

## Introduction: The Law of Nations and the Intellectual History of Empires

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## EDITOR'S NOTE

Hiroki Ueno, Brian Chien-Kang Chen and Michihiro Kaino are guest editors of the *Revue d'études benthamiennes* for the special issue on 'International Thought of the British Empire'.

*This special issue is the outcome of East Asian Intellectual History Network (EAIHN) activities. This is the first achievement based on the EAIHN, which is still quite young and was established in 2019. The guest editors of this special issue, Brian Chien-Kang Chen, Michihiro Kaino, and Hiroki Ueno, are grateful to all those who belong to the Network or have contributed to developing it in any manner or on any occasion. After the COVID-19 pandemic spread globally in early 2020, our discussions were mainly held in the form of online seminar series sponsored by the East Asian Academy for New Liberal Arts, University of Tokyo, whose financial and human support is greatly appreciated. We thank Takahiro Nakajima, Tsuyoshi Ishi, Yoojin Koo, Yosuke Wakazawa, and Kyoko Ino. With respect to organising this issue in particular, special thanks should be given to Anne Brunon-Ernst, the editor-in-chief of the Journal, as well as several reviewers of individual papers submitted to the special issue, all of whom definitely made a great contribution to improving their quality.*

## Introduction

- 1 Recently, not only scholars in postcolonial and cultural studies but also historians of political thought and political theorists have started to pay greater attention to the

issue of empire and colonialism within Enlightenment thinking. Unfortunately, owing partly to the theoretical and somewhat ahistorical distinction between utilitarianism and deontology, the current development of studies in Jeremy Bentham's thought on empire and the international and cosmopolitan order seems to be separated to some extent from that of Continental Enlightenment thinking on the same subject, whose focus has been on Immanuel Kant in particular. This special issue in the *Revue d'études benthamiennes* shall deal with Enlightenment thinkers and radicals in the British Empire and those who discussed it with reference to the stocked studies of international legal and political thought and cosmopolitan ideas refined in the pan-European region.

## Kant and Bentham on International and Cosmopolitan Laws

- 2 Traditionally, the European Enlightenment has been associated with cosmopolitan ideals as moral universalism. As more and more heed has been paid to the imperial or colonialist dimension within the Enlightenment, its connection with cosmopolitan morality, which appeared to relate exclusively to a goodwill, turned out to be much more complex. As mentioned, the term Enlightenment cosmopolitanism reminds us, first of all, of Immanuel Kant. Surely, he continues to be a central figure in the study of cosmopolitanism in the eighteenth century, but recent scholarship tends to expand its interest to the wider context of Enlightenment Europe and has started to launch comparative studies on this subject. This trend seems to be inherently linked to the gradual shift in Kantian studies.<sup>1</sup> Among the scholars representing this tendency is Peter Niesen, who calls our attention to the fundamental distinction between cosmopolitan and international laws and appears to decentralise the common understanding of Kantian cosmopolitanism as a utopian moral ideal, wherein the divided nations would finally be integrated to form a united world state.<sup>2</sup> Once we distance ourselves from this view to reach multiple perspectives of cosmopolitanism and internationalism, there appears to be an intellectual arena for comparing several different types.<sup>3</sup>
- 3 In Enlightenment legal and political thought, the international relations among countries in Europe are usually distinguished from those between them and countries in the non-West, including what was then dubbed the 'Two Indies', as was realised by the so-called 'Meiji Enlightenment' intellectuals in Japan exemplified by Yūkichi Fukuzawa. Kant and his predecessors in the natural law tradition recognized the so-called Westphalia system, wherein Western powers formed as independent sovereign states treated each other equally, *de jure* not to say *de facto*. Distinct in quality from these European international relations, what could be found between the West and the non-West was only much less legally regulated relations, and it is these asymmetrical and vulnerable relations that were analysed by Kant in terms of cosmopolitan law.<sup>4</sup> By contrast, he could see a far more solid legal regime established between sovereign states in Europe, which might be able to lead to even 'perpetual peace' under some conditions.<sup>5</sup> It is crucial to note that Kant spoke more highly of this regime integrated by 'international' law, than the unstable order of 'cosmopolitan' frontier outside Europe, which lacked efficient legal protection.<sup>6</sup>
- 4 Kant and other Enlightenment thinkers were also interested in the transitional process within the emerging international order, which may be fundamentally accompanied by

