 2020).

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the liberal capitalist dimension of our current law comes from, which today legalises immense land appropriations.

By overlapping European, Malagasy, Algerian, and indigenous peoples of the Americas discourses, it becomes clear to the reader that in each period analysed, the categories of international law relating to land reflect attempts by historically situated human groups to define them in accordance with their values, cultures, and interests. In this sense, the author proposes to write a European history of international law that is not Eurocentric. For her, a non-Eurocentric historical project must highlight *global histories of internationalist ideas*, which means recognising that (a) in all regions of the world there were systems of rules to manage external relations between different political entities and that, (b) due to multiple factors – military and technological power –, the European legal model gradually extended to the world, integrating certain legal techniques or institutional specificities of the great regional cosmovisions of the time. (c) Correlatively, according to Jouannet, if European international law ended up prevailing over other systems of external relations, it remains true that its evolution and reformulation took place in exchange with the *Other*. From reading it, it is clear that the book does not want to restore a global/mixed history of international law in relation to land, which the author even argues does not have competence or capacity to do, because she would have to use only secondary/indirect sources. At this point, the author does not fall into the trap of the grand origin narrative: 'we propose to write what could be similar to a problem history and not a solution history' (p. 28). This position avoids both the homogenisation of a historical movement that remains in dispute, and a strictly *factual* history that would end up diluting the developments that occur at different times in the observation of the multiple singularities of past law and that could justify everything and explain nothing. Furthermore, she resists the temptation to describe 'a well-ordered evolutionary framework of norms, discourses and practices on international law in relation to land' (p. 28), preferring to explore the complexities of interests and ambiguities: it is not about seeking an ultimate truth about the facts, but stimulating debate.

Methodologically, as in her previous books,[2] Jouannet adopted a 'moderately external' position to the law, 'seeking to avoid both an internal discourse of the law, which would only be accessible to the specialist lawyer, and a strictly external discourse, which would not allow understanding the

2 Emmanuelle Jouannet, *Qu'est-ce qu'une société internationale juste?* le droit international entre développent et reconnaissance (Pedone 2011); Emmanuelle Jouannet, *Le droit international libéral-providence*: une histoire du droit international. (Bruylant & Éditions de l'Université de Bruxelles 2011).

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technicalities and specificity of law' (p. 18). A stimulating discovery for the reader will be the vast historical, economic and political contextualisation of the three periods studied, although a non-jurist audience would perhaps like to see the relationship between the context and the object studied itself developed further. The author is not limited by the *cleavage test of legal sources*, and extracts her reflections from studies in the fields of Philosophy, History, and Economics, from memoirs, speeches, and reports. If, on one side, the work is qualified by the elasticity of the sources, on the other, it sometimes lacks more specific legal sources for the object itself, which is partly justified by the unavailability of sources at the time, which leads the author, especially in the first chapter, to draw specific conclusions based on more general principles.

The first period analysed (Chapter 1) is that of the triumph of *modern humanism* over *ancient naturalism*, the accomplishment of the modern territorial State and the capitalist agrarian economic turn of the late 18th century. In this context, the land is no longer understood as 'mother earth' in a *primitive communion*, according to the worldview of *legal naturalism*, to become a commodity, since for *legal humanism* man dominates nature. The main sources used in this chapter are the writings of Emer de Vattel, which, according to the author, marks the emergence of the understanding of international law as the law of States.[3] According to Jouannet's reading, Vattel presents a complete theorisation of the principles relating to the appropriation of land both for the foundation of the modern State and for its private economic exploitation, and does so by invoking natural law. For Vattel, the appropriation of land founds the existence of a State and presents itself as the solution to guarantee the subsistence of European populations through the agricultural exploitation of land. From this general principle, the rights of *territorial domain of the State* and *private property of individuals* are derived. Hence the understanding that modern international law established not only a *territorialised legal order of nation-States*, but also a *legal order of landowners*, even though this second dimension has been forgotten or underestimated by commentators.

Jouannet also demonstrates how Vattel reformulates ancient legal qualifications to justify colossal land appropriation abroad, arguing that 'the common nature of all human beings and all States makes European legal principles of land grabbing universal, intangible and absolute imperatives' (p. 123). Thus, she presents a vast material to corroborate with the debate on the politics of the universal, since, as she shows, international law has always

3 Emmanuelle Jouannet, *Emer de Vattel et l'émergence doctrinale du droit international classique* (Pedone 1998).

been universal, and the problem was – and continues to be – the quality of this universality, since that it 'allows us to reject any alternative conception of the land by non-Europeans' (p. 123). Thus, modern international law helped to determine the territorial rights of each of the newly formed modern European States, by virtue of the original division of the *primitive community*. On the other hand, certain regions of the world were perceived by Europeans as virgin, empty, uninhabited, or very sparsely populated, to the point of being identified as 'remnants of the original primitive communion' (p. 123). Contact with the indigenous tribes of North America forced jurists to formulate the category 'hunting and breeding territory' to justify its appropriation, since it was not *terra nullius*, as the justification for the seizure of land in South America by the Portuguese and Spanish in the 15th century. This same manichaeism between good and evil, right and wrong, moral and immoral will be perceived in the contemporary practices of large private groups in Madagascar, which present themselves as carrying out a highly positive *mission* (Chapter 3), and in Tocqueville's speeches when demanding that the French colonisation of Algeria in the 19th century did not reproduce the atrocities of past colonisations (Chapter 2). The historical perspective, therefore, calls into question any idea of a radical rupture between yesterday and today in this area and helps to understand the persistence of certain ambivalences and contradictions in international society.

