

# The Specter of Eurocentrism in International Legal History

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Some words struggle amongst themselves as enemies. Other words are the site of an ambiguity: the stake in a decisive but undecided battle.

- Louis Althusser, *Lenin and Philosophy*

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## INTRODUCTION

The honeymoon period of the “turn to history” in international law did not last long.<sup>1</sup> On the surface everyone agreed that the past of the discipline remained under-examined and under-theorized. Additionally, few (if any) international legal scholars still believed in the most extreme versions of linear, progressivist narratives that imagined (international) law to be part and parcel of “the long march of mankind from the cave to the computer.”<sup>2</sup> Nevertheless, important methodological differences persisted. These

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1. For some critical overviews: Thomas Skouteris, *Engaging History in International Law*, in *NEW APPROACHES TO INTERNATIONAL LAW: THE EUROPEAN AND AMERICAN EXPERIENCES* (Jose Maria Beneyto & David Kennedy eds., 2012); Matthew Craven, *Theorising the Turn to History in International Law*, in *THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW* (Anne Orford & Florian Hoffman eds., 2016); Valedina Vadi, *International Law and its Histories: Methodological Risks and Opportunities*, 57 *HARV. INT’L L.J.* 311 (2017).

2. MALCOLM N. SHAW, *INTERNATIONAL LAW* 1(6th ed. 2008).

disagreements include the nature of historical time and, correspondingly, the relationship between the present and the past,<sup>3</sup> the appropriate and permissible sources,<sup>4</sup> the relationship between contingency and necessity, agency and structure,<sup>5</sup> and aesthetic and theoretical choices between “thick description” and explanation.<sup>6</sup> These deep theoretical divisions and the increasingly sour tone of the debate make the apparent consensus over the question of Eurocentrism worthy of closer examination. Simply put, scholars who agree on little else nonetheless acknowledge that the history of international law has been profoundly Eurocentric and that correcting this bias should be one of the main preoccupations of contemporary historical efforts. In fact, it is not uncommon that battles over other methodological questions are fought on the terrain of Eurocentrism, a point to which I will return shortly.

This essay is animated by the suspicion that Eurocentrism has emerged as an important empty signifier for the history and historiography of international law. This is not to say that the term is vague or indeterminate, even though it certainly is that as well. Rather, drawing from Laclau, we can understand “Eurocentrism” as a point of hegemonic contestation. The meaning of the term, its implications, and the means for overcoming it have not acquired yet a stable and discrete content. They are, rather, the battlefield where different political and jurisprudential projects clash. In Laclau’s own words:

[T]he universal—taken by itself—is an empty signifier, what particular content is going to symbolize the latter is something which cannot be determined either by an analysis of the particular in itself or of the universal. The relation between the two depends on the context of the antagonism and it is, in the strict sense of the term, a hegemonic

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3. Central to the dispute is, of course, the Orford-Hunter debate centered around the question of anachronism: Ian Hunter, *Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations*, in *LAW AND POLITICS IN BRITISH COLONIAL THOUGHT: TRANSDISPOSITIONS OF EMPIRE* (Shaunnagh Dorsett & Ian Hunter eds., 2010); Anne Orford, *The Past as Law or History? The Relevance of Imperialism for Modern International Law* (University of Melbourne, Legal Studies Research Paper No. 600, 2012).

4. Rose Parfitt, *The Spectre of Sources*, 25 *EUR. J. INT’L L.* 297 (2014); Susan Pedersen, *Back to the League of Nations*, 112 *THE AMER. HIST. REV.* 1091 (2007) (criticising Anghie’s engagement with the Mandate System by primarily focusing on his sources, which Pedersen considered to have been out-of-date, rather than the substance of his argument).

5. The debate is commonly structured around confrontations between Marxist and other, non-Marxian leftist legal histories, as well as between poststructuralism and structuralism of the Marxist, non-Marxist, and anti-Marxist varieties: ROBERTO UNGER, *FALSE NECESSITY* (2004); Susan Marks, *False Contingency*, 62 *CURRENT LEGAL PROBLEMS* 1 (2009); Umut Özsu, *Agency, Universality, and the Politics of International Legal History*, 51 *HARV. INT’L L.J.* 58 (2010); Ingo Venzke, *What If? Counterfactual (Hi)Stories of International Law*, (Amsterdam Law School, Research Paper No. 2016-66, 2016); Justin Desautels-Stein, *Structuralist Legal Histories*, 78 *LAW & CONTEMP. PROBS.* 37 (2015).

6. Marxist legal histories being a typical example of the latter category: Christopher Tomlins, *Marxist Legal History*, in *THE OXFORD HANDBOOK OF LEGAL HISTORY* (Markus D. Dubber & Christopher Tomlins eds. 2018).

operation.<sup>7</sup>

An empty signifier is both the outcome and the point of articulation of an antagonistic relationship: opposing discourses clash and their incompatibility becomes evident, as does the impossibility of objective determination.<sup>8</sup> On the contrary, when a discourse achieves hegemonic status it absorbs its opponents and dictates the meaning of signifiers. Meaning is, therefore, stabilized through struggle and not thanks to some inner quality or rationality of any given term. When it comes to law, the sites of this struggle are diverse and diffuse. Courts, diplomatic conferences, law reviews, and the streets operate as the theatres of clashes over the meaning of “sovereignty,” the implications of being “human,” the steps that are essential for the realization of the “right to self-determination.” Debates over Eurocentrism are an overwhelmingly academic preoccupation. They can, nonetheless, inform broader theory and practice and define what is possible and desirable for international law as a discipline.

If it is true that an unacknowledged battle over the meaning and implication of “Eurocentrism” is unfolding, then what is at stake is not simply the clarification of the terms of the debate. More fundamentally, I am interested in intervening in this debate, retrieving the radical potential of early critiques of Eurocentrism, and bringing them to bear on international legal history. To do so, I will proceed in two steps. First, I will map the ongoing debate as well as the strategies proposed by international lawyers in order to overcome Eurocentrism. It will become evident that beneath this apparent consensus lie irreconcilable differences about the meaning of Eurocentrism, imperialism, and the character of international law. Secondly, I will revisit Samir Amin’s original articulation and treatment of the term.<sup>9</sup> I will further draw from debates between Marxian and postcolonial scholars about the potential and limitations of Marxian concepts to grasp and adequately explain society, domination and social struggles outside the West. Drawing from Samir Amin’s arguments about the uniquely capitalist origins of modern Eurocentrism I will then reflect on contemporary debates about international legal history and anachronism arguing that contextualist critiques of postcolonial legal histories have fundamentally misunderstood the purpose and limitations of such endeavors. Overall, I argue that thinking about Eurocentrism as a culturalist distortion that is inextricably linked to global capitalist expansion allows us to discern the role of international law in this irreducibly contradictory process of globalizing capitalism. Mine is a position that—unlike much contemporary scholarship—is open about its assumptions, and in doing so

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7. ERNESTO LACLAU, EMANCIPATION(S) (2007).

8. *Id.* at 5.

9. SAMIR AMIN, EUROCENTRISM (2d ed. 2009).

pushes against efforts to domesticate the critique of Eurocentrism, reducing it into demands for professional diversity under the hegemony of neoliberal capitalism.

