

## Review of IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW by Antony Anghie (2005)

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In *Imperialism, Sovereignty and the Making of International Law*, Antony Anghie presents what he calls ‘an alternative history of sovereignty’. Unlike traditional accounts of international law, this history does not take as its starting point the Peace of Westphalia, nor does it understand the development of sovereignty through the progress (primarily) of European statehood. Rather, the history Anghie draws focuses on the colonial confrontation between European and non-European societies. Anghie’s argument is that colonialism and imperialism — terms he uses essentially interchangeably—are central to the way that the doctrine of sovereignty has been constituted. Further, that such imperialism remains embedded, unacknowledged, within its constitution has led international law into a cycle of renewing and repeating the dynamic of colonial relationships, even as it claims to overcome them. In making this argument, Anghie creates a compelling and confronting work that lays down a singular challenge for international lawyers: how to create an international law that transcends its colonial history and that can truly claim to be ‘universal’.

Anghie’s argument is centred around two main propositions. First, he posits that the rhetoric of the ‘civilizing mission’—the distinction between the civilized and the uncivilized—is repeated in contemporary international discourse through categories such as the ‘developed’ and the ‘developing’ and, particularly in the context of the modern ‘war against terror’, the ‘civilized’ and the ‘barbaric’. Sovereignty, Anghie argues, has always rested with the ‘civilized’ and ‘developed’, to the exclusion of the ‘uncivilized’ and ‘developing’. The ‘civilized’ is the universal standard against which the ‘uncivilized’ is compared. This, in turn, creates a ‘dynamic of difference’— Anghie’s second proposition—which he defines as the process of establishing the gap between two cultures and then ‘seeking to bridge the gap by developing techniques to normalize the aberrant society’ [p 4].

By exploring a number of different periods in the history of international law, Anghie contends that the civilizing mission and the ‘dynamic of difference’ have been central to the development of the doctrine of sovereignty. He examines the colonial encounter between the Spanish and the American Indians through the eyes of Francisco de Vitoria (chapter 1), colonialism in the 19<sup>th</sup> century (chapter 2), the Mandate System under the League of Nations (chapter 3), and then the more contemporary examples of ‘transnational law’, the Bretton Woods Institutions and the war against terror (chapters 4, 5 and 6). Anghie’s argument is thus deeply historical. This is a distinguishing characteristic of his work and it provides the substantive foundation for his views. The broad historical sweep of Anghie’s project also gives rise to one of the book’s few weaknesses, however: the need to generalize and be less detailed in the elucidation of arguments than might ideally

be the case. Even within these limits, however, the chapters on Francisco de Vitoria and on the Mandate System, in particular, offer powerful support for Anghie's thesis.

In chapter 1, Anghie examines the encounter between the Spanish and the American Indians as described, explained and justified in the work of 16<sup>th</sup> century jurist and theologian, Francisco de Vitoria. Vitoria, Anghie argues, laid the foundation for the 'dynamic of difference' through the significance he attached to the cultural differences between the Spanish and the Indians. For Vitoria, while the Indians were capable of being bound by the law of nations because of their capacity for reason, they were not actually capable of possessing sovereignty because of their barbaric cultural practices, which were contrary to the norms of the universal law of nations (effectively Spanish norms). The Spanish were therefore justified in imposing universal (Spanish) practices and identity on the Indians, through waging war where necessary. Importantly, for Vitoria, only sovereigns had the power to wage war and only Christians could engage in a 'just' war. Thus the non-Christian Indians could never legitimately wage war or, consequently, possess full sovereignty. In Anghie's view, Vitoria's reasoning informs the subsequent development of international law in two ways. First, it establishes that certain groups can be excluded from the 'sphere of sovereignty' because they are different and, in particular, are non-European and non-Christian. Secondly, sovereignty itself is then moulded by the exercise of unlimited sovereign power against these excluded groups. The European power is authorized, through the doctrine of sovereignty, to dominate the non-European.