In the second chapter of the book, Jouannet argues that the *international law of civilized nations* in the 19th century will continue the project of the modern one, 'but radicalizing it in a civilizational and racialized form' (p. 153). The difference between the jus internationalist discourse of the 18th and 19th centuries is brutal: the later believe in the superiority of Western civilisation, which would be explained (never justified, it is emphasised) by the great European material growth resulting from the industrial revolution. The author highlights the evolution of legal principles, since the very idea of human nature starts to be interpreted based on the principle of *inequality*, which will also structure the notion of a *civilised State*, a *community of civilised nations* and its double legal regime: one for relations between civilised nations (the international law of civilised nations) and another for civilised and non or semi-civilised nations (colonial law).

A highlight here is the colonial commitment made at the Berlin Conference of 1885. According to article 1 of the Berlin Act, the division of the African territory between 14 Western countries was based on the idea of *territorium nullius*. In this part, the book takes the reader through international law handbooks (which today we clearly identify as racist) such as those by Martens, Pillet, and Calvo, and allows the understanding that although it continues to be a liberal pluralistic law in Europe, 'international law becomes,

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in its special form, an illiberal law outside Europe' (p. 197). This chapter extensively documents how French colonial law created in Algeria (1847-1962) the legal-economic conditions for the transformation of a pre-colonial food-type agricultural economy into a capitalist colonial economy.

The last chapter of the book discusses the *capitalocene* era, in which the colonial past is closely linked to the global present, corroborating the continuous degradation of nature and climate. Here, Jouannet displays great lucidity in demonstrating that there is no *global new deal* to socialise the benefits of globalisation, and that, on the contrary, the more liberal definition of private property and the capitalist process have spread across the planet, over the centuries, via global law and institutions such as the Organization for Economic Co-operation and Development (OECD), United Nations (UN), United Nations Conference on Trade and Development (UNCTAD), and International Monetary Fund (IMF), for example. In the era of *panjuridism*, international law is more pragmatic and less rigid, more insidious, more open, more positive in the legal options and principles it conveys, including, for the first time, the reconsideration of the relationship with nature through legal regimes such as human rights, sustainable development, or environmental legislation that oppose economic rules that favour land appropriation. Contemporary international law is therefore even more ambiguous as it attempts to reintegrate the living, natural world. On the one hand, the contemporary appropriation of land is fully justified in legal language: (a) it focuses on the private property of external investors, (b) it is part of the ultraliberal legal-economic system that dominates international relations and (c) it presents itself as an altruistic stance supported by the enchanted discourse of 'durable development' and 'food security', so in vogue in the language of the United Nations, which is none other than the contemporary guise of the *civilising mission*. To illustrate this period, Jouannet uses the case of Madagascar, where half of the land was appropriated by foreign companies. The chapter shows that Malagasy land law tries to translate a double heritage: colonial and pre-colonial, so that the government tries to reconcile two types of property: modern and traditional, offering the population incentives to access modern, individual property. Hence the tragic ambiguity of private property in the context analysed: it does not correspond to traditional ways of relating collectively to land, but it is the best way to avoid appropriations and preserve peasants' lands.

On the other hand, Jouannet shows that certain international conventions relating to the environment, biodiversity, or human rights are beginning to integrate a *right to land* that is not a *right to property*, in order to justify a model of representation of land and its uses that is more respectful of the cultural traditions of each person, the rights of peasants, but also the environ-

ment. Although it has a *soft law* structure, the United Nations Declaration on the Rights of Peasants (2018) speaks of the *right to the social function of land*, and could be interpreted together with the United Nations Declaration on the Rights of Indigenous Peoples (2007) and with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on Diversity of Cultural Expressions (2005), to establish, alongside the peasants' land rights, a *right to the Earth* and *for the Earth*. Thus, the international law of global society opens up space to base the land as the substrate of the identity of human beings. It can be mobilised to fight against the land grabs that it, on the other hand, favours. If on one side Jouannet is radical, as she recognises that the problems narrated are the result of the 'dominant paradigm resulting from European modernity' (p. 404), she is also optimistic, when exploring marginalised paths to rethink relations with the land, highlighting the law's transformative capacity through social and legal struggles and arguing that 'solutions are plural, come from all sides and will never be definitive' (p. 403). Ambiguously radical and optimistic, but never radically optimistic. In one sentence: the dice are still rolling.

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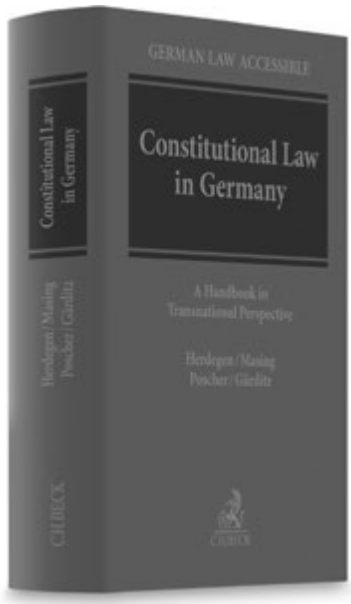

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