Eurocentricism. We shall argue that they scarcely had the plan or expectation in mind, according to which the Westphalian interstate system would sooner or later be replaced with a cosmopolitan borderless world, often dubbed the 'société générale du genre humain'.<sup>7</sup> On the contrary, a more probable and desirable world for them was, in fact, the one wherein regions ordered only by weak and unstable cosmopolitan law should gradually be deduced and integrated into the international order regulated by the law of nations or what Bentham later dubbed international law. Notably, Kant suggests that the state formation (or what we now often call the nation building) is part of the categorical imperative — a complete duty according to the law of nature — for hunter-gatherers or pastoral nations whose neighbourhood became agrarian, making it unnecessary for the European civilised nations to 'enforce' uncivilised societies (particularly in the Americas and also in some Asian countries) to respect the natural rights and private property.<sup>8</sup> Without coercion by the West, according to this Kantian prospect, they themselves have a moral obligation to form a civil state so that they voluntarily enter the international community sharing the positive laws of nations.<sup>9</sup> Now, they would be much less dependent on cosmopolitan morality, wherein the idea of hospitality may be double-edged. This is still the case even though Kant tried his best, in the discussion of cosmopolitan rights, to minimise the risk of non-Western countries being colonised under the pretext of the European travellers' alleged right to be hospitalised.<sup>10</sup>

- 5 Taking Kant as an intellectual guide, a similar view can be found in Jeremy Bentham and Adam Smith. It is of extreme importance again to recognize the two distinct fields of the world order in these major theorists of the British and other European Empires, with the American settler colonies and the dependencies in the East Indies as examples of different statuses. It is true that these undoubtedly representative philosophers of British Enlightenment were critical of the British Empire.<sup>11</sup> Nevertheless, this does not necessarily imply that an international regime consisting of independent sovereign states would, according to their ideals, be overcome through the expansion and deepening of the cosmopolitan politico-economic system. Instead of bearing the simplistic dichotomy between imperial colonialism and enlightenment cosmopolitan ideals, we need to be dedicated to a more careful reading of intellectuals living in or facing the expanding British Empire.<sup>12</sup>

## The Scots' 'Cosmopolitan' Perspective on the European International Relations

- 6 As for the international or cosmopolitan character of eighteenth-century Britain, there is something paradoxical. According to the commonly accepted meanings of 'cosmopolitanism', eighteenth-century London appears to stand out as among the most cosmopolitan of European cities. Certainly, its bustling financial centre, the Royal Exchange, was admired because of its diverse citizenry and global connectedness, not only by Joseph Addison, but also by the French Anglophiles.<sup>13</sup> To say nothing of Voltaire, what was dubbed (particularly after the Seven Years' War, with negative connotation) French 'Anglomanies' often included Montesquieu and those influenced by Fénelon's legacy. Indeed, Enlightenment intellectuals in Paris, who tended to be critical of Bourbon's ambition for universal monarchy and the ideal of civilisation suggested by Louis le Grand's courtly society, regarded Britain's commercial society as

a significant model for their reform and improvement.<sup>14</sup> However, historians have discussed at the same time that it is scarcely possible to find typically cosmopolitan philosophers in England, with Bentham and Edward Gibbon being crucial exceptions; leading 'citizens of the world' may be discovered in Scotland, instead.<sup>15</sup>

- 7 The Scottish Enlightenment has 'global' historians so-to-speak, such as David Hume, Adam Smith, William Robertson and John Millar, most of whom, however, explicitly denounced London as the capital of this Atlantic empire for having unnaturally overgrown. Smith's critique of the system of commerce, later called mercantilism, is just one example among many attempts to demonstrate that the insularity of Englishness was actually in opposition to the cosmopolitan spirit.<sup>16</sup> Critical of this type of English vulgar Whiggism, the enlightened Scots underlined their cosmopolitan identity,<sup>17</sup> sometimes in contrast to English insularity (Francophobia) and their mercantile insatiability, accompanied by the spirit of monopoly. The Franco-Scottish connections and their shared ideals are of particular importance, wherein being a citizen of the 'world' is intrinsically entwined with enjoying a highly sociable life, which is quite distinct from the commonplace image of Stoic cosmopolitans.<sup>18</sup> Among the typical 'citizens of the world' who were sociable in the Scottish cities (such as Edinburgh, Glasgow and Aberdeen) and also in Paris was Hume, in whose case, a reason why 'le bon David' is called a cosmopolitan is likely due to his sociable and worldly character. His taking pride in his international reputation gained above all in Paris obviously shows that the Scotch critique of English insularity is part of identity politics — even if it can be dubbed a meta-politics of culture — rather than simply overcoming it.<sup>19</sup>

## The Law of Nations within Europe and their Colonial Expansion

- 8 Once one has taken into account the moral ambivalence of Enlightenment Britain, it is no longer possible to ignore its intrinsic relationship with empire and colonialism. It also becomes difficult to discuss the international and cosmopolitan dimensions of British Enlightenment without mentioning its imperial and colonial aspects. The intellectual field wherein both internationalist thinking and expansionist ambitions closely crossed was investigated by not so much scholars at eighteenth-century English universities as jurists in the Scottish Enlightenment, who were among the most important successors to the early modern natural jurisprudence developed in the Continent.<sup>20</sup> In this sense, it may be possible to state without exaggeration that the Continental natural law tradition is a necessary frame of reference in order to discuss international and colonial thought in and of the British Empire, despite the fact that most popular English writers at the time tended to be less knowledgeable about this ideological heritage than the Scots. This is still the case even if Hugo Grotius' and Samuel Pufendorf's chief interests were laid in the European rivalry between France and the Protestant league whose leading power was the Dutch Republic, with England being of the second significance as the other side of the future Protestant Union of the Crown. Needless to say, the House of Orange finally reigned over the two peoples on both sides of the Channel after the Glorious Revolution.
- 9 Recent literature tends to stress the innovative character of Grotius's view of the international society or community, in stark contrast to the second Scholastic lawyers

