International Law and Eurocentricity

Prakash Sinha, Surya. *Legal Polycentricity and International Law.*
Carolina Academic Press, 1996. N'zatioula Grovogui, Siba.
*Sovereigns, Quasi Sovereigns and Africans: Race and Self-
Determination in International Law.* Minnesota: University of
Minnesota Press, 1996

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Introduction

The two books under review here fall within a broad research agenda of anti-colonial
international law scholarship.[1] They focus in particular on the question of inter-
national law and Eurocentricity, albeit from two rather different perspectives. *Legal*

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would like to thank Celestine Nyamu, Antony Anghie, Balakrishnan Rajagopal, David Kennedy and
Nathaniel Berman for their insightful comments on various drafts of this review.

[1] Several themes constantly recur in anti-colonial international legal scholarship. Five examples may be
cited. The first set of themes relates to the revision of international law by decolonized countries with the
aim of ending colonialism, the arms race, discrimination on the basis of race, intervention from powerful
countries, as well as arguing for a restructuring of the unequal economic relations between developed
and developing countries through efforts such as the New International Economic Order. Second, we find
analyses of the power and structural relationships that are embedded within and represented in
international law, especially within the colonial and neo-colonial imperial and economic relationships
between the former European colonial powers and the colonies as well as the unequal impact of
globalization in the post Cold War period on women, various social classes and ethnic and cultural
groups. A third theme examines the cultural articulations of the history of international law along the
European-non-European axis, to which new work now traces the origins of international law. This new
line of research explores the ways in which the encounter between European and non-European
countries contributed to the formulation of basic doctrines and principles of international law, thereby
revising the view that international law arose exclusively within the practice of European states. Fourth,
anti-colonial scholarship on international law has focused on the culturally constructive character of
international law in various regimes, such as those dealing with minorities and the rights of subordinate
groups within multinational societies. This culturally constitutive character that was epitomized by the
colonial encounter has parallels in post-colonial societies. Fifth, there has recently been a renewed
interest in closely studying and exploring the work of the first generation of Asian and African scholars of
international law.

Polycentricity seeks to validate two main arguments: first, the historical coexistence of civilizational plurality, which goes to displace the universality or 'single-value' approach to international law and which establishes in its place 'an acceptance of moral pluralism' in international society;[2] second, notwithstanding its 'parochial origin and growth in Europe',[3] the author argues, 'the genius of international law [is that] ... it has become universal and it governs states of all civilisations, European and non-European'.[4] These two arguments seem to be in contradiction: the first goes to disprove the universality of an international law whose values represent a single value approach (Eurocentric) to international society, while the second argues that Eurocentricity notwithstanding, international law has become universal. *Legal Polycentricity* is a five-chapter polemic aimed at reconciling this contradiction.

By contrast, *Sovereigns, Quasi Sovereigns and Africans*[5] explores two principal ways in which international law bears the imprint of the hierarchical nature of European-

[2] S. Prakash Sinha, *Legal Polycentricity and International Law* (1996), at 1 [hereinafter *Legal Polycentricity*]. This proposition derives from work in social science research, especially in anthropology. For example, Sinha uses the notion of plural legal orders occupying the same social field in rejecting legal centricism and endorsing radical relativism (*ibid*, at 6–9). S. Falk Moore, a leading anthropologist, quoted by Sinha, has extensively elaborated on the notion of social fields to illustrate the interaction of formal and non-formal sources of norms that govern members of a community. See Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', 7 *Law and Society Review* (1973) 719. The application of the concept of social fields to the study of international law is therefore an extension to what Sinha considers an analogous situation. This novel application of what may be a useful concept in other disciplines to the study of international law helps to camouflage the structural inequalities between different peoples within international society and the manner in which racial categorization undergirded the imposition of colonial rule with the endorsement of international legal norms and jurists. In addition, the liberal presumption underlying Sinha's adoption of the notion of social fields, to the effect that all races or civilizations are naturally equal and need to be given the same equal rights within the existing status quo, similarly obscures power realities in as far as it fails to even attempt to appreciate the inherent positions of hierarchy represented by the various civilizational orders that he examines.

[3] *Ibid*, at 15.

[4] *Ibid*.

[5] S. N'Zatioula Grovogul, *Sovereigns, Quasi-Sovereigns and Africans* (1996) [hereinafter *Sovereigns*]. The title of this book apparently derives from the hierarchical proposition advanced by a major thesis of the book: sovereignty belongs to European nations, quasi-sovereignty to European trading companies, while Africans were just that, *Africans*, since they were incapable of becoming bearers of sovereignty. The grant of authority to the German South West African Company, an agent of the German Crown authorized to 'acquire territories and the right to engage in trade and administer and assume governmental and legislative powers over the inhabitants of such territories', by the German government is what amounts to quasi-sovereign authority (*ibid*, at 68–69). In addition, *Sovereigns, Quasi-Sovereigns and Africans* refers to the establishment of the International Commission of the Congo (ICC), as a '*state unto itself*' (*ibid*, at 85). The ICC was established by European powers at the Berlin conference to 'promote colonial rule by juridical means ... by extending the customary principle of freedom of navigation and trade in Africa to all imperialist powers, including the United States and Turkey which had no Sub-Saharan African possession' (*ibid*, at 84). Grovogul sums up this argument thus, 'European publicists and practitioners construed sovereignty to imply inter alia the bearer of full freedoms and liberties, but they attributed this status solely to Christians/Europeans ... The dominant European position was that non-Europeans were primitives or savages who, although incorporated into the international legal order, were not yet ready for full subjectivity or sovereignty.' *Ibid*, at 49, 96.

non-European relationships over time: firstly within the discursive context of European thought and secondly in the context of European imperialism, colonialism and neo-colonialism. *Sovereigns, Quasi Sovereigns and Africans* is a probing analysis of the universalistic claims of international law through an examination of the 'structures of the discourses' of both international law and politics in the context of Namibian decolonization,[6] while *Legal Polycentricity* examines the presence of non-European legal orders alongside the Eurocentric international law.[7]

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[6] *Ibid*, at 23.

[7] Sinha has an impressive portfolio of work on Afro-Asian perspectives of international law. He quotes no less than eight of his articles and books on this topic written between the period 1967 and 1993 and published not only in international law journals and reviews but also in journals in other disciplines in the United States, Europe and Asia. For a sampling of Afro-Asian anti-colonial international law scholarship, see F.E. Snyder and S. Sathirathai (eds.), *Third World Attitudes toward International Law: An Introduction* (1987). Like Sinha and Afro-Asian scholars in the post-decolonization period, in the inter-war period Chilean international jurist Aljejandro Alvarez argued that there was a separate American international law shared and observed between South American countries and in their relations with other American states and European states. See Alvarez, 'International Life and International Law in America', 74 *Bulletin of the Pan American Union* (1940) 232. Manoel Alvaro de Souza Sa Vianna, a Brazilian international jurist, on the other hand contended that a group of problems and situations such as those common to Latin American countries was insufficient to constitute the basis of an international law. In Sa Vianna's view, international law was constituted not by commonality of conditions between countries, but rather by the nature of the universal principles which underpin international society. M. Alvaro de S. Sa Vianna, *De la Non-Existence du droit International Americain*, (1912). While the debate on the universality of international law took place among Latin American jurists beginning at the end of the last century, for Asian and African scholars the debate took off after decolonization.

In the inter-war period, Soviet approaches to international law challenged the bourgeois underpinnings of international law. Soviet approaches are principally predicated on a contrasting ideological basis to bourgeois or capitalist law, namely, socialism. G.I. Tunkin, one of the leading Soviet international legal jurists, observed that one of the principles of Soviet internationalism, the international law governing relations between socialist states, was that of 'proletarian internationalism, which signified the fraternal friendship, close co-operation, mutual assistance of the working classes of various countries in the struggle for their liberation'. According to Tunkin, this principle (of proletarian internationalism) emerged as the principle of the workers' movement when the development of capitalism and of the workers' movement itself attained a sufficiently high level. 'The internationalization of the domination of capital, the intensification of ties among the workers of individual countries, the growth of the consciousness of the unity of purpose and the need for unified efforts of the proletariat of various nations in the struggle for their liberation and for the creation of a new society not knowing exploitation — these are the basic reasons for the emergence of the principle of proletarian internationalism.' See G.I. Tunkin, *A Theory of International Law* (1974), at 4. It is noteworthy that notwithstanding its critique of liberal internationalism which was predicated on universal models, Soviet internationalism was based on the idea that the proletariat of the Soviet Union and the West would liberate those of the rest of the world. Hence, Soviet internationalism, just like liberalism, upon which modern international law is predicated, posits a 'universal system'. For a critique of the failure of Soviet approaches to ground their approach to international law on Marxism, see B. S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (1993).

1 Anti-Colonial Reconstructions of International Legal History

In *Sovereigns, Quasi Sovereigns and Africans,* Grovogui demonstrates how 'western notions of self and sovereignty have been grounded in claims of superiority, a higher knowledge of civil institutions, and a mission to elevate the other'.[8] South West Africa, present-day Namibia, provides the case study for this well-researched, well-written and well-argued book. Initially a PhD thesis, *Sovereigns, Quasi Sovereigns and Africans* explores the manner in which international law, its structures and institutions express European 'philosophic assumptions' that deny, erase or suppress 'non-European subjectivity'.[9] For this reason, *Sovereigns, Quasi Sovereigns and Africans* represents a strong and rare form of anti-colonial international legal scholarship.

