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LEARNING RESOURCES REVIEWS

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Edited by Ben Waters

The battle for international law: South-North perspectives on the decolonization era, edited by Jochen von Bernstorff and Philipp Dann, Oxford, Oxford University Press, 2019, 496 pp., £95 (hardback), ISBN 978-0-19-884963-6

The Battle for International Law is a collection of essays that focus on how the decolonisation movement in the period 1950–1970 challenged and shaped the existing international legal order. The editors focus on how this battle transformed "the era situated between the Bandung Conference and the adoption of the [New International Economic Order (NIEO)]" (p. 31). The editors are clear about the outcome: "While third world scholars and politicians succeeded in discrediting and delegitimizing the most apparent structures enabling classic colonial rule, the third world on balance clearly lost the battle for a new substantially reformed international law" (p. 31). *The Battle for International Law* comprises 19 chapters, with an introduction by the editors and an epilogue by Martti Koskenniemi. The first part, "Sites of Battle" (split between "Concepts" and "Institutions") focuses on specific areas of international law over which the battles took place. The second, "Individual Protagonists and Regional Perspectives" (also in two parts) looks at the role of individual academics and the perspectives of certain geographical regions. While this appears to give the book a logical structure, the volume is more a collection of essays on a diverse array of topics related to the period. The value of the book is not so much that it introduces new ways of thinking about this period, but in the way it brings together these various perspectives under a common framework.

Some authors question the value of the "battle" metaphor (Koskenniemi resists its "military tone"). Viewing the period as one of battles may cause us to focus on who are the winners and losers, rather than the processes that shaped those outcomes. Pahuja and Saunders mark the period as one of "encounters between rival practices of world-making" (p. 141). The term "battle" may be apt as it reminds us of the stakes involved, and the intensity of the struggles. These battles were not about diverging interpretations of legal texts, but about the very structure of the global economy, and would have an impact on the lives of millions in the Global South. The chapters reveal a history that is more nuanced than the battle metaphor suggests. Fiti Sinclair discusses how "the battle over international law in the UN during the period of decolonization was profoundly creative and generative" (p. 258). Von Bernstorff, on the battle for recognition of wars of national liberation, shows how the "victory" involved use of the "newly appropriated language of the colonizer" (p. 70). Eslava, discussing the issues of dependency shows how "the battle for a different international law is still alive" (p. 100) What emerges from the book, then, is a story not of who won, but of the way the battles were fought, on which terrain, and especially how law was used as a weapon. For instance, it shows how the framing of "technical/legal" arguments and political arguments was itself a political choice. Pahuja and Saunders'

chapter on the battle over transnational corporations in international law shows how questions regarding the effects of corporate activity "came gradually to be redescribed as apolitical questions, and the difficulties came slowly to be understood as questions of technique" (p. 172). Dann, discussing the World Bank, shows how political neutrality, technicality and objective expertise were politically constructed (p. 289). *The Battle for International Law* shows how scholarship from outside the West was co-opted by Western liberal academics, and how Third World scholars also had to use the language of (eurocentric) international law to have influence in international institutions. Özsu, in a brilliant chapter on the work of Mohammed Bedjaoui, concludes "third-world jurists were responsible for much of international law's evolution in the latter half of the twentieth century" (p. 356).

Learning resource

Teaching international law often focuses on the texts of treaties, judgments, or the output of international organisations. Eslava describes international law as "a technical field of expertise, driven by positive norms and impersonal and apolitical interventions" (Luis Eslava, "The Teaching of (another) International Law: Critical Realism and the Question of Agency and Structure" (2020) 54 The Law Teacher 368, 379) More recently, there has been a trend to include more critical approaches to international law, including Third World Approaches to International Law (TWAIL), Marxist approaches, feminist approaches, indigenous studies, political economy, postcolonialism and decolonialism. It identifies and challenges structural biases and legacies of colonialism and how they are reproduced.

When designing educational curricula, the teacher of international law may think about how to include these critical approaches. Part of teaching international law involves introducing students to a vocabulary and set of practices, yet this should also include debate about how this practice may contribute to establishing unjust structures. Some students choose to study international law because they see it as a way to improve society – upholding human rights, preventing armed conflict, or managing global trade. An international law curriculum should allow those students to reflect upon how international law can also create instability, deepen inequality, or reinforce injustices. One way to do this is to study colonial history and how the "battles" for international law shaped international law today.

Critical scholarship is sometimes presented as an addendum to the main canonical international law texts. International law textbooks and syllabi often include critical scholarship as part of a discussion of the history and theory of international law, but there are fewer references found in discussions of international law's foundational topics (e.g. sources, subjects) or some substantive fields of law (international criminal law, law of the sea). *The Battle for International Law* can be used to teach international law by integrating this history, theory and criticism at each stage. For example, one may teach the sources of international law by presenting Article 38 of the Statute of the International Court of Justice, and giving examples of treaties and customary international law. *The Battle for International Law* helps highlight how even this apparently neutral concept of sources was a site of battle. Sornarajah shows how Western lawyers could dismiss the doctrine of permanent sovereignty over natural resources as *lex ferenda* in UN General Assembly resolutions. Yet Western states were quick to ground their arguments on principles of law from European legal systems, such as dealing with

the doctrine on acquired rights (Craven). *The Battle for International Law* can thus be used as a way of linking critical theories to the "canon" – they are not presented as afterthoughts or issues for further reflection, but show how the canon itself was constructed.

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