mainly based in Salamanca. Richard Tuck's historiography of early modern international political thought is among the most conspicuous, even if problematic.<sup>21</sup> His interpretation is that Grotius succeeded much more to the so-called Machiavellist or Tacitusian view of international politics whose focal concept is the *raison d'état* (and which he dubs 'humanism') whereas those Catholic natural lawyers attempted to justify the cosmologically integrated world order. As pointed out by Tuck, their respective views of the colonial relations between the Western powers and the Americas — and, later, 'uncivilised' countries in the East Indies — were quite contrary to each other.<sup>22</sup> What may sound shocking with Tuck's argument is that scholasticism (in particular, Spanish Thomism) was usually more critical of Western immoral colonialism in the Americas, whereas humanism unexpectedly appeared to almost permit a violent free hand to powerful empires. According to this differentiation of intellectual traditions, Grotius is situated, by Tuck, within the aggressive humanist lineage, corresponding roughly to Hobbesian realism in contemporary international relations (IR) theory, separated from the ideal of the international community morally and even politically superior to individual states. To moralise the international community was rather what scholasticism had pursued, but was not succeeded by the later generations owing to its general decline.<sup>23</sup> Tuck strongly criticises the 'Grotian' framing of the history of the laws of war and peace led by James Brown Scott and his circle (who were, after the WWI, financially supported by Carnegie Foundation) wherein the anti-Hobbesian ideal of international legal integration was linearly and continuously developed by 'Grotian' international jurists; in fact, among those then considered as proto-Grotian thinkers, Luis de Molina and Francisco de Vitoria should be put in opposition to humanist Alberico Gentili, the latter of whom was a real predecessor of the Hobbesian Grotius.<sup>24</sup> And in the same line, Kant (and partly Rousseau) was added to Gentili and Grotius as developing this realistic humanist heritage, with what had been labelled as the 'Kantian' idealism or liberalism being associated with the scholastic tradition.

- 10 The aggressive and anti-humanitarian nature of the Grotian international law tradition is underlined by Tuck himself, being surprising to modern readers who tend to expect Grotians to emphasise the moral and legal constraints on modern states. Also surprising is his thesis that Grotian humanists usually justified the European Empires' colonialism, which Scholastic Thomists severely criticised. However, worthy of being stressed, this perhaps embarrassing fact is entirely compatible with the fact that the modern principle of sovereign equality is clearly derived from Grotian humanists and opposed by Scholasticism. It is crucial to frame how and to what extent this modern aspect of Grotians recognizing the equal status and rights of self-determination (or autonomy) of independent states is in no contradiction to their colonialist or imperialist attitude, and in order to understand this, the aforementioned dichotomy between international and cosmopolitan laws is an indispensable point. In other words, Grotians recognised and enhanced the interstate system that had, in historical reality, emerged in post-Confessionalist Europe, while — once looking outside Europe — they scarcely expected such a legal framework when it came to relations in which either or both agents were not equipped with a modern civil and regular government.
- 11 Correspondingly, while scholastic jurists were, compared to 'Machiavellist' humanists, apt to believe in the possibility of moral power beyond each nation, enabling them to criticise anti-humanitarian colonialism, they understood and represented Christian Europe as structured in a morally hierarchical manner, wherein sovereignty and mutual equality of political entities were difficult to imagine. In this sense, ideals of

integrated Europe, whether it is a Unionist idea or based on universal monarchy by a king, emperor, or pope, first belong to this lineage, whereas Grotian humanists were much more sceptical of such an idealist project of regional integration, respecting the independence and autonomy of individual states.<sup>25</sup>

