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Book review “Imperialism, Sovereignty and the Making of International Law” for Antony Anghie

استعراض كتاب "الإمبريالية، السيادة وصنع القانون الدولي" لأنطوني انجي

Revue du livre «Imperialism, Sovereignty and the Making of International Law” Antony Anghie

Guedjali Zakaria [*1]

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ملخص:

في كتابه "الإمبريالية، السيادة وصنع القانون الدولي" يحاول أنطوني انجي أن ينقد الصورة النمطية والرواية التقليدية عن تطور وتشكل القانون الدولي والتي يرى انه تم تبنيها حتى من قبل ما يعرف بفقهاء ''TWAIL'' مثل محمد بجاوي والتي تنص على أن القانون الدولي تكون في أوروبا ما بين دول ذات سيادة من أجل تنظيم أمورها اثر حرب الثلاثين عام التي كللت باتفاق وستفاليا بالتالي فهو عبارة عن منتج جاهز تم تصديره لبقية دول العالم. ينتقد أنجي هذه السردية حيث انها تهمل اللقاء الكولونيالي والذي يعتبره هه المؤسس الرئيسي للقانون الدولي والذي بسببه صار هذا القانون يحمل جوهرا استعماريا لابد من التخلص منه اذا اردنا لهذا النظام القانون أن يشتغل بالكيفية التي وضع من أجلها أي بين دول متساوية في السيادة، التأثير والحقوق والواجبات. تقدم هذه المراجعة عرضا مختلفا للكتاب من خلال التركيز على جوانب الشبه في هذا المكون الاستعماري من خلال الحقب الزمنية المختلفة (القانون الطبيعي، الوضعي ثم حقبة المؤسسات الدولة والحرب على الإرهاب) مع ابراز اختلاف التمظهرات والأدوات المستعملة.

الكلمات المفتاحية: القانون الدولي؛ الاستعمار؛ الكولونيالية؛ أنطوني أنجي؛ وستفاليا.

Abstract :

In his book “Imperialism, Sovereignty and the Making of International Law” Anghie tries to refute the traditional story of IL, which focuses on establishing the Westphalian order between sovereign European states and disregards imperialism, for Anghie the colonial encounter was at the core of the creation of international law, he tries to identify what he calls “the dynamic of difference” which illustrates the cultural gap between Europeans and non-Europeans, and which would be translated to the dichotomy of the civilized versus the uncivilized, developed and developed versus undeveloped. Anghie traces this dichotomy by identifying 3 historical phases, that of natural law, positive law and up to the time of international institutions and the war on terror. This review seeks to identify the similar concepts that continued to exist cutting across the various phases of IL development and despite the different manifestations and tools.

Keywords : International law; colonialism; TWAIL; Antony Anghie; Westphalia.

Résumé :

Dans son livre « Imperialism, Sovereignty and the Making of International Law » Antony Anghie essaye de réfuter l’histoire traditionnel de l’évolution du droit international, celle qui présume que le droit international est le produit de la guerre de trente ans qui s’est terminée par établir la traité de Westphalie, c’est a dire le droit international était un produit fini européen qui a était ensuite exporté pour le reste des pays du monde. Pour Antony Anghie cette histoire non seulement est trop simpliste mais elle rate l’élément constituant du droit international qui est pour lui la rencontre coloniale, cette rencontre qui a formé le DI et qui lui a donné un noyau colonial, en fait et selon Anghie toujours c’est ce mem noyau qui a barré la route pour toute reformation du DI. Cet article essaye de résumer les idées dans le livre d’une façon nouvelle en se concentrant sur les similitudes de cette évolution pendant les phases historiques toute en montrant les différentes manifestations et outils de ce noyau colonial.

Mots clés : droit international ; colonialisme; TWAIL; Antony Anghie; Westphalie.

* **Zakaria Guedjali.**

[1] زكرياء قجالي, **Doha institute for graduate studies: Qatar, zgu002@dohainstitute.edu.qa.**

Introduction :

The imperial phenomenon has no doubt left a lasting effect on today's world, it could almost be traced to every field and every aspect of our lives. and while the ex-colonial powers maybe oblivious to it, thinking that imperialism is something of the past, the ex-colonies seem unable to escape it, this is very clear from the different scholarship produced especially by scholars of the global south, and that regardless of the field, for instance Azmi Bishara in his tracing of Israeli democracy eludes to the fact that democracy as a concept was shaped through the colonial encounter, and through its emancipation, it wasn't simply a ready product (Bishara,2005), Wael Hallaq in his discussion about Islamic law presents a clear example of how colonialism eviscerated the political, socioeconomic and religious dynamics in the middle east, in fact he even affirms that postcolonial states in the area were no different than the imperial forces (Hallaq, 2013). An-Na'im goes even further as to suggest that the claims to found an Islamic state are nothing more than post-colonial totalitarian claims that emerged from the imperial encounter (An Na'im, 2010, p. 9).