I identify this form of anti-colonial international legal scholarship as *strong* because of the centrality its analysis places on the claims and role of economic, political, social and cultural superiority/inferiority in the historical relationship of colonized and colonizing countries in the past and the present. The failure or lack of engagement with the 'coercive realities of colonial history and the current neo-colonial era'[10] is 'conducive to the preservation and continued development of a distorted "world view", since it allows for the historical erasure of imperial politics and, additionally, represses the record of contemporary forms of western power over the non-West'.[11]

This *strong* form of international law scholarship self-identifies with group solidarity among less powerful countries. It expresses their desire for self-determination and autonomy from all forms of external or neo-colonial controls. In other words, as *Sovereigns, Quasi-Sovereigns and Africans* illustrates, decolonization did not imply complete self-determination of the formerly colonized countries, in part because the process of decolonization was subject to a regime of international law complicit in the subjugation of non-European people.[12]

For its part, *Legal Polycentricity* continues a *weak* tradition of Afro-Asian post-decolonization international legal anti-colonial scholarship, but in a new form. A major research theme that unites this diverse anti-colonial intellectual tradition is its primary focus on arguing about the limits within which the newly independent nations of Asia and Africa would embrace an international law that was Eurocentric in its geographic origin,[13] Christian in its religious basis, imperial in its political

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[8]   *Sovereigns,* at x (Preface).

[9]   Ibid.

[10]   B. Moore-Gilbert, *Post Colonial Theory, Contexts, Practices* (1997), at 11.

[11]   Slater, 'Contesting Occidental Visions of the Global: The Geopolitics of Theory and North-South Relations', *Mass Alla Del Derecho-Beyond Law, Stories of Law and Social Change from Latin America and Around the World,* no. 10, at 99.

[12]   One of the central claims discussed by Grovogui is that international law is 'the legal system that engendered colonialism', *Sovereigns,* at 3.

[13]   Mohammed Bedjaoui, for example, notes that '[b]efore the First World War there was an "exclusive club" of States which created what has been called a "European international law" or a "European public law"', which broadly speaking, governed relations not only among members of the 'club' but also between them and the rest of the world. If the scope of this law, which was geographically specific, had a

objectives and mercantilist in its material underpinnings.[14] A vague but general consensus that had emerged in this tradition by the early 1970s held that these newly independent countries would only accept those parts of international law that were not inconsistent with their independence.[15]

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universal character, it had nevertheless been conceived simply for the use and benefit of its founders, the states that were called 'civilized'. Bedjaoui, 'General Introduction', in M. Bedjaoui, *International Law: Achievements and Prospects* (1991), at 5. Some recent work on the history of international law has suggested a more nuanced thinking about the European origins of international law. For example, the strict binary opposition between European and non-European identities has now been problematized as not only varied and fragmented, but also as having intermingled and interacted in the course of the colonial encounter. In other words, the received history of international law to the effect that international law arose exclusively within the West has been revised in recent work that seeks to show how the history of the non-West was central to the construction of important doctrines of international law such as sovereignty. In this new work, the non-West is no longer represented as being outside the history of knowledge and the West as the sole and exclusive source of contemporary knowledge including international law. Antony Anghie's definitive study, 'Creating the Nation State: Colonialism and the Making of International Law', SJD Thesis, Harvard University, 1995, for example argues that the perceptions of non-Western people among jurists of international law were central to the creation of international law as we know it today. This theme is discussed further later in this essay. According to Prakash, 'Orientalism Now', 34 *History and Theory* (1995), the fundamental insight that traces 'the domination of the Other into the very constitution of the West ... [is] a deep fissure on the operation of Western hegemony. There, the West appeared both to reach its limits and to construct its dominance. For if the West represented itself as autonomous and universal in the domination of the Other, then the encounter with the "native" was the point of both the limit and the fabrication of such a representation.'

[14] Bedjaoui, *supra* note 13, at 6.

[15] Scholars in this tradition have sought an appropriate balance between realizing independence from unequal relationships with former colonial countries and the post-independence governments, on the one hand, and 'the responsibilities' of post-colonial states under international law which tend to compromise their independence, on the other hand. Consequently, a group of African international legal experts, meeting in 1967, observed that automatic succession of treaties entered into by colonial governments, as required under the rules of treaty succession in customary international law, needed modification to bring them into conformity with the aspirations of newly independent African countries. These experts noted that in deciding which international treaties the newly independent African countries would choose to take over, they had to 'be aware of their responsibility to the international community [but] ... should strive to uphold the rule of law and the preservation of the international legal order'; see E.E. Seaton and S.T. Maliti, *Tanzania Treaty Practice* (1973), at 56. Similarly Mohammed Bedjaoui wonders how newly independent African countries could at once attain full independence from their repressive relationships with their former colonizing power, without simultaneously reordering the international legal, economic and political order. Bedjaoui observes that one of the tasks of international law is that of consolidating rather than transforming situations. Writing at the end of the 1970s, Bedjaoui is sceptical of the possibilities of international law acting as an instrument to *transform* international society and as such to usher in a New International Economic Order. His scepticism derives from the view that international law could not easily assume a new task (of transforming international society) since it is 'a law which hitherto has been confined to protecting a type of international relations not yet purged of inequality and imperialism'. In M. Bedjaoui, *Towards A New International Economic Order* (1979), at 110.

The *weak* form of anti-colonial scholarship is basically integrationist: meaning that it is largely complimentary of the liberatory claims of principles such as self-determination as uncompromising tenets of world peace and indicators of the rejection of the colonial experience and specifically as an expression of the value these principles uphold against the unacceptable repression of non-European humanity under colonialism, slavery and other forms of discrimination and repression of the non-European personality. This *weak* form of anti-colonial scholarship also uncritically endorses the United Nations agenda in areas such as human rights and the right to development as having potential and being of continuing benefit to the formerly colonized countries. The *weak* strand can only be understood alongside the *strong* variant, which would regard the positions of the *weak* form not only as bordering on apology for their uncritical reflection of the promises of international law in the post-decolonization era, but also for repressing the record of post-colonial forms of Western and non-Western power over the non-West and 'Third World' parts of the West.[16]

Legal Polycentricity falls in this general tradition in so far as it grapples with the extent to which it is (not) possible to assimilate different civilizational experiences into a single international law whose geographic origin is European and whose religious basis is Christian.[17] Unlike *Sovereigns, Quasi-Sovereigns and Africans, Legal Polycentricity* does not focus on the political (imperial) and material capitalist underpinnings of international law as posing any limitation to its acceptance by formerly colonized countries. A major theme explored in the immediate post-decolonization period within the *weak* strain of Afro-Asian international legal scholarship was that of the existence of trade, commercial and diplomatic links between pre-colonial African and Asian kingdoms and European societies prior to colonial conquest late in the eighteenth and early nineteenth centuries. This evidence was mobilized to argue that

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[16] F. Fanon, *The Wretched of the Earth* (trans. C. Harrington, 1963), esp. at 119–199. This book illustrates the various ways in which African elites in the post-colonial period undermined the political and economic goals of their countries, thereby sacrificing important national goals for selfish gain in alliance with foreign capital and governments. See also *idem, Toward the African Revolution: Political Essays,* (trans. H. Chevalier, 1967) 191 *et seq.*

[17] E.g., T. O. Elias, *Africa and the Development of International Law* (1972). See especially the first part of chapter 1 of his book entitled 'Ancient and Pre-medieval Africa'. This *weak* form of anti-colonial scholarship is more concerned with the spiritual rehabilitation of the African (from racial doctrines propounded by European imperialists regarding the inferiority of Africans) rather than the structural adjustment of some of her/his circumstances. So, e.g., scholars in this tradition, like T.O. Elias, go to great lengths to demonstrate that ancient African Kingdoms participated on a basis of equality with European states and even exchanged diplomats with them. This evidence is marshalled in support of the proposition that Africa is not as backward and uncivilized as the texts of international law suggest. In addition, Elias uses this evidence in support of the argument that ancient African states participated in the formation of customary international law, contrary to the telling of contemporary texts of international law published in the West. *Ibid.* at 3–23.

African and Asian kingdoms and societies participated in the formulation of customary International law and were not therefore newcomers to it.[18]

Legal Polycentricity does not however mobilize similar evidence to make its case for the legitimacy of international law. Rather, it undertakes a detailed exploration of the different non-European *civilizational* experiences to prove the fact of their existence, much like Eurocentric *civilizational* experiences. Sinha maintains that examining non-European *civilizational* experiences is more fruitful than reverting to 'the dead horse of questioning the validity of international law owing to the inclusion of non-European states in today's society of states'.[19] This position contrasts with Sinha's proposition in his 1967 book, *New Nations and the Law of Nations*, where he argued that the then newly independent Afro-Asian states aimed at, first, 'preserving the rules of international law which help them exist as members of the society of states and are not inconsistent with their own interests'; second, 'the removal from the existing body of international law those rules which impair or prevent the realisation of their interests'; and third 'the creation of new rules which would reap the maximum benefits from the international system'.[20] These three tenets characterize positions adopted within the *weak* tradition of Afro-Asian international legal scholarship especially in the 1960s and 1970s.

However, *Legal Polycentricity* shifts its attention from these traditional concerns of the weak form of anti-colonial scholarship to exploring how the 'single catalogue approach', or Western/Eurocentric approach to international law has prevented international law from 'being sufficiently responsive to the needs of this [*civilizational*] diversity'.[21] A significant point illustrating Sinha's departure from his earlier position is his caution in *Legal Polycentricity* that the lack of a genuinely inter-civilizational international law is not a reason 'for scrapping the international human rights program, but for improving it'.[22] By contrast, a major focus of the *weak* strain of anti-colonial scholarship was on the unfair nature of international law with respect to

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[18]   By contrast, in the *strong* form of anti-colonial international legal scholarship, the origins of international law are traced to the rise of industrial capitalism in Europe. See Chimni, *supra* note 7 (also arguing in favour of a Marxist approach to international law); S.B.O. Gutto, *Human and Peoples' Rights for the Oppressed: Critical Essays on the Theory and Practice of Human Rights from a Sociology of Law Perspective* (1993); Umozurike U.O., *International Law and Colonialism in Africa,* (1979).

[19]   *Legal Polycentricity,* at 16.

[20]   Ibid.

[21]   Ibid, at 17. Note that the earlier position referred to here is in S. Prakash Sinha, *New Nations and the Law of Nations* (1967), as described above.