## European Relations with Other Civilised States and with Non-State Primitive Societies

- 12 It is now clear that the contradictory views between Scholasticism and Grotian humanists regarding the colonial relations between Western powers and the Americas can hardly be discussed without associating them with their distinct understandings of the European international (and cosmopolitan) order.<sup>26</sup> In the Grotian tradition, there is a clear contrast between symmetrical relations within Europe and asymmetrical relations between European countries and the Americas.<sup>27</sup> What draws our attention next is how Grotian humanists saw the relations between Europe and other “civilised” nations located outside Europe. In historical reality, Europeans’ trade with the Two Indies started with their intention and purpose of accessing the East Indies directly, and the gradual expansion of trans-Atlantic commerce was accompanied as an unintended consequence.<sup>28</sup> This means that Europeans’ imperial expansion was driven by the fascinating wealth and luxury of highly civilised nations in Asia, outside Europe, denoting that they had originally had little intention to set up territorial colonies that were actually established in the New Continent.<sup>29</sup> As a Dutch officer, Grotius’s chief attention was paid to how to dominate and monopolise trade with the East Indies by taking its share from Portugal. For this purpose, he developed the free or open sea theory, founded on the alleged common ownership of the earth.<sup>30</sup>
- 13 European Empires’ attitudes toward the Americas were quite opposite, particularly after they realised that nations on the New Continent were what were called savages or barbarians in terms of way of life or mode of subsistence, very different from Asian civilizations such as India, China, and Japan. Similar to the aforementioned case, somehow astonishing to those who share the typical image of Renaissance humanists and Grotius is the historical fact, investigated by Tuck, that it was them who morally, politically, and legally justified such brutal conquests and colonisation of the New Continent.<sup>31</sup> The notion of common ownership of the earth was underlined by Grotius, originally in order to back the free sea theory that aimed to censure Portuguese exclusive occupation of the important sea lanes in the East Indies (roughly equivalent to Southeast Asia here). He accused Portugal of being unjust and invalid in terms of the natural law and the law of nations, stating that a particular country could not dominate or owned the sea exclusively — in terms of *proprietas* or *dominium* — but was only entitled to its right to management or caretaking (*imperium*) and ought to keep the sea open to the public. In the later stage of his career, however, Grotius infamously reused and applied the idea of original commonality — based on the distinction between *proprietas* and *imperium* — to defend the European conquest chiefly in the Americas, as well as some of the uncivilised regions in the East Indies. If a certain land was exploited, without being cultivated, by savages or barbarians who were not knowledgeable about agriculture, then their tribal chiefs or kings were not entitled to *dominium* but only to *imperium*, so they could not refuse newcomers from Europe. Importantly, this is the case not only when they just visited but also if they wanted to settle down as colonisers,



according to his logic. If patriarchs or heads of a local community did not accept immigrants who showed their intention to inhabit and cultivate 'unutilized' land but attempted to expel them, agrarian settlers (or 'invaders') were considered to have the right to just war against these local communities.

- 14 What should be noted here is that this colonialist and imperialist attitude toward uncivilised American nations was not self-contradictory at all with the Grotian humanists' reputation as internationalists, which is what Tuck seems to fail to represent properly.<sup>32</sup> The reason for their apparently immoral and even greedy attitude is simple: international law, which at least formally respects equality and mutual independence of political entities, was not applicable to Americas lacking civil states. For American nations to be treated by Europeans as equal agents in international relations, they ought to establish a civilised sovereign state, within which the rule of law prevails. Although Tuck's iconoclastic reading of Grotius who used to be interpreted as a liberal internationalist (by the circle of James Brown Scott) tends to focus perhaps a little too much on his 'aggressive realist' aspect, it seems worthwhile to emphasise that this naked aggressiveness principally belongs to his understanding of the asymmetrical international relations between civil states and non-state countries. Great attention should be paid to the fact that the invasionist Grotius was able to behave, without self-contradiction, as an egalitarian internationalist inside Europe, or among civilised countries — and modern Japan, as alleged, made every effort to be recognised by the Western powers as a member of their club.
- 15 It is celebrated that the second Scholastic thinkers in the Spanish Empire directed harsh criticism against their own country's colonial invasions.<sup>33</sup> This is in stark contrast to the imperialist posture of Grotian humanists, which Tuck emphasises. This somewhat one-sided picture of these contrasting schools could be misleading to a certain extent, as one may ignore the hierarchical dimension of this Scholasticism. It is entirely true that their attitude toward the Americas was much more liberal and humanitarian than that of Grotius, according to the contemporary standard of our age. However, despite Tuck's description of the doctrine of the Salamanca school as something like a non-engagement policy, it seems that it is by assuming the law of nature as a strong and effective moral entity that Vitoria and Suarez attempted to mitigate too much interventionism that tends to back the imperial expansion. Even more emphatically, this Catholic natural law theory denotes their moral realism, wherein the supranational order linked to hierarchically integrated cosmology takes precedence over particular nations or states. In this sense, even if several of them were quite critical of popist absolutism that tends to assume the pope's status as *dominium mundi* (i.e., being entitled to a universal monarch), Catholic moral universalism always gives intellectual room for the papal or imperial authority to intervene and subjugate the civil power of each particular state. From this ecclesiastical worldview, it is difficult to deduce an international order composed of equal sovereign states. The concept of sovereignty attributable to equal political agents in plural should thus be derived from the Grotian tradition, even though it was actually very aggressive against non-state societies outside Europe.