#### I. INTERNATIONAL LEGAL HISTORY AND THE PERILS OF EUROCENTRISM

Launching his scathing critique against Anthony Anghie in particular, and critical and postcolonial histories of the law of nations in general, Ian Hunter anchored his objections to a critique of Eurocentrism. For Hunter, critical international legal historians are trapped within a profoundly Eurocentric theoretical universe that assumes a single moral framework for both, say, Māori conceptions of land-belonging and English claims for settlement.<sup>10</sup> In fact, he argues that by assuming such a universal framework critical historians enact their own Eurocentric assumptions. In Hunter's text this embrace of Eurocentrism is a failure so compelling as not to require further explanation:

In treating early modern *jus naturae et gentium* as the ideological origin of modern—state-centered, imperialist—international law, critical historiography grounds its critique of *jus gentium* particularism or regionality on social-theoretic and philosophical premises tacitly assumed to be universal. It is highly likely, though, that the theoretical and philosophical premises of this critique are themselves European-specific—that is, accessible only to those iteratively trained in an array of regional university-based European intellectual cultures.<sup>11</sup>

For now, I am not interested in discussing the substance of Hunter's argument nor whether thinking about 18th century intellectual production in terms of Eurocentrism is itself—paradoxically—anachronistic. Rather, I want to make strange something very familiar to everyone in the field of international legal history: Eurocentrism is a common and effective charge against one's intellectual opponents. Correspondingly, successfully detecting and avoiding it operates as a shared measure of the scholarly quality and/or political worthiness of new scholarly pursuits. As I show in this section, this common vocabulary and ambition carry wildly divergent meanings. These divergences persist because “Eurocentrism” has become the terrain of political confrontation within the discipline. Different historiographical, juridical, and political projects are in competition over authoritatively determining the meaning and consequences of “Eurocentrism.” As long as no approach scores a decisive victory, the term remains open-ended, and no amount of technically impeccable scholarly work can concretize its meaning. This section offers a snapshot of these differences, without advocating for or arguing against one specific approach

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10. Hunter, *supra* note 3, at 25.

11. *Id.* at 13.

for the time being.

Take, for example, the *Oxford Handbook of the History of International Law*.<sup>12</sup> Of all possible goals, its editors identified confrontation with Eurocentrism as their primary commitment and organizing principle. For them, if Eurocentrism is the problem, it is because it leads to “incomplete” histories of the discipline:

The Eurocentric story of international law has proven wrong because it is incomplete. Not only does it generally ignore the violence, ruthlessness, and arrogance which accompanied the dissemination of Western rules, and the destruction of other legal cultures in which that dissemination resulted. Like most other histories, this history of international law was a history of conquerors and victors, not of the victims. Furthermore, the conventional story ignores too many other experiences and forms of legal relations between autonomous communities developed in the course of history. It even discards such extra-European experiences and forms which were discontinued as a result of domination and colonization by European Powers as irrelevant to a (continuing) history of international law.<sup>13</sup>

A particular version of global history is put forward as the solution. More specifically, the incorporation of multiple perspectives, an emphasis on new actors, and a certain anti-statist sensibility are identified as ways of “provincializing Europe.”<sup>14</sup> This experiment was met with more than a little skepticism. A review symposium hosted by the *European Journal of International Law* found the initiative to be ambitious but ultimately unsuccessful. Critics focused on the uncritical reproduction of international legal sources that makes histories irreducibly statist regardless of a potential “global” outlook,<sup>15</sup> the limited and limiting engagement with Islamic law *as law*,<sup>16</sup> and a certain “mild center-left” political commitment that rendered issues of economic exploitation and global capitalism invisible.<sup>17</sup> I will return to this last point shortly, since it captures something important about the way critiques of Eurocentrism are framed in the disciplinary debate. For now, it is worth noting that this distinction between seeing Eurocentrism as a matter of perspective and/or completeness and seeing it as a matter of conceptualization and/or theoretical orientation is an unacknowledged but important one.

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12. THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW (Berdo Fassbender & Anne Peters eds., 2012).

13. Berdo Fassbender and Anne Peters, *Introduction: Towards a Global History of International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW, *supra* note 12, at 1-2.

14. *Id.* at 9.

15. See Parfitt, *supra* note 4.

16. Nahed Samour, *Is There a Role for Islamic International Law in the History of International Law?*, 25 EUR. J. INT’L L. 313 (2014).

17. Anne-Charlotte Martineau, *Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law*, 25 EUR. J. INT’L L. 329, 330 (2014).

Allow me to elaborate the significance of this distinction. Bringing the contributions of non-Western international lawyers to the discipline of international law into the spotlight is undeniably a much-needed task. Nevertheless, such initiatives do not necessarily mean that these additional contributions question the core concepts of international law, such as a binary and exclusionary understanding of “sovereignty,” a fixed and reified understanding of “territory,” or a hierarchical and exclusionary understanding of the “human.” An approach that questions Eurocentrism exclusively by showing that non-Westerners also became competent users of the language of international law ends up implying that the language itself is truly universal, even if it originated in Europe.<sup>18</sup> On the contrary, critical histories of international law go beyond the origins of the discipline or the identity and geographical representativeness of its practitioners. Rather, critical legal scholars have strived to show that some of the discipline’s core concepts and arguments not only incorporate Western ideas about the world but also support the material interests of imperialist centers, even if the composition of the profession has diversified. Either side yields the language of Eurocentrism to criticize the other. However, neither concede that their understandings of Eurocentrism diverge significantly. If we did so, the power of accusations about Eurocentrism would automatically diminish. The term would cease to operate as the focal point of superficial consensus and would, therefore, not interpellate the opposing camp effectively.

However, disciplinary differences will not disappear if we refuse to talk about them. If we read carefully, these unacknowledged differences become visible. Arnulf Becker Lorca, for instance, has put forward a particular conception of what Eurocentrism is and what it does in the history of international law. For him, Eurocentrism produces a particular type of distortion that erases peripheral and semi-peripheral international lawyers and their progressive contributions to the evolution of international law.<sup>19</sup> Accordingly, Becker Lorca’s broader contribution is centered around shedding light on the struggles and victories of such semi-peripheral lawyers. Latin American, Greek, Ottoman/Turkish, Japanese and Chinese international lawyers—his argument goes—fundamentally transformed 19th-century international law making it more responsive to the needs and aspirations of their polities.<sup>20</sup> He argues that histories that focus on the fundamentally imperialist character of international law perpetuate the

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18. See, e.g., Alexander Orakhelashvili, *The Idea of European International Law*, 17 EUR. J. INT’L L. 315 (2006).

19. Arnulf Becker Lorca, *Eurocentrism in the History of International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW, *supra* note 12, at 1035.

20. See Arnulf Becker Lorca, *Universal International Law: Nineteenth-Century. Histories of Imposition and Appropriation*, 52 HARV. INT’L L.J. at 475 (2010); ARNULF BECKER LORCA, *MESTIZO INTERNATIONAL LAW: A GLOBAL INTELLECTUAL HISTORY 1842-1933* (2014).