These examples have nothing to do with post-colonial studies which Twailers may advance, which is why it allows us to understand the continuing impact of this colonial encounter, in fact, marginal mentioning of the role of colonialism will always be present in every work that takes the third world into consideration, and such a marginal mentioning could be developed into a whole field of research, democracy, liberalism (pitts, 2005), human rights (An-Na'im, 2021) …all of these grew side by side with the colonial encounter, and it is this exact idea that Antony Anghie takes in order to produce an elaborate reading of international law and its development, not through the traditional Westphalian model but rather, through the lens of this colonial encounter.

This paper tries to trace the work of Antony Anghie "Imperialism, Sovereignty and the Making of International Law" and how he tried to identify the colonial elements that helped shape the current doctrines and understandings of international law, Anghie tries to present a different starting point of IL, one that begins with the Spanish-Indian encounter in the 16th century (Anghie, 2004), and then he goes to mount his theory about IL doctrines emerging as a reaction to this encounter, he does this for every century to follow, going through the different phases of IL from naturalism and positivism to pragmatism and institutionalism. The paper will try to follow this development identifying the common colonial core, which is often dismissed or hidden, through highlighting the changes in the tools, doctrines and terminology employed by the colonial powers without really substituting or eliminating the imperial practices that are shaping these doctrines.

The paper will be divided into five parts which will identify the similar and continuing colonial manifestations which are shaping IL since the 16th century and until today (as presented by

Anghie), these will be the substantive and constitutive part of IL, the changes that are happening -as Anghie would suggest- aren't touching much on this colonial core, therefor they are mere formal differences in tools, terminology and doctrines, and they shall be presented through the historical tracking of the different phases of IL from natural law until institutionalism and the war on terror.

1- The colonial encounter:

This is perhaps the core issue that Anghie is trying to present, in fact he even criticizes the first generation of Twailers who took for granted the fact that IL and its doctrines such as sovereignty were developed among European states, and once ripe enough, they were exported to rest of the world gradually century (Anghie, 2004). For Anghie this isn't how IL came to be, rather it developed through this encounter with the other, admittedly there might have been starting points, but they were shaped in response to the colonial confrontation century (Anghie, 2004), it is for this reason that he claims the reforms of the first generation failed, for it is self-defeating century (Anghie, 2004). And this is clear through the different phases of IL development.

While Columbus wasn't aware of the fact that he extended Spanish law to the newly discovered territories when he was giving them Spanish names (Anghie, 2018), Di Vitoria wrestled with the idea of extending legal and political jurisdiction to the Indians, as a matter of fact he fought against the biblical law that granted the Spanish their just war allowing them to kill and enslave the Indians (Anghie, 2004), instead developed this idea of natural law that allowed the inclusion of the Indians in the sphere of reasonable people but at the same time denied them full agency through comparing the children (Anghie, 2004), this extension of natural law which is really Spanish law meant that in case of violation, the Indians will have to incur the wrath of the Spanish (Anghie, 2004), thus going back to point zero where divine law allowed that from the beginning in the name of god, it is important to notice here that without this encounter di Vitoria wouldn't have asked the questions In the first place.

For positivists, law emanated from the state, it was the will of the sovereign, there are no universal laws above everyone as the naturalists claim. this, however, poses two problems, one, international law has no sovereign and so it couldn't be law as Austin would suggest (Anghie, 2004), this meant that jurists would need to find another source of law, but since the state represents the pinnacle of sovereignty, the norms of IL would be whatever the sovereign states agree upon through treaties or through customs formed by the society of states (Anghie, 2004). This leads us to the second problem, what is the society of states? and who will be admitted to this club? this question can only be understood through the colonial confrontation (Anghie, 2004), for attributing a position to non-European states determining their status vis a vis the international family wasn't just another subtopic of positivism but it shaped the concept, and thus the constitutive effect of colonialism. in other words,

imperialism wasn't the application of European positivism, but positivism was constituted through imperialism (Anghie, 2004).

The mandate system was the clearest when it comes the role of the colonial encounter, for it was designed with the purpose of preparing non Europeans to be the full sovereign that they can be if they follow the European model (Anghie, 2004), old 19th century conquests were rejected (for other reasons as Anghie would explain later) and territories weren't distributed as spoils of war instead they were put under the tutelage of the civilized European world (Anghie, 2004), and so it is clear that the tools are different be it the league of nations or the whole system of mandates, but again what is shaping this development in IL is the colonial encounter between European imperial powers and the rest of the world.