[22]   Ibid. Makau Wa Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties', 35 *Virg. J.Int'l L* (1995) 339, argues against the Eurocentric proposition that African societies did not have notions of human rights and proposes that the contemporary international human rights regime can only be *truly* universal from the multicultural elaboration of norms. See also Makau Wa Mutua, 'Limitations on Religious Rights: Problematizing Religious Freedom in the African Context', in J.D. Van de Vyver Jr. and J. Witte (eds.), *Religious Human Rights in Global Perspective* (1996), at 417–440, where he argues that the human rights 'movement should encourage the cross breeding of cultures and tolerance for diversity. It should also frown upon homogenisation and the imposition of uniformity' (at 439). Finally, Makau Wa Mutua, 'The Ideology of Human Rights', 36 *Virg. J. Int'l L* (1996) argues that in the reconstruction of a multicultural regime of international human rights, 'the

newly independent countries, including those still under formal colonial rule, and the need to *remove* those parts of international law, to use Sinha's 1967 phraseology, rather than merely suggesting that they need to be *improved*, to use Sinha's new phraseology in *Legal Polycentricity*. For these reasons, *Legal Polycentricity* is a new variation of the *weak* form of anti-colonial international legal scholarship of the 1970s. One major difference between the *weak* form of anti-colonial scholarship of the 1970s and that of the 1990s is that the latter lacks the critical strength, such as it was, of the 1970s version, limited though it may have been. In *Legal Polycentricity*, the extensive investigation and positive affirmation of non-Western civilizational experiences may therefore be said to serve the purpose of masking the structural character of international law in favour of those countries and interests around the world that enjoy economic, military and political superiority.[23]

The concern with human rights, though part of the agenda within the *weak* strain during this earlier period, also symbolizes the migration from a concern with the more significant questions of self-determination, especially in the post-Cold-War period. In other words, the contested post-colonial settlements endorsed after the Second World War are, in *Legal Polycentricity*, taken for granted. The concern for human rights, though significant, reflects a shift from a concern with the problematic character of international relations between countries with different levels of economic, political and social endowment as well as historically unequal relationships to a concern with the local conditions *within* each country, resulting in a narrowing of the larger *international* perspective within which the *local* or *national* can and ought to be seen.[24]

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imagination of norms and political models whose experimental purpose is the reduction — if not the elimination — of conditions that foster human indignity, violence, poverty and powerlessness ought to be the overriding objective of actors in this discourse' (at 657).

[23] A major shortcoming of the positive light that Sinha chooses to cast on what he calls civilizational pluralism or cultural diversity is that it does not truly challenge existing practices based on European superiority. An alternative analysis to that offered by Sinha would instead address the transforming of 'existing categories of domination into an altogether different, positive social formation'. Gotanda, 'A Critique of "Our Constitution Is Color-blind"', 44 *Stan. L. Rev.* (1991), at 62. For this reason, I associate myself with critical race scholarship in the United States in so far as it embraces the idea that mainstream liberal and conservative legal scholarship are held together by excluding 'radical or fundamental challenges to the status quo institutional practices of American society by treating the exercise of racial power as rare and aberrational rather than as systematic and ingrained'. K. Krenshaw, N. Gotanda, G. Peller and K. Thomas (eds.), *Introduction*, in *Critical Race Theory: The Key Writings that Formed the Movement* (1996), at xix. Similarly, the weak tradition of anti-colonial international law scholarship fails to challenge the status quo, Eurocentric international legal regime by attempting to rehabilitate rather than engage it.

[24] There are many ways in which the narrowing of the range of the international has taken place in many *weak* forms of anti-colonial and liberal international law scholarship. These include: the emphatic repetition of the importance of interdependence and international cooperation, which serves as a camouflage for differences of interest and capacity between countries; the invocation of images of chaos as a reflection of nationalist separatism that is dangerous for world peace; the necessity of international economic openness for development across the world; the importance of international law and

To the extent that *Legal Polycentricity* departs from a tradition of Afro-Asian scholarship which argues that customary international law was in part formed by Afro-Asian contributions, it also departs from the project of redefining and challenging categories such as backward, uncivilized and barbaric which were assigned to non-European communities by early European international law scholars.[25] A major aim of rewriting the history of international law in the *weak* strain of anti-colonial scholarship, especially in the 1960s and 1970s, was to correct the historical record: to rescue non-Europeans from their assigned place in the history of international law as backward, barbaric and uncivilized and hence incapable of participating in the international legal order.[26] For example, some African scholars used historical evidence of the existence of ancient African Kingdoms or political units equivalent to, if not superior to, the 'modern' and 'civilized' Western states to disprove African inferiority on account of a lack of political units akin to those found in Western Europe.[27]

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institutions in enhancing the ability of nation-states to communicate and cooperate in the process of redefining their interests and their strategies. In short, the *weak* form of anti-colonial scholarship, unlike the *strong* variant, fails to critique the injustices and inequalities of the present order in any fundamental way.

[25] Hegel among other Enlightenment (European) scholars reinforced the exclusion of Africa from the universal future of conscious humanity embodied in Judeo-Christian historicity. See Jewsiewicki and Mudimbe, 'Africans' Memories and Contemporary History of Africa', 31 *History and Theory* (1992) 1. International scholars in the nineteenth century also adopted the view that Africa had no history. These scholars emphasized that Africa was different from Judeo-Christian Europe because of general cultural inferiority and political disorganization which barred Africa from membership in the family of nations. As a consequence, John Westlake, one of the international lawyers at the time, argued that these African states lacked the power to sign legal treaties to transfer their sovereignty to a European power. P.D. Curtin (ed.), *Imperialism* (1971). See also Serequeberhan, 'The Critique of Eurocentricism and the Practice of African Philosophy', in E. Chukwudi Eze (ed.), *Post Colonial African Philosophy — A Critical Reader* (1997), 141–161.

[26] Makau, 'The Limitations on Religious Rights', *supra* note 23, notes that like Christianity, Islam is based on 'the belief in the racial superiority of the proselytizer; the other is quite often depicted as inferior. Arab muslims, for example, have historically viewed Black Africans as racially inferior and deserving of disrespect; Islamised Africans are regarded as having taken an important step towards over-coming that inferiority.' Makau adds that it is this attitude among Arab Muslims that justified the capture and enslavement of 'millions of Africans' (*ibid*, at 423).

[27] E.g. Elias, *supra* note 17, at 2–23. Two leading anthropological publications that support this position but are not cited by Elias are, C. Anta Diop, *The African Origin of Civilization: Myth or Reality* (1974); C. Anta Diop, M. De Jager and H.J. Salenson, *Civilization or Barbarism: An Authentic Anthropology* (1991). Nigerian historian A.E. Afigbo, *The Poverty of African Historiography* (1977) regrets the rewriting of African history to adorn it with the glory of past greatness. The author refers to this form of representation of African glory (successful Kingdoms and states) as *merrie Africa*, or problem-free Africa. He observes that this historiography served as an important justification of repressive post-colonial statehood. This African historiography of *merrie Africa* also approximates to that adopted by anti-slavery campaigners and Christian humanitarians in the United Kingdom in the seventeenth and eighteenth centuries. These campaigners sought to challenge the eighteenth-century biological thought, which justified slavery of inferior races like *negros*, by portraying negroes as being as human as the Europeans and as having their

2 Limitations of Anti-Colonial Reconstructions

This reinterpretation of the writings of European international law by African scholars was in part buoyed and promoted by nationalist thought and scholarship in the hopeful moment of decolonization after the Second World War. However, this scholarship can only be regarded with ambivalence at best. From one perspective, this scholarship contributed immensely to questioning the 'objectivity' or fairness attributed to international law for playing a purportedly ameliorating role to colonial governance, a theme that *Sovereigns, Quasi-Sovereigns and Africans* explores with virtuosity. This exposition was undoubtedly significant in its message of emancipation and liberation.

Yet, from another perspective this scholarship uncritically embraces international law in ways which *Sovereigns, Quasi Sovereigns and Africans* does not. Instead, Grovogui develops an alternative critique of international law to that put forward by *Legal Polycentricity* in at least the following ways:

(i) *Legal Polycentricity* fails to examine the continuity of structures of colonialism in countries that were ostensibly politically independent not merely because international law was Eurocentric but because it is 'built upon past philosophical foundations including political, legal, and cultural assimilation of the colonised into the structures of the global system';[28]

(ii) *Legal Polycentricity* pays inadequate or no attention to questions of power, hierarchy and ideology in endorsing the notion of civilizational pluralism. It is oblivious to *the* hegemonic status of international law, in so far as it shies away from examining the structural and cultural basis upon which colonial relationships were (and are) constructed and construed. In effect, *Legal Polycentricity* may

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own culture and way of life. These campaigners were associated with the creation of the idea of a 'noble savage', an abstraction of European literary thought. According to Philip Curtin, the 'exotic hero was an ancient device of social criticism to describe the golden age — a time and place infinitely better than the real world, necessarily beyond the view of the audience, either in the past or in the future, or a far country'. P. Curtin, *The Image of Africa — British Ideas and Action, 1750–1850* (1964), 48–51. Even before the 'discoveries of new lands', some medieval European traditions, according to Curtin, laid great stress on the value of unadorned nature, apostolic poverty and a simplicity that was thought of as primitive. Yet, as Curtin reminds us, the image of the noble African or savage was not intended to suggest that Africans 'were better than Europeans, or that their culture, on balance, measured up to the achievements of Europe ... the attitude was ... patronizing' (*ibid,* at 49–50).

[28] *Sovereigns,* at 185. This argument is not advanced to excuse the repressive character of post-colonial leadership in a number of these countries. Authoritarianism cannot be simply seen as a continuation of colonial domination over local populations, but rather as arising within specific historical and local situations that helped sustain and maintain it. The Cold War is a good example of a historical process that maintained authoritarianism in many countries. See Shaw, 'Global Society and Global Responsibility: The Theoretical, Historical Limits of "International Society"', 21 *Millennium: Journal of International Studies,* 241.

be said to constitute an endorsement of 'the authoritative discourse of international relations and its assumptions ... [and] ... of the distortions and silences of Western discourses';[29]

(iii) *Legal Polycentricity* may be interpreted as participating in delegitimating an exploration of the manner in which distinctions between non-Europeans and Europeans were deployed in international legal discourse to legitimize the colonization of the former. By contrast, *Sovereigns, Quasi-Sovereigns and Africans* warns against delegitimation of 'critical third world perspectives [such as those identified in one and two above] ... as irrelevant ... or [as] ... seeking the destruction of the West'.[30] In fact, *Sovereigns, Quasi-Sovereigns and Africans* is an effort to address the 'metaphysical dissociation of post-colonial crisis from the deficiencies of decolonisation ... [which have] been sustained by a philosophical commitment to the status quo'.[31]

It is the critical evaluation of these philosophical commitments that sets *Sovereigns, Quasi-Sovereigns and Africans* quite apart from *Legal Polycentricity*. The former

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[29] *Sovereigns*, at 195.

