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BOOK REVIEWS

Emmanuelle Jouannet, *Le droit international libéral-providence: Une histoire du droit international*, Brussels, Bruylant, 2011, 351pp., ISBN 978-2-80-272998-3.
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The preamble to the Charter of the United Nations emblematically reminds us that contemporary international law voices an aspiration. It seeks, among other things, to promote the economic and social advancement of all peoples. Yet, the meaning of that aspiration is unclear, and attempting to uncover its essence compels the study of ideas that have shaped modernity. In *Le droit international libéral-providence*,[1] Professor Jouannet embarks on a quest to characterize the purpose of international law since what is commonly seen as its outset around 1648. But while, generally, the syncretic conceptualization of a legal phenomenon still in the course of development can be a hazardous undertaking, this book should be praised for overcoming the hurdle with a clear frame of reference: a historical articulation of liberal and welfarist interests in international law.

The meaning of these terms bears great emphasis. 'Liberal' (*libéral*) and 'welfarist' (*providence*) do not suggest a discussion of the traditional opposition between the welfare state and the liberal state. 'Welfarist' qualifies a set of eighteenth-century ideas ascribing the law a distinctively interventionist purpose such as the search for happiness, the common good, moral and material advancement. The welfarist law is a law of intervention whereas the liberal law is a law of regulation; the welfarist law pursues the good whereas the liberal law guarantees the liberty of states. Jouannet posits that international law has carried since its emergence in eighteenth-century Europe a dual liberal–welfarist purpose: guaranteeing the liberty and security of states while providing welfare and happiness to the people.

Departing from an originally secular eschatological model, thought to replace a moral paradigm of human relations defined by religious dogmas, the law of nations has since constantly articulated liberal ends and welfarist goals with varying intensity. And this original project further underpins what the author calls a globalized post-colonial and post-Cold War era. Fundamentally, contemporary international

1 Also recently published in English (translation by Christopher Sutcliffe) under the title *The Liberal-Welfarist Law of Nations: A History of International Law*, Cambridge University Press, 2012, 326pp., ISBN 978-1-10-701894-5. The translations employed in this work are followed throughout this book review.

law is neither a strictly welfarist law nor a strictly liberal law: it is liberal–welfarist. The association of these two terms in the meta-concept coined by the author – the liberal–welfarist purpose (*la finalité libérale-providence*) – is one of the keys to the meaning of international law, and it also partly explains its constant ambivalence. Thus, though the purpose of international law cannot be captioned in a static definition, it can be tracked through the lens of a term of art.

The author concedes that her thesis rests on a fragile assumption. Jouannet's concept-intensive history of international law is selective; the book excludes the law of war and peace, omits European Union law, skims through international human rights law, and barely touches on international criminal law. Acknowledging the risk of sweeping generalizations, it is made clear that the essay does not attempt to give a definite answer to the question. Yet, in so far as it aims to state one possible interpretation of the history of international law, this book should be credited for making a valuable contribution to an aspect of legal theory that has been left adrift for some time. The argument is clearly presented and is replete with references and examples, though at times used repeatedly. The book is structured around three periods, which also constitute the main chapters: the modern law of nations, classic international law, and contemporary international law.

Appearing in the aftermath of the peace of Westphalia, the liberal purpose of the modern law of nations stems from the heritage of scholastic theory, but also, and before all perhaps, from the Protestant Reformation. Thus, as the author opines in the first part of the book, the liberal purpose is a product of secularization. Echoing Benjamin Constant's dichotomy between the liberty of the ancients and the liberty of the moderns, the law of nations emerged at the peak of European modernity. Vattel's *Law of Nations*, published in 1758, is the prime hallmark of this evolution. For the first time, it was conceived that the law could govern the behaviour of sovereigns. Such a liberal purpose is one of liberty, equality, and security for states in Europe. The modern law of nations appears in a Europe comprising a plethora of states (around 300 just within the Roman-Germanic Empire) and organized along very sundry lines of political organization. They range from the autonomous city to the republic, and are ruled by absolute monarchy or enlightened despotism. The modern law of nations reflects that plural and heterogeneous European society, highly unstable and confronted by heinous wars.