Eurocentric distortion by downplaying the agency and influence of international lawyers outside the West.<sup>21</sup> For him, international law's Eurocentrism needs to be confronted in the terrain of intellectual history, in order to show the rich contributions and original legal thinking of semi-peripheral lawyers. At the same time, Becker Lorca acknowledges the active participation and intellectual as well as material embeddedness of these semi-peripheral lawyers in projects of state and capitalist expansion coupled with genocidal violence against Indigenous peoples, but he swiftly separates them from the main historiographical effort and relegates them to parenthetical status.<sup>22</sup>

However, it is precisely international law's complicity with Indigenous dispossession, statism, capitalist expansion, and racist domination that form the heart of post-colonial critiques of Eurocentrism. If accounting for non-Western agency, struggle and change is at the heart of Becker Lorca's confrontation with Eurocentrism, others remain less optimistic. As indicated above, for those writing within the tradition of Third World Approaches to International Law (TWAIL), the Eurocentric inheritance of the discipline goes beyond individual practitioners and theories and permeates its core concepts and argumentative structures. Writing within this tradition, Anghie argued that the concept of sovereignty was forged through the colonial encounter and that despite twists and turns "imperialism is a constant" for the discipline.<sup>23</sup> Furthermore, Nesiah, and more recently Storr, have argued that territorial sovereignty and the juridical mechanisms that reproduced this particular form of political authority, such as the *uti possidetis* doctrine, are inherently Eurocentric, despite their adoption by non-Western states and their occasional tactical deployment for anti-imperialist purposes.<sup>24</sup> Finally, Parfitt has recently placed the state, the much revered subject of international law, at the center of her exposition of the discipline's Eurocentrism.<sup>25</sup> Within this intellectual and political tradition, it is not intellectual or professional but rather juridical histories that can capture the extent of Eurocentrism in international law. Overall, even though many TWAIL accounts conclude with upbeat notes about the possibility of resistance and change, their overall orientation does not offer

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21. Becker Lorca, *supra* note 19, at 1054.

22. Becker Lorca, *supra* note 20, at 134.

23. ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 312 (2004).

24. Vasuki Nesiah, *Placing International Law: White Spaces on a Map*, 16(1) *LEIDEN J. INT'L L.* 1 (2003); Cait Storr, *Denaturalising the Concept of Territory in International Law*, in *LOCATING NATURE: MAKING AND UNMAKING INTERNATIONAL LAW* (Julia Dehm & Usha Natarajan eds., forthcoming 2020).

25. "[V]iewing statehood and international personality from the perspective of the process of international legal reproduction casts doubt on the idea that 'sovereign statehood' should be understood as the apotheosis of collective emancipation for all human communities everywhere, as international law encourages us to assume." ROSE PARFITT, *THE PROCESS OF INTERNATIONAL LEGAL REPRODUCTION: INEQUALITY, HISTORIOGRAPHY, RESISTANCE* 13 (2019).

a comprehensive solution to Eurocentrism nor does it purport to do so. After all, the problem is not primarily conceptualized as a distortion of the historical record of the discipline, but rather as a very real, persisting characteristic of the international legal order.

The two approaches summarized above represent a small part of the debate. A decade ago, Martti Koskenniemi identified at least four different methods for confronting Eurocentrism, even though he refrained from elaborating on his own understanding of the term.<sup>26</sup> These techniques included hybrid histories that pluralize the origins of international law;<sup>27</sup> a critique of core concepts and of their colonial inheritance; comprehensive studies of the relationship between international law and imperialism; and, finally, the exoticization of both Europe and of European international law. This exoticization will be achieved through a detailed study of the discipline as a peculiar project of a very specific group of European liberals. For Koskenniemi, this last approach is encapsulated by the purportedly anti-Eurocentric Eurocentrism of *The Gentle Civilizer of Nations*.<sup>28</sup>

Ten years later, we can detect at least two more methods that have been employed by legal scholars as responses to Eurocentrism. The first involves the turn to global history offered by the *Oxford Handbook of the History of International Law*.<sup>29</sup> The other seeks to pluralize the notion of international law itself by asserting, for example, the lawfulness of Indigenous or Islamic law and resisting the tendency of European international law to expand its jurisdiction over time, space and all aspects of life.<sup>30</sup> Within this context, it is appropriate to talk about “international laws” in the plural. According to this line of thinking, there is no good reason to think about core legal concepts, such as sovereignty, exclusively within the narrow, statist constraints of European international law. Lawyers can (and should) look at other juridical traditions that imagine and practice sovereignty in ways

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26. Martti Koskenniemi, *Histories of International Law: Dealing with Eurocentrism*, 19 RECHTSGESCHICHTE 152, 171 (2011).

27. For some interventions that question the European Origins of international law see: Becker Lorca, *supra* note 20; Liliana Obregon, *Between Civilization and Barbarism: Creole Interventions*, in INTERNATIONAL LAW AND THE THIRD WORLD: RESHAPING JUSTICE (Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens eds., 2008); Liliana Obregon, *Creole Consciousness and International Law in Nineteenth Century Latin America*, in INTERNATIONAL LAW AND ITS OTHERS (Anne Orford ed., 2008); SURYA PRAKASH SINHA, LEGAL POLYCENTRICITY AND INTERNATIONAL LAW (1996).

28. MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* (2001).

29. Fassbender, Peters, *supra* note 12. See also: Maria Adele Carrai, *Current Chinese Approaches to a Global History of International Law*, 66 STORICA 23 (2016).

30. For such approaches emanating from settler colonies both by settler and indigenous scholars see: Mark McMillan, *Koowarta and the Rival Indigenous International: Our Place as Indigenous Peoples in the International*, 23 GRIFFITH L. REV. 110 (2013); Anne Orford, *Ritual, Mediation and the International Laws of the South*, 16 GRIFFITH L. REV. 353 (2007); Amar Bhatia, *The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World*, 14 OR. REV. OF INT'L L. 131 (2012); Ruth Buchanan, Jeffery G. Hewitt, *Treaty Canoe*, in INTERNATIONAL LAW'S OBJECTS (Jessie Hohmann, Daniel Joyce eds., 2018).

better equipped to deliver social and environmental justice.<sup>31</sup>

As noted earlier, the purpose of this section is not to arbitrate between these different approaches but rather to draw out their diversity. Even though it is both intellectually and politically possible to reconcile and combine some of them, it is also clear that many are directly antithetical and often take aim at each other as much as they do at the “mainstream” of the discipline. As I have already indicated, this multiplicity of tactics is anchored to unacknowledged differences about the nature and impact of Eurocentrism in international legal history. In a recent interview with Liliana Obregon, Koskenniemi registered his frustration with the “blurriness” of the concept and the fact that seemingly entirely different problems are summarized under this moniker.<sup>32</sup> This observation captures, in my view, only a minor part of the problem. To return to Laclau, talk of Eurocentrism is not just “noise” nor does it mean “all things to all people”. Rather, the process of signification is currently failing and occasionally causes considerable frustration to people whose professional identity revolves around the mastering of language and meaning. This is because none of the approaches summarized above has managed to establish itself as universal or objective. In the section that follows, I engage in detail with the Marxist conceptualization of Eurocentrism and make the case for its importance for international lawyers.

## II. TOWARD A RADICAL CRITIQUE OF EUROCENTRISM FOR INTERNATIONAL LAW

This is not the first time that international legal historiography has been plagued by a misleading sense of agreement that conceals fundamental tensions. For example, implicit tensions about the meaning of imperialism, the ways it interacts with international law, and whether it is still relevant for international legal analysis have been constantly present during the “turn to history” in international law. As James Gathii and Robert Knox have both argued, “imperialism” has been mobilized to signify anything from a narrow set of practices of direct political domination to a global system of value extraction and exploitation.<sup>33</sup> These different conceptualizations have also led to starkly diverging positions in regard to international law. On the one hand, “weak” critiques of empire have sought to salvage international law and to reassert its universality against what they perceive to be its

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31. Michael Fakhri, *Third World Sovereignty, Indigenous Sovereignty, and Food Sovereignty: Living with Sovereignty despite the Map*, 9 *TRANSNAT'L L. THEORY* 1 (2018).