We can clearly see the same logic over and over, in the period of decolonization, under neocolonialism and the war on terror, the imperial confrontation between European and non-European, allows the creation of doctrine like self-determination, permanent sovereignty on national resources (Anghie, 2004) and preemptive self-defense (Anghie, 2004), in fact this encounter will create completely new fields of international law, transnational law for instance is the field created to protect MNCs when they enter non-western territories through universalizing European law to apply to everyone else, human rights law is created only after the wave of independence witnessed in Africa and Asia and with their contribution (Anghie, 2004) for the first time as suggested by Anghie and Jensen (Jensen, 2016).

This is all to say, that the current system of international law wasn't just a ready system exported by Europe to the rest of the world but in fact it reacted to the colonial reality and it was shaped and developed through it, and this here is a very dangerous conclusion because that would mean that IL has a colonial core that defines it and dictates its responses, which would translate in the failure of non-Europeans to use it or change it because it was built to impede such change and use in the first place (Anghie, 2018), and this will have some serious implication on the next parts of the analysis.

2- European means universal

The colonial encounter by nature posits two conflicting sides, a colonizer with all its might (military and intellect), a subject of history who holds all the truth and around which everything revolves, the other side of the coin is an object of history, merely part of the story that the colonizer is telling, this is why one of the most serious critiques for human rights and the reasons for its rejection is its eurocentrism, one party of the encounter has more power in dictating norms than the other, the Vienna conference of 1993 faced this issue when trying to impose the universality of human rights,

it claimed that unlike any other field of IL, human rights law is universal (*UN General Assembly*, 12 July 1993). Such a claim could have had value if it was an exception, but if one follows the 500 years of evolution of IL, s/he would realize that this claim was made at every conner since the very beginning, it is as such that it lost its meaning and as such that it fails to resonate with people nowadays.

Di Vitoria in his attempt to bestow the faculty of reason on the Indians, saving them from their biblical doomed fate claimed that there is a system of natural law that applies to everyone (*UN General Assembly*, 12 July 1993), a system under which Spanish and Indians are equal, an elegant statement but a problematic one nevertheless, because when trying to determine the components of this natural law, he ended up asserting that Spanish law is the universally binding body of norms, the Indian rules and regulation were discarded as uncivilized, undeveloped and simply unnatural (*UN General Assembly*, 12 July 1993) "Indian's specific social and cultural practices are at variance from the practices required by the universal norms -- which in effect are Spanish practices (*UN General Assembly*, 12 July 1993)."

The 19th century positivist school denied the existence of a natural that is applicable to everyone (Anghie, 2004), but it didn't lay down the claim of universality, despite the fact law is what the sovereign dictates, which means that it would be as diverse as the number of sovereigns out there, but no, positivist through the creation of a society of nations (European nations) tried to create something that resembles customary law among states (Anghie, 2004), claiming the existence of some fundamental rules that could be discovered through an analytic scientific approach (Anghie, 2004), and like Anghie says the myth of the state of nature is replaced, in positivist jurisprudence, with the myth of a fixed set of principles (Anghie, 2004), the tool is different but it is nevertheless universal.

Under the mandate system, the goal was to put the newly acquired territories under tutelage because they aren't ready to be sovereign states, upon satisfying the conditions laid down by the league of nations, these peoples will be ready to take the form of the European state which is the universal and most developed protype, one needs not to look further enough to realize that the European model was indeed universalized through this colonial encounter, so much that the entire globe today is comprised of European-like nation states, in fact An-Na'im and Hallaq both defend a secular state for the Islamic world because they think this universalized version of the state nation is irreversible (An Na'im, 2010), Anghie stressing the same view declares "the universalizing mission of international law, could now be adapted to continue its task of ensuring that the Western model of law would be seen as natural, inevitable and inescapable. In this sense, the Mandate System continued, rather than departed from, the grand nineteenth-century project of universalizing international law (Anghie, 2004)"

Under the same system modernity, progress and individualism are viewed as universal (Anghie, 2004), while culture is backward, the law of labor is universal (Anghie, 2004) because that is what is needed to be developed, and development is what the mandate system sought (Anghie, 2004). later on after decolonization, it is doctrines like acquired rights, state succession and state responsibility that become universal, simply to oppose PSNR and attempts of the third world to change economic international law as Bedjaoui suggests (Bedjaoui, 1979), the neo-colonial era would allow for even bigger changes but not in favor of the third world, we would see the private law of contracts transformed into a transnational public law of investment (Anghie, 2004) (to protect MNCs from sovereign states that are lawless as Lord Asquith asserted (Anghie, 2004)), again western law universalized, the same thing with concepts like good governance, democracy and even the war on terror, which is a holy universal law, or war, the distinction is blurry.

