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BOOK REVIEW

B. S. Chimni, International Law and World Order: A Critique of Contemporary Approaches

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Anyone aiming to formulate a general theory of international law will have to take into account at least two factors that render such an enterprise decidedly risky. First, there is the circumstance that the field of international law is of broad yet uncertain scope. Most would agree that international criminal law and international environmental law have become fixed parts of international law, despite having some peculiarities (think of individual responsibility with respect to the former, or the need to mediate many standards through the state in case of the latter), but does international law also cover, say, elements of labour law? Or international taxation? Or refugee and asylum law? Or questions relating to nationality? A general theory would first need to figure out what it will be a general theory *of*, and that is no easy task.[1] In this light, it is probably no coincidence that the only successful attempts at formulating something akin to a general theory tend to concentrate on matters internal to legal thinking (rather than the relations between law and society), and do so on a high level of abstraction: the 'cool structuralism' of Martti Koskenniemi's *From Apology to Utopia*[2] is probably the best-known successful example. Others may present a theory of sources, or a theory of authority, or even more detailed theories of such things as extraterritorial jurisdiction, but examples of plausible comprehensive theories of international law are rare indeed.

Second, conceptual pluralists figured out some time ago that the same thing can look different to different people, or can look different in response to different questions.[3] A natural physicist may come to look at a church as yet another collection of particles and elements. To an architect, the same church may represent a particular

[1] Some of the pitfalls of grand theorizing can be discerned in Skinner (1985).
[2] Koskenniemi (1989).
[3] For one influential formulation, see Putnam (2004).

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style of design and building. The interior designer may see it as mostly a collection a benches and altars. The sociologist may see the church as a collection of men and women assembled for some reason, which the psychologist may further flesh out. The faithful may view the church as a beacon of hope and comfort; and the critic may view the same church as a symbol of greed or oppression. The point is, that all of them may well be right, and not merely right from their own perspectives—different though their respective truths are, they are not by definition incompatible—and much depends, again, on the chosen level of abstraction.

This is a difficult lesson to learn, as we are usually inclined to take our individual view of the world and absolutize it: if I am right, then others must necessarily be wrong—if the church stands for greed and oppression, it cannot also be a beacon of hope and comfort. These are thought to be incommensurable. And it comes with serious ramifications for scholarship, in whatever discipline. For if different 'truths' can co-exist, then it becomes difficult to establish any theory with some ambition in terms of the conclusiveness of its postulates and axioms.

In the light of these two concerns, one may wonder whether it is possible even to imagine, let alone develop, a Marxist theory of international law, if by 'theory' we mean something like a set of hypotheses and theorems or claims aiming to explain the world around us (and preferably better than competing theories do). Such a theory would have to explain not just what role international law in the abstract plays (as in suggestions that 'international law helps to oppress the poor and dispossessed'), it should also tell a compelling story about how exactly this oppression works, preferably backed by empirical materials (any empirical materials, really[4]) rather than suggestive assertions. Moreover, such a theory should also have some cogency at the level of detail. How would a Marxist theory explain the duty, under the Geneva Conventions, to take care of the sick and wounded on the battlefield? Or the strict liability regime relating to satellites? Or the precautionary principle that, some claim, governs international environmental law? Or the right to fair trial? Or the practical aspects of air services agreements? While it might be possible to construct a general, grand Marxist theory of international law around themes of oppression and capital accumulation and ideology (a fairly abstract theory about law and society), it would be much harder to construct a theory that would plausibly explain international law in all its considerable detail without falling into traps of vulgarity.[5] The field is simply too large and varied and open-ended, and the possibility of conceptual pluralism too abundantly present to develop such a theory with any degree of cogency.

[4] It remains an open question what 'empirical' means, which helps explain why calls to engage in 'empirical international legal studies' remain difficult to follow.

[5] One could, no doubt, explain the right to a fair trial as an attempt to generate false consciousness into the masses, an attempt to put forward an ideology revolving around the individual in order to reach a more effective level of exploitation, but surely, Occam's razor might resist such an explanation. That said, a fairly plausible critique of civil and political rights in general (and in the abstract) is that their endorsement has diverted attention away from other forms of maltreatment of individuals, including labour market insecurities and the dismantling of the welfare state in quite a few Western societies.