32. Liliana Obregon, *Martti Koskenniemi's Critique of Eurocentrism in International Law*, in *THE LAW OF INTERNATIONAL LAWYERS: READING MARTTI KOSKENNIEMI* 379 (Wouter Werner, Marieke de Hoon & Alexis Galán eds., 2017)

33. James Thuo Gathii, *International Law and Eurocentricity*, 9 *EUR. J. INT'L L.* 184 (1998); Robert Knox, *A Critical Examination of the Concept of Imperialism in Marxist and Third World Approaches to International Law* (2014) (unpublished Ph.D. thesis) (on file with the author).

isolated perversions by the great powers. On the other, “strong” critiques have focused on demonstrating international law’s repeated failures to live up to its universalist promise because of its very intertwining with imperialism.<sup>34</sup>

In many respects, contemporary disagreements over Eurocentrism directly echo this earlier debate about imperialism. It is partly for this reason that this section focuses on the work of the Third Worldist Marxist Samir Amin. His work enables us to think through both problems at the same time. Amin’s writings are important not only because it was him who introduced the concept of Eurocentrism in the field of social inquiry, but also because he did so in the process of discussing the historically concrete nature and implications of Western imperialism. Before proceeding further, a methodological clarification is required. Earlier in this essay I have framed the problem of Eurocentrism in international law as one of empty signifiers, of competing meanings that only become stabilized through struggle. This choice renders certain arguments unavailable to me. My turn to Samir Amin is, therefore, not an attempt to recover Eurocentrism’s authentic and, by implication, authoritative meaning.<sup>35</sup> Rather, Samir Amin’s articulation has the advantage of providing a clear, explicit articulation of the problem as well as of its possible solutions. Additionally, my return to Amin wants to draw out the politics of the marked absence of his work from international legal accounts of Eurocentrism. None of the works that I discussed above engages with or even cites Amin. This absence carries with it a tendency to turn Eurocentrism into a problem of culture and/or professional diversity and to insulate it from a radical critique of the global political economy. In this respect, revisiting Amin’s work can help us to push against efforts to domesticate the radical potential of the critique of Eurocentrism and to reduce it to liberal pluralism or to a politics of representation that does not challenge the discursive or material structures of international law.

For now, let’s return to Amin: his work offers the tools for thinking about Eurocentrism, imperialism and capitalism together. Amin’s political and materialist treatment of Islamism and, more broadly, religious fundamentalism is an important antidote to the rampant Islamophobia of our political moment. It also offers useful tools of engagement that go beyond liberal tolerance. His own radical critique emerged as part of his effort to understand Eurocentrism as a phenomenon specific to capitalism,

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34. The distinction between “weak” and “strong” critiques of imperialism is found in Gathii, *supra* note 33.

35. Peter E. Gordon calls this the “premise of origins”: the contextualist historian’s (implicit) assumption that in order to properly grasp an idea we need to restore it to its origins. Gordon warns against the potentially unpleasant normative consequences of this emphasis on origins, but at the very least this return to the origins as somehow authoritative and authentic requires justification: Peter E. Gordon, *Contextualism and Criticism in the History of Ideas*, in *RETHINKING MODERN EUROPEAN INTELLECTUAL HISTORY* 37-8 (Darrin M. McMahon & Samuel Moyn eds., 2014)

or, to paraphrase Fredric Jameson, as the cultural logic of expansionist capitalism. Indeed, Amin's treatment of Eurocentrism can only be understood within the context of his Third Worldist Marxism. In his work, he sought to understand the dynamics of capitalism as a fundamentally global system of exploitation, and to make sense of his experience as a left-wing radical who witnessed the resurgence of religious fundamentalism and the essentialization of non-European cultures and peoples.<sup>36</sup> Amin pushed against this essentialization of culture and its discursive elevation into a driver of conflict. In fact, he saw this culturalism as a core ideological construction of global capitalism that legitimizes unequal development. To do so, he assumed not only that Marx's theory is not economic but that it is not a theory of economics at all: 'Marx's project is not an economics; it is an historical materialism.'<sup>37</sup> Rather, Amin argued, the main difference between Marx and bourgeois economics was that Marx tried to comprehend the historical specificity of capitalism as a mode of production that is differentiated from other such modes. This is the case—Amin argued—because generalized commodity exchange and commodity fetishism under capitalism render the idea of a separate and independent "economy" governed by its own laws thinkable and even self-evident in the first place.<sup>38</sup> After all, Marx positioned his work not as yet another theory of political economy, but as a critique of the whole enterprise. Simultaneously, juridical ideology that posits workers and capitalists as free and equal enables the function of capitalism, while simultaneously obscuring its exploitative character.

Enter Samir Amin's Third Worldism, which emphasizes the global transfer of value and the tendency of capitalism to exacerbate imbalances between the center and the peripheries of capitalist development.<sup>39</sup> In this context, the incorporation of an ever-increasing number of regions within the circuits of capitalist production and exchange does not bring about homogenization in terms of incomes, development, political or material cultures. Instead, imperial linkages ensure the steady transfer of value from the periphery to the center. Eurocentrism, Amin posits, emerged as a historically specific ideological construction, one that re-read Europe's contingent, chaotic, and violent transition to capitalism as a story of always-existing cultural and moral European supremacy.<sup>40</sup> Within the Eurocentric

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36. *Eurocentrism* first appeared in English in 1989 (it was published in French a year earlier). Its second, updated edition appeared in 2009 and contains an extensive section on religion, capitalism, violence and (anti)modernity taking stock of the post 9/11 developments. See Amin, *supra* note 9, at 57-86.

37. *Id.* at 87.

38. *Id.* at 86.

39. *Id.* at 154. See also: SAMIR AMIN, *UNEQUAL DEVELOPMENT: AN ESSAY ON THE SOCIAL FORMATIONS OF PERIPHERAL CAPITALISM* (1976); SAMIR AMIN, *IMPERIALISM AND UNDERDEVELOPMENT* (1977).

40. The historicization of capitalism has been at the core of the Marxist critical project: Karl Marx, 'The Secret of Primitive Accumulation' in *CAPITAL VOL. 1: A CRITIQUE OF POLITICAL ECONOMY* (1991);

intellectual universe, Europe's transition to capitalism and national-statehood were imagined to be due to purely internal factors, a position not unknown to certain strands of Marxism either.<sup>41</sup> For the ideologists of Western imperialism, Western prosperity and expansion was due to the purportedly uniquely open and dynamic character of Christianity and/or Western culture.<sup>42</sup> The latter was, Samir argues, re-invented to encompass civilizations, such as ancient Greece, that developed through their interaction with the eastern Mediterranean, especially Egypt, and not with any place that would later come to be associated with "the West".<sup>43</sup>

Marx himself was not a stranger to these Eurocentric understandings of the rise of capitalism, especially in his earlier writings. In some of his earlier journalistic writings on India, ideas of "Oriental despotism" and its inherent tendency toward stagnation still permeated his thought.<sup>44</sup> The dissolution of the "archaic" modes of production could also be brought about externally, and British imperialism—despite its moral repugnancy—was precisely this external force propelling the supposedly stationary East toward capitalism and modernity. In a stark departure from such Eurocentric essentialization of both East and West, Amin claimed that all cultures, and especially all religions, are plastic and subject to constant interpretation and re-interpretation to serve diverse political projects and material interests.<sup>45</sup> Instead, for Eurocentric thinkers, Europe and subsequently, the West or the "developed world," are elevated into the position of unique and predestined matrixes of rationality, modernity, tolerance or justice. Amin argued that Islamic fundamentalism and other forms of culturalist reaction operate as the mirror image of these Eurocentric fantasies. Such reactionaries accept this self-designation of the West as the source of modernity only to assign

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ELLEN MEISKINS WOOD, *THE ORIGIN OF CAPITALISM: A LONGER VIEW* (2017); SILVIA FEDERICI, *CALIBAN AND THE WITCH: WOMEN, THE BODY AND PRIMITIVE ACCUMULATION* (2004); ALEXANDER ANIEVAS, KEREM NIŞANCIOĞLU, *HOW THE WEST CAME TO RULE: THE GEOPOLITICAL ORIGINS OF CAPITALISM* (2015). For an application of the concept of "primitive accumulation" in international law, see Mark Neocleous, *International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization*, 23 EUR. J. INT'L L. 941 (2012).