It is this past that lies behind the rejection of the claim that human rights are universal (even though the third world participated in their formation and perhaps they are the closest to anything universal (Anghie, 2016) , for everything that came from the west always seems to be universal (Anghie, 2018), whereas the rest of the world has to drop all the norms, laws and culture they had before, for it will impede their development and civilization, and in case they oppose it, then it could be imposed on them through pressure and sheer force, practicing social engineering (Mearsheimer, 2018), granting/denying sovereignty and using the claimed universal values to invade, reform, civilize or kill the uncivilizable, it is for this reason that writers like Sartre and An-Na'im oppose the idea of imposing human rights (happiness in Sartre's terms(Sartre, 2001) because the imposer will be acting like an imperialist while lacking legitimacy (An-Na'im, 2021) and the imposed-upon will simply reject it as foreign and coerced (An-Na'im, 2021), some writers like Knop and Engle Merry take it even further suggesting that persuasiveness should be stronger than bindingness even within the legal framework and not just social convincing (Knop, 2000), Arendt suggested a method of translation of the commonly accepted norms to ensure true particularism instead a disguised universalism that is bound to lose (Knop, 2000).

3- The dynamic of difference:

"I cut my hair, he plaits his; I use a fork, he uses chopsticks; I write with a goose quill, he draws characters with a paintbrush (Sartre, 2001)" Sartre called it "the aristocratic pleasure of counting the differences (Sartre, 2001)" or so it started with the tourists and merchants, but it soon turned into something more concrete through the colonial confrontation, the distinction between cultures presenting one as universal and the other as local and backward puts us in an endless process of creating a gap between these cultures, which in turn leads to wanting to bridge this gap by civilizing

and developing the backward culture (Anghie, 2004), it is this gap that allows terms like civilizing mission, just war and mandate system to exist.

The dynamic of difference doesn't just create a sense of superiority for the worst kinds of people, but even those we deem reasonable and with good intention will end up sucked into this cycle (pitts, 2012), their dynamic of difference will manifest into a sense of patriarchy, this is perhaps a point that Anghie might have missed, for it is true that Di Vitoria and mill don't compare to the generals that were killing natives without regret but they all would agree on the cultural gap and legitimize colonialism albeit for different reasons and this is the unavoidable danger of colonialism as Edmund Burk and Sartre argued that imperialism had an inevitably corrupting effect on the polity of the imperial power regardless of the intentions[2], it is also why we find liberals like john Stuart mill and de Tocqueville supporting colonialism in the name of the civilizing mission, mill without hesitation states "the present era is pre-eminently the era of civilization (Sylvest, 2007)" Tocqueville on the other hand asserts "democracy is inevitable, it will triumph and we can but embrace it, and spread it (de Tocqueville, 1998)." Echoing the tone of Fukuyama when he spoke of the end of history.

Di Vitoria as we have shown earlier made a clear distinction between the universal Spanish culture (representing natural law) and the backward uncivilized Indians, and despite deeming them as reasonable he viewed them as children who need Spanish tutelage until they are of age, until they adopt the Spanish universal culture that is (Anghie, 2004), and here we clearly see the dichotomy of civilized vs uncivilized being created (Anghie, 2004). Positivist jurists further enlarged that gap because while Vitoria made Indians the equals of the Spanish, positivism couldn't do such a thing, as explained before the lack of an international sovereign made jurists of the 19th century rely on customary law among sovereign states, which reflects a set of general principles they all agree too, the claim is that these principles are scientific but as a matter of fact they are nothing but the shared cultural practices of Europe as Anghie points out (Anghie, 2004), again a universal culture that would widen the already existing gap, but this time it is worse because non Europeans are completely excluded from the realm of positive law. This would in turn devise new tools for the imperial powers to legitimize colonialism, such as quasi sovereignty (Anghie, 2004) (to allow the non-civilized to enter treaties and contracts), protectorates(Anghie, 2004), legitimate conquest…

With the end of the first world war, positivism was viewed as crude and inexact, perhaps even the reason behind the war (Anghie, 2004), not to mention the fact that conquest as enabled by this

[2] Jeremy benthem for instance had been outraged by British miss government in India and argued that the British have irresponsibly replaced an indigenous legal system that had worked reasonably well, he wrote when the English judge acts rightly once in 100 times the brahmin judges were in the habit of acting rightly every day.
In contrast James mill, John Stewart's father declared that Indian judges were universally incompetent and tyrannical as he said: this English government in India with all its vices is a blessing of unspeakable magnitude to the population of hindusthan even the utmost abuse of European power is better than the most temperate exercise local power.

