

Book Review Ekaterina Yahyaoui Krivenko, *Space and Fates of International Law: Between Leibniz and Hobbes* Cambridge: Cambridge University Press, 2020. ISBN 978-1-108-48875-4.

Yahyaoui Krivenko's monograph promises to deliver 'the first analysis of the influence exercised by the concept of space on the emergence and continuing operation of international law'.<sup>1</sup> This bold and ambitious abstract for the book might lead one to think that it contains a legal geography of international law, extended discussion of territory, and the role of law in constructing space. Some of these questions are touched upon, but the book is better classified as a contribution to the history and theory of international law. The author reads Hobbes and Leibniz as theorists of space and of law, arguing that their different conceptions of space inform their different conceptions of law, and that both contrasting conceptualisations are at work in the deep structure of international law, sustaining ongoing conflicts between subjects and sources of international law.

Hobbes and Leibniz are studied in their context, although the historical methodology is far from dogmatic; inspired by, rather than relying directly upon, work on the history of ideas, particular Cambridge School historians. The methodological approach is best summarised as history and theory of international law, or as Janne Nijman puts it 'seeking change by doing history'<sup>2</sup>. The thesis is that by studying the past, one comes to see contemporary international law in perspective, and realise the possibility for change, for doing things differently. There is a significant and important debate around how to study the history of international law, but that is not a debate Yahyaoui Krivenko enters in to.<sup>3</sup> Instead the author demonstrates the potential of a detailed history of ideas to provide new arguments and understandings of international law.

The introduction sets out the argument that as modern occidental international law was established in the late 19<sup>th</sup> century, an understanding of space developed in the 17<sup>th</sup> century was assumed. This, Yahyaoui Krivenko argues, has led to a contemporary problem 'that international law is an oxymoron'<sup>4</sup>. It is an oxymoron because the concept of law cannot be maintained alongside the spatial concept of international. If it is to be international, it cannot be law. If it is to be law, it cannot be international in the traditional sense of inter-state. To solve this problem requires a rethinking of the spatial underpinnings of international law. At this point it is worth noting another debate which this book speaks to, the field of global governance or global law, which could be greatly enhanced by attention to the spatial concepts currently assumed.

The first chapter sets the historical context for reading Hobbes and Leibniz. Key considerations for Yahyaoui Krivenko are the active role of God in philosophy, the new role of science and philosophy, the adoption of the geometrical method in philosophy, and the political setting of the Thirty Years' War and the English Civil Wars. Both thinkers then adopted rigorous methods of philosophy as a science, whilst still taking religion seriously, in a political context of long and terrible warfare. A final contextual element mentioned only in passing is 'thinking about law in a new more global context when new lands with different cultures were being explored'<sup>5</sup>. It is a shame that colonialism is not

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<sup>1</sup> E Yahyaoui Krivenko, *Space and Fates of International Law: Between Leibniz and Hobbes* (CUP 2020) Back cover blurb.

<sup>2</sup> J Nijman, 'An Enlarged Sense of Possibility for International Law: Seeking Change by Doing History' in I Venzke and K J Heller (eds) *Contingency in International Law* (OUP 2021)

<sup>3</sup> The most recent and most significant contribution to thinking about the history of international law is A Orford *International Law and the Politics of History* (CUP 2021).

<sup>4</sup> E Yahyaoui Krivenko, *Space and Fates of International Law: Between Leibniz and Hobbes* (CUP 2020) 1.

<sup>5</sup> *Ibid* 25.

given greater consideration, first for its revolutionary impact on the concept of space, but also for the changes and developments demanded in law by the destruction and subjugation of colonised peoples. Political and legal thought of the 17<sup>th</sup> century surely cannot be understood without that context. One of the most important contributions of the turn to history of international law has been to make just that point.

Chapter two introduces the concept of space. Space poses a trap due to ‘the obviousness with which space appears to law and the easiness with which ... it is disregarded’.<sup>6</sup> The concept of space in Hobbes and Leibniz is then set out, the key for both being a rejection of Newtonian absolute space. This discussion of space sticks very closely to the texts and contexts of the two philosophers and asserts that space and law are separate and independent concepts today, whilst they were entwined for Hobbes and Leibniz. Chapter three addresses the concepts of universals and human cognition, putting these concepts in context before offering a close analysis of Hobbes’ and Leibniz’s thinking. Here Yahyaoui Krivenko argues that to link space to international law requires an understanding of the role of universals and human cognition in the thought of the two philosophers. International law ‘is especially preoccupied with asserting its universal validity’.<sup>7</sup> The concept of universals in international law is directly influenced by 17<sup>th</sup> century thinking which at that time could not describe a concept of the universal without a concept of space. Hobbes’ materialism led him to a theory of space that was produced by the movement of bodies. These bodies can produce imaginary space by exercise of cognition. As such there are no universals, except possibly language. For Leibniz, his mathematical approach requires a belief in discoverable universal truths. Space structures how human cognition can operate, and the process of discovery.