41. This is notably the position of the current known as political Marxism, especially Robert Brenner and Ellen Meiksins Wood. For an account of the origins of legal extraterritoriality that draws from political Marxism, see Maia Pal, *Early Modern Extraterritoriality, Diplomacy and the Transition to Capitalism in*, *THE EXTRATERRITORIALITY OF LAW: HISTORY, THEORY, POLITICS* (Daniel S. Margolies et al. eds., 2019). For the most comprehensive critique of this internalism within the field of international relations, see Anievas & Nişancioğlu, *supra* note 39.

42. On the global dissemination of the concept of culture as 'a claim about the fundamental underdetermination of human subjectivity,' see Andrew Sartori, *Culture as a Global Concept*, in *BENGAL IN GLOBAL CONCEPT HISTORY: CULTURALISM IN THE AGE OF CAPITAL* (2008).

43. Amin, *supra* note 9, at 166.

44. Marx's writings on British colonialism in India serve as a good guideline on the gradual evolution of his thought away from his early eurocentric assumptions, as do his late-life notes on the Iroquois. August Nimtz, *The Eurocentric Marx and Engels and Other Related Myths*, in *MARXISM, MODERNITY AND POSTCOLONIAL STUDIES* (Crystal Bartolovich & Neil Lazarus eds. 2002); *THE ETHNOLOGICAL NOTEBOOKS OF KARL MARX* (Lawrence Krader ed., 1972).

45. Amin, *supra* note 9, at 162.

negative connotations to this otherwise unchallenged Eurocentric narrative. Instead of struggling against the material and ideological constructions that perpetuate unequal development, these movements “are not different from Eurocentric fundamentalism, which itself tends to take the form of Christian neo-fundamentalism. On the contrary, they are only its reflection, its negative complement.”<sup>46</sup>

The question that remains is what can international lawyers learn from Samir Amin. Amin’s engagement with Edward Said provides an answer. Even though Amin’s analysis drew heavily from the insights of *Orientalism*, it also pushed back against what he saw as the lack of historic specificity and a partial embrace of the West’s mythology about itself. Amin cautioned against Said’s tendency to conflate Eurocentrism as a particular form of universalism that arose along with European imperialism with other forms of ethnic particularism or chauvinism. The latter, Amin argued, predated capitalism and emerged from entirely different sets of social relations:

During the Crusades, Christians and Muslims each believed themselves to be the keepers of the superior religious faith, but . . . neither was capable of imposing its global vision on the other. That is why the judgments of the Christians, at the time of the Crusades, are no more “Eurocentric” than those of Muslims are “Islamocentric”. Dante relegated Mohammed to Hell, but this was not a sign of a Eurocentric conception of the world, contrary to what Edward Said has suggested. It is only a case of banal provincialism.<sup>47</sup>

Needless to say, this observation alone cannot provide satisfactory answers to all of the problems of international legal historiography. Nevertheless, it offers a useful guideline for thinking through the historical specificity of Western international law and its universalization. Take for example Anghie’s famous formulation that international law has been animated by a certain “dynamics of difference” since the times of the conquest of the Americas.<sup>48</sup> This observation has since informed a rich tradition of postcolonial critiques of international law.<sup>49</sup> The problem,

46. *Id.* at 204.

47. *Id.* at 153-54.

48. Anghie, *supra* note 23, at 3.

49. Amongst many: Vasuki Nesiah, *From Berlin to Bonn to Baghdad: A Space of Infinite Justice*, 17 HARV. HUM. RTS. J. 75 (2004); SUNDHYA PAHUJA, *DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY* (2011); Usha Natarajan, *Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty*, 24 LEIDEN J. INT’L L. 799 (2011); Luis Eslava & Sundhya Pahuja, *Between Resistance and Reform: TWAIL and the Universality of International Law*, 3 TRADE, L., DEV. 103 (2011); Adil Hasan Khan, *International Lawyers in the Aftermath of Disasters: Inheriting from Radhabinod Pal and Upendra Baxi*, 37 THIRD WORLD Q. 2061 (2016); KATE MILES, *THE ORIGINS OF INTERNATIONAL INVESTMENT LAW: EMPIRE, ENVIRONMENT AND THE SAFEGUARDING OF CAPITAL* (2013); Kathryn Greenman, *Aliens in Latin America: Intervention, Arbitration and State Responsibility for Rebels*, 31 LEIDEN J. INT’L L. 617 (2018).

however, is that, at an appropriately abstract level, the “dynamics of difference” can be used to explain not only this specific legal system, but pretty much every other legal system as well. In other words, we need intellectual and conceptual tools that will enable us to grasp the differences between the Eurocentric international law of the 19th century and the Sinocentric worldview and law of the same period. Notions of “barbarity” and “civility” or “Othering” and hierarchy are insufficient guides since both systems revolved around such notions. Rather, if we want to capture both the historical specificity of 19th-century international law and the reasons for its unprecedented success and global spread, we would benefit from an inquiry into the relationship between this particular form of legality and the rise and global (but unequal) spread of capitalism.

This framework enables us to concentrate on the specific discursive function and material operation of core concepts, such as the “civilization”. For if the notion was present in other legal systems too, it was in the context of 19th-century international law in particular that it was used to authorize, amongst other things, extensive extraterritorial jurisdiction and the comprehensive administrative, political, and economic reform of ‘semi-civilized’ polities along the lines of capitalist modernity.<sup>50</sup> Furthermore, it was at this point when difference came to be understood in strict biological terms pertaining to sexual and racial difference.<sup>51</sup> In other words, international law made the distribution of rights and duties dependent both on things as mundane as the promulgation of commercial law codes and the appointment of independent judges and as metaphysical as the grandeur of the “white race”. It is within this conundrum that the Eurocentricity of modern international law unfolds. Of course, this example is not exhaustive of the international law’s Eurocentrism. At the same time, as Amin pointed out, Eurocentrism is an indispensable part of the hegemonic ideology of global capitalism, which however is not reducible to Eurocentrism:

The dominant ideology and culture of capitalism cannot be solely reduced to Eurocentrism. It is only one dimension of the prevailing ideology, though one that has developed like an invasive cancer suppressing the essential force, that is to say, economism, in the hidden recesses of the corpulent body it has produced.<sup>52</sup>

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50. On 19th-century extraterritoriality and its links to comprehensive internal reform in the semi-periphery see: Richard S. Horowitz, *International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century* 14 *J. OF WORLD HIST.* 455 (2004); Mai Taha, *Drinking Water by the Sea: Real and Unreal Property in the Mixed Courts of Egypt*, in *THE EXTRATERRITORIALITY OF LAW*, *supra* note 41; Ntina Tzouvala, “*And the laws are rude, . . . crude and uncertain*”: *Extraterritoriality and the Emergence of Territorialized Statehood in Siam*, in *THE EXTRATERRITORIALITY OF LAW*, *supra* note 41.

51. I have further explore the links between the standard of civilization and capitalism in Ntina Tzouvala, “*Civilisation*” in *Jean d’Aspremont*, *CONCEPTS FOR INTERNATIONAL LAW: CONTRIBUTIONS TO DISCIPLINARY THOUGHT* (Sahib Singh ed., 2019).

