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***Justice Among Nations: A History of International Law*, by STEPHEN C. NEFF.
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978-0-674-72529-4**

The history of international law begins in 1648 at the Peace of Westphalia, or so most introductions to international law will tell you. More recent attempts to chart the origins of international law have started in Europe in the 1500s,¹ a time of trade and exploration that witnessed interactions between growing nation-states. In *Justice Among Nations: A History of International Law*, Stephen C. Neff goes further still in his account and starts with the Greeks and Romans, travels through China and India, to bring the narrative up to the present day.² Histories of international law are often criticised for focusing on the European role in creating international law, but *Justice Among Nations* promises a thorough history, spanning both time and the globe. The introductory chapters to *Justice Among Nations* inspire hope for a survey of international law from all continents.

¹ Bardo Fassbender, Anne Peters, Simone Peter and Daniel Högger (eds), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012).

² *The Oxford Handbook of the History of International Law* ends its particular history at World War II.

Beginning with Livy's report on the murder of four Roman envoys by Lars Tolumnius, ruler of Veii, in ca.438 BC and ending in 1564 with the disputed ownership of the Adriatic Sea, Part I of the book is a story of trade and war. Weaved between tales of the power of the papacy and the power of empires, is a narrative about the role of natural law in early thinking on international law and the debate on the relationship between natural law and *ius gentium*. Covering these earlier periods in depth provides the 'roots' for discussions on extraterritoriality and consular jurisdiction that come later.³ Neff shows how, in the Middle Ages, European countries had resident communities in trading cities, which provided the need for treaties that granted extraterritorial privileges. Starting from here, he can then trace the trend for these treaties to interactions with the Far East. By the 1850s, there were a series of resolutions that provided for extraterritorial privileges, which had been brought about by the end of the "Opium War" between Britain and China in 1842.⁴ Running threads through the ages and across continents, Neff persuasively traces the history of international law.

Racing through time and across space, Neff documents the periods between 1550-1815, 1815-1914 and then from 1914 onwards. Occasionally there is an indulgent pause as Neff delves deeper into a snippet of history. Such a pause is taken to discuss Spanish exploration, for example. By the 1500s, questions were being asked about the legality of Spanish sovereignty over the New Lands.⁵ In a detailed investigation, Neff surveys the alternative justifications and arguments supporting sovereignty, as well as outlining who was responsible for proposing or refuting these justifications. Neff's early explanations of Roman Law mean that he is able to demonstrate how the Roman Law on the acquisition of title fed into the

³ *Justice Among Nations*, 316.

⁴ *Ibid.*

⁵ *Ibid*, 111.

debates on 16th century sovereignty.⁶ There was, however, another source of thinking: religion was at the heart of the discussions. Effort was spent trying to stretch the papal grants to include the acquisition of territory,⁷ and the Vatican was instrumental in rejecting justifications based on slavery. In 1537, Pope Paul III declared that ‘Indians’ should not be treated as slaves.⁸ Drawing the connections with modern day international law, Neff shows that just war theories were, by this time, well established, and the scholar Vitoria was able to list the possible grounds upon which to justify war, distinguishing between correcting wrongful conduct and a war of conquest.⁹ There is even a tentative argument based on humanitarian concerns, which echoes debates on humanitarian intervention.¹⁰ Although connections can be drawn, what these debates and alternative justifications really show is the importance in the 16th Century of a legal basis to legitimise decisions.¹¹

Yet, these episodes of detailed analysis are few and far between. As Neff reaches the 16th Century, the prose changes from recounting stories of wars, to telling stories about influential scholars and practitioners. Sometimes questions about where the scholar drew their ideas from—i.e. the political, social and economic context of their works—are addressed. For example, Neff situates Clyde Eagleton’s solidarist work on the idea of the international community in 1950s New York, a city very much aware of its 1930s liberal idealism.¹² However, it is rare that questions on how those ideas then filtered into the law are answered. In 1956, in Columbia Law School, Philip C. Jessup was writing about the idea of transnational law or the ‘interpenetration of legal rules and systems’ worldwide.¹³ The

⁶ Ibid.

⁷ Ibid, 119.

⁸ Ibid, 118.

⁹ Ibid, 117.

¹⁰ Ibid, 124-125.

¹¹ Ibid, 126.

¹² Ibid, 427.

¹³ Ibid, 428.

concept of transnational law is still heavily debated today. Jessup's time as a judge at the International Court of Justice and the influence his decisions and opinions might have had on the development of international law are not discussed.

This book is very much a history of the men who wrote about international law.¹⁴ Details of the contents of The Hague Academy Programme¹⁵ over the years and comments on the structure of legal texts,¹⁶ are evidence to suggest that Neff not only prioritises the role of the academic in international law, but revels in narrating the 'general intellectual atmosphere'.¹⁷ Part IV of the book acts as an extended encyclopaedia that documents scholars from 1914. In this part, Neff details each scholar's early life and career, as well as the ideas in their most significant works. Included in the list are French, German, English, and American scholars, a few Russian scholars and practitioners, and a Chinese scholar. Despite assigning each scholar with their academic institution, Neff does not acknowledge that the majority of these scholars are from the same Western tradition, a large portion studying or working for a time in the United States of America. The smaller section dedicated to the Global South fails to acknowledge a single author from the Third World Approaches to International Law (TWAIL) school of thought.¹⁸ Professor Balakrishnan Rajagopal, as just one example, has shone a bright and inescapable light on the colonial nature of international law,¹⁹ which is only tentatively addressed for a book on justice among nations.