## The Americas and the Transitional Character of Cosmopolitan Law

- 16 Therefore, despite this dark side of the Grotian humanist tradition, Rousseau and Kant in Enlightenment Europe should be situated within this intellectual lineage, not in the other lineage that pursued the ideals of a morally and politically united community, usually dubbed the world state. If one called this a cosmopolitan ideal, not only Rousseau but also Kant would definitely be sceptical of cosmopolitanism of this kind.
- 17 How did they tackle colonialism, which had long accompanied the Grotian internationalism? While Rousseau appeared pessimistic about the future of Europe,<sup>34</sup> the Kantian answer would be that international relations consisting of equal and independent states should and could be expanded to the non-West in the long run. Kant attempted to demonstrate that it was not indispensable to enforce primitive societies to establish a state with positive laws, since they have a duty to move from the state of nature to the civil state. However, it should be stressed that this vision based on the Kantian philosophy of history is something entirely different from the cosmopolitan vision in which particularistic sovereign states would sooner or later be melted into the '*société générale du genre humain*'. On the contrary, it is not the Westfalian interstate system but the cosmopolitan relations (either or both sides of which do not have a sovereign civil state) that are considered transitional in the Kantian framing of the progress of history.
- 18 According to the Kantian ideals, the Americas should thus become independent states. In the historical process of transition from then-called savage or barbarous nations to civilised ones whose chief industry would be agriculture and commerce, cosmopolitan law has an essential role, which is surely supplementary to the international law system but still indispensable. As Tuck has persuasively revealed, while Grotius, who is still dubbed the founding father of international law, used to be interpreted as a pacifist, his real theory and practice are highly likely to represent 'malicious' intentions to excuse the European imperial invasion, with the juridical justification of 'preemptive attacks'. By contrast, Kant thought that this legal vacuum should be covered by cosmopolitan laws.<sup>35</sup> For Kant, cosmopolitan law should also be compatible with the sovereign state system, unlike the neo-Thomist hierarchical conception of the world order, and the Kantian philosophical view of history has the expectation that the American natives would sooner or later establish their own sovereign states, possibly with simultaneous changes in their traditional ways of life and modes of subsistence. In general, cosmopolitanism in Kant's international thought appears to be something that does not replace but supplements his vision of the international order. However, his idea of cosmopolitan law plays an essential role in mitigating the aggressiveness of Grotian international thought justifying imperial colonialism.

## Ancient and Modern Empires, International Law, Cosmopolitanism, and Colonialism

- 19 This special issue tackles the international and colonial thought of the European Enlightenment, with a particular focus on the rising British Empire. While many scholars have long discussed this subject, there are still several important

Enlightenment intellectuals yet to be fully investigated in the imperial and colonial context, and some of them shall be dealt with in this issue: Montesquieu, Josiah Tucker, Adam Smith, Adam Ferguson, Jeremy Bentham, John Henry Newman, and Frederic Rogers.

- 20 It is now widely acknowledged that the revived legacy of classical antiquity had an enduring impact on Enlightenment Europe even after the Renaissance era, and contested interpretations of the Roman Republic and Empire in particular were still of vital importance in judging their contemporary political and economic regimes, including the British Empire. Montesquieu and Ferguson are two representative figures of the age who highly developed such a comparative historical perspective, and shall be extensively studied by Ryo Sadamori and Craig Smith individually. Both political and economic analyses of the modern and ancient empires should be focused on when interpreting these thinkers to clarify their individual characteristics. Smith and Tucker are as important figures as Ferguson in understanding the intellectual (and partly practical) responses to the ongoing diastrophism of the British Empire, including the American question. Reinterpreting them, the contribution co-authored by Sora Sato and Hiroki Ueno emphasises the significance of Smith's analysis of the global imperial trade of Britain based on a combination of utilitarian and right-based languages, as well as his under-examined constitutional vision of a future British Empire, both of which continued to be an essential theme for Bentham and his generation. It would be somewhat one-sided, however, focusing only on Smith's perspective on the North American colonies, and Shinji Nohara makes an important contribution to his view of South America. This point of view is crucial because the European empires' justification/criticism of colonialism was closely linked with their understanding of non-Western 'civilised' and 'uncivilised' nations (as shown above) in particular terms of stadial development of the mode of subsistence or production.
- 21 Developed in response to the restructuring of the Empire in the eighteenth century, utilitarian points of view and constitutional thought were highly refined by the later generations exemplified by Bentham. Lorenzo Cello and Michihiro Kaino give articles on Bentham's international thought with implications for imperial and colonial issues. As Peter Niesen has repeatedly underlined, international and narrowly cosmopolitan dimensions should be carefully distinguished when interpreting Bentham, similar to the case of Kant. Rather than the vision of one borderless world that a certain kind of cosmopolitanism recommends, Bentham likely expected the international system to consist of independent particular states that should, however, be formed and constituted on the basis of minimal but universal human nature. Behind this was, according to Kaino, Bentham's conception of 'Pannomion' and universal jurisprudence, which in turn made it possible for him to consider the theory of 'legal transplants'. If individual states should be established based on basic human nature shared universally, this would take a long time and need a legal and moral framework that regulates a variety of political entities belonging to different stages of development. Cello's article focuses on Bentham's moral concept of 'effective benevolence' which is essential to this aspect of his international thought, with the problem of legitimate interventions being discussed as the most important political test. He reveals that far from the commonplace understanding of Bentham as a pioneering humanitarian interventionist, Bentham theorised with utmost care a novel type of 'moral casuistry' whose chief task was to balance the cosmopolitan or universalistic moral standard and