[30] *Ibid*, at 200. A dominant theme in post Cold War international legal scholarship and within the peace and security studies academy and establishment in the United States has been the threat of ethnic warfare, authoritarian dictatorship, terrorism and the drug trade to northern industrial countries, especially the United States. For example, the current Director of the Central Intelligence Agency of the United States, Robert Gates, speaking at a conference hosted by the University of Oklahoma on 'Preparing America's Foreign Policy for the 21st Century', stated that in the post Cold War period, Americans 'need to realize that "the world is different, but it is not safe" because of ethnic religious and regional disputes'. Mr Gates warned that Americans should not become complacent since the economy was 'booming, unemployment is low and there is no superpower confrontation'. Mr Gates also referred to the control of remaining nuclear weapons in the former Soviet Union, the hostility of the governments of Iran and North Korea to the United States and the Colombian drug cartels as additional security threats. Consequently, Mr. Gates noted that 'the American intelligence community must prevail by continuing its unique analysis and clandestine collection capabilities that reside in no place else in government and take risks to get the information our nation's leaders need to protect American interests'. See *Daily Oklahoman*, 13 September 1991, at 1. The view of cultural incompatibility and hostility between Confucianism and Islam on the one hand, and liberal democratic ethos on the other hand, has been endorsed by S. Huntington, *The Clash of Civilizations and the Remaking of World Order* (1996). In an earlier book, Huntington endorsed the view that Confucianism and Islam had attributes that were compatible with liberal democracy. See S. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (1991). For a review of this contrast of perspectives, see Gershman, 'The Clash within Civilizations', 8 *Journal of Democracy* (1997) 165. For a review of some of the international law scholarship in this area see, Orford, 'The Uses of Sovereignty in the Imperial World Order', 6 *Australian Feminist Law Journal* (1996). The nature of the alleged source of threats to international peace and security in the post Cold War period is a reflection that mainstream international law has now widely accepted identity politics as a serious threat to international peace and security in much the same way that Communism was during the Cold War. Consequently, critical analysis of the simplistic association of social disorder, civic decay and war with ethnicity and race suggests that race and ethnicity are now regarded by powerful interests and countries as things to contain with a view to guarding against the elimination of structural and cultural inequality. See Giroux, 'Living Dangerously: Identity Politics and the New Cultural Racism: Towards a Critical Pedagogy of Representation', 7 *Cultural Survival* (1993), 2. See also F. Furedi, *The New Imperial Ideology of Imperialism: Renewing the Moral Imperative* (1994).

[31] *Sovereigns*, at 180.

examines several ways in which the idea of universality of international law is undermined by the 'politics and self-interest of hegemonic powers' and the 'dependence of its norms on western culture'.[32] The author does this in part by questioning the claims of universality and 'naturalness' assumed by international law. He analyses international law and order as an 'affirmation of western hegemony', in so far as its norms provide for the 'legal, political and ideological conditions of sovereignty and self-determination in the post-colonial era'.[33] For these reasons, *Sovereigns, Quasi-Sovereigns and Africans* represents a *strong* form of anti-colonial international legal scholarship.

There are two ways in which *Sovereigns, Quasi-Sovereigns and Africans* sets out to demonstrate international law's hegemony: first, by exploring 'its modes of operation (perceptions, philosophical interpretations, values) and second, by examining its functions (the reproduction of international order)'.[34]

At the level of international law's mode of operation as a hegemonic structure, *Sovereigns, Quasi-Sovereigns and Africans* proceeds from the view that 'European perceptions of the self and their metaphysical representations have been crucial to the structure of international law'.[35] It is for this reason that *Sovereigns, Quasi-Sovereigns and Africans* notes that international law has a fixation for a self based on the 'European ego as the sole locus of inter-communal relations'.[36] These representations of the European self, and the contrasting non-European other, form the basis of simultaneous exclusion and inclusion and are grounded on differences or similarities of religion, culture or race.

That the significance of the self and other is an arbitrary process of identity forms 'the basis of specific juridical norms and legal doctrines'[37] is the argument advanced in *Sovereigns, Quasi-Sovereigns and Africans*. Grovogui traces the emergence of the self-other process of identity as a political consensus among

> learned Europeans — initially the clergy, theologians, royal courts, and publicists ... through three discursive genres: ecclesiastical, enlightenment, and the colonial. Each genre of representation emerged during a specific historical phase: the middle ages for the ecclesiastical mode; the sixteenth century Reformation and its aftermath for the Enlightenment equivalent; and the nineteenth century new imperialism for the colonial version.[38]

In another important contribution to this scholarly inquiry, Antony Anghie, borrowing from Edward Said's methodology, has argued that the history and theory of international law in the nineteenth and early twentieth centuries is structured around a 'series of contrasting national identities, races, and languages'[39] with

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[32] *Ibid.* at 3.
[33] *Ibid.* at 16.
[34] *Ibid.* at 16.
[35] *Ibid.*
[36] *Ibid.* at 24.
[37] *Ibid.* at 65.
[38] *Ibid.* at 66.
[39] Said, 'Nationalism, Human Rights and Interpretation', in B. Johnson (ed.), *Freedom and Interpretation* (1992) 183.

European ones being at the apex. In other words, the elaborate 'set of distinctions between Europeans and Negroes, Europeans and Orientals, Europeans and Semitics, the history of which is pretty constant and unchanging from the early 1830's and 1840's to World War II ... covered unpleasant European practices against people of colour with a facade of appeals to greater civilizational levels attained by the White flag'.[40] Anghie observes that

> the imperial idea that cultural differences divided the European and non-European worlds is important to an understanding of the colonial project — the dispossession of the non-European world and the implementation of a civilizing mission of suppressing and transforming peoples perceived to be different, as 'other'. This dichotomy between the two worlds posed novel problems for European jurists who had to account for the colonial project in legal terms. Attempts to resolve these problems gave rise to many of international law's central doctrines, particularly [the] sovereignty doctrine.[41]

Sovereigns, Quasi-Sovereigns and Africans adds that this 'western culture' is 'endlessly in quest of material well-being and ... [its] reliance on violence to achieve political ends ... rights, property and political representation that derive from a distinction between political and juridical spheres that is non-existent in any other culture'.[42] *Sovereigns, Quasi-Sovereigns and Africans* argues that the European-non-European axis is characterized by a philosophical background that totalizes its cultural, political, economic and legal systems of knowledge as a basis for sustaining its hegemony.[43] Grovogui notes that competition for the control of non-Europeans and their wealth was a cause of intra-European rivalry. Observes Grovogui:

> The European struggle provided the discursive structures that delineated the objects of modern inter-communal relations. ... It also determined the doctrinal formulation and

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[40] *Ibid*, at 184.

[41] Anghie, 'Colonialism, Environmental Damage and the Nauru Case', 34 *Harv. Int'l L.J.* (1993) 447; idem, 'Francisco de Vitoria and the Colonial Origins of International Law', 5 *Social and Legal Studies* (1996) 321. In the latter article, Anghie argues that the discovery of the Indians by the Spaniards, presented special problems for international jurists like Vitoria. Consequently, Vitoria reconceptualized prevailing international legal doctrines, or invented new ones 'in order to deal with the novel problems of Indians. The essential point is that international law, such as it existed in Vitoria's time, did not precede and thereby effortlessly resolve the problem of Spanish Indian relations; rather international law was created by the encounter between the Spaniards and the Indians.' (*Ibid*, at 322). See also Anghie, *supra* note 13.

[42] *Sovereigns*, at 3.

[43] *Ibid*, at 8–9. Riles, 'Aspiration and Control: International Legal Rhetoric and the Essentialization of Culture', 106 *Harv. L. Rev.* (1993) 723, argues that the writings of nineteenth-century international legal scholars like the Reverend T.J. Lawrence 'participated in the creation of an essentialized and coherent European community defined in dichotomous opposition to non-European "savages". The portrait of European identity demanded the suppression of contradictions and differences in favour of a picture of unity and essential characteristics.' Riles also observes that '[i]t is not difficult to understand this conception of European identity as an argument for the authority of international law. In a world full of bonded cultural units of collective representations bordered by intelligible boundaries, a language such as international law that managed the chasm between such units held a privileged position.' (*Ibid*, at 736.) Similarly, Edward Said's, *Orientalism* (1979), has proposed that the Orient was constructed by the Occident 'as its contrasting image, idea, personality, experience', an image of otherness, while orientalism served as 'a western style for dominating, restructuring, and having authority over the Orient' (at 1–3).

eventually, judicial interpretations of these legal objects, which established the key principles of international law: communal sovereignty, freedom of trade, and guaranteed right to private property.[44]

Acknowledging that international law is not simply Eurocentric, since the colonial or imperial encounter between the Europeans and non-Europeans[45] resulted in cross-cultural 'borrowing', similarly suggests that non-European civilizational orders that came in contact with European imperial governance were also influenced and shaped by this encounter.[46] In other words — should we think of the representation of non-European identity as being homogeneous or as if it was shared and stable in the discourse of the Eurocentric and imperial international law?

Sovereigns, Quasi-Sovereigns and Africans does not ignore this implication of a shared and stable African identity in his analysis of the Namibian decolonization. To do so would be to ignore and disguise the deep fractures along class, economic, gender, ethnic and political lines within Namibian society as perhaps in any other society.[47] These alternative and multiple frames of identity are disguised by the homogenizing effect of the hegemonic character of international law scholarship as much as by nationalist coalition building and scholarship.[48]

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[44] *Sovereigns*, at 55.

