
Book Reviews

Nathaniel Berman. ***Passion and Ambivalence. Colonialism, Nationalism and International Law***. Martinus Nijhoff, 2011. Pp. xiv + 460. €129. ISBN: 9789004210240.

It is truly a complete change in the organization of the Society of nations. To visualize it requires imagination and hopefulness. But the alternative is despair.

Theodore S. Woosley, 'The Rights of Minorities under the Treaty with Poland'

This quotation lends a title to the third chapter, 'But the Alternative is Despair', that in some ways captures the core compulsion of Nathaniel Berman's book, *Passion and Ambivalence. Colonialism, Nationalism and International Law*. Warding off despair through a ground clearing operation for a more imaginative and hopeful future seems to fuel Berman's own passions in the series of dazzling readings of international legal history that make up this book. It is a book that runs against the grain of dominant approaches to internationalism and its historical role. Berman seeks to wrest international law from the sterility of formalism and interest calculation on the one hand, and, on the other, the contortions that emerge from formalism and pragmatism's discursive acrobatics in denying and advancing passions. Instead, Berman centres internationalism's fantasies and fears (represented here by nationalism, there by colonialism), even as he seeks to de-centre the discipline's own self-conception. From Jerusalem to Kosovo, Berman holds international legal projects most innovative, vital, and resourceful when passion is not expelled from the internationalist terrain, but where internationalism's ambivalent relationship to its passions is fore-grounded, mined, and negotiated.

Berman, perhaps more systematically than anyone else in the field, brings psychoanalytical insights to his reading of internationalism. They shape his argument at different scales of perception – from when he is focusing a wide-angled lens at the terrain of internationalism from the colonial period to the present to explicate how 'ambivalence may itself come to be a technology of power' (at 414), to when he is working through a close focus lens to tease out how internationalism manifests itself in the granular, quotidian experience of French diplomats and Algerian freedom fighters.

At a more general level, he draws on psychoanalytical insights about identity construction to flip the dominant view of international law adjudicating conflicts while standing above the fray. Instead, he tracks how international law's own identity is constituted in its framing of conflict through language, law, institutional design and attendant practical projects that have become part of its lived history – from minority protection to protectorates, the mandate system to colonialism. Unpacking international law's framing of these 'conflicts' renders visible internationalism's deeply ambivalent relationship with the very passions that it claims to control or even reject. In this sense, internationalism needs and even creates its others – the rebellions and revolutions, the nationalisms and anti-colonial protests. Yet, significantly then, resistance cannot claim a pedigree that does not carry the imprint of imperialism, '[a]nd so resistance is an artifact of the imperialism that dominates it' (at 456). It is the tragedy of this condition that colonizes our future.

At a more concrete level, he draws on psychoanalytical insights about particular techniques of negotiating ambivalence in the context of individual personality development to track and

unpack the legitimacy narratives of internationalists – or what he sometimes describes as a tradition of ‘liberal colonialism’. For instance, he uses the Kleinian description of identity formation through ‘splitting’ to understand and illuminate the manoeuvres of internationalist projects that ‘split’ both colonialism and nationalism into good and bad variants. This splitting helps to ‘manage two kinds of ambivalence: their relationship to internationalist power and their relationship to nationalist energy’ (at 425). Thus, even purportedly anti-colonial figures could ally with an ‘enlightened’ colonialism against an ‘undisciplined’ nationalism even while condemning colonialism and sympathizing with nationalism.

