

# International law and capitalism

Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge: Cambridge University Press, 2021). 276pp., £85.00 hb., £22.99 pb., 978 1 10849 718 3 hb., 978 1 10873 955 9 pb.

At the heart of the post-World War II international order was a legitimating narrative premised on the idea that the world system was no longer imperial; it had now become a community of equal states. This meant that international law established a framework for shared peace and prosperity grounded in multilateral institutions that imposed constraints on all and that, over time, could eliminate the remaining distinctions between historic colonisers and colonised. Furthermore, such arrangements amounted to the progressive spread of basic rights protections around the world. This spread moved from the global centre, especially the United States and Western Europe, to the global periphery in ways that lifted all boats.

Unfortunately, twentieth and twenty-first century reality diverged dramatically from this narrative. Today's global order is one of sustained economic and political inequalities across states, alongside violent interventions targeted at those in the periphery. The result is the dramatic enrichment of some and impoverishment of others precisely along many of the old imperial lines.

Given this, left-leaning efforts – in scholarship and in political practice – to critique the role of international law in such developments have proliferated. But to put it somewhat bluntly, they have at times followed two tracks, each of which have their own limitations. The first approach is to emphasise argumentative openness and the potential embedded in the law. Such lawyers and critics argue that, while international legal frameworks may re-inscribe modern hierarchies, legal arguments can be employed against the grain to challenge existing modes of domination. The problem, however, with this approach is that in essentially embracing argumentative flexibility, it can fail to confront why time and again international legal regimes reinforce rather than dislodge structural inequalities (see especially the work of Asli Bâli). At its worst, it can collapse into a version – albeit far less self-congratulatory – of the progressive account, with continued investment in the idea that if left-leaning lawyers are creative enough perhaps they can use estab-

lished international legal doctrines for transformative ends.

The second approach is to be far more skeptical of international law's progressive potential. Since its long-term effect is to sustain global hierarchies and entrench new modes of empire, these arrangements essentially facilitate the interests of the powerful masquerading in the guise of neutral rules. A challenge for this orientation is that many international legal instruments still impose real checks on nation-state authority. Indeed, in recent decades the principal promoters in international affairs of the idea that international law is 'not law' have been right-wing proponents of powerful security states. These elites use a version of the same critical argument to contend that, precisely given the flaws of the international legal system, states should be able to pursue their security objectives unconstrained by international legal limitations. Thus, too much skepticism up-front of international law can unwittingly re-entrench the authority of dominant nation-states and aid their reduction of global relations to a violent security competition among them.

In the context of these dilemmas, Ntina Tzouvala has written a remarkable new book, *Capitalism as Civilization: A History of International Law*. The book is a trenchant examination of how international law participates in the reproduction across time of fundamental global hierarchies. In the process, it offers an essential pathway for avoiding the pitfalls embedded in both of these orientations. It does so through an innovative materialist reading, one that links international law to global capitalist development without simply treating the law as a mechanistic outcome of economic processes.

According to Tzouvala, one cannot appreciate the double-sided quality of international law – how it holds out an inclusive promise and yet sustains real subordination – without locating it in the history of capitalism. In particular, she highlights how global capitalist development has two embedded tendencies. On the one hand, it involves a limitless expansion to subject all populations to the imperatives of capitalist accumulation. But on

the other, this expansion is never totally homogenous. Rather, it is structured in ways that are inevitably uneven, with ‘under-development’ and extractive exploitation the product of capitalist spread rather than a result of ‘insufficient contact’. For Tzouvala, international law is one of the central sites that navigates this tension between inclusion and inequality. She demonstrates this through a sustained exploration of the legal term ‘standard of civilisation’. The term was employed by European legal actors in the late nineteenth and early twentieth centuries as a benchmark for assessing whether non-European polities were worthy of proper membership in the international community and thus for legitimating colonial control.



But Tzouvala argues that the standard of civilisation is not best thought of as a concrete doctrine, one that during the era of decolonisation would in fact be repudiated by lawyers and jurists. Rather, at its core is an argumentative practice that survives in international law down to the present. This is because the standard of civilisation emerged as one way for European officials to manage a world of expanding but unequal global capitalist development. In this way, civilisational claims swung between two logics, mirroring the inclusive and the hierarchical contradictions in capitalism itself. And these logics remain active in contemporary international legal

argument. The first, a ‘logic of improvement’, emphasises the idea that the promise of legal equality can be achieved through domestic reforms and capitalist market transformations. The second, a ‘logic of biology’, ‘constantly negate[s] such a possibility’, by always presenting the non-European world as marked by ‘unchangeable characteristics’ that necessitate various forms of supervision and provisional sovereignty.