Consequently, the liberal modern law of nations seeks to give full practical effect to the notion of sovereignty–liberty. It provides that states can coexist because of the others' respect for the principle of non-interference in one's internal affairs. This idea tracks the general liberal thinking of the time, a liberalism of opposition, which claims religious tolerance, individual liberties, and the axiological neutrality of the state. Distinctive of this period is the states' understanding that they act in furtherance of their own identifiable interests and self-esteem. Because it was in their interest to abide by a set of rules that would help them live in peace with other sovereigns, the state interest drove socialization in the world of foreign relations.

But this is not to say that the modern law of nations was deprived of all welfarist ends. The Enlightenment operated a paradigmatic shift in conceiving of happiness.

Sacrifice, austerity, and the mutilation of passions are no longer definitional of good since the search for happiness defeated the medieval ideal of monastic life and stoicism. Thus, the law of nations has a welfarist purpose because the state is a perfectible entity that must guarantee the happiness of its people. Indeed, happiness at the time is not seen as an individual issue; it is a governmental one. Frederic II of Prussia's *Essay on the Forms of Governments and on the Duties of Sovereigns* illustrates the proposition that the welfarist purpose of the modern law of nations is the advancement of states. Consequently, the liberal–welfarist purpose underlying the law of nations is a code of good conduct to discipline European states. It embodies the Enlightenment in international law. As will be seen, however, the modern law of nations also contains the premises of a tension between the welfarist good and the liberal sovereignty.

Further carried by positivism, classic international law becomes in the nineteenth century a genuine field of legal scholarship and practice. Whereas a liberalism of opposition was distinctive of the eighteenth century, the nineteenth century is defined by a liberalism of government. Classic international law is an instrument of power, and, the liberal purpose being the exercise of sovereignty, it follows that states have the capacity to consent. This is no minor achievement. But unfortunately, this new product of liberalism will be applied with prejudice to others. Namely, European states will employ their capacity to consent to create protectorates and enter into demeaning international agreements. Thus, for the author, the liberal purpose became conducive to practices running afoul of its original purpose: equality among sovereign states. Working in tandem with the liberal purpose, the welfarist component of this world-view is paternalistic, colonialist, and discriminatory. For Jouannet, in this respect, classic international law is the law of civilized nations seeking to bring happiness to uncivilized peoples. This is one only half of the story, however, as other events concomitantly unfold during that period.

Mainly, the third Industrial Revolution, a phenomenon largely resulting from the liberal thinking of the time, induced some adverse effects, resulting in new social and economic concerns. The second part of the book shows how classic international law sought to address those new scourges. Illustrative is the creation of the International Labour Organization with the Treaty of Versailles, which Jouannet places at the end of this process. Throughout that period, social well-being slowly becomes a goal in itself and is advanced by an interventionist law leading up to the creation of international organizations as we know them today. Whence, again through a slow process, a concern for human rights will emerge. That said, despite these evolutions, classic international law remains rather liberal until 1945.

Just as in the preceding two periods, the liberal–welfarist purpose will drive contemporary international law. The last part of the book shows how it both manages the problems of coexistence among states, and safeguards the well-being of the global population. It aims to protect people's lives, their freedom, their health, and their education and hygiene. Not only has it a regulatory function in international relations, it is an instrument of direct intervention in internal societies. Contemporary international law is omnipotent for it governs the lives of states as well as those of individuals while striving to preserve the economic and social balance of the planet.

The author cautions against drawing an angelic inference from that observation, however, which rather serves as a prelude to further analysis.

Contemporary international law creates internal effects. Thus, the liberal–welfarist purpose unfolds in a new context, addressing issues that traditionally fell within the sole ambit of domestic government. This, as the author points out, creates serious legitimacy issues, and in some way contemporary international law is going through an identity crisis. The exercise of power at the international level has also changed. New actors such as private organizations, non-governmental organizations ('NGO'), or networks of governance exemplify the fragmentation of international law, a field that is increasingly applied according to defined benchmarks and quantifiable goals. Ultimately, this raises the question of the effectiveness of international law. And undoubtedly, in some respects, international law has come short of bringing about its intended results.