While Berman’s focus is on the identity and history of the discipline, his work is aimed at unmooring the received guideposts for that identity and history. As he says in a dialogue staged within the pages of a paper he presented at a gathering of the American family of international lawyers (ASIL 1999), identity and history ‘are not what they seem: family history always includes lawless unions, scandalous relations, illicit progeny, swindled fortunes, mad women in the attic. International legal genealogy rejects linear accounts of the origins of the progress of the “international legal community”’ (at 44). In that spirit, Berman’s forays into international legal history have him digging under false foundations, searching in hidden corners and up in attics. Much of his work is not focused on the ‘landmark’ events of international law but the forgotten episodes of the interwar years, such as Ethiopian claims as a member of the League of Nations (at 346 ff). In her masterly introduction, Emmanuelle Jouannet calls Berman ‘the internationalist of marginal categories, of forgotten legal institutions, of audacious, if imprudent practices, and inspiring, even if unimplemented grand projects’ (at 2). These are episodes punctuating decades that have been written off as failures of internationalism. He sees that period and the war of positions at any given juncture as carrying an uncanny continuity with, and relevance to, the post-cold-war era when these essays were authored. The contingent elements of his own writing (his historic obsessions and his current habitus) may well be the fulcrum on which that continuity pivots, but they have yielded a prism through which a particular structure of relationships and a particular tradition of internationalist power are rendered visible. The structure, what Berman sometimes calls the ‘matrix of modernity’, and the tradition, what he sometimes called liberal colonialism, illuminate the technologies and fault lines of global governance by mapping the consciousness of the protagonists of international legal terrain. Like the high modernists in the arts and other disciplines, the modernist international lawyers that fascinate Berman are those who sought to revitalize international law by drawing inspiration outside its received boundaries. Experimentally drawing on a heterogeneous range of elements, they pushed against the constraints of the existing order by engaging with nationalism and a ‘host of so-called “primitive” sources of cultural energy’ that they viewed with a ‘mixture of desire and terror’ (at 131). Berman’s analysis resonates with Homi Bhabha’s discussion of the colonial relationship as one that is ‘simultaneously inscribed in both the economy of pleasure and desire and the economy of discourse, domination and power’.¹ Similarly, Berman’s lawyers experience the marginal with a sense of both invigoration and threat, and respond to that dual provocation with a ‘perilous ambivalence’ that haunts humanitarian intervention today.

This ambivalence and the challenging and paradoxical positions that it has given rise to are at the heart of the inter-war modernists’ legacy, and the allied imprint of Kouchner and other contemporary heirs to this tradition. It is a tradition of catastrophic failures and some improbable successes, projects that Berman may ‘vociferously condemn’ (‘the 1912 imposition of a French protectorate in Morocco’), and projects that he ‘passionately’ supports (‘the 1999 imposition of UN rule in Kosovo’) (at 418). Thus the work Berman does in connecting the dots between

¹ Clarke, ‘The Other Question . . . Homi K. Bhabha Reconsiders the Stereotype and Colonial Discourse’, *Screen* 24 June 1983, 18, at 19, available at: <http://www.rlwclarke.net/courses/LITS3304/2009-2010/08ABhabhaTheOtherQuestion.pdf>.

'reformist colonialism, protectorates, League Mandates and UN Chapter VII regimes' (at 418) is not intended to suggest that these internationalist projects carry the same political valence or warrant the same normative judgement. It also does not suggest that they were over-determined by some primordial structural pattern of thought; there are contextually shaped nuances and variations to how the modernist matrix manifested itself at different points. Rather, the highlighting of this kinship performs a heuristic function (here he is building on Kristeva's *Strangers to Ourselves*) in rendering the familiar (liberal humanism) strange (the mandate system), and vice versa.² This subverting of the normative common sense of the discipline is also about contesting the units and linearity of nationalist and historical time. Thus the claims of leading French international lawyers that Algeria was a part of France become through Berman's close reading a suggestion that France is part of Algeria (at 412–413). Here too Berman seems to resonate with Homi Bhabha's work on the double task of unthinking the unity of the nation and the linearity of world history³ as a way of both claiming and troubling the 'internationalist and nationalist longings' (a '*dedoublement passionnel*') that characterizes the positions of his heroes as well as himself.

