doubt on the power of the SCSL to set aside the personal immunities of Taylor as an incumbent Head of State (204), but no reference is made, however, to the ICC Pre-Trial Chamber's ruling that ICC Statute Article 98(1) provides no bar to the requirement that a State Party comply with an arrest warrant issued by the ICC in accordance with UN Security Council reference against a serving Head of State (*Omar Al Bashir* ICC Pre-Trial Chamber I, 12 December 2011).

Whilst Foakes' review of the immunities with all their inconsistencies enjoyed by senior State officials well presents the current scene as viewed from the UK FCO, in the light of today's rapidly changing political scene a critical analysis drawing on academic writing and political comment would also have been useful to assess the continuing utility of the immunities described. Save for a note with regard to the conclusive nature of FCO certificates following the overthrow of the Libyan regime in 2011 (47), the core question whether parliament, the executive or the courts should determine which of competing foreign administrations should enjoy immunity for its officials is not discussed. Reference to Warbrick's work or Talmon's *Recognition of Governments in International Law* (1998) would have been useful here, particularly with regard to exiled governments. A more systematic analysis into subjective, material and temporal scope (ie by office, function and time) would have shortened the search through Chapters 3 and 4 as to what constitutes 'an act performed in an official capacity'. Other issues arise: Does the ICJ ruling in *Djibouti v France* exonerate a foreign State's mistreatment of a State official with regard to whose visit no express immunity has been requested? Do the *Arrest Warrant* and *Jurisdictional Immunities* decisions allowing imputability to the State at the procedural stage (Foakes, p.8) nonetheless extend a substantive defence relating to responsibility and liability beyond torture and enforced disappearance to genocide, war crimes and Crimes against humanity (10, 137,153)?. What is the situation in a federation as regards immunity extending to the Head of a federal unit or where the headship rotates as in Malaysia to a retired Head (see the cases of *Sultan of Pahang, Alamieyeseigha* (47–8) and the not-cited *Mellenger v New Brunswick* [1971]).

The closing date of the book's information, July 3013 inevitably means that some of the issues raised in the book are now resolved by the 2013 decisions of the ILC Committee. Thus the latest Draft confines immunity *ratione personae* to the 'troika' of Head of State, Head of Government and Foreign Minister indicating that the immunity of other departmental heads when visiting abroad may be adequately secured by express conferment of Special Mission status.

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*The Liberal-Welfarist Law of Nations: A History of International Law* by Emmanuelle Jouannet [Cambridge University Press, Cambridge, 2014, 318pp, ISBN 978-1-107-47094-1, £21.99 (p/bk)]

International law is at the heart of many of the most contentious issues in contemporary foreign relations—should the international community intervene more aggressively against ISIL? Should Palestine be recognized as a State? Are drone strikes a lawful tactic to use against suspected terrorists? Yet while international norms prominently shape diplomatic discourse, there is a growing disquiet that the discipline itself has lost its normative bearings: What is the point of international law? How did it come about? What purposes does it serve?

Emmanuelle Jouannet's *The Liberal-Welfarist Law of Nations: A History of International Law* addresses these portentous questions through a review of 'the history of the purposes of international law so as to take a fresh look at the point behind it all' (1). The book's thesis, in brief, is that since its emergence as an autonomous discipline in eighteenth-century Europe, international law has had two central purposes. One, its 'liberal purpose', aims to promote and protect the sovereignty of free and independent States. This purpose advances a State's freedom to choose its own ends, for 'independent self-determination' (33). International law's second, or

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'welfare purpose', in contrast, takes 'utility, happiness, the common weal and the material and moral betterment of peoples [as] the purpose of the law' (4). Jouannet's monograph is an extended argument that international law is and has been a 'liberal-welfarist law' and that the key to its meaning lies in the ever shifting relationship between these two purposes. To support this claim, Jouannet presents a 'conceptualizing history', as opposed to an 'events history', that, she asserts, generalizes actual historical experience and provides a conceptual map that makes sense 'of the discourse and practice of international law past and present' (3, 4).