The Mandate System of the League of Nations is the focus of chapter 3. Anghie's argument is that the Mandate System, along with most international institutions, was profoundly shaped by colonialism and that an understanding of this history is necessary in order to fully appreciate the impact of modern international institutions on the Third World. Anghie asserts two particularly forceful points about the way sovereignty developed under the Mandate System. First, Anghie emphasizes that even as the Mandate System purported to transfer formal sovereignty to Third World States, it continued their subordination through new sociological mechanisms. Thus, Third World statehood became contingent not just on the formal criteria of territory, population and government, but on the satisfaction of rules and standards in areas such as economic development, health and mortality rates, and reform of native political institutions. Or, as Anghie puts it, 'the formal positivist criteria of statehood ... [were] transformed from mere criteria ... into projects to be undertaken by the Mandate System' [p 189]. In this, Anghie detects the beginning of the science of 'development'. Secondly, Anghie views the Mandate System as a 'pivotal moment' in the constitution of the 'dynamic of difference'. He argues that it was during this period that international law removed the obvious traces of racism from its discourse and shifted to more neutral language to describe the problems of the Third World. Thus, people were no longer 'civilized' and 'uncivilized', but instead were 'backward' or 'advanced' in economic (and therefore apparently more scientific) terms. In this way, the

problems of the Third World, and the First World's attempts to resolve them lost their appearance of cultural superiority and instead became questions of neutrally-applied technologies of economic management.

In chapters 4 and 5, Anghie examines the techniques of neo-colonialism that he identifies as originating in the Mandate System. In these chapters, Anghie traces some of the modern manifestations of the 'civilizing mission' and the 'dynamic of difference', and Third World attempts at resistance. While there are many critiques of the contemporary tools of Third World management, such as those practised by the Bretton Woods Institutions, Anghie's historical method brings a different perspective to this question. An example of this is his view on the origins of 'good governance'. For Anghie, the move to install 'good governance' standards in the Third World, and the related move to regarding democratic governance as essential for proper development, simultaneously conceals and reproduces the colonial history of international law. He says, 'historically, the international legal discourse has ... been shaped ... by a concern to impose 'universal standards' that essentially furthered European/Western interests. ... [good] governance is now designed to provide the political institutions that will enable the furtherance of globalization' [p 253]. The Bretton Woods Institutions, the successors of the Mandate System, impose far-reaching requirements for (primarily Western notions of) economic, political and social reform on Third World countries, which, if fully implemented, will transform the Third World state into a 'proper' international citizen. At the same time, the Institutions fail to acknowledge that any of the causes of poverty might stem from the structure of the international economy or, indeed, from the actions of the Institutions themselves.

Anghie claims not to be deterministic about his argument. Although he says that he does not consider that international law must necessarily and consistently reproduce the forms of colonialism, his own argument makes this a difficult claim to sustain. In chapter 2, for example, which focuses on colonialism in the 19<sup>th</sup> century, Anghie argues that positivism enabled the entrenchment of the distinction between the 'civilized' and the 'non-civilized' because of its rigid dichotomy between 'advanced' and 'backward' systems of law. This view effectively denied legitimacy, and sovereignty, to 'backward' systems and assumed that the latter systems could only progress (and become sovereign) by becoming more like the advanced systems. This argument allows Anghie to draw another of the many parallels in the book between the colonial and the contemporary international orders. Anghie posits that just as in the 19<sup>th</sup> century, when the non-European world could achieve sovereignty only by submitting its culture and norms to European standards, so in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries, 'adoption of Western systems of democracy and economic liberalization appear to offer the only feasible alternative to states around the globe, whether in Asia, Africa or Eastern Europe' [p 113]. So tightly bound does Anghie consider the past and present concepts of sovereignty, and so connected to a construction of the 'other', that he asks if the civilizing mission can ever be erased from the principal elements of the international system: 'ideas of modernity, progress, development, emancipation and rights' [p 114].

Anghie's book is therefore challenging. While certain of his historical illustrations support his central argument better than others, he identifies many ways in which international law continues to embody an imperial impulse, however concealed, even as it purports to have rejected or transcended it. It may be possible to argue about the degree to which international law remains an imperial law, but it is difficult to dispute Anghie's basic proposition.

The question for international lawyers, then, is what can be done about it? Anghie's critique, as presented in this book, is unrelenting—the cycle of colonial renewal and repetition has become so entrenched that even when people/States/institutions attempt to avoid it, they cannot help but reproduce it. Anghie himself does not have many suggestions on how international law might properly transcend the centrality of colonialism. Indeed, the force of his critique makes his concluding hope—that identifying the problems within international law will be enough to prompt a remedy—seem a little trite. This is, however, a minor disappointment in a book that is otherwise truly enlightening. *Imperialism, Sovereignty and the Making of International Law* is a work of expert scholarship that is simultaneously accessible and engaging. It inspires a questioning of our assumptions about international law and about the motivations for our own work. It should be read by anyone interested in the future of international law.

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