

There Is No International Legal Order Beyond Capitalism

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Ntina Tzouvala, [Capitalism as Civilisation](#) (2020).

In recent decades, a new wave of critical literature highlighted how the concept of “civilization” emerged in the 19th century as a rubric to judge countries as worthy (or not) of admission to the European order of international law. Today this scholarship is commonly referred to as the “historical turn” in international legal scholarship. Much of this literature explored the problematic racialized origins of the term “civilized,” as well as its persistent impact on international law today. In this context, Ntina Tzouvala’s *Capitalism as Civilisation* presents a next-generation interpretation of the legacy of “civilization” of international law today.

Tzouvala’s book is ambitious on a number of fronts. She approaches “civilization” not as a singular term but as an argumentative pattern driven by an oscillation between what she calls the “logic of improvement” and the “logic of biology.” “Improvement” here refers to international law’s embrace of progressive universalism, and “biology” refers to assertions of immutable cultural difference. While these ideas are seemingly at odds, Tzouvala emphasizes how these dual logics exist in productive tension. Together, they kept those once deemed “uncivilized” as perpetual objects of needed reform and irresolvable incompatibility.

But *Capitalism as Civilisation* is even more ambitious than simply providing this new framing of the now well-established “historical turn.” The book can be read as a generational statement about what critical scholarship on international law should and can be. Within a single volume it attempts to provide a convincing synthesis of core tensions in the field, if not in critical scholarship more generally. With care and confidence, Tzouvala’s aims to integrate material analysis into the predominately discursive and deconstructive focus of her critical predecessors on the indeterminacy of international law.

Like many today working under the frame of “law and political economy,” Tzouvala wants to avoid Marxist scholars’ dismissal of discursive approaches while still arguing for the necessity of a “materialist framework for understanding legal indeterminacy.” (P. 38.) In what could be called nothing less than the holy grail of critical scholarship, the book seeks to fuse both “epistemological relativism and ontological realism.” (P. 13.) To do so she takes up how the creation of the modern international legal system was inseparable from the creation of the modern international economic system—for Tzouvala, understood as the spread of global capitalism.

Her first chapter delves directly into melding an understanding of the expansionist nature of global capitalism and its interplay between her two logics in 19th century international legal thinking. In her second chapter, she gives specific focus to the now-classic example of extraterritorial regimes as premised on the empirical “improvement” of domestic legal systems (as generally judged through comparison with idealized forms of capital-friendly economic regulation) but ever-susceptible to arguments of “biological” cultural incommensurability to shift the proverbial goal-posts. Similarly, she explores how the international abolition of slavery was turned against colonized countries as a lever to induce reforms amenable to modern wage labor markets.

Her next three chapters link together the early 20th and 21st centuries to show the way in which the language of international law repackaged the logics of improvement and biology even after the formal demise of “civilization” as a central frame. Chapter 3 looks to the post-World War I Mandate System where, in particular, struggles over the British presence in Iraq after the Anglo-Iraqi Treaty set into collision new alchemies of informal power, “good governance,” and essentializing cultural reasoning. Chapter 4 primarily centers on the “South West Africa saga” from the late 1940s

to the early 1970s which saw the International Court of Justice confronting challenges by Liberia and Ethiopia to South Africa's presence in modern Namibia. For Tzouvala, the outcome of this judicial contest required displacing concerns with exploitative economic development as a basis of critique to normalize a more circumscribed language of judicialized rights. Chapter 5 brings the analysis into the contemporary era by showing how the invasion and post-invasion administration of Iraq after the second Gulf War, as well as the larger war on terrorism, relied again on both logics to demand particular market reforms while opportunistically falling back on arguments regarding cultural difference for justification or explaining away failure.

In threading her discursive and material needle, Tzouvala argues that activists or scholars who strategically embrace either logic as tools of resistance ultimately contribute to crippling more radical critique. With little fear of the polarizing terrain it has recently induced, she clearly outlines examples where the language of human rights was used to displace systemic critiques of capitalism, and the domestic and transnational social movements that embraced them. Similarly, she provocatively unpacks how this argumentative strategy is redeployed in modern international humanitarian legal vocabulary—exemplified in the recurrently stable set of countries “unable or unwilling” to properly self-govern and thus legitimating external intervention. Here remedying the elision of the material context of economic development—at least as a contested arena of publics rather than technocratic “best practices”—renders the stakes and drivers of doctrinal debates visible.

With such theoretical ambition, *Capitalism as Civilization* will be off-putting to some who would be uncomfortable with its clear invocations of Marxist legal theory—even as it spends much energy addressing the limitations of its recent critical standard-bearers in her field. Yet, it can be read productively alongside many recent works with quite divergent theoretical positions. For example, her Australian National University colleague Anthea Robert's recent *Is International Law International?* provides detailed exemplification of both the specific material and discursive practices by which modern international lawyers continue to assert their unsullied transcendence of cultural chauvinism (while replicating patterns of social and economic inequality in and between nations). Similarly, Gao and Shaffer's study of the “improvement” of China's performance at the WTO, and the United States' concomitant withdrawal, exposes the material consequences when the submerged cultural presumptions of international law are challenged.

Critically, Tzouvala's broadening of the analysis to include the context of capitalism's near complete global spread and indigenization is necessary for understanding a changing global order in which the traditional discursive anchors of previous critiques have lost trenchancy. It is clear that terms such as “the West,” or even the more recent “Global South,” struggle to capture the assertive global role of China or the regional rise of ethnonationalist authoritarian politics in India or Brazil—all of which exist in a deeply economically integrated capitalist world order.

Tzouvala's ultimate audience is still quite specific. Her motivating concern is that recognizing legal, or epistemological, indeterminacy is a wholly insufficient ground for generating an effective radical counter-politics. If advancing a critique of capitalism is not already within one's normative frame, then there are many places where the book can provide reason to disengage. Still, even for those least-disposed to consider this their own concern, the synthetic breadth of Tzouvala's work should be read as an effort of intellectual reconciliation that will continue to be at the heart of critical legal scholarship in coming decades in and outside of international law.

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