school was very cost inefficient (Anghie, 2004), a new more pragmatic system needed to be introduced, that was the mandate system, it saw as its goal the promotion of welfare, self-governance and ultimately sovereignty in the European model (Anghie, 2004) with the same "mission civilizatrice" as illustrated above, but nevertheless with an economic goal that Anghie does not shy away from when he says "the native was no longer merely to be conquered and dispossessed; rather, he was to be made more productive (Anghie, 2004)", regardless of which of these statements is right, the mandate system needed new tools and technologies to be deployed, one that is scientific and could be generalized to all territories, and the answer was economics, the new system associated the market with modernity (Anghie, 2004), and progress therefore reproducing the dynamic of difference pragmatically through the information gathered from the backward peoples (Anghie, 2004) but this time it took the form of developed and undeveloped (Anghie, 2004), and thus backwardness despite the many meanings it had, came to be understood in purely economic terms by the interwar period (Anghie, 2004).

The new dynamic of difference (developed-undeveloped) will persist after decolonization, in fact the newly independent states will adopt the same practices of their prior colonizer against minorities regarding them as backward and undeveloped (Anghie, 2004), while remaining both (majority and minority) undeveloped in the international arena. During the same era and upon third world attempts to change IL, the new states embodied the definition of the term "dynamic od difference" for they aren't undeveloped and backward only but they attempt to change the international system (Anghie, 2004), they are simply "different" because they reject the European system as Anghie puts it "The non-European world, the Third World, must be distanced now, not because it is barbaric or threatening or undeveloped although these ideas continue to have a powerful residual influence but because it seeks these changes (Anghie, 2004)" i.e they seek to change the system so they are different, we need to change them to keep the system.

The dynamic of difference takes a different form in the phases to come but it's always there, with the concept of good governance we have "the good governed "versus those who lack good governance (Anghie, 2004), we have liberal democracies and illiberal democracies, for even when some entities like the Asian states achieve a high level of development, they are still categorized as the other (Anghie, 2004), and therefore a dynamic of difference is to be found. The last manifestation of this concept was during the war on terror, where it (the dynamic of difference) embodied all the former manifestations united together, Iraqis and afghanis were viewed as children-like and oppressed by their regimes, at the same time they were violent and threatening, terrorists, undeveloped (Anghie, 2004), their culture is backward and they needed democratic and western universal values, it is for all of these reasons that they are deprived the protection of international law (Anghie, 2004), and even

the minimum gains of IL that were achieved by disallowing conquest are now being reversed again (Anghie, 2004), exactly because of the always existing imperial core within it.

4- Commerce is all

"The structure of the civilizing mission hasn't always been political, but it certainly is always economic…trade drove the whole thing since the times of Columbus (Anghie, 2018)" it is as such that Anghie presented his book *imperialism sovereignty and the making of international law* at the Akademie Der Kuste yearly event. Trade and economics are at the core of the colonial encounter, in fact and as Anghie points out the whole reason Columbus sales towards America was to find a new trading root to India (Anghie, 2018), and the first thing he did upon arriving was dispossessing the Indians of their lands and claiming title to them (Anghie, 2018). This doesn't only concern the new world, it began since the Portuguese dominated trade roots to the east around Africa, and even in the MENA French companies were able to penetrate Algeria and secure a monopoly over certain areas in commerce such as the production of coral all along the Algerian coast and this as early as the 16th century.

Di Vitoria's inclusion for Indians based on their reasonableness might have been political but the backdoor towards applying the laws of war as he describes them were definitely economic, for it is through allocating the right to travel and trade freely to the Spanish that he will hold the Indians liable (Anghie, 2004), Vitoria argues "the right to travel in Indian lands, and the right to trade, are fundamental principles of natural law to which the Indians must adhere (Anghie, 2004)" this translates into considering any act of rejecting the entry of the Europeans, perhaps expelling them (Anghie, 2004), which are total acts of sovereignty, as being acts of war and aggression, which allow the Spanish the right to use force, enslave and kill the Indians under the universal natural law of free trade.

The right of free trade will only gain momentum in the 19th century, colonial powers aspired to see the whole world integrated (Pitts, 2012) into a single order of trade, in fact the whole reason behind legitimizing the acts of conquest and aggression was the profits it brought back to the empire (Pitts, 2012), in two ways that is, first the colonized territories are usually rich in resources, at the same time they provide a market for what is produced in the mother land which is producing way more than it needs, this is why we find Anghie stating "one of the primary driving forces of nineteenth-century colonial expansion was trade. The right to enter other territories to trade, the freedom of commerce asserted so powerfully and inevitably even in Vitoria's time, was a principal rule of nineteenth-century legal and diplomatic relations (Anghie, 2004)." And while early trade was mainly led by companies and defended by natural law, the 19th century will employ new tools, that of the sovereign directly, it would acquire the right to conquest, and will coin new concepts like quasi sovereignty just to allow the colonized to enter into treaties, this will be the basis for the doctrine of

acquired rights which will be used against the efforts of the third world to nationalize their resources (Anghie, 2004).