[45] Grovogui observes that the 'rhetoric and ideologies that permeated post second world war discussions of Africans and non-Europeans had been at the core of western philosophic systems since the middle ages, and of international legal constructs since the protestant reformation' (*ibid*, at x (Preface)).

[46] Nathaniel Berman's work in this area has traced international law as a culturally constructive discipline and practice in its projection of intra-European otherness. For example, Berman explores ways in which international legal jurists in Europe proliferated doctrinal and institutional mechanisms (such as plebiscites and minority protection systems) to accommodate heterogeneous dimensions of international life following nationalist passions such as those 'unleashed by the collapse of central European empires', after the First World War. Berman, 'Modernism, Nationalism, and the Rhetoric of Reconstruction', 4 *Yale J. L. and Human* (1992) 363. Berman has also examined the relationship between intra-European and colonial aspects of international legal history in the context of Czechoslovakia and Ethiopia, see Berman, 'Beyond Colonialism and Nationalism? Ethiopia, Czechoslovakia and "Peaceful" Change', 65 *Nordic J. Int'l L.* (1996) 421.

[47] The realignment of colonial categories (e.g., the inversion of the European superiority/African inferiority axis discussed above) also had the simultaneous consequence of camouflaging the class differences and imperial alliances among the African people. Another critique of the European-non-European dichotomy has come from 'feminists and "halfies" — people whose national or cultural origin is mixed', see Abu-Lughod, 'Writing against Culture', in J. Fox (ed.), *Recapturing Anthropology* (1991) 137. Samir Amin has argued that 'ideological mobilization around ethnic and culturalist objectives, are the engine of impotent communalism, and shift the struggle [for democracy and rights] onto the ground of ethnic cleansing or religious totalitarianism'. Amin, *Monthly Review*, June 1996, at 10. Ngugi Wa Thiong'o, has argued that Eurocentric or universalist hegemony which constitutes the West as the only viable cultural centre for all peoples, could be decentred by an alternative perspective that places the centre among the proletariat and the peasantry. See Ngugi Wa Thiong'o, *Moving the Center: The Struggle for Cultural Freedoms* (1993).

[48] Nationalist and colonialist renditions of the history of countries that have emerged from formal colonial rule have been critiqued for deploying fixed European-non-European binaries which give legitimacy and stability to the hegemony of European identity over non-European identity. The important point to note here is that the critique is founded on the displacement of the heterogeneity represented by categories such as race, ethnicity, gender and class. This position is articulated in G. Prakash (ed.), *After Colonialism:*

While *Sovereigns, Quasi-Sovereigns and Africans* is sensitive to the heterogeneity of Namibian identities, *Legal Polycentricity* retains strict boundaries not only between the different civilizational orders, but also within each civilizational order that it discusses.[49] This homogenization has an important consequence, namely the failure *to acknowledge the participation of European administrators in shaping African or Asian (non-European) customary norms.*[50] Imperial rule over colonial territories resulted in the shaping of customary law as part of the colonial process. In other words, *Legal Polycentricity* overlooks the fact that the presumed African and Asian heritage and culture has/had been Europeanized and changed to coincide with the

Imperial Histories and Postcolonial Displacements (1994); *Idem*, 'Writing Post-Orientalist Histories of the Third World: Perspectives from Indian Historiography', 32 *Comparative Studies in Society and History* (1990) 383. A reply to this view, O'Hanlon and Washbrook, 'After Orientalism: Culture, Criticism, and Politics in the Third World', 34 *Comparative Studies in Society and History* (1992) 141. O'Hanlon and Washbrook argued that Marxist (historical writings) and deconstructionist paradigms (critical analysis) are inappropriate for writing history since they contradict each other and operate ambivalently. They therefore contend that history must be grounded in foundational themes. Prakash replied to this critique in 'Can the "Subaltern" Ride? A Reply to O'Hanlon and Washbrook', 34 *Comparative Studies in Society and History* (1992) 168.

[49] As a Kikuyu myself, I identify with Prakash's description of 'our way of life' in *Legal Polycentricity*. However, this rendition does not nearly approximate the contemporary day-to-day lives of the Kikuyu people or even the diversity of their political viewpoints or class status. The *mau mau* nationalist war against forced land alienation and political repression by the British colonial government and white settler farmers in Kenya (between about 1950 and 1960) was in part a civil war among different social and economic classes among the Kikuyu people. More importantly, Prakash does not acknowledge that the production of knowledge about communities such as the Kikuyu has been a very politicized undertaking. Prakash's reliance on Jomo Kenyatta's book, *Facing Mount Kenya* (1938), for me epitomizes just how seriously one needs to take Prakash's accounts of different civilizations. *Facing Mount Kenya* was written in large part as a nationalist reading of a people seeking their political independence. It was published as the preferred account, by the well-known anthropologist Malinowski, to a White man's (Louis Leaky) account of growing up and being circumcised as a Kikuyu. I do not of course subscribe to the view that there is any *real* or even *authentic* account of the Kikuyu people, which I believe not even Louis Leakey would have provided. Rather it is the context within which such accounts are written that seems to me to form an inevitable part of how they ought to be regarded and read. See Berman and Lonsdale, 'Louis Leakey's Mau Mau: A Study in the Politics of Knowledge', a paper presented at the annual meeting of the African Studies Association, Baltimore, Maryland, 1–4 November 1990.

[50] See, e.g., S. Falk Moore, *Social Facts and Fabrications* (1986); M. Chanock, *Law Custom and Social Order* (1985); E. Hobsbawn and T. Ranger (eds.), *The Invention of Tradition* (1983); M. Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (1985); L. Vail, *The Creation of Tribalism in Southern Africa* (1989). All of these authors explore how various African customary laws got 'formalized in the turbulent early colonial years, when the powers of chiefs and heads of households were threatened by the new freedoms opened up to women and young men through the enlargement of the labour and produce markets, the abolition of slave trade, and official restrictions on the political use of witchcraft operations. ... In rapidly changing times, the codification of customary law was a weapon of present social control rather than a summary of past history.' Lonsdale, 'African Pasts in Africa's Future', in B. Berman and J. Lonsdale, *Unhappy Valley: Conflict in Kenya and Africa, Book One: State and Class* (1992) 209.

goals of the colonial political economy. *Legal Polycentricity* therefore lacks a concept of power and this depoliticizes one of its central themes — that international law is Eurocentric. Eurocentricity is explored as a neutral concept stripped of its historical association with imperialism and colonization of non-European societies.

3 Anti-Colonial Reconstructions of Material and Economic Domination

As noted above, *Sovereigns, Quasi-Sovereigns and Africans* traces the Eurocentric imprint in international law against the backdrop of the European-non-European dichotomy. It traces this dichotomy to a whole range of European philosophy, social theory, academic writing, opinion, traveller reports, trader and missionary reports some of which date as far back as 'ecclesiastical interpretations of the universe' from the Middle Ages.[51] What ties these diverse sources together is their political consensus on the opposition between the self (European/Christian) as the legal subject of international law on the one hand, and the other (non-European) as the opposite or mirror image of the European subject.

The European-non-European framework, for example, manifested itself in the relationship between European 'Christian rights' within and outside Europe from the twelfth century. *Sovereigns, Quasi-Sovereigns and Africans* argues that it is the nature of these rights which in turn led to 'transformations within the church and ... struggle for political authority between temporal rulers and the papacy'.[52] It attributes extension of political authority over non-Christian people to an ecclesiastical consensus among European powers, which is dated to the period after 1492 with the discovery of the 'New World Infidels', European Jews, Africans and peoples indigenous to the Caribbean, as distinct from the 'Old World Infidels', the Chinese, Indians and Muslims.[53]

The Christian-non-Christian dichotomy provided an important interpretive framework for an authoritative interpretation of the denial and erasure of non-European subjectivity and humanity. Other than being non-European, *Sovereigns, Quasi-Sovereigns and Africans* traces the denial of non-European humanity and subjectivity to beliefs, attitudes, opinions and prejudices in European thought and history, such as the unequal endowment of non-Europeans with reason; their lack of, or different form of government and private property; their strange and backward culture and customs; and their lack of literacy.

These views laid the justification for the enslavement and consequent colonization of non-European societies, thereby providing a role for international law, in part, to purvey this Eurocentric justificatory regime. Eurocentricism as embedded in international law comprises the

[51]   *Sovereigns*, at 17.
[52]   *Ibid*, at 17.
[53]   *Ibid*, at 7–18.

> belief that the progress brought about ... in capitalist Europe is inherently superior and has a historical mission which must finally prevail in the world ... backward countries or nations have the prospect of development and progress, but only through the agency of, following the path of, and in so far as they do not interfere with the main European historical agents and their needs.[54]

After all, non-European races needed European 'guidance' 'to bring civilisation and light to a continent ... characterized as dark'.[55] The Christian and enlightenment mission of salvation was thereby transformed into one of colonial conquest.[56]

Sovereigns, Quasi-Sovereigns and Africans provides the example of the grant of quasi-sovereign authority over non-European people to 'private European agents, settlers, and commercial companies'[57] through juridical instruments by colonial powers, as an initial illustration of how the European-non-European framework formed the basis of juridical rules and norms of international law. *Sovereigns, Quasi-Sovereigns and Africans* examines the juridical rules and norms that emerged from the delegation of sovereignty by European powers to private European agents, settlers and commercial companies not only as a reflection of the European-non-European dichotomy, but also as a legal expression of the political domination and economic exploitation of non-Europeans.[58]

An example of the erasure of African subjectivity in the new juridical rules and norms is reflected in the assumption that 'Africans maintained an imperfect relation to their environment, including land and its natural resources'.[59] This view in turn justified the '*right*' of the colonizing powers to acquire African land since it was considered ownerless. In essence, 'positivists replaced the existing juridical idioms and rights with new ones, through metaphysical processes that entitled European claimants to political authority, land and resources'.[60]

The transformation of negative imagery of non-Europeans into juridical norms of international law is a development attributed to positivism which 'established total control over their African possessions ... [through a] ... new legal environment ... constructed around images provided by contractual principles and related doctrines'.[61] Positivism therefore contributed to the emergence of private property and contract as primary planks of colonial relations. However, as Grovogui notes, these 'contractual agreements resulted from unequal power relations and foreign idioms ... [and] imposed unilateral burdens on the indigenous populations'.[62]

[54] Larrain, 'Classical Political Economy and Marx on Colonialism and "Backward Nations"', 19 *World Development* (1991) 240.
[55] *Sovereigns*, at 68.
[56] *Ibid.*
[57] *Ibid.* at 68.
[58] *Ibid.* at 69–70.
[59] *Ibid.* at 73.
[60] *Ibid.*
[61] *Ibid.* at 74.
[62] *Ibid.* at 75.