the more particularistic or situational moral judgement in practical settings, without relying too much on an a-priori fixed ethical theory. This means that he actually paid considerable attention to 'geopolitical reasoning based on the primacy of sovereignty and reason of state considerations' that would enable to detect the point of 'effective' benevolence wherein self-regarding and other-regarding interests are likely to go hand in hand. Bentham investigated what kind of constitutional system — such as representative assembly, a judiciary, and a public opinion tribunal — could make it easier for these often contradictory interests to be compatible with each other, so as to render benevolence 'effective', namely, to enforce real motives of the otherwise little-motivated abstract or universal benevolence by providing self-regarding interests.

- 22 After Bentham and the Benthamites or philosophical radicals, constitutional questions may, for the further-expanding British Empire, have become even more vital. For the so-called 'global Britishness', the religious question became the focal point once again, in relation to the redefinition of the British Empire's cultural identity and her constitutional self-understanding. With a focus on Newman, Michael Ratnapalan investigates some intellectuals of the Oxford Movement that, aside from theological or ecclesiastical historians, have drawn little attention from the study of political and constitutional thought. As is extensively discussed in Ratnapalan's article, redefining the fully globalised British Empire appears to have been a central question in the nineteenth century as a post-Enlightenment era. This almost inevitably entailed the recurrent issue of restructuring the Empire, accompanied by the reframing of imperial colonial relations, as well as possible future visions of international order.

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- Saito, Takuya, 'Kant on Cosmopolitan Right between the "Universal" and "Particular": Republic, Cosmopolitanism, and Patriotism', *State of Community 2016 Report* (Dhillon Marty Foundation, 2016), pp. 52-64.
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- Ueno, Hiroki, 'Adam Smith between the Scottish and French Enlightenments', *Dialogue and Universalism*, 32:1 (2022), pp. 127-146.

## NOTES

1. On this point, I am indebted particularly to recently developed scholarship on Kant's political philosophy in Japan, such as the studies by Hae Kim, Sosuke Amitani, Hideo Kotani, and Takuya Saito. Some of them are presented in English, such as: Saito, Takuya, 'Kant on patriotism: "civic dignity" and "way of thinking"', in *Kant's Concept of Dignity*, eds. Yasushi Kato and Gerhard Schönrich (Berlin, De Gruyter, 2020), pp. 303-324; Saito, T., 'Kant on Cosmopolitan Right between the "Universal" and "Particular": Republic, Cosmopolitanism, and Patriotism', *State of Community 2016 Report* (Dhillon Marty Foundation, 2016), pp. 52-64.
2. Niesen, Peter, 'Varieties of Cosmopolitanism: Bentham and Kant on International Politics', in *Kant's Perpetual Peace: New Interpretative Essays*, ed. Luigi Caranti (Rome, Luiss University Press, 2006), pp. 247-288; Niesen, P., 'Restitutive Justice in International and Cosmopolitan Law' in *Kant and Colonialism*, eds. Katrin Flikschuh and Lea Ypi (Oxford, Oxford University Press 2014),

pp. 170-196; Niesen, P., 'What Kant would have said in the Refugee Crisis', *Danish Yearbook of Philosophy*, 50 (2017), pp. 83-106.

3. For a different interpretation, see, for instance, Tully, James, 'The Kantian Idea of Europe: Critical and Cosmopolitan Perspectives' in *The Idea of Europe: From Antiquity to the European Union*, ed. Anthony Pagden (Cambridge, Cambridge University Press, 2002), pp. 331-358.

4. Kant, Immanuel, *Toward Perpetual Peace*, in *Practical Philosophy*, trans. Mary Gregor (Cambridge, Cambridge University Press, 1996 [1795]), 8:358-368, 371. In this paper, references to Kant are to the German 'Akademie' edition cited by volume and page number.

5. Kant, *Perpetual Peace*, 8:358. For internal 'republicanisation' as such a condition, see 8:351.

6. It is now widely acknowledged that Kant in the 1790s declined the type of cosmopolitanism whose ends are to establish a 'world state'. See Kleingeld, Pauline, 'Approaching Perpetual Peace: Kant's Defence of a League of States and His Ideal of a Worlds Federation', *European Journal of Philosophy*, 12:3 (2004), pp. 304-325; cf. Cavallar, Georg, *Imperfect Cosmopolis* (Cardiff, University of Wales Press, 2011).