In a significant sense, Berman's book is not only an exposition of this ambivalence but also an elegant and witty performance of it. Many of us in the international law field have read some of these chapters as journal articles at various times over the last two decades. These are path-breaking interventions that have had wide influence and we are fortunate to have these gathered together in a single volume. In addition, collectively, these interventions enact a distinct presence that is even more than the sum of its parts. Rather than a progress narrative tracking landmark developments in the discipline, Berman engages heterogeneous vignettes of international legal history to construct an internationalist edifice both to 'legitimize and subvert' its elements.⁴ Berman's style – the constant layering of quotations from decades apart, the intertextual references to legal decrees and legal claims, the dialogue between 'genealogists' on the one hand and 'restater-renewers' on the other – works to 'de-doxify' hegemonic internationalism through a pastiche installation of different periods and different techniques in ways that disorient and reorient, even if only contingently.⁵

Berman undertakes the project of subverting the orthodoxy of internationalist ambitions by 'parochializing' the canon in ways that have resonance with post-colonial scholars.⁶ Berman's work locates all the action in the periphery (minorities, the colonies ...), he obsesses over episodes that have faded from the discipline's most familiar histories (such as the governance architecture of the Saar, Upper Silesia ...), his interlocutors are international lawyers who have been fairly marginal to the enterprise (such as Robert Redslob), and he highlights motives that have

² J. Kristeva, *Strangers to Ourselves* (1994).

³ H. Bhabha, *Nation and Narration* (1990). Bhabha's interrogation of historical time draws on Kristeva's juxtaposition of women's time (as one that could simultaneously cast multiple even competing temporalities) and Fanon's argument about the instability of colonial time; Berman seems to carry echoes of these same influences.

⁴ L. Hutcheon, *Politics of Postmodernism* (1989), at 101. Collectively these essays present a parodic architecture citing a formalist column here, a pragmatic cantilever there, a plinth of nationalism, colonialism's vaulted ceiling – doing the work that Linda Hutcheson attributed to parody, namely, that 'through a double process of installing and ironizing, parody signals how present representations come from past ones and what ideological consequences derive from both continuity and difference'.

⁵ *Ibid.*, at 93.

⁶ Noting Dipesh Chakravorty's call to provincializing Europe where '[t]o attempt to provincialize this "Europe" is to see the modern as inevitably contested, to write over the given and privileged narratives of citizenship other narratives of human connections that draw sustenance from dreamed up pasts and futures where collectivities are defined neither by the rituals of citizenship nor the nightmare of "tradition" that "modernity" creates': D. Chakravorty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2000).

lurked in the discipline's subconscious self (such as fantasies and anxieties of fear and desire for the 'primitive'). The extent to which these preoccupations and obsessions define his work is markedly distinct from that of the two critical international legal scholars with whom he is most often grouped, David Kennedy and Martii Koskenniemi. Indeed it is this focus on the reach of the colonial imagination in international law that pulls Berman away from the pragmatism that sometimes characterizes Kennedy's work, and the formalism that is sometimes present in Koskenniemi's work. While the Kennedy and Koskenniemi grouping provides one prism into his work, Berman is in (sometimes explicit and often implicit) dialogue with post-colonial theorists in law and other disciplines, and a fuller appreciation of Berman's intervention needs to situate his work in relation to these alliances and debates. Indeed, as already noted, you can follow the resonances with, perhaps even debts to, theorists such as Homi Bhabha and the long reach of Fanon in probing the psychoanalytical dimensions of the colonial relationship and the perceptions, distortions, and refractions that play out in the hall of mirrors that frames that encounter. The other more significant resonance is with the academic 'movement' that has come to be identified as Third World Approaches to International Law (TWAIL).⁷ Indeed I situate Berman as partaking in the TWAIL project to the extent that the core of that effort is a centring of the colonial encounter in the political and legal imagination of international law. There are two (potentially complementary and potentially contradictory) divergent paths of inquiry internal to TWAIL research that Berman's own work throws into relief. First, there is a knot of tension regarding the intellectual and political priorities of TWAIL work. There is one strand of TWAIL work that is focused on condemning the colonial encounter, its post-colonial legacies and incarnations.⁸ Another strand of TWAIL work is focused on the sweeping complicities that drove many international lawyers on both sides of that encounter.⁹ Strand one's project of condemning the colonial encounter and its post-colonial avatars does not necessitate zoning power and principle into separate spheres, but it is being fuelled by moral clarity regarding what Mutua refers to as 'an alternative normative legal edifice for international governance'.¹⁰ Yet those clear normative lines unravel if anti-colonial resistance is also the bastard child of imperialism – indeed if the repeated negotiation of those compromises defines the terrain of internationalist politics. Echoing 'Roger Martin Du Gard, a French writer responding to the War on the Riff in 1925' who 'cannot disassociate himself' from the colonial enterprise, Berman urges that 'the crucial challenge for anyone who would act in "the current state" of a world structured by radically unjust distributions of power and wealth' is not just to condemn that world, but to 'determine what kind of dirty compromises with power are necessary, rather than hoping to maintain clean hands' (at 446). It is a stance that paints a more murky picture of anticolonial resistance but also a more hopeful picture of international law as not over-determined by its servicing of those unjust distributive arrangements. In this sense, Berman's work offers a provocation that is at