Consequently, Grovogui is critical of making distinctions between the norms of international law and their 'given meaning' on the one hand, and the 'constitution of their operations: international politics', on the other hand.[63] Such a separation of norm and praxis denies the hierarchical, racist and imperial underpinnings of international law. In this view, international law cannot be regarded as a neutral normative regime whose otherwise efficient workings are compromised by opportunistic interests and forces external to it. *Sovereigns, Quasi-Sovereigns and Africans* therefore examines the hierarchical international legal order, the racist oppositions between Europeans and non-Europeans and European imperialism, not as anomalous policies inconsistent with international order, but rather as intrinsic parts of it.[64]

Sovereigns, Quasi-Sovereigns and Africans, examines the arrangements reached by an overwhelming majority of European countries in the 1884–1885 Berlin conference, the 1920 League Covenant and the 1945 United Nations conference as having formally instituted the unequal juridical-political relations established through colonial rule. The Berlin Treaty agreed upon at the Berlin conference, referred to the *responsibility* of the Western nations to 'watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being'.[65] The benign nature of the notion of *watching over* and *improving the conditions* of the native populations is contrasted with the desire on the part of the colonial powers to establish a framework for 'collective access and free trade'[66] within Africa among the European powers. This contrast between *watching over and improving the conditions of native populations* and the *collective access and free trade* of the colonial powers over Africa exemplifies for Grovogui what he terms a basic contradiction of colonial philosophy: paternal protection and radical exploitation.[67] These two elements of colonial rule worked in a complementary manner, although they evoke contradictory aspirations at face value. Grovogui observes that this contradiction was also evident among abolitionists who preached Christian humanism, commerce and emancipation.[68]

Namibia, formerly German West Africa, provides the case study for hard evidence to illustrate the actual workings of this contradictory colonial philosophy. In a typical story of how colonial control was acquired through guile, force and contract all combined, Grovogui discusses how German rule was imposed upon the Herero and the Nama communities in the second half of the nineteenth century. New institutions such as a paramount chief among the Herero were established[69] and new trade

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[63]   *Ibid*, at 15.

[64]   *Ibid*, at 12–15.

[65]   *Ibid*, at 81.

[66]   *Ibid*, at 89.

[67]   *Ibid*, at 77–78.

[68]   *Ibid*, at 78.

[69]   The Herero chieftaincy, for example, was transformed from merely responsible as 'an overseer and guardian of the customs and laws of the land' into a centralized authority. This transformation coincided with the need to speedily and easily establish control over the Herero people. *Ibid*, at 101. It is in this sense that European influence on *African* culture can be appreciated. See *supra* note 50 and accompanying text.

patterns and networks destroyed pre-existing ones which did not suit the needs of the new colonial establishment.[70] Divide and rule tactics, judicial proceedings and capital punishment were used by the Germans among the Herero community.[71]

The post First World War League of Nations settlement is reflected as a new stage in the imperial domination of Africa. In Grovogui's view, it emphasized the 'obligation (the duty of the civilised) as the new basis of any form or measure of political (or administrative) control (or supervision) of the German territories'.[72] While the Berlin Treaty enshrined the *responsibility* of Europe *in watching over and improving the conditions of native populations*, the League of Nations settlement enshrined a new but not so different 'liberal consensus', the *sacred trust of civilization*.[73] It was upon this consensus that the mandate system was formulated, with African mandates such as South West Africa ranking C, the lowest in the hierarchy, while Palestine got an A status.[74] Woodrow Wilson and General Smuts of South Africa in fact supported the exclusion of South West Africa from the international supervisory mechanism (the mandate system) that was agreed upon after the First World War. The latter justified his decision on account of the fact that German colonies in 'the Pacific and Africa ... [were] inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impractical to apply any idea of political self determination in the European sense'.[75] The rhetoric of responsibility and guardianship of European people

[70] *Sovereigns*, at 103.

[71] *Ibid*, at 100–101.

[72] *Ibid*, at 120.

[73] For an endorsement of this view, see Alexandrowicz, 'The Juridical Expression of the Sacred Trust of Civilisation', 65 *AJIL* (1971) 149; *Idem*, 'The Afro-Asian World and the Law of Nations (Historical Aspects)', 123 *RdC* (1968 — I).

[74] Article 22(1) of the League of Nations Covenant provided for the establishment of the mandate system as a 'sacred trust of civilisation' for the 'well being and development' of the peoples in the mandates. This Article continued to provide for the establishment of a three-tiered hierarchy of mandates, A, B, and C. While, it was not in doubt that Class A mandates (which were European) would ultimately become self-governing, there was a dispute whether this also applied to Class C mandates (of which Namibia is a good example). In fact, Article 22(6) of the League of Nations Covenant provided that Class C mandates were territories which 'owing to the sparseness of their population or their small, or their remoteness from the centres of civilisation ... [needed] to be administered under the laws of the Mandatory as integral portions of its territory.' For a critical review of the mandatory system in this regard, see Anghie, *supra* note 41, at 454–457; *Idem*, *supra* note 13, at 215–287.

[75] *Sovereigns*, at 130–131. Grovogui observes that there was 'greater sensitivity to nationalism in the former German colonies in the Ottoman dependence than in South West Africa. Consequently, more favourable mandates were established here in as far as they required Britain and France to recognise Arab leaders in this region' (Ibid, at 130–131). Grovogui notes that the classification of South West Africa as a Class C mandate 'confirmed South Africa's prediction that nothing in the post war arrangements proscribed the integration of the territory into its own' (*Ibid*, at 137). South Africa's interest in South West Africa was mainly economic and as such sought the least restrictive terms for accounting for its activities in South West Africa to the international community under the League's Mandate system.

over non-European people dominated the direction that non-European colonies would take in the post First World War settlement.[76]

The trusteeship system of the United Nations system established after the Second World War continued this idea that 'Western powers entrusted a number of countries to assume responsibility for the trust territories'.[77] After the First World War, South Africa assumed control over South West Africa, replacing Germany as the new imperial power.

Sovereigns, Quasi-Sovereigns and Africans departs from the emancipatory view of the law of self-determination adopted in international law in the post-decolonization period. Departing from the view that decolonization totally emancipated or totally terminated the various forms of control of the former colonial countries and attendant private interests over their colonies, it contends that far from being an 'ethical basis of international order', international law is 'but a means to hegemony' of European powers over non-European countries.[78] Using Namibia's anti-colonial struggle, *Sovereigns, Quasi-Sovereigns and Africans* demonstrates that 'decolonisation was not an unconstrained exercise by the formerly colonised of a universally applicable right to self determination ... [rather, it] was driven primarily by the desire of the Western nations to maintain existing hierarchies of the international order and the attempt by Third World nations to subvert those structures'.[79]

Grovogui summarizes these views as follows:

> The relationship between the European self and the non-European other has been characterized primarily by confrontation arising from European expansion and the ensuing exploitation of the other. This exploitative interaction has been organized around a set of values, an ideology, whose philosophic system, or episteme emerged during the Enlightenment to guide Western praxis. ... In addition, the constellation of principles and rules that applied to non-Europeans was part of a generative process dependent upon a tradition of alterity and erasure, of silencing the rights of non-Western claims, and interests of non-Western societies.[80]

Against this background, *Sovereigns, Quasi-Sovereigns and Africans* inquires into the hostility among some liberals from Western countries of 'third world proposals either to restructure the international order or change the existing norms'.[81] Grovogui does this by revisiting the defeated attempt by a number of Third World countries to, *inter alia*, restructure international economic relations to establish a balance between their predominantly raw-material-producing economies and Western industrial and now increasingly service-oriented economies on the basis of a 'New International Economic Order' (NIEO). For example, Robert H. Jackson, one of the liberal

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[76] Grovogui also notes that as understood after the First World War, the principles of self-determination and popular sovereignty were not mentioned as being applicable to colonies outside Europe. *Ibid*, at 111–112.

[77] *Ibid*, at 121.

[78] *Ibid*, at 43.

[79] *Ibid*, at 184.

[80] *Ibid*, at 63.

[81] *Ibid*, at 200.

commentators cited in *Sovereigns, Quasi-Sovereigns and Africans*, has argued[82] that the NIEO 'was unduly ambitious in that it attempted to replace free trade and cumulative justice with economic democracy and distributive justice'.[83] Jackson, in fact, borders on yearning for a return to a system of trusteeship, if not unlimited rights of Western encroachment, to arrest crises such as genocides and gross violations of human rights.[84] Another liberal commentator has argued that the NIEO wrongly sought to

[82] R.H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (1991).

[83] *Sovereigns*, at 202.