¹⁴ Ibid, 415.

¹⁵ The Hague Academy provides intensive courses in public and private international law.

¹⁶ *Justice Among Nations*, 228.

¹⁷ Ibid, 292.

¹⁸ Ibid, 432-434.

¹⁹ Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

Neff graciously acknowledges the feminist approaches to international law,²⁰ yet throughout the book he marginalises the women that have contributed to the history of international law. Eleanor Roosevelt gets a token mention for her role in the Universal Declaration of Human Rights,²¹ Catherine the Great and her role in organising the League of Armed Neutrality in 1780 to protect the freedom of the seas in the Baltic Sea is not mentioned,²² and Neff's commentary on Christine de Pizan's 1410 text, *Book of Deeds of Arms and of Chivalry*, is offensively shallow.²³ Christine de Pizan is remembered for writing in an accessible dialogue format so that laypersons could access the 'laws of war', possibly by hearing it read aloud.²⁴ It is accepted that she drew inspiration from her predecessors, Vegetius (ca. late 4th century) and Honoré Bonet (ca. 1340 – ca. 1410), and that she repeated some of their ideas, but Neff goes too far in insinuating that she is unimportant because she merely copied Bonet.²⁵ Histories of international law usually omit female scholars or practitioners, but *Justice Among Nations* acknowledges them. Yet, by demeaning those women and the TWAIL scholars that were part of the history of international law, Neff repeats a familiar all-male and mostly Western tale of the discipline.

This story of writers and practitioners does challenge the myth that Hugo Grotius (1583 - 1645) is the father of international law.²⁶ Firstly, Neff compares Grotius' work with the thoughts and scholarship of Isidore of Seville (ca. 7th century) and Francisco Suárez (1548–

²⁰ *Justice Among Nations*, 462.

²¹ *Ibid*, 402.

²² Fassbender et al., (n 1) 775; Howard Jones, *Crucible of Power: A History of American Foreign Relations to 1913* (Lanham: Rowman & Littlefield Publishers, 2009) p 16.

²³ *Justice Among Nations*, 85.

²⁴ Charity Cannon Willard and Sumner Willard (eds), *Book of Deeds of Arms and of Chivalry: by Christine de Pizan* (Penn State Press, 2010) pp 5-6.

²⁵ *Justice Among Nations*, 85.

²⁶ *Ibid*, 166.

1617).²⁷ According to Neff, Grotius followed Suárez on upholding a dualist notion of international law, he ‘aped’ Suárez when he identified diplomatic relations as a manifestation of voluntary law, and, he echoed the work of Isidore in arguing that the voluntary law of nations was man-made.²⁸ The contribution of Grotius to international law is downplayed, as he was to expound upon the work of Suárez and to spread it to the wider world.²⁹ Secondly, returning to the 1100s, Neff uncovers a number of different ‘fathers of international law’. For example, Bartolus of Sassoferrato is ‘credited as “the first theorist of international law”’.³⁰ Bartolus, ‘sometimes legal adviser to Emperor Charles IV’, devised ‘the independent city’ within the Holy Roman Empire to explain the environment in Europe in 1183.³¹ Neff draws an analogy with state sovereignty in international law. Making comparisons and finding older sources of inspiration, *Justice Among Nations* expands the horizons for international legal history.

To write a history of international law, however, we have to know what international law is. As ‘conceptions of what international law is have changed so much over time’ there is no single history, instead there are histories.³² Rather than suggest what international law is, Neff attempts to document how competing ideas have travelled through history. The book becomes, however, a narrative of the respective rise and fall of positivist law and natural law.³³ In particular, Part IV of the book reads as an introduction to international legal theory, a narrative that is familiar to the student of international law. Neff traces the development of the liberalism, solidarist or sociological approaches, socialists and positivism schools of

²⁷ Ibid, 165.

²⁸ Ibid, 162-163.

²⁹ Ibid, 158-159.

³⁰ Ibid, 77.

³¹ Ibid, 76.

³² Ibid, 481.

³³ Ibid, 221.

thought.³⁴ Focusing on the main scholars or works, Neff does not engage with the particular historical contexts. For example, despite discussing the Russian and then Soviet approach to international law, the book overlooks particular facts in the history of Russia. There is little discussion to explain the Bolshevik approach to law after the Revolution in 1917 and the Western reaction.³⁵ Without these, and other, historical reference points the book is less about the justice among ‘Nations’ and more about debates between intellectuals.

Justice Among Nations asks whether there is a difference between the days of the ancient world and the twenty-first century.³⁶ Still without a defined ‘purpose’ for international law, Neff suggests that international law might still be described as just a series of state practices engineered to bring predictability.³⁷ There is a difference between the ancient world and the modern day in the narrative Neff tells. According to Neff’s history, nations have become increasingly less important. Progression through the chapters of this volume document a rise in the importance of the theorist, which diminishes the focus on state practices. The book turns away from China and India, and instead hones in on the academies of Central Europe. While Part I of *Justice Among Nations* lives up to the promise that histories of international law will have a new temporal and geographical scope, Neff’s coverage of the traditional narrative of international law beginning in 1640s Germany tends towards rehearsing a well-known story. Nevertheless, for those readers with an interest in international legal history, *Justice Among Nations* is worth reading.

RUTH HOUGHTON

Durham Law School

³⁴ Ibid, 415-432.

³⁵ John Quigley, *Soviet Legal Innovation and the Law of the Western World* (Cambridge: Cambridge University Press, 2008) p xiv.

³⁶ *Justice Among Nations*, 481.

³⁷ Ibid.