Chapter four deals with Hobbes’ and Leibniz’s conceptions of law. For Hobbes, law limits and directs movement in space, thus his focus on political ordering of otherwise chaotic movement. Leibniz starts from the other end, that justice is a universal truth, but because of a relational, perspectival concept of space, it is a truth that can only be worked towards, never truly realised. There is a contrast here then between controlling complexity for Hobbes and understanding it for Leibniz. The *intermezzo* chapter five draws the preceding conceptual work together and sets up the final chapter on international law. In this chapter the argument comes to a head. Again, it starts from context, and the argument is based in close reading of the two authors. The chapter has two major themes, sovereignty and sources of international law. The argument is made that sovereignty, or our contemporary understanding of it, remains stuck in a Hobbesian conception of space and law. Crucially, this theory demands formal equality of states. Leibniz’s thinking, based on relational space, offers an understanding of the inequality of sovereigns, and a theory of substantive equality.

On sources, again a clear divide is found between the two authors. Leibniz believed in universal truths being discoverable by human cognition. Hobbes did not hold similar beliefs, thus his need for control to bring order. Leibniz supported a voluntary law of nations and argued that this could improve and get ever closer to natural law and universal justice. Leibniz also has room for regional international law and includes individuals in the international legal system, the author argues. Hobbes however, sceptical of universals, concerned with organisation on the scale of the state, fundamentally would not recognise international law as law. Thus, the contemporary theory of sources is Leibnizian, in contrast with a theory of sovereignty that is Hobbesian. At this point, Yahyaoui Krivenko touches again on issues of global constitutionalism, which is an interesting area where the research of this book could be further developed and applied in other work.

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<sup>6</sup> Ibid 26.

<sup>7</sup> Ibid 86.

The conclusion argues that a lack of spatial thinking in international law has so far failed to reveal the conceptual basis of the discipline, as demonstrated through an analysis of sovereignty and sources. The different conceptualisations at work here produce irreconcilable differences, undermining any universal project. Here the fundamental contrast between Hobbes and Leibniz is between control and knowledge. International law seeks to do both, and thus conflict within the system is unavoidable. The book as a whole offers a strong, interesting and persuasive thesis. However, its narrowness and lack of engagement with research much beyond the history of ideas is a significant limit on its use and impact.

The question of space is one of the central questions of the discipline of geography. However, apart from one footnote mentioning David Harvey and Doreen Massey, and another mentioning Henri Lefebvre, who is not really a geographer, there was no engagement with geography. There have also now been decades of work in the field of legal geography, and the only engagement here is one footnote referencing Andreas Philippopoulos-Mihalopoulos. There has been no major engagement by scholars in legal geography with international law. This book could have added something very valuable in that area if it had engaged directly with work of legal geographers. There is also no reference to or engagement with TWAIL scholars who have written on topics of international law and space, such as Keith Aoki,<sup>8</sup> James Thuo Gathii,<sup>9</sup> Vasuki Nesiah,<sup>10</sup> and Tayebb Mahmood.<sup>11</sup>

The claim in chapter two that law does not engage with space is only sustainable if political geography, legal geography, and much writing in a broad critical legal studies tradition is ignored. Perhaps most noticeably absent is the work of Stuart Elden on territory, whose 2013 monograph included significant engagement with the spatial and political thinking of Hobbes and Leibniz, and which argued for Leibniz as one of the first to articulate a modern theory of territory. Another missed connection can be found in the discussion of the relationship between space and time, the legal implications of which Marianne Valverde recently published a book on. Perhaps most troubling is the lack of discussion of other works in the history of international law, the field this book most comfortably sits in. A footnote on page 147 offers the lengthiest discussion of the field. Rose Parfitt's recent monograph studies very closely the materiality of sovereignty, something Yahyaoui Krivenko could have productively engaged with.

The book is digging deep into a very specific issue, and while it may be very useful for further work on international law and space, it does not actually do the work of exploring the concept of space within international law or the interrelationship of these two concepts. The real strength of the book is its development of a clear and rigorous articulation of a Leibnizian theory of international law, a valuable addition to the history of ideas in international law. But, at this point in the scholarship, I a'm not convinced that is enough. There has been so much work in the history of international law, and there are clear and politically meaningful divisions over how and why this research is done. Any author must engage with these questions. I also feel the book mis-sells itself, or at least over-sells

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<sup>8</sup> K. Aoki 'Space Invaders: Critical Geography, the Third World in International Law and Critical Race Theory' (2000) 45 *Villanova Law Review* 913 .

<sup>9</sup> J.T. Gathii 'Geographical Hegelianism in Territorial Disputes Involving Non-European Land Relations: An Analysis of the Case Concerning *Kasikili/Sedudu Island* (Botswana/Namibia)' (2002) 12 *Leiden Journal of International Law* 581.

<sup>10</sup> V. Nesiah, 'Placing International Law: White Spaces on a Map' (2003) 16 *Leiden Journal of International Law* 1.

<sup>11</sup> T. Mahmud 'Colonial Cartographies, Postcolonial Borders, and Enduring Failures of International Law: The Unending War Along the Afghanistan-Pakistan Frontier' (2010) 20 *Brooklyn Journal of International Law* 1. T. Mahmud 'Law of Geography and the Geography of Law: A Post-colonial Mapping' (2010) 3 *Washington University Jurisprudence Review* 64.

the spatial aspect, as without engagement with legal geography, political geography, and international lawyers who have and are working on these questions, the book cannot make a significant contribution to the question of international law and space.