52. Amin, *supra* note 9, at 177.

Therefore, an ideology critique of international law that focuses exclusively on its (undeniable) Eurocentrism runs the risk of exceptionalizing it and ultimately abstracting it from the thick and contradictory nexuses of power and ideas within which it operates. In the next section, I will show the conceptual and historiographical problems that arise when the critique of Eurocentrism is vacated from all its radical connotations while at the same time absorbing all other critiques of the discipline of international law and its histories. I will also explore the problems that arise when historiographical differences are fought in the terrain of Eurocentrism, especially when the term is loosely or improperly understood.

### III. *EUROCENTRISM AS REGIONALISM: OR, ON THE PECULIAR A-HISTORICISM OF HUNTER'S HISTORY*

Allow me to return to Ian Hunter's attack against Anghie's path-breaking *Imperialism, Sovereignty and the Making of International Law* as articulated in his 2010 piece "Global Justice and Regional Metaphysics".<sup>53</sup> Despite the fact that this piece initiated the ongoing and bitter debate about anachronism between international lawyers and legal historians,<sup>54</sup> his objections to Anghie's postcolonial history of international law are more explicitly focused on the latter's purported Eurocentrism. Hunter's argument focuses particularly on the inclusion of jurists like Vitoria in Anghie's critical history of the discipline and goes as follows: *Imperialism, Sovereignty and the Making of International Law* is representative of critical histories of international law, not only in the sense of being skeptical about international law's virtues, but also "in the philosophico-historical sense positing norms that project a history of *what jus naturae et gentium* should have been or could have become, as opposed to a history of what it contingently happened to be."<sup>55</sup> This involves-Hunter's argument goes-evaluating *jus gentium* against "a global principle of justice capable of including European and non-European peoples within the 'universal history' of its unfolding."<sup>56</sup> Unfortunately, all such available theories are profoundly Eurocentric. They originated in Europe as responses to concrete political struggles of their time. As a result, both *jus gentium* and its critics

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53. *Supra* note 3.

54. The literature is voluminous and growing. See Orford, *supra* note 3; Anne Orford, *International Law and the Limits of History*, in *THE LAW OF INTERNATIONAL LAWYERS*, *supra* note 32.; Anne Orford, *On International Legal Method*, 1 *LONDON REV. INT'L L.* 166 (2013); Lauren Benton, *Beyond Anachronism: Histories of International Law and Global Legal Politics*, 21 *J. HIST. INT'L L.* 7 (2019); Kate Purcell, *On the Uses and Advantages of Genealogy for International Law*, 33 *LEIDEN J INT'L L.* 13 (2020).

55. Hunter, *supra* note 3, at 11.

56. *Id.* at 11-12.

are “regional to and within Europe”.<sup>57</sup>

The cultures, philosophies, and life-worlds with which *jus gentium* collided were no less regional and particularistic. As a consequence, there is no transcendental principle—Hunter contends—that can help us evaluate the encounter between these radically different moral, political, and legal orders. Citing the Japanese international lawyer Onuma Yasuaki, Hunter then concludes that we ought to understand the history of international law as one of clashing regional orders. The Islamocentric *siyar*, the Sinocentric tribute system, and the Eurocentric law of nations are placed side by side as equally regional and particular legal systems, in a move that according to Hunter produces “powerful relativizing effects.”<sup>58</sup> To summarize: for Hunter the only non-Eurocentric way of approaching *jus gentium* involves placing it in its proper time and space. This contextualizing move should also apply to all legal systems, which were equally regional and particularistic. Any other modes of intellectual engagement involves necessarily a moral evaluation, which can only ever be Eurocentric. In fact, Hunter offers an exhaustive catalogue of the standards available to critical histories: Catholic universalism, Kantian cosmopolitanism, or Heidegerian metaphysics.<sup>59</sup>

Hunter’s argument suffers from multiple problems, some of which have already been discussed at length by other scholars. For example, Orford has argued that Hunter’s pronouncement that *jus gentium* had absolutely nothing to do with 19-century imperialist international law is historically incorrect. As both Orford and (indirectly) Anghie have pointed out, Vitoria’s writings were retrieved by the liberal US lawyer James Brown Scott to justify non-territorial forms of US empire through the language of universalism, humanity, and free trade.<sup>60</sup> Furthermore, Hunter’s assertion that the encounter between different legal systems led to their “uncontrollable” clash because of their fundamental incommensurability and the absence of an overarching system that could arbitrate amongst them is difficult to sustain in the light of the historical record.<sup>61</sup> Both in Aotearoa

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57. *Id.* at 12.

58. *Id.* at 16. The excerpt quoted by Hunter reads as follows: “What is critical is the question of the scope of a society in which a certain normative system is valid and applied. Whether ‘ancient international law,’ the Islamocentric *siyar*, the Sinocentric tribute system or Eurocentric law of nations, they are nothing other than regional normative systems which were applied in only a limited area of the earth and lasted for a limited period of time.” Onuma Yasuaki, *When Was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilisational Perspective*, 2 J. HIST. INT’L L. 1, 7 (2000).

59. *Id.* at 14.

60. “It is fitting that the entrance of the US Department of Justice displays a likeness of Scott in the guide of Vitoria, because it is the version of Vitoria created by Scott that would provide the ideological justification for the universal law of the American century.” Orford, *supra* note 3, at 17.

61. “[B]y presuming the existence of a universal form of justice-disagreeing only over whether Vitoria had discovered it or not—critics and defenders both ignore the possibility that the immensely destructive imposition of this European moral anthropology on indigenous cultures was the uncontrollable consequence of a clash between disparate civilizational cultures.” Hunter, *supra* note 3, at 18.

New Zealand and elsewhere, full-scale colonization was preceded by Europeans living amongst Indigenous populations, following the latter's law, or devising new ways of managing their juridico-political encounters.<sup>62</sup>

This leads me to one of the most pressing problems with Hunter's overall argument and conception of Eurocentrism. Competing regional systems that have incorporated divergent cosmologies, conceptions of the good life, and metaphysical assumptions have co-existed for a very long time and have accommodated each other in various ways. These encounters have not always been peaceful or free of imposition, hegemony, or exploitation. However, following Samir Amin's thought, I argue that there is a crucial difference between the co-existence and clashes between these regional legal orders and modern international law. The latter harbored the ambition and to a large extent succeeded in colonizing the globe as well as diverse aspects of social, political, and economic life.<sup>63</sup> In the course of a couple of centuries, ancient empires and civilizations had to abandon or at least radically modify the ways in which they arranged their inter-polity affairs and adopt the technologies and vocabulary of (European) international law.<sup>64</sup> Even when confronting Western imperialism, non-European elites and even ordinary people began to do so from within the categories of this new international order. Following Amin, I posit that what requires explanation and also marks contemporary international law as Eurocentric is not the trite observation that its origins have been European or the fact that its "fathers" thought it was somehow superior. Rather, what is both peculiar and historically unique is that this particular, regional, and in many respects rather strange and dysfunctional legal system managed to establish itself as a universal language, as the arbiter of disputes as diverse as territorial claims over the South China Sea, the importation of beef raised with synthetic hormones in the European Union, or the availability of the institution of marriage to same-sex couples in Costa Rica. Hunter's attempt

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62. For an account of these encounters in the Pacific, see MATT K. MATSUDA, *PACIFIC WORLDS: A HISTORY OF SEAS, PEOPLES AND CULTURES* (2012).