[84] Jackson, *supra* note 82, asks whether 'collapsed states' should be able to claim the protection of the norm of non-intervention, especially if intervention might result in benefits to the populations of those states (at 184). For a similar Jacksonian analysis see, Claude, 'The United Nations of the Cold War: Contributions to the Post-Cold War Situation', 18 *Fordham Int'l L.J* (1995) 789; Helman and Ratner, 'Saving Failed States', 89 *Foreign Policy* (1992) 3 (arguing that the United Nations should help failed states, possibly through a type of conservatorship, including the use of governance aid, UN trusteeship or the delegation of governmental authority); Helman, 'Collapsing into Anarchy: Saving Failed States', *Current*, no. 353 (June 1993) 33 (arguing that UN policies toward collapsed states should be geared towards the concept of conservatorship, an effort designed to save nations threatened with collapse); Colburne, 'Recolonizing Africa: The Right to Intervene?', 23 *South Africa International* (1993) 162. Damrosch, 'Politics across Borders: Non-Intervention and Non-forcible Influence over Domestic Affairs', 83 *AJIL* (1989) 1, argues for a reformulated norm of non-intervention that would create a balance between the political independence of the state on the one hand, and the political rights of citizens to freely choose a political system of their choice, on the other. Under this reformulated version of the non-intervention norm, Damrosch argues that the prospects of enhancing internationally protected rights would increase. F. Teson, *Humanitarian Intervention* (1988), argues that it would be morally intolerable for the international community to defer combating massacres, acts of genocide, mass murder and widespread torture on the basis of the non-intervention rule. He argues that because the ultimate basis for the existence of states is the protection and enforcement of the natural rights of its citizens, a government that engages in substantial violations of human rights betrays the reasons for its existence. Consequently, Teson argues that such a state forfeits not only its domestic legitimacy, but its international legitimacy as well. For this reason, he argues that foreign armies are morally entitled to help victims of oppression in overthrowing dictators, provided that the intervention is proportionate to the evil it was designed to suppress. Kennedy, 'International Law and the Nineteenth Century: History of an Illusion', 65 *Nordic J. Int'l L.* (1996) 418 summarizes this tension between, on the one hand, a strict formal notion of sovereignty that does not accommodate intervention and, on the other, its reinterpreted or reformulated counterpart that derives authority not from the sovereign will but from the people themselves (and as such accommodates intervention for serious human rights abuses) as follows: 'This formalism is a fighting faith, a defence of forms, responsive to scepticism and pragmatism. International Law in this century has developed in the clash between these ideas — between a set of forms, legal constructs, and a set of political and sociological sensitivities.' Kennedy notes that the move from formalism to pragmatism in international law is told as one of progress or social evolution. This replacement of classical international law and its replacement by institutions is, according to Kennedy, told as 'a story of modernisation, of internationalisation and of the left' (*ibid*, at 387). For another excellent critique of this rendition of progress and modernization of international law see, Obiora Chinedu Okafor, 'The Global Process of Legitimation and the Legitimacy of Global Governance', 14 *Arizona Journal of International and Comparative Law* (1997) 117; *idem*, 'The Concept of Legitimate Governance in Contemporary Municipal and International Legal Systems: An Interdisciplinary Study', unpublished LLM thesis, University of British Columbia, 1995. Obiora notes that legitimacy must extend not only to governments, as suggested by Teson and Damrosch, but must also extend to the international institutions and governments of powerful countries and their conduct (e.g. with regard to their efforts to promote human rights and democratic modes of governance) as it affects

extend the legal concept of sovereignty in international law to economic aspects.[85] *Sovereigns, Quasi Sovereigns and Africans* finds such liberal positions of Western theorists wanting in as much as they 'have been unable to envision perspectives in international relations other than those consistent with western hegemony and official mandates'.[86]

Yet, it is not only Western theorists who come under attack in *Sovereigns, Quasi-Sovereigns and Africans*. Grovogui is critical of post-colonial African leadership for at least two reasons: first, for championing 'a model of anti-colonialism that sought political liberation ... as an end ... [hoping] that the emerging nations would inevitably transform inter-communal relations by virtue of their presence within the international system';[87] and secondly, for their mismanagement and corruption which has compounded the inherited colonial inequities which most of them failed to challenge as a precondition to independence.[88]

However, *Sovereigns, Quasi-Sovereigns and Africans* does not undertake the task of simultaneous critical appraisal of the scholarship of African international lawyers.[89] Such a critical appraisal is important because these scholars had a better and more subtle understanding of the problems that African countries were confronting by having to adopt an international legal regime alien to them than Grovogui may have appreciated. I would however add that these scholars ought to be read against the sort of contextual backdrop sketched out in this review. More work in this area, however, needs to be undertaken.

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developing countries. The inconsistency of the application of these norms also calls into question the practice of institutions such as the United Nations. Murumba, 'Grappling with a Grotian Moment: Sovereignty and the Quest for a Normative World Order', 19 *Brooklyn Journal of International Law* (1993) notes that recent events (such as the collapse of the Soviet empire, the end of the Cold War and multilateral involvement in Haiti, Somalia and the Persian Gulf among other places, South African independence) indicate that 'so much has happened so fast that ... policy analysts ... have [not] had a chance to find their footing in this rapid transformation of orthodoxies into obsolescence'. Murumba therefore cautions: 'The danger ... is that incredulity can give way to blind faith — that the hard work of transforming transitory opportunities can be abandoned for belief in miracles.' Another critical observer in this area is Orford, 'The Politics of Collective Security', *Mich. J. Int'l L.* (1996) 373; *Idem, supra* note 30, at 63.

[85] Horn, 'Normative Problems of a New International Economic Order', 16 *Journal of World Trade Law* (1982) 343.

[86] *Sovereigns,* at 202.

[87] *Ibid.* at 196–197.

[88] *Ibid.* at 205.

[89] See J.T. Gathii, 'Anti-colonial International Legal Scholarship in Post Second World War Africa', paper presented at the 'New Approaches to Third World Legal Studies Conference', Harvard Law School, 7–8 March 1997; B.S. Chimni, 'International Law Scholarship in Post Colonial India: A Report', paper presented at the 'New Approaches to Third World Legal Studies Conference', Harvard Law School, 7–8 March 1997.

4 Conclusion: Towards Solidaristic Reconstructions of International Society

Sovereigns, Quasi-Sovereigns and Africans ends with the challenge to African countries to 'experiment with new approaches to the questions of democracy, pluralism, co-operation, and global responsibility ... [to] revisit our intellectual assumptions, and perhaps our political agendas, in order to promote a new vision of human solidarity and global inter-dependence'.[90] Grovogui leaves us with the hope that 'we might still save ourselves from global catastrophe if we apply self determination and multilateralism to the future course of international relations'.[91]

While I applaud the excellent research and analysis of *Sovereigns, Quasi-Sovereigns and Africans*, I suggest that more could have been said about the limitations that have been confronted in attempts at restructuring international relations, or conceptions of democracy, cooperation and global responsibility. The attempt to restructure the international economy proposed in the NIEO is one example mentioned in the book. Although *Sovereigns, Quasi Sovereigns and Africans* is appropriately critical of liberal commentators who have looked upon the attempt to restructure international economic relations with claims of the inevitability of an international free market economy in place of planned or managed economies, it nevertheless falls short of pointing out a basic feature of liberal argument: that as a matter of political philosophy that is quite well accepted even within political theory discussions in many Western countries, the relationship between markets and politics is, as a matter of principle, contestable.[92] The relationship between markets and politics has no singular, natural and necessary form that can be reproduced from place to place or country to country as proposed by the Bretton Woods institutions and the United States.[93] In a sense, therefore, calls to restructure the international economy through the liberal parameters of international law cannot be seen as self-defeating, as some otherwise critical commentators within international law have observed in advancing justifications for the failure of the effort to restructure the international economy through the NIEO.[94]

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[90]   *Sovereigns*, at 207.

[91]   *Ibid.*

[92]   See Langille, 'General Reflections on the Relationship of Trade and Labor or: Is Fair Trade Free Trade's Destiny', in J.N. Bhagwati and R. Hudec, *Fair Trade and Harmonization: Prerequisites for Free Trade?* (1996) 238.

[93]   Roberto Unger has also argued that necessitarian social and political theories that propose that there is only one way in which market economies can be successfully organized do not have credence when seen against historical evidence to the contrary. R.M. Unger, *False Necessity, Anti-necessitarian Social theory in the Service of Radical Democracy*, (1987).

[94]   Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference', 5 *Social and Legal Studies* (1996) 348. Concluding her observations on the failure of the NIEO, she argues that '[d]espite its oppositional stance to western domination, the G77 strategy relied on an arsenal of liberal legal concepts to support its case. ... In doing so, the strategy remained uncritical of modernity itself. A Subaltern Studies perspective would suggest that the G77 challenge was both made possible, and also prevented from substantial success by the uncritical embracing of a European framework.'

Another important feature of the liberal response to restructuring the international economy using international law has been what Mohammed Bedjaoui has referred to as *legal paganism*.[95] Legal paganism refers to the refusal to acknowledge attempts to restructure international law or the global economy on the basis that these attempts promote claims that have no legal basis. In other words, legal paganism refers to the notion that a revision of international economic relations would unduly destabilize the present international legal order and subject it to the whims of developing countries. The Charter for the Economic Rights and Duties of States which embodied some of the principal demands of the NIEO, for example, was recognized as an example of soft law: it failed to reach a level of legality that would have constituted it as hard law. The ostensible reason for this was that there was little international consensus over its claims. This typical response to claims to restructure the international political economy is not unfamiliar, even within domestic jurisdictions. The bifurcation of legal claims (representing the status quo) on the one hand, and moral claims or soft law (deviations from the status quo or challenges to it) on the other hand, is a liberal strategy for perpetrating an unjust status quo by adopting the political posture that oppositional claims may in time become legal principles when they attain or command a sufficient level of legality. While the oppositional claims arise from a communitarian conception of international society based on ideals of solidarity and democratic accountability, those representing the legality of the status quo self-represent as neutral, natural and objective and are based on individualistic conceptions where the will of states gives legitimacy to the prevailing international law. Consequently, a departure from the present rules, as posed by the NIEO challenge, is held in check not by an ill-advised resort to liberal legality, but rather in spite of it. In other words, one cannot separate the rules of international law, from their praxis. As already noted earlier, such a separation would presume that international law is a neutral regime whose otherwise unproblematic workings are compromised opportunistic forces external to it. Such presumptions are false and only serve to disguise the participation of international law in the colonial and neo-colonial projects of various interests and their particular and myriad manifestations.

