Jennifer Pitts. *Boundaries of the International: Law and Empire.* Cambridge: Harvard University Press, 2018. 293 pp. $45.00, cloth, ISBN 978-0-674-98081-5.

Reviewed by Michael Geyer

Published on H-Diplo (October, 2018)

Commissioned by Seth Offenbach (Bronx Community College, The City University of New York)

It is a categorical error to conceive of the global society of nations as a European system of states writ large. The world is not Europe; it never has been and never will be. Neither does the world follow Europe's model; not even Europe follows its own purported model. Jennifer Pitts's remarkable study, *The Boundaries of the International*, calls this categorical fallacy "parochial universalism" and demonstrates that it has deep roots in European thought.[1]

"Parochial universalism" still has a tenacious hold on the present imagination, even if it is nowadays stripped of its nineteenth-century racialized grandstanding. Pitts sees the English school of international relations theory in this tradition,[2] finding fault, first, with the historical presumption that the global society of nations evolved from the European society of nations and, second, with the systemic view that it resulted from the diffusion of the key principle of the European system, the equality of sovereign states. She rejects this as a "flat-earth" design for global politics, and while she puts too much trust in the equality of nations in Europe, her study demonstrates that inequality and hierarchy had always been key features of the European system in its relations with the rest of the world. She has less to say about the anarchical nature of the society of nations, but it would follow that anarchy is an ef-

fect of inequality in international society. Contemporary political theory about the society of nations has not gone very far beyond what was thought in Europe in the eighteenth and early nineteenth centuries. The "English school" is only one of the examples she offers that all build on the presumption that what once was right for Europe is still right for the world. For all those, like me, who once saw in the English school an escape from continental European *Machtpolitik*, this is a sobering line of thought even in retrospect.

But Pitts does not belong to what one French thinker memorably called "the school of suspicion."[3] She chastises one scholar, who, although "sensitive to the discursive particularities of the text, rather than using these to understand the move in an argument that the thinker makes,... instead uses these to unmask the thinker" (p. 79). She is not into deconstruction but into the reconstruction of the implicit logic of changing arguments and indeed a changing field of argument in the invention of a new category of thought, which we have come to take for granted—"the international."[4] The most important benefit of this approach is that we observe, with Pitts as our guide, past legal and political thinkers debating how to grasp reality in international relations and how to recognize struggles over differences in approach and worldview. Above all, we trace the effort of

bending and reworking traditions of European thought in the face of changing circumstances. For British thought on international relations, it turns out, the Revolutionary and Napoleonic Wars were the decisive watershed.

With this periodization, she picks up on the rediscovered work of C. H. Alexandrowicz (1902-75), who had forcefully argued that the shift from the eighteenth to the nineteenth century is one from (enlightened) cosmopolitanism to (imperial) Eurocentrism.[5] Pitts subsequently reworks this argument to good effect but also gets caught in it. She takes as a historical fact what Alexandrowicz famously argued, namely, that British international and imperial politics were (and are) articulated in the language of international law, which as a result is a biased and flawed language. Pitts, in turn, discusses the grammar of this language and in the process revises Alexandrowicz, who has an instrumental understanding of the relation. By contrast, she shows the fusion of international law and international and imperial politics. International law became the language of (the British) empire.

It is less a matter of disagreement than of astonishment that this should be the case, because the fusion of law and empire, flawed or not, contrasts with the absence of international law in German thought (at least in the late nineteenth and early twentieth centuries), which has just recently been documented with great effect by Isabel V. Hull in *A Scrap of Paper: Breaking and Making International Law in the Great War* (2014). In British thought, if we radically simplify the matter, talking about power or empire means thinking law, whereas in German thought, thinking power means talking force. But note that both British thought and German practice in the nineteenth century also differ significantly from the way twentieth-century international lawyers, Martti Koskenniemi's "gentle civilizers" (*The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* [2002]), approach the

subject. The latter construct international law *above empire*. They aim to create an "empire of law." They did this mainly in contradistinction and rejection of German *Machtpolitik*. They had a far more difficult time distinguishing law from empire in the case of self-declared lawful empires, if indeed they ever tried.

Pitts weaves an intriguing path through these contradictory approaches. Against the modern-day theory and practice that hold international law to be above empire, she forcefully insists that imperial relations are in fact revealed in the seemingly above-empire language of international law and human-rights law, at that. Against the "school of suspicion," she argues that it nonetheless remains important to analyze the internal logic and the architecture of international law as imperial law. It cannot simply be dismissed as a tool of empire. As a language of empire, international law has its own integrity, she insists. It is never pure instrumentality, invented on site to serve an (imperial) interest. Like any language, custom, or tradition, it cannot be invented from scratch. Rather, international law, as *ius gentium* (law of nations), and imperial thought are deeply embedded in centuries of controversies and in complex architectures of reasoning. How British imperial thinkers dealt with these past controversies, how they tried to reason themselves "out of the box," and to what effect and with what limits they built a new system of imperial legal thought, these are the key questions that inform Pitts's study. Jeremy Bentham (1748-1832) coined the term "international law" to distinguish it from the older Christian and European *ius gentium* and to create a new understanding and, indeed, constitute a new type of law. This heritage nevertheless left vexing traces, presuppositions about the nature of humanity and of the society of nations, that were remolded and reshaped, but proved to be difficult and indeed impossible to remove in their entirety. Old prejudices were powerfully reloaded.