63. No victory is ever final or complete, as evidenced by the survival of Indigenous legal systems around the globe. See SHIRI PASTERNAK, *GROUNDING AUTHORITY: THE ALGONQUINS OF BARRIER LAKE AGAINST THE STATE* (2017); HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII* (1999); Irene Watson, *There is No Possibility of Rights without Law: So Until Then, Don't Thumb Print or Sign Anything!*, 5 *INDIGENOUS L. BULL.* 4 (2000); Heidi Kiiwetinepinesiiik Stark, *Nenabohzo's Smart Berries: Rethinking Tribal Sovereignty and Responsibility*, 2013 *MICH. STATE L. REV.* 339 (2014).

64. Non-Western lawyers quickly adapted to the new demands and became highly competent and creative users of this new language, which they deployed both against Western imperialism and in order to further their own imperial and other hegemonic projects. For some examples: Liliana Obregon, *Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America*, in *INTERNATIONAL LAW AND ITS OTHERS*, *supra* note 27; Becker Lorca, *supra* note 20; Mohamad Shahabuddin, *The "Standard of Civilization" in International Law: Intellectual Perspectives from Pre-war Japan*, 32 *LEIDEN J. INT'L L.* (2019); Maria Adele Carrai, *Learning Western Techniques of Empire: Republican China and the New Legal Framework for Managing Tibet*, 30 *LEIDEN J. INT'L L.* 801 (2017).

to present both *jus gentium* and Māori law as two equally particularistic and regional legal systems avoids the question of how come it is the former but not the latter that is being taught to law students around the world and that it is concepts of universal humanity and its discontents that are still being put to motion in order to justify the projection of legal authority in our formally post-colonial world.<sup>65</sup>

Here, I suggest that we need to conceptualize international law's Eurocentrism not in reference to where it originated from or even what it says, but in terms of what it does in the world, the way in which it has intervened and shaped material relations of power. Drawing from Amin, I argue that international law has been one important link in the long chain of discourses and practices that have mystified the contingent and violent origins of capitalism in Europe, have posited recent developments such as the centralized state as expressions of the inherent rationality and superiority of European culture, and have demanded their universalization. In this respect, Anghie's engagement with *jus gentium* in particular and international law in general is open to criticism, but for very different reasons than those assumed by Hunter and other contextualist historians. As we saw above, Hunter argues that Anghie's argument that a "dynamics of difference" has been the animating feature of European international law is Eurocentric because of the intellectual debt of such a formulation to Martin Heidegger.<sup>66</sup> This objection is in line with Hunter's (and other contextualist historians') broader aversion toward the (explicit) theorization of history.<sup>67</sup>

Another, more fruitful and sustainable, way of engaging with Anghie's formulation would be to seek to understand the historical specificity of this "dynamics of difference" in ways that both deepen and diverge from his own analysis. This call for historical specificity is necessitated by two main reasons. First, European international law's historically unique and unprecedented success, as summarized above, requires some explanation lest we slide toward theories about inherent European superiority. Secondly, left unelaborated the "dynamics of difference" can describe most-if not all-legal systems that have existed across space and time. The truly interesting

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65. One could object to this retrieval altogether and argue that engaging with it in its own terms involves dignifying bad history. Orford, however, has persuasively responded that this argument involves a rejection of the jurisprudential method as a whole and a refusal to engage with the ways legal scholars and institutions make meaning move across space and time. See Orford, *supra* note 3, at 2.

66. "Finally, basing itself on Heideggerian metaphysics and 'deconstruction,' postcolonial critique of 'European law' has developed an elaborate metaphoric of colonization as the imposition of a European 'self' on a colonized 'other.' Colonization is thus treated as if it were the project of constructing a repressive yet anxious European identity—'The colonizer constructs himself as he constructs the colony'—that is destined to be undone through the self-manifesting 'Being' of the colonized 'other.'" Hunter, *supra* note 3, at 14.

67. Hunter explicitly articulated his objections to the theorization of history and to the epistemological argument that we can only access reality (past and present) through theoretical schemes that allow us to order what would otherwise be unrecognizable amalgamation of data in Ian Hunter, *The Contest over Context in Intellectual History*, 58 HIST. & THEORY 185 (2019).

and challenging question is what specific differences (and similarities) were invented, reified, or glossed over in the process of the colonial encounter and how did European international law specifically deal with these differences. After all, despite postcolonial theorists' emphasis on 'othering' as a rhetorical device to justify subjugation, international law has struck a precarious balance between "othering" and the erasure and assimilation of difference as a way of engaging with and subjugating the peripheries.

Consider, for instance, the "standard of civilization" which has been central to critical histories of international law.<sup>68</sup> Anghie's contention that "the civilising mission was animated by . . . the question of 'cultural difference'"<sup>69</sup> brackets the fact that people from different regions, backgrounds, and economic systems had been encountering each other for millennia without resorting to this particular legal standard. An additional problem emerges if we consider the fact that the idea of culture and cultural difference has been itself a 19<sup>th</sup>-century invention.<sup>70</sup> Therefore, the idea of a pre-existing and transparent understanding of "cultural difference" being managed through this standard is somewhat unconvincing. Rather, what was distinctive about the standard of civilization was the specific differences that were understood to be of significance and the possibility, desirability and methods for overcoming such perceived differences. I have argued elsewhere that the standard of civilization in international law performed two crucial moves. First, it turned difference into a matter of biology and secondly, it singled out the social, legal, and political institutions associated with capitalist modernity in the West and transformed them into preconditions for the achievement of "civilized" status.<sup>71</sup> The development of private law, the protection of human freedom as individual liberty, the separation of powers, and the development of a centralized, bureaucratic state that controls its territory through the usage of police, prisons, and asylums were considered definite markers of "civilization" in the context of international laws and institutions. As a consequence, a series of juridical techniques ranging from the so-called "unequal treaties" to mechanisms of international supervision, such as the Mandate System of the League of Nations, were put in place in order to implement, monitor and evaluate reforms undertaken by non-Western states

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68. For some examples, see Anthony Anghie, *Civilization and Commerce: The Concept of Governance in Historical Perspective*, 45 VILL. L. REV. 887 (2000); David P. Fidler, *The Return of the Standard of Civilization*, 2 CHI. J. INT'L L. 137 (2001); Anghie, *supra* note 23; Obregon, *supra* note 27; Shahabuddin, *supra* note 67; Ntina Tzouvala, *Civilisation*, in CONCEPTS FOR INTERNATIONAL LAW, *supra* note 51.

69. Anghie, *supra* note 23, at 3.

70. "We find discourses of culture emerging to prominence in the German-speaking world during the second half of the eighteenth century; in the English-speaking world starting in the first half of the nineteenth century; in Eastern Europe, East Asia, and South Asia starting in the second half of the nineteenth century; and just about everywhere else in the course of the twentieth century." Sartori, *supra* note 42, at 5.