7. Rousseau, Jean-Jacques, *Du contrat social ou Essai sur la forme de la République / Manuscrit de Genève*, eds. B. Bachofen, B. Bernardi and G. Olivo (Paris, Vrin, 2012).

8. Kant, Immanuel, *Metaphysics of Morals*, in *Practical Philosophy*, trans. Mary Gregor (Cambridge, Cambridge University Press, 1996 [1797]), 6:255-256, 264, 306-307, 312-313, 352-353; Kant, *Perpetual Peace*, 8:349. To understand this logic quite unique to Kant's political thought, I am indebted particularly to conversations with Sosuke Amitani and Hae Kim, which I greatly appreciate.

9. This seems to be missed by a unquestionably brilliant paper by Muthu in his edited volume: Muthu, Sankar, 'Conquest, Commerce, and Cosmopolitanism in Enlightenment Political Thought', in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge, Cambridge University Press, 2012), pp. 199-231, at pp. 224-226.

10. Niesen, Peter, 'Colonialism and Hospitality', *Politics and Ethics Review*, 3 (2007), pp. 90-108. For a somewhat different but important interpretation, see also Cavallar, Georg, *The Rights of Strangers* (Aldershot, Ashgate, 2002).

11. Muthu, Sankar, *Enlightenment against Empire* (Princeton, N.J., Princeton University Press, 2003); Pitts, Jennifer, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, N.J., Princeton University Press, 2005); Rothschild, Emma, 'Adam Smith in the British Empire' in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge, Cambridge University Press, 2012), pp. 184-198. For the details of this problem, in the special issue, see Ueno, Hiroki and Sato, Sora, 'Adam Smith and Josiah Tucker on Restructuring the Empire'.

12. For the correlation of the empire and Bentham's utilitarianism, see Schultz, Bart and Georgios Varouxakis eds., *Utilitarianism and Empire* (Lanham, Maryland, Lexington Books, 2005), chapter 2 and 3. For the assessments of J. S. Mill in relation to the British Empire and imperialism, as well as chapter 6 and 7 in the same collection of papers, see also Mehta, Pratap Bhanu, 'Liberalism, Nation, and Empire: The Case of J. S. Mill' in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge, Cambridge University Press, 2012), pp. 232-260.

13. For the details, see Ueno, Hiroki, 'The French and English Models of Sociability in the Scottish Enlightenment: The Politics of "Refined" Culture in David Hume' in *La Représentation et la réinvention des espaces de sociabilité au cours du long XVIIIe siècle*, eds. Annick Cossic and Emrys Jones (Paris, Editions Le Manuscrit, 2021), pp. 365-94.

14. On this point, in addition to my articles shown below, see also Kawade, Yoshie, 'Peace through Commerce or Jealousy of Commerce? Jean-Bernard Le Blanc on Great Britain in the mid-18th Century' in *The Foundations of Political Economy and Social Reform: Economy and Society in Eighteenth Century France*, eds. Ryuzo Kuroki and Yusuke Ando (London and New York, Routledge, 2018), pp. 24-44.

15. For the further details, see Ueno, Hiroki, 'French and English Models of Sociability'; Ueno, H., 'Adam Smith between the Scottish and French Enlightenments', *Dialogue and Universalism*, 32:1 (2022), pp. 127-146.
16. For the general explanation of the Scots' attitude toward London, its vulgar culture and the English mercantile spirit, see, among others, McDaniel, Iain and Ueno Hiroki, 'Scottish Enlightenment', *The Digital Encyclopedia of British Sociability in the Long Eighteenth Century* [online], (2022). URL: <https://www.digitens.org/en/notices/scottish-enlightenment.html>
17. Forbes, Duncan, *Hume's Philosophical Politics* (Cambridge, Cambridge University Press, 1975).
18. In reality, what can be dubbed Christian Stoicism enhanced the culture of sociability in Scotland instead. See, Sher, Richard B., *Church and University in the Scottish Enlightenment: The Moderate Literati of Edinburgh* (Edinburgh, Edinburgh University Press, 2006); Phillipson, Nicholas, 'The Scottish Enlightenment' in *The Enlightenment in National Context*, eds. Roy Porter and M. Teich (Cambridge, Cambridge University Press, 1981).
19. Ueno, H., 'French and English Models of Sociability'.
20. Haakonsen, Knud, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, Cambridge University Press, 2012).
21. Tuck, Richard, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, Oxford University Press, 1999).
22. See also Armitage, David, *Foundations of Modern International Thought* (Cambridge, Cambridge University Press, 2012).
23. Robertson, John, *The Enlightenment: A Very Short Introduction* (Oxford, Oxford University Press, 2015), pp. 50-52, 70-71; Robertson, J., 'The Scottish Contribution to the Enlightenment' in *The Scottish Enlightenment: Essays in Reinterpretation* ed. Paul Wood (Rochester, NY: Rochester University Press, 2000), pp. 37-62.
24. For an interpretation that rather closely combines Francisco de Vitoria and Grotius, see Muthu, S., 'Conquest, Commerce, Cosmopolitanism', pp. 202-203.
25. It should be noted, however, that the idea of a united Europe or European federation was taken much more seriously and realistic enough at the beginning of the eighteenth century, during the debate of the 1707 Union. See, among others, Pincus, Steven, 'The English debate over universal monarchy' in *A Union for Empire. Political Thought and the Union of 1707*, ed. John Robertson (Cambridge, Cambridge University Press, 1995), pp. 37-62; Bosbach, Franz, 'The European debate on universal monarchy' in *Theories of Empire 1450-1800*, ed. David Armitage (Aldershot, Routledge, 1998), pp. 81-98.
26. One of the most prominent historians of this subject is Anthony Pagden. See Pagden, Anthony, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500-c. 1850* (New Haven, Conn., Yale University Press, 1995); Pagden, Anthony, "Conquest and the Just War: The 'School of Salamanca' and the "Affair of the Indies"" in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge, Cambridge University Press, 2012), pp. 30-60.
27. This symmetric and equal nature of European international relations does not necessarily suggest political stability of this system, and this is one of the essential matters Rousseau and Kant later attempted to address.
28. As Adam Smith discussed, this was an absolute disaster for the Americas, while for Europe, it supplied a huge complementary market with them, boosting the rapid economic growth. See Sato S. and Ueno H., 'Smith and Tucker on Restructuring the Empire' in this special issue.
29. This original expectation to discover other civilised societies was interestingly reflected by Christopher Columbus disguising the Indies he found as a highly progressed civilization toward his patron, the Spanish Kings.
30. Tuck, R., *Rights of War and Peace*, chapter 3. My point of view on the idea of 'common ownership of the earth' is indebted particularly to the conversations with Peter Niesen, which I entirely appreciate.