B.S. Chimni is far too sophisticated an international legal academic, and far too sophisticated a Marxist, to even try. For him, a Marxist theory stands not so much for a coherent and comprehensive set of statements claiming to explain all of international law, but stands rather for a critical attitude, inspired by some insights stemming from Marx and Engels and some of their later interpreters, but without any claim to comprehensiveness. Chimni's Marxism is 'Marxism as mindset', one might say, a constant reminder that international law can be used for purposes of oppression of various groups of people, that doing so is wrong, and that there might be more equitable ways of doing things. Chimni himself consistently refers to his work as an 'approach': an 'integrated Marxist approach to international law', and that sounds about right, with the adjective 'integrated' representing the idea that the sources of inspiration are not only to be found in the writings of Marx and his followers, but also stem from elsewhere, in particular post-colonial studies and feminist approaches. For, as Chimni rightly points out, a critique of international law along strictly materialist lines and revolving around the notion of a struggle between the classes should not be allowed to hide the oppression of women and the global south.

The book suggests that it is a second edition, and in a way it is, but it differs markedly from the first edition, published a few generations ago in 1993, when the world (including the world of international law and international lawyers) was still a very different place. That first edition contained sympathetic but critical discussions of various approaches to international law: the classical realism represented by Hans Morgenthau; the policy approach of Myres McDougal and associates; the world order approach endorsed by Richard Falk, and the socialist international law voiced by Grigory Tunkin. The chapter on Tunkin has been taken out of the second edition, whereas the other three have been updated and to some extent re-worked. They have come to be accompanied by chapters on critical international law or new approaches to international law[6] (discussing the work of David Kennedy and Martti Koskenniemi) and feminist international law (mostly discussing a pioneering study by Hilary Charlesworth and Christine Chinkin). All this takes up some 440 pages, leaving another 110 pages for the development of Chimni's integrated Marxist approach.

Chimni does not offer a critique of mainstream, positivist international law in any detail, and for good reason. It is clear, to him, that mainstream positivism is the dominant approach, and that there is little to be gained by offering a critique. Instead, his intellectual interest goes to approaches that offer some alternative (those who have already formulated a critique of the mainstream), and his project is best understood as an attempt to learn from these alternatives precisely in order to offer a more plausible alternative. Morgenthau's realism may have been overblown, but it offers the insight that the role of power cannot be completely ignored. The policy approach of McDougal and friends may have been too indeterminate and blurs the relative autonomy (from politics and policy) of the legal sphere, but nonetheless aimed at being comprehensive. Richard Falk's work may have paid too little

[6] I will fiercely resist the popular habit of rendering various approaches as acronyms—doing so helps to reify the approach concerned, and should automatically be suspect.

attention to the role of capital, but at least displayed more sensitivity towards third-world scholarship than most rival approaches, and Falk has never been shy 'to speak truth to power'.

If the chapters on Morgenthau, McDougal and Falk rehearse the first edition (even if they have been seriously updated), the more intriguing chapters are the ones on the critical and the feminist approach. As with Morgenthau, McDougal and Falk, Chimni is basically sympathetic, but unsparing in his criticism. Of some of David Kennedy's work it is said that his internal critique 'is neither particularly novel nor of great value' (at p. 262) and 'profoundly ahistorical and apolitical' (at p. 263). Kennedy and Koskenniemi are chided for what he refers to as their 'methodological individualism' and the well-nigh complete neglect, in their structuralist early work,[7] of the plight of the global south, despite the circumstance that some very good work from the global south had already been available to them, such as the work by Georges Abi-Saab or Mohammed Bedjaoui, among others. The influence of the external realities on the internal structure of legal argument is never grasped by Kennedy or Koskenniemi. The main substantive gripe seems to be that Kennedy and Koskenniemi—the latter in particular—exaggerate the structural indeterminacy of international law (from the perspective of the colonized there was nothing indeterminate about the law), and Koskenniemi's proposed culture of formalism 'is a fuzzy idea that does not hold much attraction for the weak or legal professionals who really wish to advance the cause of the weak' (at pp. 343–344).[8]

Few men write about women's rights or feminism, and perhaps for good reason. The risk of being (or being seen to be) patronizing always lurks around the corner. Chimni, however, has not been deterred, and offers a lengthy critique of in particular the landmark study by Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law*.[9] The main flaw he identifies is that Charlesworth and Chinkin remain caught up in a broadly liberal approach, fighting symptoms (women are discriminated against and under-represented in international decision-making processes) without thinking too much about underlying causes and the deeper structures underpinning international law and global governance.

Chimni's own integrated Marxist alternative is best seen, as mentioned, not so much as a systematic theory, but as a constant reminder that there is more to international law than meets the mainstream eye. The function of the preceding chapters was, it seems, to make visible various possible other conceptions and point out their weaknesses and strengths (which, in all fairness, he also does—and often quite generously so), so as to sensitize the reader to what follows. The integrated Marxist approach—and again, note the word 'approach'—is built around what he considers to be the five determining logics underlying international law, i.e. a logic of capital, of territory, of culture, of nature, and of law. Each of these enjoys a certain relative autonomy, and this alone is a plausible and useful insight. Law, for instance, is too

[7] Koskenniemi (1989); for Kennedy this refers mostly to a set of articles published in the 1980s and 1990s, and his *International Legal Structures* (Kennedy 1987).