The mandate system is always the clearest illustration of the colonial elements even though it sought to end colonialism formally, this is especially clear in the case of commerce and trade, for the dynamic of difference here is characterized as economic (Anghie, 2004), as mentioned earlier Anghie would even dare say that one of the reason of the decline of colonialism was that is it no longer cost effective (Anghie, 2004), in fact the new mandate system was devised to guarantee the same economic benefits without incurring the responsibility to administer the backward people, this isn't unfamiliar in today's world when we see Israel doing the same thing to the Palestinians (creating an authority with quasi sovereignty that is solely responsible for the people while claiming title to the empty lands (*From the course about Palestine*). In fact, the mandate system was so much about trade that the imperial powers claimed a monopoly of trade in the lands that were under their tutelage, so much that the United States refused to join the league of nations for this reason "The League's failure to reach agreement on this matter (free trade in colonies) was decisive in the final refusal of the United States to be party to the League (Anghie, 2004)." It just run contrary to Wilson's third point about the removal of all economic barriers (Bedjaoui, 1979).

After decolonization many attempts at changing international law were launched, most notably the one proposed by Mohamed Bedjaoui in his book about a new international economic order, we can clearly see trade and economy at the center of the debate (Anghie, 2004) and that is for 3 reasons, one, commerce has been the real drive behind colonialism (Anghie, 2004), two, the dynamic of difference now is one of developed and undeveloped (Anghie, 2004), and finally, as explained before the third world Inherited the colonial practices including striving for development (Anghie, 2004). Examples of these attempts produced doctrine like PSNR but they were met with fearsome battles elaborating their own counter doctrine like the mentioned acquired rights, state responsibility and state succession (Anghie, 2004), and we can clearly see how the economic drive created the doctrine of acquired rights, which in turn needed concepts like quasi sovereignty which allowed the colonized to enter into treaties but at the same time denied them sovereignty over resources (Anghie, 2004).

This equally applies to universalizing labor law, the creation of the transnational law of investment, and even the promotion of good governance which is identical to commerce (Anghie, 2004) for Anghie because at the core of it, it is market based economy as a sign of modernity and progress, Anghie follows "internationally administered governance is not merely about reforming the primitive, Accompanying these arguments, which rely heavily on images of backwardness and barbarity, are an equally if not more compelling set of ideas which focus on property, trade and

commerce (Anghie, 2004)", and even as the war on terror was ushering, raising the flags of the crusades and civilizing mission again, extrinsic decision were already made about how to handle to Iraqi economy (Anghie, 2004). To summaries it in Anghie's words "Since the beginning of the discipline, the creation of norms regarding government has been inextricably connected with commerce and a 'right to trade' that, in reality, legitimates the presence of foreigners in non-European territories (Anghie, 2004)", this was the reason behind the French and American revolution (the new bourgeoisie), the reason behind the two world wars (Hitlers diaries on Germany's need to expand) and it is definitely the driving reason behind colonialism and neocolonialism.

5- The metamorphosis of Sovereignty:

Sovereignty is not just another concept of international law, but it is a founding one, it is the recognition that every state is sovereign on its territory, possessing rights and obligations that protect it from foreign aggression, and forbid it from intervening in other nations internal affairs, it is based on this principle that hamdan khoudja, an Algerian nobleman of the early 19th century travelled to France after the conquest of his city demanding independence and criticizing the hypocrisy of Europeans who celebrated the nationalism of Poland, Belgium and Finland but denied it to Algerians (Pitts, 2012). It is exactly this self-given ability of the Europeans to extend/retract the concept of sovereignty and to change the sphere of legal/political norms to include or exclude non-Europeans that Anghie is challenging when he says "international law isnt about sovereignty made in the west and transferred to non-Europeans, it is an issue of disempowerment, using the law to exclude people from the realm of sovereignty (Anghie, 2018)."

