

FOREWORD: THE LEAGUE OF NATIONS DECENTRED

We are delighted to introduce this special feature in the *Melbourne Journal of International Law*. The feature developed from a conference hosted at Melbourne Law School on 17–19 July 2019, The League of Nations Decentred: Law, Crises and Legacies, with funding from the Australian Research Council through the Kathleen Fitzpatrick Australian Laureate Fellowship. The conference brought together nearly 30 scholars in international law and history from around the world to think critically about the League of Nations — 100 years since its establishment — in relation to or with a view from the Global South.

A century after its creation, the League is still commonly remembered as a failure in a period of chaos and disorder.¹ In the past 20 years, however, a growing literature has begun a reappraisal of this historiography, looking at the role of the League beyond its frustrations and disillusionments in collective security.² This new surge of critical studies has led to a more complex and multifaceted understanding of the League, exploring its legacies and impacts at a time of renewed economic crises and of deepening conflicting visions of international order. Importantly, the South has been central in these re-evaluations. Placing the League within broader frameworks of imperial and colonial governance, and acknowledging its role as a laboratory of administrative techniques with ongoing relevance for North–South relations, has enabled lawyers and historians alike to uncover a more complete understanding of the organisation. Provincialising Europe is not simply a political and aesthetic choice (even though we embrace both), but it is often an elementary precondition for a better understanding of our discipline and its institutions.

On the centenary of its foundation, then, the conference invited participants to decentre the League. The idea was to think of the League not only, or even primarily, as the product of bureaucratic will unfolding in Geneva or as a story of

¹ See, eg, CG Fenwick, ‘The “Failure” of the League of Nations’ (1936) 30(3) *American Journal of International Law* 506; EH Carr, *The Twenty Years’ Crisis, 1919–1939* (Palgrave Macmillan, 2016); Christian J Tams, ‘League of Nations’ in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online at September 2006); Zara Steiner, *The Lights that Failed: European International History 1919–1933* (Oxford University Press, 2005) ch 7.

² Antony Anghie, ‘Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations’ (2002) 34(3) *New York University Journal of International Law and Politics* 513; B Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge University Press, 2003) ch 3; Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press, 2009) ch 1; Usha Natarajan, ‘Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty’ (2011) 24(4) *Leiden Journal of International Law* 799; Nathaniel Berman, *Passion and Ambivalence: Colonialism, Nationalism, and International Law* (Martinus Nijhoff Publishers, 2012); Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford University Press, 2015); Natasha Wheatley, ‘Mandatory Interpretation: Legal Hermeneutics and the New International Order in Arab and Jewish Petitions to the League of Nations’ (2015) 227 *Past and Present* 205; Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press, 2019) 154–222; Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press, 2020) ch 3.

great men (and the occasional woman) and their plans, but rather as a complex system of more or less successful practices, procedures and rules that emerged as the precarious terrain of struggle amongst a broad range of actors. This is not to imply that the League was a neutral terrain and that all and any political projects and ambitions had an equal chance of success. Indeed, as our contributors point out, this novel institution also produced new, but not less oppressive, articulations of racialisation, borders and violence. After all, turning our attention to the South and its interaction with the League helps us move beyond the failure–success binary and ask another, more generative and critical question: failure or success for whom, to what end and according to what criteria?

As we write this in early 2021, this shift in our thinking is important. With the election of Joe Biden as President of the United States, the crisis of the (neo)liberal international order might suddenly seem less terminal, but it has certainly not been resolved.³ Re-evaluating the League by centring the South enables us to rethink the contemporary liberal international order and its institutional infrastructure. In fact, returning to the League might well reveal that what appear as that order’s successes are, in fact, the product of unsustainable political, economic and social arrangements.

This special feature showcases three papers from the conference. First, Robert Knox explores the US’s occupation of Haiti between 1915–34 and its relationship to the League. For Knox, it was in the context of Haiti that techniques for the internal transformation of societies were developed that made legal sovereignty compatible with extensive political and economic domination. It is these techniques, argues Knox, that have prefigured the contemporary international financial institutions, more than those developed in the context of the mandate system, which were based on non-sovereign peoples and territories. Haiti was a member of the League throughout the occupation, and Knox shows the crucial role that this played in resolving the paradox between Haiti’s sovereignty on one hand yet lack of political or economic independence on the other. For Knox, Haiti’s membership of the League affirmed its sovereignty; League members had to be fully self-governing. At the same time, however, this prevented Haiti from challenging the US occupation and reinforced the narrative that reframed the occupation as a request by Haiti — racialised as inferior and immature — to its ‘elder brother’, the US, for aid. In Knox’s words:

Unlike the case of Ethiopia, the intervention in Haiti was not coded as a dysfunction of the League or a spectacular violation; rather, it was present at Haiti’s joining of the League and was understood as compatible with the smooth functioning of the international legal order. In this way, Haiti’s membership of the League of Nations indicates the subtle ways in which practices of racialisation are able to intersect with formal international legal sovereignty.⁴

In the second article, Aliko Semertzi juxtaposes two distinct yet parallel international legal mechanisms that both addressed rebellion and revolution: the League’s Permanent Mandates Commission (‘PMC’) and its debates

³ See Anne Orford, ‘The Sir Elihu Lauterpacht International Law Lecture 2019: The Crisis of Liberal Internationalism and the Future of International Law’ (2021) 38 *Australian Year Book of International Law* 1.

⁴ Robert Knox, ‘Haiti at the League of Nations: Racialisation, Accumulation and Representation’ (2020) 21(2) *Melbourne Journal of International Law* 245, 247.

regarding the Bondelzwarts rebellion in South West Africa in 1922, and the 1923 US–Mexico Special Claims Commission (‘SCC’) that received alien protection claims arising out of the Mexican Revolution. Semertzi argues that these two mechanisms can be read as homologous and distinctively *modernist* ‘technologies of power’ that served to discipline and normalise ‘unruly subjects’ through international law, driven by concerns about both political and economic order. Drawing on studies on cultural and legal modernism, Semertzi shows how the PMC and the SCC were ‘mechanisms of an elitist, hegemonic, autonomous character’, and their members

felt legitimated ... because of their new subjectivity, their modernity ... intrigued by the exotic, the subaltern, the temporally alien as a field to deploy their workings and drawn by the violence of rebellions and revolutions as a phenomenon to be tamed, to be regulated and temporally streamlined.⁵

For Semertzi, the juxtaposition of the PMC and the SCC is about ‘rearranging [our historical archive] into new configurations’.⁶ The goal of such work is not

to discover hidden historical material but to force a new visibility ... motivated by questions of the present, the actual moment, of financial crisis, pandemic, climate emergency, of post-West hegemony. And equipped with this new visibility, we can better grasp our very present conjuncture, comprehend the forces that led to and sustain it, and reflect on more social futures.⁷

Finally, Christopher Szabla traces the ‘deep’ and ‘interlinked’ roots of international law and institutions, migration, and development to the practices of the International Labour Organization (‘ILO’), which was attached to, if mostly autonomous from, the League. Szabla explores how, through a series of labour conventions and advocacy for domestic law reform, the ILO legally constructed a hierarchy between European ‘colonists’ settling Latin America, who enjoyed certain legal privileges and protections, and ‘native’ migrant labour in colonial Africa, who did not. For Szabla,

[b]oth the ILO initiatives in Africa and Latin America demonstrate the extent to which interwar internationalism, as it related to migration both to and within the South, represented continuity with and legitimated existing colonial practices, and the extent to which it both reflected and deepened racial and cultural hierarchies in independent ‘peripheral’ states. ... What [they] also had in common was that they reinforced hierarchies through new instruments that sought to facilitate *development* through different configurations of social rights, deepening these cleavages throughout what would become the Global South.⁸

⁵ Aliko Semertzi, ‘Modernist Violence: Juxtaposing the League’s Permanent Mandates Commission over the Bondelzwarts Rebellion and the US–Mexico Special Claims Commission over the Mexican Revolution’ (2020) 21(2) *Melbourne Journal of International Law* 275, 293.

⁶ *Ibid.* 333.

⁷ *Ibid.*

⁸ Christopher Szabla, ‘Entrenching Hierarchies in the Global Periphery: Migration, Development and the “Native” in ILO Legal Reform Efforts’ (2020) 21(2) *Melbourne Journal of International Law* 334, 361 (emphasis in original).

Szabla argues that in both cases, ‘ILO action bore resemblance to institutionally directed development programs imposed by international financial and other institutions in the Global South more recently’.⁹ Today, international migration law continues to privilege certain migrants over others in a way that resembles the way in which protection gave way to development when it came to migrant rights during the interwar period.

By considering the League of Nations with a view from the South, the articles in this special feature help to unsettle all-or-nothing claims about the League’s ‘success’ or ‘failure’. They encourage us to consider the rival visions of law, community, governance and society with which that new experiment in international organisation competed and coexisted, and their continued resonance in contemporary struggles over the future of life on a shared planet.

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⁹ Ibid 336.