

## Reckoning with Empire: Self-Determination in International Law

by Miriam Bak McKENNA. Leiden/Boston: Brill Nijhoff, 2022. x + 225 pp. Hardcover: €149.00; eBook: €149.00. doi: 10.1163/9789004479197

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Can the master's tools ever dismantle the master's house?<sup>1</sup> How much can and should present sensibilities and desires guide the re-writing of international legal histories? In reviewing self-determination, Miriam Bak McKenna takes on a perpetually unsolved puzzle of contemporary international law – a courageous undertaking. First, self-determination is a shapeshifter: at times, the handmaiden to power politics and, at times, a powerful shield against it. Second, it is already the subject of several weighty international law monographs (for example, by Antonio Cassese, Siba N'Zatioula Grovogui, and Karen Knop), which are rich in theoretical and doctrinal nuance, thereby limiting the space for genuinely new and original interventions. Regardless, McKenna is only one of several scholars who have revisited the subject in a book-long intervention, using contemporary sensitivities to cast light on the role of this principle in twentieth-century international law. *Reckoning with Empire* is different from other interventions of its generation. Whereas Tom Sparks' monograph is a stocktaking exercise and, as such, a straightforward, doctrinal, and fairly descriptive account, Adom Getachew is committed to recovering intellectual histories of self-determination in anti-colonial struggles – self-determination as a means for decolonial world making – as it was imagined and in part practised by Third World leaders.<sup>2</sup> In the spectrum between these two accounts, McKenna is positioned exactly in between. By revisiting the history of international law since the interwar period, she seeks to understand how self-determination ties sovereignty to statehood and promises to offer a radical account of self-determination's legal and political role in decolonization. It argues that colonial peoples used self-determination to challenge the coloniality of international law and its complicity in upholding empire from within through the institution of the United Nations family.

McKenna is right to point out that epistemologies of the principle, beyond the liberal socialist paradigms, have been left unscrutinized for far too long. She is also in good company when she argues that even at the level of the international institutions, indigenous interpretations, as well as radically anti-colonial readings, have been articulated and that, indeed, through these different visions of its content, self-determination has been radically re-shaped to become a hallmark of decolonization (for example, Sophie Rigney and Natalie Jones). The problem is that radical and new insights are rarely gained when exploring the same material as others have through their vernaculars. With impressive rigour, McKenna nods to every scholarly piece of relevance. Yet this flawless exercise of literature review and engagement comes with a heavy reliance on the accounts of others at the expense of the author's engagement with primary material. This,

<sup>1</sup> Audre LORDE, *Sister Outsider* (London: Penguin Classics, 2019) at 103–6.

<sup>2</sup> Tom SPARKS, *Self-Determination in the International Legal System: Whose Claim, to What Right?* (Oxford: Hart Publishing, 2023); Adom GETACHEW, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton: Princeton University Press, 2019).

unfortunately, not only hampers the promised radical nature of her account but also gives its argumentative thread a deterministic character, as if the author had committed to the politics of recovering Third World histories of international law without feeling fully confident to engage with the unknown terrain of materials and sources that such a project requires.<sup>3</sup>


Reflecting on the above questions that occupied me throughout my reading of *Reckoning with Empire*, my conclusions are as follows. First, can the master's tools dismantle the master's house? Perhaps. Yet even if so, the master, being much more skilful and experienced in wielding them than their subject, can certainly use them to rebuild and fortify it. Second, how much can and should present sensibilities and desires guide the re-writing of international legal histories? Most studies revisiting the past and engaging with neglected or forgotten histories are driven by an unease with the present and a commitment to recovering pathways to a better future. Yet, proposing a new reading of the past and truly recovering one are very different things. Both may be worthwhile endeavours, yet the latter is tedious work requiring one to search where others have not and comes with the risk that one may not find what one is looking for.

**Competing interests.** The author declares none.

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## **The UN Declaration on the Rights of Indigenous Peoples: A New Interpretative Approach**

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The literature on international indigenous rights has two distinct approaches: the decolonization model and the human rights model. This first view places indigenous rights within the historic sovereignty of indigenous populations and emphasizes the need to respect their right to self-determination, self-government, land and resources, historical redress, and free, prior, and informed consent (FPIC). By contrast, the second model focuses on indigenous peoples' rights to culture, language, tradition, non-discrimination, and other socio-economic rights. These two approaches underscore the tension between indigenous populations of the North (namely indigenous peoples of the former British colonies, such as Canada, Australia, New Zealand, and the United States, also known as the 'CANZUS states') and the South (that is, indigenous peoples of Latin America, Asia, and Africa) in the negotiation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) with the North advocating the former approach and the South supporting the latter. It is often thought that the final draft of the UNDRIP reflects the human rights model, an approach favoured by states which threatened the pursuit of the indigenous North for greater self-determination and self-governance.

<sup>3</sup> Priyasha SAKSENA, *Sovereignty, International Law, and the Princely States of Colonial South Asia* (Oxford: Oxford University Press, 2023).