While di Vitoria didn't tackle the issue of sovereignty head on, he touched on it in two ways, first by denying Indians full agency, he thought of them as children that needed to be under Spanish tutelage (Anghie, 2004), which translates into denying them sovereignty as a collective, secondly, the whole analysis of di Vitoria doesn't emanate from the law of equal sovereignty of states, despite his fierce attacks on the church for the benefit of the Spanish sovereign (Anghie, 2004), he seems to completely disregard the idea that the Indians might also be sovereigns on their lands, the same thing was done by Columbus when claiming title to the lands he discovered. What is clear here is that sovereignty as a doctrine wasn't a ready tool to apply to everyone, but it is being shaped by Vitoria's reflections regarding his encounter with the other, and his position regarding the Saracens as unable to engage in just war because of their false religion is the embodiment of a include/exclude doctrine of sovereignty, one that is being shaped by the colonial encounter (Anghie, 2004).

Sovereignty is a cornerstone in the 19th century, for it is the original point of legal and political systems, law is what the sovereign says it is, but this didn't explain a horizontal international society as mentioned earlier, which created the need for an alternative source of law, "customs among sovereigns", but this directly begs the question of who is sovereign and who is not? Jurists, trying to

answer that, presented the idea of fundamental principles of law (Anghie, 2004), which in turn would be used to differentiate between those nations that have such principles, namely the civilized Europeans versus the other nations that don't, the uncivilized world. The repercussions of this on sovereignty doctrine are clear, because the translation of cultural differences to legal ones, meant that non-Europeans are automatically denied sovereignty, for they certainly lack a Europeans culture (Anghie, 2004), mill himself saw a huge problem to extending the same rights to all the britains, in what Jenifer Pitts calls the democratic anxiety (Pitts, 2012) (an international law anxiety in this case) which will manifest itself clearly after decolonization when European states fight the attempts to change international law.

The positivist jurist created many shapes of sovereignty (quasi sovereignty, sovereign in entering contracts but not in making law…) and many ways to be assimilated in the international order (occupation, session, adopting European values…), a legacy that the mandate system would cherish despite forbidding conquest, for it would create a new type of before-sovereignty, thus putting states under imperial power's tutelage until they are mature enough to be European-like, in that it bestowed the title of sovereign to the new entities but without the governmental powers that should come with it, especially economic powers, and this at the expense of the promotion of doctrines like self-government, it was an abstract formal right with no exercise or on-ground manifestation (Pitts, 2012).

This limited type of sovereignty will be carried to the newly independent states, and it is reflected not only in their inability to use this sovereignty to change international law, but it is clear the internationalization of private laws like the law of contracts, and through the establishment of new doctrine like acquired rights and state responsibility to limit any effect of a true notion of sovereignty the third world might have, and thus this absolute concept suddenly became a spectrum, and a state's position in it would depend again on how western-like this state is (Anghie, 2018). This criterion would only be reinforced through globalization, through new concepts like human rights and good governance, which are used to even exclude the Asian states which achieved the same level of economic development as the west, albeit they aren't well-governed, which translates into the need to impose these new doctrines on them in a way that undermines their sovereignty again (Anghie, 2004). Something that the war on terror will take a new level, or maybe we should say to an old level where conquest is legitimate and even legal, thus negating the whatever little was achieved by the current international order, Anghie further elaborates "At least in this most basic sense, then, the United Nations developed a system of international law that outlawed conquest and affirmed the right of a state to establish a particular ideology or political system. It is precisely this set of ideas that is being threatened by the new developments (Anghie, 2004)."

To summarize, the non-European territories enter the international arena through the colonial encounter, they are denied their sovereignty by being conquered, an act that is legitimate under the system of international law, yet after decolonization they are given sovereignty through the same system which allowed their conquest in the first place, that is to say they come into existence through the very system that denied that existence in the first place (Anghie, 2004), the idea is self-defeating even on a conceptual level, let alone adding other realistic challenges like nationalism, interest and the realist theory of politics, the third world lost its battle for sovereignty even before it began.

6- What critique can we give to Anghie:

While Anghie retelling of the history of international law sheds light on many dark areas, there seems to be many shortcomings whether on the level of the overall conception or minor details. On the broader scale, there seems to be a mixture of political, legal, and historical reasons which weakens the correlations that are made, especially that events and writings are picked specifically to confirm the narrative chosen and could easily be counterweighed. Anghie admits that it was the influence of politics and its use for law as a tool that caused some discrepancies, something that we can clearly see nowadays, but which doesn't make the concept of law illegitimate, it would simply need to be pointed out, and changed.

This leads to the main problem with this work, which is that it doesn't offer an alternative, or at least a map or conception of what a new legal system should look like, in fact it doesn't even say whether we need an entirely new system or is this one solvable? This here is the problem with most critiques of international law, TWAIL, FtAIL, IMAIL…also while they claim they offer a non-western view, they actually have the western world at the center of their theories, because whether its colonialism or Westphalia that is the core, the third world still didn't manage to create anything, Anghie eludes to the existence of a non-European international law of treaties and war but does little to show that or build on it.