The book periodizes international law into three eras: modern, classical and contemporary. Modern international law starts with the 'Vattelian model' of the mid-eighteenth century when, she argues, international law was first 'conceived and thought of as a legal order and no longer as a mere source of law common to all men' (13). As she does throughout the volume, Jouannet locates this jurisprudential development in the context of larger intellectual, political and economic trends. Thus, the modern law of nations was strongly influenced by the 'liberalism' associated with the writings of Locke, Smith and Bentham in Britain, Jefferson, Franklin and Paine in the United States, and Montesquieu, von Humboldt and Condillac on the continent. Moreover, it emerged when earlier forms of religious, hierarchical and traditional forms of organization were breaking down; when Europe consisted of more than 300 small States; and when this plural and non-homogeneous group of States sought rules to enable them to live 'with fairness, in freedom and in safety while ensuring the happiness of their peoples' (27). Modern international law's 'liberal' dimension was designed to permit the peaceful coexistence of multiple European sovereigns that were divided by diverse moral, philosophical and religious conceptions of the good life (29).

At the same time, modern international law was centrally concerned with the State as a human group that would strive for the happiness of its people. To be sure, this goal was ordinarily met through domestic law and politics (61). But Jouannet analyses contemporaneous treatises, diplomatic notes and other instruments to demonstrate the pervasive *intra gentes* dimensions of modern international law. For example, this law contained numerous 'rules of assistance', including that States 'had to help a nation that was assailed by an enemy threatening to oppress it, they had to give succor in the event of a famine, take in its nationals (under certain conditions) and treat them well' (77). Thus, modern international law was 'the law *of* nations, not exclusively in the sense of law *among* nations but in the sense of all their rights and duties, whether for internal or external use' (65). In excavating the oft-overlooked welfare dimension of eighteenth-century international law, Jouannet challenges influential historiographies, such as those by Wolfgang Friedman and Georg Schwarzenberger, which claim that seventeenth- and eighteenth-century international law was a 'law of co-existence', and a 'law of co-operation' did not develop until the twentieth century.[1]

In Part II of the volume, Jouannet argues that during the nineteenth century, 'the law of nations of the Moderns became the *classical* law of nations' (110). As with modern international law, the development and content of classic international law was firmly rooted in contemporaneous political, economic, and intellectual developments, in particular, 'the triumph of liberalism in nineteenth-century European and American regimes' (115). Jouannet highlights the 'principle of neutrality', or tolerance, associated with classical international law (121). Under this principle, international law was deemed neutral regarding States' internal political and religious choices, leading to an evolution from a 'law *of* states' to a 'law *between* states', giving 'free rein to the total freedom of domestic sovereignty of the state in its own territory' (121).

Despite this triumph of international law's liberal purpose, the discipline's welfarist dimension did not entirely disappear; tragically, however, it would be employed in the service of colonialism. Specifically, while international law's liberal purposes were 'reserved exclusively for European and then civilized states, the welfarist end was here to be destined for non-

[1] See eg W Friedmann, *The Changing Structure of International Law* (Columbia University Press 1964); G Schwarzenberger, *The Dynamics of International Law* (Professional Books Ltd 1976).

European and uncivilized states' (136). The rules regarding these States were not based on liberal principles of equality and freedom, but rather were built on the 'imbalance and actual inequality of the material, economic and social situations of certain peoples' to justify a host of interventions—ranging from 'the existence of special rights, to the regime of capitulations, of international and colonial protectorates, the appropriation of land, the right of ownership, the exercise of external sovereignty or even of internal sovereignty' (138).

What explains this egregious inversion of international law's welfarist impulse? Jouannet notes that eighteenth-century jurists and liberals were highly critical of the injustice and violence that marked European life. However, 'by the nineteenth century, the mindset had totally changed'. In particular, Europeans felt a 'moral, intellectual, political, economic and technological superiority … over the rest of the world' (144). The conflation of liberalism's progress narrative with other strands of European thought emphasizing human perfectibility led to the conclusion that the general welfare of people throughout the world could be advanced by pursuit of European notions of progress—imposed by force if necessary (145–7).

Significantly, Jouannet argues that this was not a necessary outcome: 'Liberalism does not inexorably lead either to imperialism or to anti-imperialism. … Although liberalism readily drifts towards imperialism because of the very idea of progress and its attachment to economic freedom, the founding political principles of liberalism—neutrality, liberty and equality—are intrinsically anti-imperialist' (143). Thus, the volume emphasizes the cultural and historical contingency of the complex relationship between international law and the colonialist project, and both joins issue with and extends other important recent work on this vexed topic.[2]