⁷ See Gathii, 'TWAIL: A Brief History of its Origins, its Decentralized Network and a Tentative Bibliography', 3 *Trade, Law and Development* (2011) 26, and Alvarez, 'My Summer Vacation (Part III): Revisiting TWAIL in Paris', *Opinio Juris*, (2010), available at: <http://opiniojuris.org/2010/09/28/my-summer-vacation-part-iii-revisiting-twail-in-paris>.

⁸ For instance, see Mutua, 'What is TWAIL?', 94 *ASIL Proceedings* (2000) 31.

⁹ Including, we may add, the complicities and contradictions that drive them today. For instance, Anthony Anghie and Bhupinder Chimini, describe TWAIL as 'an ongoing project that is continuously questioning not only the foundations and operations of international law, but also its own methodological premises'. Against the backdrop of what they describe as their 'non-rejectionist' stance towards international law, they also urge (quoting Zygmunt Bauman) that not wrestling with these 'continuous complicities between international law and violence' in this way simply perpetuates 'a violence that thinks of itself as kindness': Anghie and Chimini, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflict', 2 *Chinese J Int'l L* (2003) 77, at 102.

¹⁰ Mutua, *supra* note 8, at 31.

the heart of the TWAIL project. His work also throws into relief a second set of issues about the relationship between material interest and internationalist ambitions. For some the centrality of the colonial relationship is a window into unpacking the material enabling conditions and distributive consequences of colonial relationships.¹¹ Yet Berman resists making causal connections between 'material interest' and the project of empire. He explicitly situates his work as a riposte to left realist approaches to international relations – an approach he criticizes for lacking a grip on the 'political and emotional complexity' of legal consciousness; 'rather than coherent theories, the discourse and practices of colonialism and nationalism ... are informed by more complex dynamics'. Indeed Berman's work emphasizes psychological motivations and passions that at times appear disconnected from questions of economic distributions.

Berman's focus on political and psychological consciousness of international lawyers challenges the gatekeepers of the discipline, but it also complements and complicates how critical traditions may map the relationship of power, principle, and interest. He compellingly demonstrates how we get a more acute understanding of the colonial encounter if we track how power and authority are exercised not only to exploit and dominate, but also to disavow its own pleasure in, and desire for, the colonized; yet he is also interested in the distributive consequences of the colonial encounter. He invokes (often implicitly and sometimes explicitly) materialist analysis as a backdrop, informing his reading of the stakes that motivated his protagonists. Yet the cumulative import of the book also suggests that this is an ever-receding backdrop with the relentless tracking of ambivalence and reincarnations of the modernist matrix from the Polish nationalists case to the Greco-Bulgarian case, from Palestine to Kosovo, from Redblob to the Jurists assessing the Allan islands' claims. Each time the analysis is compelling and illuminates dynamics that further corrode disciplinary doxa. However, parody can provide only part of the armoury in that project. The challenge is also to mobilize multiple critical tools that provide a more fulsome account of how and why the modernist ambivalences have such traction in fueling governance technologies in the ways that Berman describes. Berman is reticent about analysing what Jouannet refers to as the "[e]conomic, social and moral grammar" of our passions and our ambivalences' (at 25).¹² While colonial exploitation or the structural dimensions of the 'radically unjust distributions of power and wealth' provide the historical stage for Berman's work, they stay in place as flat, background conditions – flattened further in contrast to the dynamism of the rest of his reading. Yet there may well be critical yield in probing the enduring reach, but also the internal contradictions and unexpected consequences, of the socio-economic drivers that enable, complicate, and profit the psychoanalytical undercurrents that Berman foregrounds.¹³ Such probing and strategic engagement with the dynamics of the socio-economic architecture of international law may be crucial to engage internationalism's passions and ambivalences to build a relevant, persuasive, political imagination of alternative futures. This is a task that Berman himself sees as critical. Indeed he does venture beyond the domain of psychological analysis and textual deconstruction to explore and applaud alternative imaginaries of internationalism and programmatic blueprints that reflect and advance those visions (as per his discussion of the Jordanian Ambassador's proposal for Jerusalem or the UN's intervention