In addition, these debates ought to be considered within their appropriate historical and political context. This historical context includes the following factors:

(i)   The debt crisis, which followed the relatively optimistic decade of the 1970s, had ravaging effects on many developing countries. The high levels of borrowing by developing countries from developed countries and private capital during this optimistic period led to accumulation of high debt burdens following a recession in many developed countries. This recession prompted a hike in interest rates on the debt. These high levels of interest set off the debt crisis by the end of the 1980s as developing countries then heavily in debt became unable to repay their

95   Bedjaoui, *supra* note 15, at 98–101.

principal or interest. The involvement of the International Monetary Fund in debt restructuring in collaboration with private lenders triggered the fundamental restructuring of developing country economies,[96] resulting in enormous cuts in social spending. [97]

(ii) Concurrently with the economic recession in North America and Europe came the rise to power of conservative governments (Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States), demonstrating hostility to issues of global justice and domestic equity.[98]

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[96] Orford, 'Locating the International: Military and Monetary Interventions after the Cold War', 38 *Harv. Int'l L.J.* (1997) argues that 'the dominant liberal international consensus is that collective humanitarian intervention has become necessary to address the problems of local dictators, tribalism, ethnic tension, and religious fundamentalism thrown up in the post-cold war era. Surprisingly little attention has been paid, however, to the extent to which the activities of international institutions, particularly international economic institutions, have affected political processes, and thus may have contributed to the crisis facing the expanded collective security system' (at 443).

[97] The aim of these policies is to meet what is now considered to be the standard economic objectives of growth, low inflation, a viable balance of payments and, more recently, equitable income distribution. See Williamson, 'What Washington Means by Policy Reform', in J. Williamson (ed.), *Latin American Adjustment: How Much Has Happened?* (1990) 5. Neo-liberalism (or the Washington Consensus, as these policies have been referred to) therefore seeks to seriously erode the sovereignty of Third World states in the following ways: by advocating 'the establishment of a monetary anchor to stabilise national currencies' against the United States dollar; reductions in public expenditure for social programmes such as health and education; liberalization, ostensibly to 'remove nepotistic and oligopolistic private capitalism', though in actual fact it leads to unqualified acceptance of international competition and economic strangulation for Third World countries; privatisation leading to 'abandonment of productive activities and their simple transfer to the hands of private actors'. It also leaves no room for social policies, other than emphasizing its 'compensatory pretensions, which seldom escape the realm of rhetoric into practice'. It has also been described as preoccupied ... on following the institutional path set by the advanced industrialised countries of the North Atlantic'. See Gomes and Unger, 'The Next Step: A Practical Alternative to Neo-Liberalism', paper presented at the Roundtable on 'An Alternative to the Neo-Liberal Model', Global Studies Research Program, University of Wisconsin, Madison.

Wade Mansell has argued that law facilitated the oppressive and aggressive economic policies of the West against developing countries following the debt crisis. See Mansell, 'Legal Aspects of International Debt', 18 *Journal of Law and Society* (1991) 381. On attempts to use liberal international discourse as positive, albeit limited, visions of reconstructing Third World countries, see Mansell and Scott, 'Why Bother About a Right to Development?', 21 *Journal of Law and Society* (1994) 171; Ginther, 'Participation and Accountability: Two Aspects of the Internal and International Dimension of the Right to Development', *Third World Legal Studies* (1992) 55; Perry, 'Rethinking the Right to Development: After the Critique of Development, After the Critique of Rights', 18 *Law and Policy* (1996) 238.

[98] There is of course an enormous Western investment in democracy promotion, peace-keeping and political reform in the Third World. These reforms are widely embraced as antidotes to Cold War support of Third World dictatorships. Alternative analysts, however, suggest that the democracy promotion programmes of the United States have been designed more to retain the elite-based and undemocratic status quo of Third World countries than to encourage mass aspirations for democratisation. Democracy promotion, in this perspective, does nothing to address growth of inequality and the undemocratic nature of international decision-making. W.I. Robinson, *Promoting Polyarchy: Globalization, U.S. Intervention and Hegemony* (1996). For a critique and alternative proposals from a human rights perspective, see Oloka-Onyango, 'Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa', 26 *California Western International Law Journal* (1995) 1.

(iii) The rise of neo-liberal reformism and its hostility to autonomous or alternative models of industrial and development strategy in developing countries was exacerbated by a constantly deteriorating international market for agricultural products from developing countries and· a hostile international economy organized to exclude agricultural commodities from a liberal multilateral trading framework (GATT) through agreements such as the multi-fiber arrangement (MFA).[99]

In East Asia, some developing countries have maintained high growth rates for at least three decades now.[100] The increasing differentiation among developing countries and the changed international political and economic conditions need to be taken into account in assessing new forms of disempowerment for developing countries, as well

[99] The 1986 Multifiber Arrangement superseded other similar arrangements agreed upon since the early 1960s with a view to controlling the terms of international trade in textiles. These arrangements allocated quotas of imports into developed countries by developed countries and at their height they were expanded to include trade in cloth and clothes. These arrangements existed in an uneasy legal relationship to the General Agreement on Tariffs and Trade which sought to lower all trade barriers, while the MFA was designed precisely to impose controls to bar developing country exports into developed countries. See B.S. Chimni, *International Commodity Agreements: A Legal Study* (1988); Zheng, 'Defining the Relationships and Resolving the Conflicts between Interrelated Multinational Trade Agreements: The Experience of the MFA and the GATT', 25 *Stan. J. Int'l L.* (1988) 45. At the Uruguay Round of the GATT negotiations, a new Agreement on Agriculture was agreed upon. Under this agreement, GATT/WTO members are required to eliminate quantitative restrictions on agricultural imports within a six-year period. The Agreement on the Application of Sanitary and Phytosanitary Measures aims at restricting the use of inspection requirements and safety rules to exclude foreign agricultural products. The Agreement on Textiles and Clothing aims at phasing out the MFA and other quantitative restrictions over a ten-year period.

[100] The newly industrializing countries are South Korea, Taiwan, Hong Kong and Singapore. A.H. Amsden, *Asia's Next Giant: South Korea and Late Industrialization* (1989), also includes Brazil, Turkey, India and Mexico. Other fast growing countries include Indonesia, Malaysia, Mauritius and Botswana. Japan is now considered a developed country. According to Chimni, 'Political Economy of the Uruguay Round of Negotiations: A Perspective', 29 *International Studies* (1992), during the Uruguay Round of the GATT, developing country members were in 'disarray and disunity' and pursued individual interests at the expense of solidaristic goals which would have been achieved had these countries pursued a coalitional strategy. Among the reasons Chimni identifies as having potentially affected a coalitional strategy among Third World countries was the bifurcated nature of the negotiation procedure in the Uruguay Round: negotiations for trade in goods, on the one hand, and trade in services on the other, were undertaken separately and then reports made to the Trade Negotiations Committee. Chimni notes that this bifurcation may have limited the use of coalitional strategies used by developing countries in forums such as the United Nations Conference on Trade and Development (UNCTAD). Chimni also notes that developed countries used divide-and-rule tactics with developing countries. Such included threats of punitive extension/denial of retaliatory trade privileges. India and Brazil, which would have provided leadership for developing countries, were singled out for application of the United States Omnibus Trade and Competitiveness Act (OTCA) by restricting their quantitative export privileges to the United States. For another excellent analysis of this theme, see C. Raghavan, *Recolonization: GATT, The Uruguay Round and the Third World* (1990), esp. at 69–80. Chimni also notes that the preferential treatment given to developing countries to enable them to meet balance of payments obligations in the GATT regime was undermined in the Uruguay Round of negotiations.

as the sources and limitations of those that have differentiated themselves by their spectacular economic performance. In no sense, however, should this analysis be taken to suggest that political, social and economic problems in developing countries should be seen as exclusively arising from the neo-colonial relationships between these countries on the one hand, and Western industrial countries, transnational capital, and international financial and economic institutions, on the other hand. Rather, the importance of structural analysis and historical experience in understanding developing country issues lies in their under-representation in contemporary and mainstream analysis.

That said, there is a significant theme that the *strong* form of anti-colonial scholarship of *Sovereigns, Quasi-Sovereigns and Africans* can borrow from the *weak* form of anti-colonial scholarship in *Legal Polycentricity*: that perhaps one place to look for inspiration for new visions of human solidarity and global interdependence would be within the rich civilizational diversity that *Legal Polycentricity* discusses at length. Although *Legal Polycentricity* does not provide us with any detailed perspective for such a reconstruction of international society (yet I recognize that one cannot romanticize the varied and rich forms of collective existence and identity), the need for reconstruction or reconstitution of global politics and economics cannot be understated. The neo-liberal regime of national economic reconstruction for global economic integration as an accepted dogma in mainstream liberal international law scholarship serves to legitimize Euro-American imperial neo-colonialism in alliance with Third World ruling and leading business elites over most of the developing world.[101]

Sovereigns, Quasi-Sovereigns and Africans charts an important research agenda for anti-colonial international legal scholarship. For its part, *Legal Polycentricity* revives an important debate, one that flags the importance of the scholarly contributions and/or perspectives of the Third World to international law. *Sovereigns, Quasi-Sovereigns and Africans*, however, invites us to appreciate the complicated relationship between cultures and civilizations as is manifest and latent in international legal norms, doctrines, principles, policies and the structural relationships between powerful and less powerful countries as we continue to undertake this challenge.

The revitalization of anti-colonial international legal scholarship that these books represent is therefore welcome for being so opportune. In particular, the books help to illustrate that there is a more subtle reading of the scholarship of the first generation of African international lawyers, such as that of the late Taslim Olawale Elias and Mohammed Bedjaoui, than presently exists. This is all the more important in view of

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[101] See Lothian, 'The Democratized Market Economy in Latin America (and Elsewhere): An Exercise in Institutional Thinking within Law and Political Economy', 28 *Cornell Int'l L.J.* (1995) 169; R.M. Unger, *What Should Legal Analysis Become?* (1997); Mkandawire, 'Beyond Crisis: Towards Democratic Developmental States in Africa', paper presented at the conference on 'Crisis, Conflicts and Transformations: Responses and Perspectives', Council for the Development of Social Science Research Council in Africa, 26th June–2nd July 1995.

the fact that some of the major themes these scholars were grappling with in the 1960s and 1970s correspond with the themes covered in the books under review here. This continuation of themes from earlier decades in contemporary international legal scholarship is highly suggestive of the possibilities of further developing strategies/approaches not only to the themes discussed here, but to many more as well.