Thus, the idea of the universality of the *ius gentium* implied that all human societies and certainly the great imperial civilizations of Eurasia demanded respect and recognition. They were urban, literate, and commercial societies with well-defined state and legal institutions. This understanding of the universality of empire and, hence, of the law of nations had already caused terrific problems as a consequence of Spanish imperial expansion. It had also been a notorious bone of contention in relations with the Ottoman Empire, not simply as a Muslim power but as a Muslim empire on the European continent. In the nineteenth century it was rehashed on a much grander canvas.

The British stepped into a centuries-old lively debate when they began to make the law of nations their own. Strict adherence to the universalism of the law of nations predicated that relations between major Eurasian polities, despite their diverse religious, political, and legal backgrounds, were "naturally" based on mutually binding, reciprocal legal arrangements. That is to say, they were full members of the society of nations, much like the various political entities in Europe, irrespective of their religion or size. But were they? With the advance of the notion of "oriental despotism," the balance of argument shifted decisively against equal recognition. Pitts discusses Montesquieu (1689-1755) as one of the concept's main propagators, in part to undercut Alexandrowicz's notion of enlightenment cosmopolitanism. She acknowledges that the notion of "oriental despotism" served as a veiled critique of European (French) absolutism, as a figure of speech for internal purposes. But her main attention is focused on the very real consequences of an imputed "oriental" incapacity for reciprocity. Because Asian empires did not know or were incapable of adhering to the (European/universal) "rules of the game," so it was argued, they could not possibly be members of the society of nations. Counterarguments were presented vociferously, mostly by diplomats. Pitts holds up Abraham Anquetil-Duperron, in particular, but the thought-architecture had shifted. While there continued to be voices of opposition—most famously Edmund Burke's plea for "legal pluralism" in the impeachment trial against Warren Hastings, the former governor general of Bengal—the British debate on international law started with the presumption of nonreciprocity in imperial encounters. But instead of negating international law altogether, British thought worked up an international law that incorporated the imperial reality of unequal relations.

Pitts moves, if rather too seamlessly for my taste, from Montesquieu to another but altogether quite different continental, Emer (Emmerich) de Vattel (1714-67), whose *Droit de gens ou principes de la loi naturelle* (1758) remains a founding text of international law.[6] Pitts features Vattel as radicalizing the notion of reciprocity and recognition, eliminating hierarchy and deference, by insisting on the principled equality of nations as the main dictate of the law of nations. Vattel presumed this equality of nations to be "universal" and meant to say "worldwide," but got caught in his own parochialism, as Pitts shows brilliantly. The legal norms undergirding his universalism were thoroughly continental European and Christian;[7] Muslim states were excluded on suspicion of being incurably violent; and empire as a territorially amorphous regime of direct and indirect forms of dominion did not exist in Vattel's "Swiss" world of nations as moral persons.[8] In short, Vattel's universalism of equality among nations was predicated on the acceptance of the standards and norms of a European world. He was the quintessential "parochial universalist."

Bentham's concept of "international law [jurisprudence]" emerged from these discussions, although his own views on the matter changed drastically over the course of the Revolutionary and Napoleonic Wars. In the tradition of Vattel, he started out, as Pitts explains, with a plan for "international law," whose main features were mu-

tual recognition of states, nonintervention, and "mutual good offices"—in other words, a program for the self-restraint of empire(s) as a prerequisite for peace. In contrast to Pitts, I see no "modesty" at all involved when he subsequently shrank these far-flung "universal" ideas to apply to Christian nations only and interpreted nonintervention as freedom from international law in the internal affairs of colonies (p. 44). Colonials thus lost their rights as sovereign actors, which in principle they had possessed within the *ius gentium*.

Henry Wheaton's *Elements of International Law: With a Sketch of the History of the Science* (1836) provided the definite articulation of this Benthamite line of argument. Wheaton was an American, but his arguments became the new normal.[9] He effectively racialized and re-baptized the law of nations—something British authors were reluctant to do—declaring that the teachings of justice were a uniquely European (Christian!) heritage and, hence, the law of nations could not possibly be universal. Therefore, the international community was an exclusively European, in fact "Western," club. The only way for non-Europeans to join was to adopt European law and presumably Christianity wholesale. It was left to British thinkers, such as John Stuart Mill, to give this dictate a more aspirational thrust, as Pitts shows. Teaching (civil) law to colonials became imperial pedagogy.