In this way, Tzouvala offers an historically compelling and analytically powerful distillation of precisely why international legal frameworks carry progressive and utopian aspirations while repeatedly reinforcing global hierarchies. She further demonstrates how this oscillation between improvement and biology – conditional inclusion and sustained inequality – operates in practice through four case studies drawn from the long twentieth century. Chapter 2 explores the emergence of the standard of civilisation in the years up to and including World War I. Chapter 3 examines its function and argumentative tendencies within the League of Nation’s Mandate System. Chapter 4 details the International Court of Justice cases and opinions during the era of decolonisation regarding Apartheid South Africa’s responsibility to Namibia (then South West Africa) under the Mandate System. And Chapter 5 argues for the persistence of this oscillating logic even now. Tzouvala does so by focusing on U.S. legal arguments about occupied Iraq and doctrinal justifications for the use of force in its Global War on Terror, especially the idea that states in the periphery can be subject to military action if they are ‘unwilling and unable’ to root out terrorist bases on their soil.

The result is a work that makes a number of essential scholarly and political interventions. For starters, it powerfully reframes left-leaning critiques of international law. Tzouvala compellingly questions the utility some left lawyers find in international law’s argumentative malleability. According to her, such an approach ignores the material connections between legal argument and capitalist development. It fails to appreciate how that very indeterminacy is built into the repeated argumentative patterns of conditional inclusion and persistent subordination. Thus, to imagine that one can genuinely alter structural hierarchies by using tools embedded in the law’s ‘logic of improvement’ is an inherently self-defeating project.

Yet, this materialist analysis does not suggest that

one should simply repudiate international law as a terrain of legal-political struggle. Instead, it means treating international law as ‘numerous sets of arguments, institutions, and patterns with all their ambiguities, contradictions, and aporias’. The radical critic has to assess the argumentative patterns in various settings as well as how they connect to the reproduction of capitalism. The goal then becomes finding political and legal avenues to contest the underlying logic of each instantiated pattern, for instance by highlighting how established practices sustain racial capitalism or undermine meaningful self-determination. For instance, in the context of the GWOT, Tzouvala sees proposals to expand who gets to say whether a state is ‘unwilling and unable’, for example by moving the site of decision-making from the U.S. military to the UN Security Council, as a version of conditional inclusion. Instead of challenging the logic of improvement and the existing argumentative patterns, it simply cloaks them in multilateral legitimacy and so must be resisted.

All of this embodies a grounded way to engage with international law without falling prey to either liberal fantasies of progress or hawkish security dictates. It also opens an entire agenda for critical empirical and normative inquiry. In following Tzouvala’s lead, it suggests the real utility of mapping out the variety of other argumentative patterns in law as well as how they relate to material conditions. Such an exercise becomes a concrete way of building a more comprehensive theory of international law. It also aids a radical politics vis-à-vis the international legal system, by delineating whether and how established argumentative moves reinforce structuring hierarchies.

Such avenues for study and action underscore a second significant contribution of the book. Tzouvala’s approach meaningfully pushes forward materialist analysis of international law. A real reason why left-leaning politics and critique, particularly in the U.S., has tended to fall into the two camps mentioned above has much to do with a general deemphasis on materialist accounts. Without a grounding in underlying economic structures, international law has either appeared free floating and indeterminate or simply a reflection of nation-state power and rivalry. But one reason why U.S. scholars especially have tended to avoid materialist, including Marxian, interpretations has been a conventional wisdom that such

interpretations fail to reckon with law’s flexibility – its openness to competing arguments and unexpected doctrinal outcomes.

Tzouvala’s book compellingly grapples with these concerns. She does so by skillful weaving into her analysis theoretical reflections on everyone from China Miéville to Antony Anghie. Beyond that, Tzouvala’s overarching approach redirects focus away from fixed legal doctrine to underlying argumentative patterns. Rather than framing the law as offering clear formal embodiments of deep-rooted economic structures, she highlights how legal logics are tied to the very contradictions inherent in capitalism. In this way she rejects the routine claim in the U.S. legal academy that materialist analysis cannot reckon with indeterminacy. Instead, Tzouvala’s approach shows how, only by grounding international law in a study of capitalism’s internal tensions, can one make sense of *why* international law has such indeterminacy in the first place as well as chart out where the argumentative boundaries nonetheless reside. This is a deeply insightful move, one that upends traditional debates around materialist frameworks.

