International Law

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THE life of "international law" as a doctrinal term of art began in 1789, when it appeared in Jeremy Bentham's *Introduction to the Principles of Morals and Legislation*. Bentham intended the term to capture, "in a more significant way, the branch of law which commonly goes under the name of the *law of nations*," which he took to be a kind of misnomer, a confused "appellation" that referred not to the formal rights or obligations of states but to some older—and epistemologically embarrassing—idea of naturally sanctioned order. Against this outgrowth of the natural-law tradition, famously dismissed by Bentham as "nonsense upon stilts," he wished for a word to describe the actually existing norms that governed the relations between states—or what he called the "mutual transactions between sovereigns as such." This field of engagement was the only one that could count as the true "subject of that branch of jurisprudence which may be properly and exclusively termed the *international*."[1]

Much to his chagrin, Bentham would not himself be witness to the development of this new form of jurisprudence, which would take some eighty years to come to institutional fruition. ("Few things are more wanting than a code of international law," he reportedly lamented in 1828, just a few years before his death.)[2] Indeed, the history of international law as a narrowly defined science or discipline, complete with practitioners who organized themselves in relation to increasingly discrete bodies of legal knowledge, turned out to be "a Victorian affair," as Frances Ferguson says about the delayed reception of almost all of Bentham's work.[3] But any account of the timing of international law's arrival as a highly differentiated field of thought must first broach the conditions of its immediate emergence, roughly 1870–1885, smack at the center of the period of commercial and imperial expansion that we have come to know as the age of empire. Central to this history is a small but prominent cohort of international lawyers—Martti Koskenniemi

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calls them "the men of 1873"—whose professionalization made the law newly audible and available for the management of imperial politics. Winning institutional respectability as "the legal conscience of the civilized world," these men developed an official discourse of rules that formalized the relations between empires, orienting them to one another such that their modes of interaction became stable, predictable, relatively immune from local or outside influence or indeed most possibilities of disruption. Exemplary in this regard was the General Act of the Berlin Conference (1885), a document that legally negotiated the process of partition as a multilateral one that would be guided by the procedural norms of jurisdiction, among other provisions. "Here," as Koskenniemi writes, "law became part of the moral and political controversy about the justice of colonialism."[4]

There are probably several different ways to explain why this history has not really been registered yet by scholars in Victorian studies, but for the sake of space I will just note its absence from the field—and ask about the dividends we might obtain by remedying it. What would the project of Victorian globalization look like from the perspective of international legal history? The best answer, I think, would be responsive to the problem-space that Sukanya Banerjee identifies in the original Keywords issue of *VLC* as the "transimperial," "a keyword that is as much about inter-imperial relations," she writes, "as the relationality between multiple constituencies through and across empire."[5] Given that this traffic has to be seen as part of a single global dynamic, "as operating along the same interrelated plane of modernity," it is important that we recognize its assimilation into an order of rule, a matrix of equations—contracts, promises, transactions—by which imperial identities can be reconciled to one another.[6] If we were to speak of an ideology borne in the setting or form of the transimperial, one of its purest expressions would be here, in the effort to displace the interests of empire from the ragged ground of conflict to the calculable channels of their resolution.

Of course, this altitude of theoretical generality takes our discussion clear of any strictly legal framework. But that's a feature, not a bug. We have arrived at this level of abstraction, I mean, because the genealogy that needs to be traced is a conceptual one in which international law acts as just one of the opening gambits in a broader reorientation of the routines of imperialist reason. Borrowing from the legal anthropology of Clifford Geertz, I want to say that "the intent is to evoke outlooks, not to anatomize codes."[7] Attention might thus be finally solicited toward

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George Eliot, who in *Daniel Deronda* (1876) paints her own securitized world picture, a high-contrast image of rational global containment. "High-contrast," because it takes its place alongside the novel's fevered invocation of the logic of ethnic separatism, typically understood as both the strategy and goal of the colonizing mission that Daniel and Mirah, "rather ruthlessly," as Susan Meyer observes, plan to undertake by the end of the story.[8] It's been less remarked, though, that this mission is also subsumed under a law, "a new order" of geopolitical life.[9] Thus, Mordecai promises that the project of Zionist statecraft will have the advantage of being included within some wider universe of normative judgment: "The outraged Jew shall have a defence in the court of nations," he predicts, "as the outraged Englishman or American."[10] Muting his crusading idealism, Mordecai does not so much elide the scene of colonial rule as look forward to its submission to and redemption by some higher authority, which will allow the constituencies of the Jewish settler state to avail themselves of the same protections as the "Englishman or American," each with their own recourse to the hearing of their petitions. One could view these legal politics as "secular and pragmatic," as Avrom Fleishman does, but that would distort their ironies, if we may call them that, underplaying their role in the violence of global expansion.[11] In *Daniel Deronda*—and not only there—the offices of law and order are anything but impartial.

Notes

1. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789; Oxford: Clarendon, 1987), 296.
2. Quoted in David Armitage, *Foundations of Modern International Thought* (Cambridge: Cambridge University Press, 2013), 185.
3. Frances Ferguson, review of *Utility and Democracy: The Political Thought of Jeremy Bentham*, by Philip Schofield, and *The Pleasures of Benthamism: Victorian Literature, Utility, Political Economy*, by Kathleen Blake, *Victorian Studies* 53, no. 3 (2011): 533.
4. Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2001), 121. Koskenniemi's work marks an important entry in—and may even inaugurate—a body of literature that can be labeled the critical history of international law. That literature is now enormous, but for another important contribution see Antony

Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

5. Sukanya Banerjee, "Transimperial," *Victorian Literature and Culture* 46, nos. 3/4 (2018): 926.
6. Banerjee, "Transimperial," 927.
7. Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 183.
8. Susan Meyer, "'Safely to Their Own Borders': Proto-Zionism, Feminism, and Nationalism in *Daniel Deronda*," *ELH* 60, no. 3 (1993): 751. See also, among others, James Buzard, *Disorienting Fiction: The Autoethnographic Work of Nineteenth-Century British Novels* (Princeton: Princeton University Press, 2005).
9. George Eliot, *Daniel Deronda* (1876; London: Penguin, 1995), 537.
10. Eliot, *Daniel Deronda*, 535.
11. Avrom Fleishman, *George Eliot's Intellectual Life* (Cambridge: Cambridge University Press, 2010), 204.

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