¹¹ For one cogent articulation of how one could connect the dots between TWAIL and a materialist analysis of international law see Chimini, 'Third World Approaches to International Law: A Manifesto', 8 *International Community Law Review* (2006) 3.

¹² Jouannet borrows this phrase from Nancy Fraser who has argued in a series of interventions that questions of recognition (such the identitarian claims at stake in the minority rights regimes that Berman describes) need to be understood as intertwined with questions of redistribution. For instance, see Fraser, 'From Redistribution to Recognition? Dilemmas of Justice in a "Post-Socialist" Age', 212 *New Left Rev* (1995).

¹³ As noted earlier, this is a project that TWAIL scholars such as B.S. Chimini do undertake.

in Kosovo for instance). In this sense, the challenge is not just for Berman but for international lawyers as a whole in revisiting received political vocabularies ‘in the wake of empire’.

In my opening paragraph I suggested that Berman’s project was a fight against despair. Wrestling international law from the vacuity of its received landmarks, these papers aim to take the liberal colonial legacies of internationalism into a different future. In the closing chapters the ironic style that was so dominant at the beginning becomes conjoined with a less ambivalent claim to his own passion. The chapters are not arranged in the chronological order of their publication, but in this movement from ambivalence to passion in the authorial voice. This inspired placement lends a growing urgency to the fight against despair; the book is driven forward, like Klee’s Angel of History, with an eye on the debris of past internationalisms. Thus, as one travels through this collected work, the cumulative effect of Berman’s work emerges not as a redemptive project but as a surprisingly hopeful one that seeks to open international law to the risks and rewards of being more creative and relevant – driven perhaps most of all by a passion for a more hopeful and imaginative vision of Jerusalem.

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Emmanuelle Jouannet. ***The Liberal-Welfarist Law of Nations: A History of International Law***. Cambridge: Cambridge University Press, 2012. Pp. viii + 318. £60. ISBN: 978110701894.

This text, an excellent English translation of the original 2011 French publication, represents an ambitious attempt to tell a new history of international law over three centuries, from the 18th century ‘law of nations of the Moderns’ to the present day. Its central move is to orient this history round an account of international law’s dual purposes, one ‘liberal’, the other ‘welfarist’:

international law is neither narrowly welfarist law nor narrowly liberal .. it is indeed *liberal-welfarist* law and ... one of the keys to its meaning lies in the conjunction of these two purposes (at 7).

These two familiar concepts are defined in a relatively straightforward way. The core of the liberal purpose of international law is the protection of the ‘liberty, equality and security of states’ – sovereignty, that is to say, understood in relatively simple terms as state freedom and autonomy (at ch. 2). Although its precise content varies across periods, it is associated above all with neutrality as regards the internal organization of the state, and norms of mutual non-interference in inter-state relations. The welfarist purpose of international law, by contrast, is concerned less with the rights of the state, and more with improving and advancing the happiness, well-being, and utility of its population, including its material and moral improvement. It is, to paraphrase Emmanuelle Jouannet, oriented round the promotion of (a particular conception of) the ‘good’ rather than solely the protection of a ‘right’. Importantly, an explicit association is made in the text between this concept of welfarist law and Foucault’s famous account of the emergence of biopolitical governmental practices from the 18th century onwards (at 69, 272).

These two purposes, in Jouannet’s account, have been articulated differently during different periods in the history of international law. First, in the 18th century, during the flourishing of the ‘law of nations of the Moderns’, the two purposes were given roughly equal weight. On one