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. Wresting 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.

Vasuki Nesiah

Associate Professor of Practice
New York University
Email: vn10@nyu.edu

doi:10.1093/ejil/cht033

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

side, the experience of catastrophic conflicts throughout the 17th century led to an emphasis on the freedom and above all the security of states. On the other, the emergence of utilitarian thought, combined with mercantilist and physiocratic thinking about economic life, meant that 'happiness, as well as utility and self-improvement, became the ends sought in most treatises on law, morality and politics' (at 58). Then, as the law of nations of the Moderns became classical international law over the 19th century, the liberal purpose triumphed, as least within Europe: 'out went happiness' (at 109), and the 'sovereignty-freedom' of states became the 'cornerstone of all international law' (at 117). At the same time, a new welfarist impulse emerged which now had its application solely outside Europe: this was the 'paternalistic, imperialistic and profoundly discriminatory' (at 134) impulse of international law as it structured practices of colonialism (at ch. 11). It was only later, according to Jouannet, with the onset of various crises of capitalism in the early 20th century, that another 'welfarist purpose' developed, as international law participated in a Polanyían re-embedding of the market. Finally, in the contemporary period of international law, which Jouannet dates from 1945, the two purposes have undergone additional transformations. There are now, in Jouannet's account, two liberal purposes: the pluralism of classical international law is now combined with the more dogmatic liberalism of human rights (at ch. 18). And the welfarist purpose has been fundamentally transformed by the triumph of economic liberalism in the late 20th century (at ch. 22), as well as by the emergence of practices of technocratic intervention in the name of development and free trade (at chs 23, 24).

The history that Jouannet tells differs in a number of specific and significant ways from some of the more familiar existing accounts. For example, she is keen to stress, against Wolfgang Friedmann and Georg Schwarzenberger, that legal duties of co-operation are not an invention of the 20th century, but in fact were already an important part of international law two centuries earlier. Importantly, also, while Jouannet fully acknowledges the intimate connection between international law and colonial practices in the classical period, she takes issue with the idea that this connection was important to the development of international law in prior periods (at 86), and she shifts the emphasis somewhat by articulating international law's relation with colonialism essentially as a particular (and particularly horrifying) historical expression of the underlying welfarist purpose of international law (at 109, 138–141).

But while these specific differences as to the historical record are important, the express purposes of Jouannet's history are more general: first, to 'broaden the range of current historical interpretations' (at 8) of international law, and, secondly, to render visible, and thus to problematixe, our taken-for-granted understandings of the purposes of international law. Both of these aims are laudable, and both are to a significant extent achieved. To tell the story of international law as the constant rearticulation and reformulation of a central tension between liberal and welfarist purposes is a useful move – mostly because it (rightly) paints a picture of international legal practice which is vastly more unstable and open to possibility than we typically assume, but also, more specifically, because it recentralizes 'welfarism' (broadly understood) at the heart of the international legal project, against the tendency to treat such aspects of international law solely as departures from the norm or from tradition.

That said, although the professed tension between the liberal and welfarist purposes of international law is the core organizing principle of the book, by the end it has a curiously ambiguous status. This is because, even as she establishes this distinction, Jouannet also deliberately and explicitly destabilizes it at a number of key moments in her argument. Three brief examples will give the flavour of what I am talking about.

First, central to Jouannet's distinction between the liberal and the welfarist purposes is that the former professes to be a principle of substantive neutrality (as regards, for example, the internal political organization of states), while the latter is more closely allied to a particular notion of the good (e.g., at 37, 95, 121). The obvious response is of course to challenge the professed neutrality of those parts of international law oriented round its liberal purposes – hardly a new

point, but one which poses a challenge of sorts to Jouannet's story. And indeed, Jouannet rightly acknowledges this on numerous occasions, noting that the neutrality of international law is 'not foundational' but instead 'founded upon the choice of the modern sovereign state' (at 141), that the notion of the state underpinning classical international law was that of a 'civilized, culturally situated legal entity' (at 149), that international law is always 'both a means and also an end to be achieved' even in its most liberal manifestations (at 163), that 'the liberal dimension of international law is itself a good … presupposing substantive and not merely formal principles' (at 239, also 167), and that the 'principle of neutrality with regard to the economic choices of states is … more formal than real' (at 254). All this is true, in my view, but where does it leave the foundational distinction that Jouannet draws between the liberal and welfarist purposes of international law? What is, in the end, the nature of the difference between them? Are there really two purposes or only one, differently expressed and pursued?

Secondly, the same points can be made about the apparent contrast Jouannet draws between the 'interventionist' tendencies of welfarist international law, and the 'non-interventionism' of liberal international law. In the economic sphere, this contrast makes little sense. On the one hand, Jouannet suggests in Chapter 4 that the liberal conception of freedom of commerce at its inception included the freedom *of the state* to choose whether or not to engage in commerce, and that 'liberalism in foreign trade therefore went along with a wealth of monopolies, ententes and protection barriers' (at 55). On the other, in the contemporary world liberal international economic law is most often accused of a particularly intense form of intervention in domestic state–market relations, while its opponents are the ones arguing for a more 'neutral' and 'non-interventionist' international law. One is left wondering whether the unstable and observer-relative contrast between 'intervention' and 'non-intervention' represents solid enough ground on which to found a distinction between international law's liberal and welfarist purposes.

A final illustration comes from Chapter 18, in which Jouannet argues that in contemporary international law the liberal purpose of international law has in fact become two somewhat opposed liberal purposes: the first is oriented round sovereignty in much the same way as during classical and modern international law, but the second is the 'liberalism of human rights' which has much more in common with what Jouannet associates in earlier epochs with 'welfarism' (e.g., at 213). In one sense, the bifurcation within liberalism is simply the obvious result of the application of liberal ideas at two different levels – the first protecting the freedom and autonomy of 'the state', the second focussed on the freedom and dignity of the individual herself. But the point is that if it is so easy to shift between such obviously opposing visions of world order within the language and ideational frameworks of liberalism, how can we speak with any sureness about a contrast between the 'liberal' and 'welfarist' tendencies of international law?

As a result, the core tension that Jouannet describes between the 'liberal' and 'welfarist' purposes of international law could just as easily be relocated as a tension internal to the liberal purpose itself. This modest reframing has certain advantages. It would, for example, extend the discussion about the purposes of international law beyond the question of the centrality of liberalism to those purposes, to the question of the meaning and import of liberalism itself in relation to international law. Addressing more explicitly the internal contradictions of liberal international legal thought, showing its instability at virtually every point, may serve to open our eyes to more and greater possibilities within liberalism itself for a rethinking of international legal structures. Such an approach may, in other words, be somewhat better suited for some of the goals which Jouannet herself sets out to achieve, in this original and informative, new history of international law.

Andrew Lang

Reader in Law, London School of Economics
Email: A.Lang@lse.ac.uk

doi:10.1093/ejil/cht030