71. See NTINA TZOUVALA, CAPITALISM AS CIVILISATION: A HISTORY OF INTERNATIONAL LAW (2020).

in this direction.<sup>72</sup> This was a Eurocentric legal standard in two ways. First, it was Eurocentric insofar as it elevated into transcendental and supposedly timeless legal standards the contingent historical developments linked to the particularities of early European capitalism. Secondly, it was Eurocentric because in so doing it was legitimizing and further promoting European hegemony and the interests of European capital. The grounding of difference on purportedly biological realities justified European expansionism and the subjugation of colonized peoples as being a literal force of nature that neither could or should be contained. The liberal international lawyer John Westlake captured the disciplinary position when he proclaimed, “The inflow of the white race cannot be stopped where there is land to cultivate, ore to be mined, commerce to be developed, sport to enjoy, curiosity to be satisfied.”<sup>73</sup> European expansionism and military superiority were de-linked from their social origins and attributed to the inherent quality of the white race and/or Christian/European civilization. At the same time, by demanding that other polities adopt the institutions of capitalist modernity the ‘standard of civilization’ demanded that the whole world was reconfigured after the image of the European ruling classes and to their benefit.<sup>74</sup> The “standard of civilization” was Eurocentric not because it embodied European chauvinism and even less so because it originated in Europe, even though both are obviously part of its legacy. Rather, it was Eurocentric because of its world-making aspirations and effects. By describing the (legal) world as divided between civilized, semi-civilized and uncivilized states the “standard of civilization” assisted in the construction of a new, global hegemony: that of European capital.

#### CONCLUSION

In this essay I argued that every historiographical debate, including

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72. On the history of “unequal treaties,” see Matthew Craven, *What Happened to Unequal Treaties? The Continuities of Informal Empire*, 74 *NORDIC J. OF INT’L L.* 335 (2005). On these “unequal treaties” as tools of state-making, see Richard S. Horowitz, *International Law and State Formation in China, Siam and the Ottoman Empire during the 19th Century*, 15 *J. WORLD HIST.* 445 (2004); TURAN KAYAOĞLU, *LEGAL IMPERIALISM: SOVEREIGNTY AND EXTRATERRITORIALITY IN JAPAN, THE OTTOMAN EMPIRE AND CHINA* (2014); Tzouvala, *supra* note 49. On the Mandate System as a method of limited internationalization of this ‘civilizing’ mission, see Antony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations*, 34 *N.Y.U. J. INT’L L. & POL.* 513 (2001-2002); Nele Matz, *Civilization and the Mandate System under the League of Nations as Origin of Trusteeship*, 9 *MAX PLANCK U.N. Y.B.* 47 (2005).

73. JOHN WESTLAKE, *Territorial Sovereignty, Especially with Relation to Uncivilised Regions*, in *THE COLLECTED PAPERS OF JOHN WESTLAKE ON PUBLIC INTERNATIONAL LAW* 131, 145 (1914).

74. The Communist Manifesto contains a brief reference to “civilization” that hints at its world-making qualities: “The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian, nations into civilisation. . . . It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them to introduce what it calls civilisation into their midst, i.e., to become bourgeois themselves. In one word, it creates a world after its own image.” KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO* 39 (Samuel Moore trans., Pluto Press 2008).

apparent historiographical and terminological confusion, has a politics. This politics is essentially antagonistic, even when it remains implicit and insufficiently articulated. Therefore, my effort to clarify the international legal debate around Eurocentrism was itself a way of illuminating the existence of a political struggle and intervening in it. My retrieval of Samir Amin's intervention sought to anchor the disciplinary critique of Eurocentrism to a critique of capitalism and of unequal capitalist development.<sup>75</sup>

I suspect that this move will be attractive to different audiences for different reasons. First, I intend to offer to my fellow Marxist international lawyers the intellectual tools for intervening in the debate about Eurocentrism in international law with renewed confidence and to encourage them to take the challenge of Eurocentrism seriously. By pointing at the radical, materialist origins of the concept I am hoping to ignite more reflections about the relationship between the cultural and the material in international law and its history. Secondly, I am aiming to stir postcolonial, critical, and left legal scholars toward a better appreciation of the role of capitalism as a structuring force in the history of international law, and *vice versa*. Such a move should enable us to better comprehend the historical specificity of modern imperialism (and its law) and to resist attempts to subvert, domesticate, and appropriate critical international legal histories. For example, thinking about international law, imperialism and capitalism together allows us to distinguish between radical critiques of imperialism (that seek to dismantle it) and critiques that seek to improve the relative position of national ruling classes in the Global South. The collapse of the radical potential of decolonization and the transformation of Third World sovereignty in a tool of protecting local autocrats and not a means of remaking the world points at the urgent need for making such distinctions.<sup>76</sup> Thirdly, I am hoping that my analysis will be of consequence to all those working on the history and historiography of international law. Indeed, my analysis should have at the very least succeeded in showing that the prevailing confusion is the outcome of a political struggle, but also of the relative ease with which lawyers adopt radical vocabularies without necessarily being willing to commit to radical projects or to even openly engage with the intellectual traditions that birthed such concepts. Incidentally, I am hoping that this re-articulation of the debate about

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75. Rahul Rao has also used the concept of unequal development as well as the traditions of Third Worldism and black Marxism to reconcile the tensions between (orthodox) Marxism and postcolonial theory. Rahul Rao, *Recovering Reparative Readings of Postcolonialism and Marxism*, 43 *CRITICAL SOCIOLOGY* 587 (2016).

76. Adom Getachew has chronicled the transformation of Third World sovereignty from a tool mobilized by revolutionary postcolonial leaders in order to remake the international (legal) order along more equitable lines to a shield used by Third World autocrats who repress and exploit their own people. ADOM GETACHEW, *WORLD-MAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION* (2019).

Eurocentrism will force some explicitness about everyone's theoretical and political commitments and assumptions.

One final note remains. Debates about Eurocentrism in international law and beyond are often accompanied by a sense of frustration and entrapment. If Eurocentrism is, in fact, prevalent, it is not evident that we can detect and critique it, let alone undo it, since our concepts, values, and methods are always already Eurocentric.<sup>77</sup> Drawing from the work of the philosopher Amia Srinivasan I want to suggest a different approach to this problem, one that acknowledges the generative potential of this impossibility of escaping Eurocentrism.<sup>78</sup> Using the example of the feminist legal theorist Catherine MacKinnon, Srinivasan theorizes that certain genealogies become potentially world-making precisely by establishing their own impossibility. Radical feminism, for example, is a riddle, a paradox that cannot be solved quite yet. This is because “[m]ale power not only constitutes reality, but moreover makes itself the standard of reality: to see things objectively is to see things as men see them. Thus to genealogize the world as a product of male power is already to worldmake.”<sup>79</sup> Indeed, Srinivasan argues, radical feminism with all its world-making potential of overthrowing the patriarchy comes into being precisely by recognizing its own impossibility as it names the totality of male power.<sup>80</sup>

The same applies, I argue, to Eurocentrism. In this paper I have suggested that we need a more precise understanding of this problem, one that links it to the globalization of the capitalist mode of production. This approach narrows the scope of the debate, but it simultaneously deepens its implications: with capitalism triumphant on a global scale, how are we to undo its influence on international law? Along with Srinivasan, I posit that if we are to understand ours as being a world-making project, one that seeks to both describe the world and in so doing to transform it, then posing this question is a good place to start. The success of this experiment is, of course, “beholden to the future.”<sup>81</sup>

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77. “It was only much later that I came to realize that the Latin Americans were as Eurocentric as their European colleagues. Though they were arguing regionalist exceptionalism they were trying to position themselves through a Eurocentric discourse and tools, and they didn’t want to be marginal. . . . So, is it possible to NOT be Eurocentric, without being completely marginalized from the field?” Obregon, *supra* note 32, at 377-78. “Eurocentrism was more like the Alien that had entered inside you, it was part of the very vocabularies that enabled you to think about those other problems. The question was, then, whether it was at all possible to exorcise it, to get rid of it.” *Id.*

78. Amia Srinivasan, *Genealogy, Epistemology and Worldmaking*, 116 PROC. OF THE ARISTOTELIAN SOC’Y 127 (2019).

79. *Id.* at 149.

80. *Id.*

81. *Id.* at 146.