31. Tuck, R., *Rights of War and Peace*, chapter 1; cf. Pagden, A., 'Conquest and the Just War', pp. 34-45.
32. The limited nature of the modern natural law without civil government as international normative regulations is already pointed out by Derathé, Robert, *Jean-Jacques Rousseau et la Science Politique de Son Temps* (Paris, PUF, 1950). See also Finnis, John, *Natural Law and Natural Rights* (Oxford, Oxford University Press, 2011 [1980]); Haakonssen, K., *Natural Law and Moral Philosophy*, pp. 15-30.
33. See Pagden, A., *Lords of All the World*.
34. Rousseau, Jean-Jacques, *Principes Du Droit De La Guerre / Écrits Sur La Paix Perpétuelle*, eds. B. Bachofen, C. Spector, B. Bernardi and O. Silvestrini (Paris, Vrin, 2008). For Kant's critical attitude toward the cosmopolitan vision of supranational integration, see Kant, *Perpetual Peace*, 8:356, 367.
35. Kant, *Perpetual Peace*, 8:358-360; Kant, Immanuel, *Theory and Practice, in Practical Philosophy*, ed. & trans. Mary Gregor (Cambridge, Cambridge University Press, 1996), 8:305-306. For arguments in favour of establishing a cosmopolitan political community, 8:310-312; Kant, Immanuel, *Idea for a Universal History*, in *Practical Philosophy*, ed. & trans. Mary Gregor (Cambridge, Cambridge University Press, 1996), 8 :28.

## ABSTRACTS

This special issue of the *Revue d'études benthamiennes*, entitled the 'International and Colonial Thought of the British Empire', aims to broaden recent debates on global intellectual history and imperial history. While this subject has been extensively studied in current scholarship, the issue attempts to approach several relatively under-examined figures, including Adam Ferguson, Josiah Tucker, and Frederic Rogers, as well as classical thinkers such as Jeremy Bentham and Adam Smith, from new perspectives. In this Introduction, we describe a pan-European intellectual setting wherein these thinkers' international and imperial thought should partly be situated, with a focus on the idea of international law, cosmopolitanism, and colonialism.

Ce numéro spécial de la *Revue d'études benthamiennes*, intitulé 'La pensée internationale et coloniale de l'Empire britannique', contribue aux débats récents sur l'histoire intellectuelle globale et l'histoire impériale. Alors que ce sujet a déjà fait l'objet de nombreuses études, ce numéro vise à aborder plusieurs figures relativement peu étudiées, dont Adam Ferguson, Josiah Tucker et Frederic Rogers, ainsi que des penseurs déjà classiques comme Jeremy Bentham et Adam Smith sous un angle novateur. Dans cette introduction, nous souhaitons décrire un cadre intellectuel paneuropéen dans lequel la pensée internationale et impériale de ces penseurs devrait en partie être située, en mettant l'accent sur l'idée de droit international, de cosmopolitisme et de colonialisme.

## INDEX

**Keywords:** British Empire, colonialism, cosmopolitanism, international law, Europe, Americas

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