In Part III, Jouannet turns to contemporary international law, exploring the implications of the substantial transformations in the field since the end of World War II. She argues that recent years have seen international law's liberal purpose split into two strands. First, the classical liberal purpose of preserving a State's internal sovereignty has continued. But at the same time, contemporary liberalism places significant weight on the promotion of democracy, human rights, and the rule of law. As Jouannet properly notes, these two sets of objectives can often be in deep tension. Moreover, although international legal actors often proclaim that democracy, human rights and the rule of law are interdependent and mutually reinforcing, Jouannet highlights the uncomfortable fact that progress on one of these liberal desiderata hardly guarantees progress on the others. In particular, the institution of democracy may lead to retrenchments on human rights and an undermining of the rule of law—as illustrated by worrisome developments in the Arab Spring. Jouannet offers trenchant criticisms of conventional thinking regarding the relationships among democracy, human rights and the rule of law, although some readers may wonder whether these are more properly considered part of international law's welfarist purpose.

Jouannet claims that the welfarist purpose has come to focus on 'well-being'. Noting UN efforts on full employment, economic development, social services, public health and a host of related issues, she argues that in its current guise the welfarist purpose 'is almost unlimited in its area of application and invention' (260). The multiplication of goals, in turn, risks charges of ineffectiveness—think of efforts to address global poverty—which, she argues, threaten eventually to undermine law's legitimacy.

Emmanuelle Jouannet provides a sweeping—and sobering—interpretation of international law's origins, development, and dual purposes. Her provocative account of continuity through change presents a powerful challenge to international law's usual progress narrative; and her examples of law's folly and overreach constitute a cautionary tale. To be sure, like many historical projects, this book is deeply informed by contemporary preoccupations, including debates over global social and economic inequalities and concerns over fragmentation. Hence the ultimate question raised by this volume is whether a richer understanding of the discipline's history can provide intellectual

[2] See eg A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005); M Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press 2002).

resources or conceptual frameworks that will enable us to better comprehend international law's current possibilities and limits.

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*International Law and the Construction of the Liberal Peace* by RUSSELL BUCHAN [Hart Publishing, Oxford and Portland, Oregon, 2013, ISBN 978-1-84-946244-0, 247pp, £50.00, h/bk].

Russell Buchan, Senior Lecturer of International Law at the University of Sheffield, won the Lieber Prize of the American Society of International Law for 2014 for his monograph on 'International Law and the Construction of Liberal Peace'. This was a well-deserved recognition of an important piece of scholarship that offers a nuanced explanation for the perseverance of liberal values and liberal interventionism in contemporary international law. Indeed, despite the accumulation of negative factors in the highly conflictual post-9/11 environment, the author argues that liberal values are firmly embedded in international practice. Though I agree with the thrust of this argument, I have some reservations on aspects of his methodology. Whilst the author's analysis reveals some 'blind spots' regarding current debates, he nonetheless advances the intellectual debate on the preservation of peace.

Buchan aspires to create an explanatory, but not normative, framework, and argues that some forms of State practice can be explained by recourse to perceptions on liberal values and liberal peace (6–7, 220). At the same time, an underlying prescriptive dimension can be discerned, whereby a weak 'ought' is linked to a strong 'is', as the author expects liberal values to ultimately 'carry the day' (223–24). Buchan's overall approach is founded on the antagonistic relationship of two co-existing 'spaces of the international', the international society and international community, whereby the latter is future-oriented and appears normatively stronger than the former. The author implies that the policies of 'liberal peace' are perhaps the only 'game in town', despite the shortcomings or occasional failures of liberal interventionism. It should be noted that Buchan makes an excellent argument on the threats to international community, including in particular his insightful response to Wendt's social constructivism (88–95).

The foundation of Buchan's analysis is the distinction between international society and international community (ch 1). Whilst the society/community dichotomy has been extensively discussed in sociology, political theory, and international relations theory, its transfer in the international legal theory raises two questions: first, on the affiliation of States with the international society and international community; and second, on the relationship of the international legal system with the two spaces of the international.

As far as the first aspect is concerned, Buchan argues that international society and international community are two forms of associations of States; the inclusive international society that took shape after the end of the Second World War and became universal over time, and the international community with a more limited constituency that emerged after the end of the Cold War. The author underscores that the international society technically 'extends membership to all states', but practically 'contains only non-liberal states', and the international community is composed only of liberal States (19). However, if, as he admits, the international society 'institutionalize[d] its association by creating the United Nations' which is 'the legitimate representative of the international society' (26–7), then 'in practice' the United Nations should be considered as being under the control of non-liberal States, a position that the author does not accept. The distinction can be salvaged if international community and international society are considered as 'pre-legal' formations mirroring the

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