[8] My own take on the proposed 'culture of formalism' is set out in Klabbers (2013).

[9] Charlesworth and Chinkin (2000).

often seen as merely an adjunct to power or policy or the economy, thereby denying the law's own dynamics and the distinctness of legal reasoning. By the same token, culture (or ideology perhaps) has a dynamic all of its own, working in tandem with the other logics yet distinct. International lawyers are well attuned to the logic of territory, so much so that they often fall victim to the 'territorial trap',[10] at the expense of identifying other important determinants of politics and governance. And of those, the supreme determinant in Chimni's view, is the logic of capital, to which he assigns 'relative primacy' (at p. 448).

Chimni's integrated Marxist approach is just that: an approach. It does not, and was never intended to, cover international law in all its rich detail, but suggests that it may well be illuminating to look at international law with a Marxist sensibility, with a keen eye to identifying its complicity in oppression and exploitation. But not just that: international law can also be a beacon of hope. Chimni is mindful of the circumstance that international law has 'also responded in some instances to the concerns of marginal and oppressed sections' (at p. 498).

Thus far, this second edition of *International Law and World Order* has mainly attracted the interests of others with an interest in establishing a Marxist approach, and this has almost inevitably resulted in some internecine debates, with a lot of energy going into disputing some of the finer niceties of Marxist theory. Robert Knox has suggested that Chimni is too quick to dismiss the commodity form theory launched by China Miéville some years ago[11]; Konstantina Tzouvala has taken him to task for not integrating a radical enough feminism into his Marxist approach,[12] while Umut Öszu queries how Marxist Chimni's approach really is.[13] And in a lengthy soul-searching essay, Akbar Rasulov wonders whether one can be a Marxist international legal scholar to begin with (he answers in the affirmative).[14]

Yet, it would be a great pity if the reception and discussion of Chimni's work remained limited to the select group of international lawyers that think of themselves as Marxists. Amidst the lengthy chapters on various approaches, and the long chapter on the integrated Marxist approach, Chimni offers many useful and refreshing insights, both on substantive international law and on the authors he takes to task, and he is nothing if not a fair critic. While he may memorably complain that much of David Kennedy's historical work 'is ahistorical by design' (at p. 271) he also recognizes that Kennedy has helped to debunk any myths concerning progress, and has 'helped liberate generations of international law scholars from the confines of arid positivism' (at p. 303).

Sometimes, on very rare occasions, the work derails a little. Surely, the sweeping claim that 'humanitarianism is the ideology of imperialism since the sixteenth

[10] The *locus classicus* is Agnew (1994).

[11] See https://www.ejiltalk.org/imperialism-commodification-and-emancipation-in-international-law-and-world-order/ (visited 23 July 2018). This refers predominantly to Miéville (2005).

[12] See https://www.ejiltalk.org/reading-chimnis-international-law-and-world-order-the-question-of-feminism/ (visited 23 July 2018).

[13] See https://www.ejiltalk.org/b-s-chimnis-relatively-autonomous-international-law/ (visited 23 July 2018).

[14] Rasulov (2018).

century' (at p. 301) is a bit all too sweeping perhaps, and the suggestion that the Soviet Union suffered from a 'lack of understanding' concerning the causes of environmental crises (at p. 205) strikes as uncharacteristically naïve towards the Soviet Union. If Soviet scholars could put men on the moon and develop nuclear technology, they surely must have been able to understand some of the causes of environmental problems—although they may have been ordered to disregard them.

One of the mysteries as well as attractions of the law is that it can be different things to different people—or sometimes even different things to the same people. This duality has been captured in various ways: Hart spoke of nightmares and noble dreams[15]; Oakeshott, employing a different perspective, spoke of *societas* and *universitas*,[16] and Koskenniemi, employing yet another perspective, of Apology and Utopia.[17] It is one of the many merits of Chimni's *International Law and World Order* that he captures both aspects. His approach offers both a critique and, if not exactly a way forward, at least a sensibility that, in turn, may offer hope. He realizes that international law can be complicit in oppression and exploitation, but refuses to accept that this is all there is, and refuses to slide into nihilism. For legal nihilism, so he suggests, 'is the luxury of armchair academics. It cannot inform social and political movements in the real world' (at p. 477).

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[15] Hart (1977).

[16] Oakeshott (1975).

[17] Koskenniemi (1989).