But this caveat should not overshadow the new ramifications of the liberal–welfarist purpose. Contemporary international law rose in the name of a new concept: humanity, for the Second World War made clear that humanity needs to be protected from itself. Significantly, crimes against humanity are prosecuted under international norms. At the same time, the general principle that states must be treated as equal sovereigns and its seminal corollary of non-intervention require international law to remain neutral as regards a state's internal choices. Yet, without overriding that maxim, contemporary international law also marks the triumph of self-determination, which heeds the people. In fact, for Jouannet, the new liberal purpose of international law is a project of emancipation directly geared toward peoples instead of states. Accordingly, fair and democratic elections may lead to authoritarian regimes or theological states that neglect fundamental human rights. At the origin of this conundrum, Jouannet writes, is the fact that contemporary international law vacillates between two liberal ends: one predicated on the free choice of government and prohibiting foreign intrusion and a second commandeering the respect of human rights and plural democracy.

In the last section of the book, the author argues that the welfarist side of contemporary international law is a form of bio-power, as Michel Foucault would put it. It is a power over life, security, and the health of the population. Jouannet then discusses the right to development and reconstruction in the post-colonial context. The non-aligned movement was characterized by a profound demand for justice on the international stage. In that sense, Jouannet says, international law was first perceived as a means to reduce inequality between developed nations and those in the developing world. Though these claims have been rather unavailing, the shift in thinking has paved the way for a new understanding of the welfarist side of the dual purpose. First, referencing Amartya Sen, the author makes the case for the right to human development, arguing that levels of international development cannot solely be computed in economic terms. But, for Jouannet, the introduction of welfarist policies permitting human development cannot be achieved by international organizations or NGOs. As has been the case with social democracies, Jouannet argues, only the state can institute the process expanding liberties that is needed to square sustainable and human development.

All in all, Jouannet opines, increased interconnection can only lead to more normative conflicts, especially if the law of nations is called upon to accommodate competing models at all levels of governance. In this context, it is unfortunate that the book does not discuss the relationship between the purpose of international law and its efficacy throughout the ages. Nevertheless, in an elegant essay presenting a history of international law, Jouannet pins down what she sees as the core of that field's identity. At bottom, the liberal–welfarist purpose should give the law of nations enough stability to navigate through the doctrinal turbulences rising ahead. While the book's conclusion remains untested against tangible benchmarks, it provides scholars and practitioners with a convincing leitmotiv in the form of two core values guiding the reader through the tumultuous history of international law.

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Donatella Alessandrini, *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission*, Portland, Hart Publishing, 2010, 261pp., ISBN 9781849460309.
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Donatella Alessandrini's *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission* examines how the 'science of development' has operated as an 'extra-economic means' to produce and sustain 'capitalist-imperialist' relations in the context of the multilateral trade regime. The work's declared aim is 'to expose the development assumptions of the international trading regime and its trade disciplines as political rather than rational, neutral and objective' (p. 10). To achieve this aim, the author retells the evolution of the GATT/WTO as a history about the shaping and reshaping of the notion of development.

According to Alessandrini, the notion of development has served to perpetuate and reinforce the position of 'developed' countries and their enterprises within the capitalist system vis-à-vis 'developing' countries, while concealing the imperial legacy that lies beneath the GATT/WTO. Alessandrini describes the 'normalization' of development by the conjugation of three fundamental normative assumptions established at the end of the colonial era. These are, in the author's synthesis: (i) 'the establishment of an unquestionable dichotomy between advanced and backward societies'; (ii) 'the reliance on a supposedly neutral economic rationality through which to bridge this gap'; and (iii) 'the invocation of the help and expertise of the so-called advanced members of the international community and the specialized international economic and financial institutions in order to facilitate the develop-

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