Finally, the book also usefully illuminates how imperial structures can remain even after the formal end of colonial empire. Tzouvala does this by demonstrating the linkages between empire, capitalism and international law. If a liberal internationalist would argue that the repudiation of explicit ‘civilisational’ claims highlights a break with the past, Tzouvala shows how the persistence of underlying argumentative logics sustains both new modes of capitalist and imperial development. In this way, she is able to capture why today’s inequalities are not simply a holdover from a colonial past, which in time will be overcome. Rather, to the extent that the same unequal capitalist development proceeds apace – alongside the connected logics of improvement and biology – one can find real continuity despite the postwar ruptures in the global system. Moreover, one can also appreciate how these continuities are reenacted in the present and so ongoing rather than unfortunate holdovers from the bad old days.

*Capitalism as Civilization* is a book filled with essential reflections for the study of both law and capitalism. If anything, I finished it wanting more, in particular how her mode of analysis would apply to other corners of international law. But again, this may ultimately be Tzouv-

ala's challenge to her readers and to those committed to finding levers for disrupting the dominant structures of international economic and political order. What Tzouv-ala provides is not only a striking rereading of international law over the last century. She also offers a powerful

model for how to integrate law and political economy in ways that recognise contingency while still centring the structural constraints that shape all emancipatory projects.

Aziz Rana

## Subversive agency

Jill Godmilow, *Kill The Documentary: A Letter to Filmmakers, Students, and Scholars* (New York: Columbia University Press, 2022). 224pp., £94.00 hb., £25.00 pb., 978 0 23120 276 3 hb., 978 0 23120 277 0 pb.

Jill Godmilow's *Kill the Documentary: A Letter to Filmmakers, Students, and Scholars* is a curious object. Although published by Columbia University Press, it is not quite an academic text. Unlike most of the theoretical volumes that have been written on documentary film in recent years, Godmilow's is neither concerned with retracing its history, nor in contributing to the scholarly research on the genre, developing consistent categories of its modes, methods, styles or contexts. Instead, the author declares in the first pages of her introduction that she 'intend[s] to be as provocative and subversive as [she] can' in order to 'advocat[e] for a cinema whose trustworthiness and usefulness is dependent not on documentary's pedigree nor pornography of the real, but rather on the strength and the performance of its ideas.' Far from pretending to any kind of scientific neutrality, Godmilow's text is clearly committed to a cause: that of sensitising her readers to the political element of perception and the agency of the forms that mediate reality.

Bill Nichols, who wrote the preface, reads the book accordingly as a 'bold, provocative manifesto'. Yet Godmilow's conversational, unflinching, sometimes ironic tone should not be taken as gratuitous or grandstanding. Rather, it expresses a long-time indignation about the way many official or commercial documentary formats tacitly claim to represent reality in its immediacy, as a positive given. The problem she points at is not only that such claims are spurious, as 'what we normally think of as "the real" in documentary films is a construction, made up of how well the look and sound of the film *simulates* the actual.' This crucial aspect, which has already been emphasised by many independent filmmakers and

critics before her, certainly is an important objection against hegemonic claims to neutrality. But what she considers even more problematic is that such an idea of documentary as transparently showing reality 'as it really is' conceals the moral and ideological underpinnings on which it often relies. Far from being as neutral and innocuous as they pretend to be, conventional documentaries not only oversimplify the real by obliterating the multiple frictions, ambiguities and inequalities of society, but also posit a certain reality – that of privileged white middle-class citizens of the so-called first world – as its normative core. They produce 'an egotism that eternally places the citizen/viewer at the centre of the universe, looking out into the represented world, discovering the problems of other peoples. It's a kind of cultural imperialism, as if your knowledge exempts us from having had any part of the damage we find there.'

Capitalising on the genre's general association with trustworthiness and sobriety, such documentaries are thus instruments to keep the dominant power structure of society intact: '[they] ask you to go there to that landscape and, once fascinated with what you find there, to keep watching, anxious for more, and finally find some kind of resolution of the problems presented. The doc asks you to enjoy, weep, celebrate, have pity, gasp, perhaps dread, and finally be released from care when the credits roll.' Her most telling example is the PBS documentary series *The Vietnam War* – an imposing, 18-hour television opus that, while meticulously retracing the chronology of the conflict, reflects an utterly uncritical attitude towards the hegemonic imperialist understanding of history and actual politics which it depicts.