On a more minor scale, this study fails in the way that it deals with the western world as a concrete block with a clear set of principles, this isn't the case now (hungry, Poland) and wasn't the case then, in fact even a single entity wasn't as homogenous as we are led to imagine, France during the 19th century was sliding between a monarchy and a democracy many times (1st,2nd,3rd republic), the French language was only imposed on all France towards the end of same century, with force nonetheless.

The problems pointed in international law, were shared in all other fields, administrative law was made to protect the executive but now it restrains it, the constitutional council in France was introduced to suppress the parliament by De Gaulle, criminal law has ecclesiastical inquisitorial roots, so the question is do we need to substitute all these branches of law as well?

On a final more practical note, while the overall idea could be a way towards reformation, two key results presented by the writer are especially dangerous. One: victimhood, blaming the west and international law on all the failure of the third world seems more like and excuse and less like a way towards reformation, especially when we call the transgressions of the 3rd world states as colonial practices, as if the civil war in Algeria was made by Europe not the Algerian regime, this in fact, denies agency to the peoples of 3rd world, even treats then in imperialist way. The second problem is rejecting everything that comes from the west as colonial heritage, and Anghie here doesn't even exclude human rights, democracy (Franz fanon shows how such an attitude worked in favor of colonialism in the Algerian revolution)…the promotion of thereof is all of imperial nature to him, the question is what would be the result of that on the universality of HR versus the relativity that is promoted, to push the argument to the limit, do we want an international legal order that is promised by China and the middle east? Even if it meant independence as Anghie defines it.

7- **Conclusion**:

Anghie tries to offer a new account of the development of international law, one that follows the long tradition of TWAIL theory, it is important to understand the aim of the theory as Anghie himself suggests isn't to negate IL, nor to invalidate the good things that IL achieved, and this is clear when he assesses the war on terror, qualifying it as an undermining of what IL has accomplished by forbidding conquest. instead, this new account of international law, aims at exposing the parts of it which are impeding its development, because the good parts are being rejected simply along with the existing bad ones which need to be changed, this is clearly the case when it comes to human rights, whose universality is challenged every day (even though there is a universal aspect to it) because everything European has been presented as universal as well.

Anghie aims to show that international law and many of its doctrines are about dispossessing certain people while claiming at the same time to liberate them, and this here is the essence of the civilizing mission and the main problem of IL, the idea that other people are inferior and backward, therefor they need to be colonized, and this is done for their own wellbeing, as in Europeans are being nothing but humane in taking on the great task of colonizing the rest of the world (Anghie, 2018), this is the reason/fallacy why liberal thinkers like Mill and Tocqueville seemed to be schizophrenic, both ideal and imperial at the same time, in fact the imperial element is born out of this sense of infallibility and universality, the civilizational confidence, and egotistical buoyancy of Europe as Pitts calls it (Pitts, 2005), it is something that still persists until today, and which ought to be signaled and challenged.

Tocqueville admits in his writings "We have made Muslim societies much more miserable, ignorant and barbarous then they were before they knew us (Pitts, 2012)" but at the same time deems

it necessary for two reasons, first it would save French democracy from falling into the same barbarous destiny (democratic anxiety) and two, European values are inescapable, and non-Europeans aren't only backward but they aren't historic they are unable to progress which is why Europe needs to show them the way (Pitts, 2012). The Mills (both the father and the son both were a little more oblivious stating "the English government in India with all its vices is a blessing of unspeakable magnitude to the population of Hindustan even the utmost abuse of European power is better than the most temperate exercise local power (Pitts, 2012)." And "to characterize any conduct against barbarous people as a violation of the law of nations only shows that he who speaks has never considered the subject (Pitts, 2012)."

It is this patriarchy, dynamic of difference, self-claimed universality, inclusion/exclusion from the realm of sovereignty that Anghie is challenging, pointing out that it still exists, and in this he isn't alone even the older generations of enlightenment thinkers shared that belief, Jeremy Bentham wrote to the Spanish parliament in the 1820s stating that if they insisted to continue their domination over their new world possessions, in vein would continue your claim to the title of liberals (Pitts, 2012), Sartre, albeit a little later emphasized that the problem of Algerians isn't that they are miserable (which they are) but its that they are colonized, and even if they were happy they would still fight us, they cant ever be happy he adds (Sartre, 2001). There is no one that says it better than Diderot who put his criticism in the mouth of a fictional Tahitian leader: "**leave us to our ways he said they are wiser and more decent than yours we have no wish to exchange what you call our ignorance for your useless knowledge everything that we need and is good for us we already possess go back to your country to agitate and torment yourselves as much as you like do not fill our heads with your false needs and your illusory virtues (Pitts, 2012)**."

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