Pitts points to a tenacious opposition both against exclusions and against unequal integration, which is to say against the imperial encroachment on an existing worldwide society of nations. She highlights the lingering effect of a fascinating late eighteenth-century British debate that thought of international society in terms of networks, rather than hierarchies of nations, and accommodated diverse legal orders in a legal pluralism. This contrarian thought, while altogether ineffectual, shows the potentials and futures of international law—futures not taken and actively denied. Hence, the procession of minor and major

oppositional figures—Paul Rycaut, Abraham Anquetil-Duperron, Robert Ward, Edmund Burke, William Scott, Francis Newman, Henry E. J. Stanley.

The main thrust in remodeling the older *ius gentium* into "modern" imperial international law came with the seemingly ever more unlimited ability to order the world.[10] It involves some of the more perplexing developments in nineteenth-century international law: the rise of a hard-nosed positivism intersecting with historicism. Pitts discusses this imperative of world ordering under the dual heading of legal positivism and historicism, which on the surface of it looks like a contradiction. But her argument here is as complex as it is fascinating. Perhaps the most unexpected aspect of Pitts's discussion is the short shrift she gives the rejection of international law as law by the eminent legal scholar and philosopher John Austin (1790-1859), a disciple of Bentham. Austin's argument is still prominent today among advocates of *Machtpolitik* and related theories of "realism."[11] Austin states that law is the command of a sovereign. Where there is no sovereign there is no law. Because international society does not have a sovereign, international law cannot be law and, therefore, "international law" becomes a matter of mere ethics, "oughts" not "musts." It is the proper subject for humanitarians.

This way of "positivizing" international law came to dominate German legal thought with the result that German legal thinkers had difficulties conceptualizing and, indeed, acknowledging the existence of international law. International lawyers in Britain, however, positivized differently. They came to insist on the "positive" (written, codified) record of governments (sovereigns) in their interaction with each other, supplemented by earlier "codifications" of the law of nations. They positivized law by "historicizing" the written record, which also meant that they shunned older fictions of (unwritten, uncodified) natural law. Le-

gal pluralism, once hotly defended by Burke, moved into the realm of imperial ethnography. International lawyers historicized by demonstrating the progression of (written) law, mowing backward to the written record to Greek and Roman times and forward to a global world of European international law. Pitts's discussion of Henry Maine (1822-88) is highly instructive in this context. In his thinking, positive international law shrank to the binding, statutory writ of states—writ, moreover, that followed European conventions and was practiced in recognizable juridical institutions. In Pitts pithy language, it "underwrote the right to adjudicate international legal norms and deploy violence in an administrative (rather than either political or legal) mode over those societies Europeans deemed not yet candidates for legal inclusion" (p. 182)

The *ius gentium* had always been parochial in its universal ambitions. But at the apex of British expansion it was transformed, against opposition from within, into a pliable international law that gave legal language to inequality and thus could become the unilateral instrument of a globalizing sovereign. The antidote? Well, Vattel had opined that insurrection was a permissible way to achieve what was natural: the equality of nations. Alas, the way from this opinion to the "right of self-determination" was long and winding.

Notes

[1]. For international law, see the pioneering work of Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

[2]. The starting point is Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977). A more recent iteration is Adam Watson, *The Evolution of International Society: A Comparative Historical Analysis* (New York: Routledge, 1992).

[3]. Paul Ricœur, *Freud and Philosophy: An Essay on Interpretation*, trans. Denis Savage (New Haven, CT: Yale University Press, 1970), 32.

[4]. Luigi Nuzzo and Miloš Vec, eds., *Constructing International Law: The Birth of a Discipline* (Frankfurt am Main: Vittorio Klostermann, 2012).

[5]. C. H. Alexandrowicz, *The Law of Nations in Global History*, ed. David Armitage and Jennifer Pitts (Oxford: Oxford University Press, 2017).

[6]. The latest edition is Emer de Vattel, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, ed. Bela Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008). See also Vincent Chetail and Peter Hagemacher, eds., *Vattel's International Law in a XXst Century Perspective* (Boston: Martinus Nijhoff Publishers, 2011).

[7]. In my reading even more Central European than Pitts would allow. See Tetsuya Toyoda, *Theory and Politics of the Law of Nations: Political Bias in International Law Discourse of Seven German Court Councilors in the Seventeenth and Eighteenth Centuries* (Leiden: Martinus Nijhoff Publishers, 2011). Vattel was councilor at the Saxon Court.

[8]. André Holenstein, *Mitten in Europa: Verflechtung und Abgrenzung in der Schweizer Geschichte* (Baden: Hier und Jetzt, 2014).

[9]. This is convincingly demonstrated by the essays in Anne Orford, ed., *International Law and Its Others* (Cambridge: Cambridge University Press, 2006).

[10]. Lauren A. Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800-1850* (Cambridge, MA: Harvard University Press, 2016).

[11]. Developed in John Austin, *The Province of Jurisprudence Determined* (London: John Murray, 1832).

If there is additional discussion of this review, you may access it through the network, at
https://networks.h-net.org/h-diplo

Citation: Michael Geyer. Review of Pitts, Jennifer. *Boundaries of the International: Law and Empire.* H-Diplo, H-Net Reviews. October, 2018.

URL: https://www.h-net.org/reviews/showrev.php?id=51932