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In the Name of Civilisation

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In the Name of Civilisation*

In his recently published *Le droit international antiesclavagiste des »nations civilisées«*, Michel Erpelding offers an important contribution to international legal history. The book explores a series of legal mechanisms that, in formalising anti-slavery, also enabled the resignification of asymmetrical and exploitative labour relations under the liberal goal of civilisation.

The publication, resulting from Erpelding's doctoral thesis, depicts the dynamic identified by the author as the »crystallisation« (Part I, divided into Title I and II) and »fragilisation« (Part II, divided into Title I and II) of the anti-slavery international law of »civilised nations«. Erpelding does not search for the term »civilisation« within legal texts; he rather seeks to understand the »structuring influence of the idea of ›civilisation‹ on the practices of international repression of slavery in the 19th century and during the first half of the 20th century« (original in French, 21; *all translations by the reviewer*). To that end, his first significant choice was to examine »anti-slavery international law« not only in the part of international law designed to fight the slave trade and slavery, but also in the international regulation of forced labour. This wide-reaching approach exposes the paradoxes of a legal framework born from the liberal rejection of the indignities of slavery and later deployed to justify colonialism. And while warfare and peacetime regulations are not usually analysed alongside, the author's second relevant choice was to consciously stray from the tradition of separating their legal histories. In doing so, Erpelding convincingly shows there was a significant continuity, throughout peace and war, in the opposition to slavery under a »civilised states« mindset.

Part I, Title I describes the universalisation of anti-slavery law in the 19th century and traces how opposition to slavery became a hallmark for the idea of civilisation. Britain, and later other European powers, included the abolition of the slave trade in the conditions for recognising states. The suppression of the slave trade was formalised in domestic law and in (mostly bilateral) treaties. According to Erpelding, in implementing that legal framework, the treatment of captives (their material living conditions) was progressively adopted as an interpretative criterion for identifying the slave trade. Some treaties increasingly included the prohibition of domestic slavery, and this was followed by a growing delegitimisation of the legal obligation to return fugitive slaves.

Part I, Title II outlines the emergence of key legal understandings of slavery and forced labour by the end of the 19th century, when anti-slavery gained centrality in international law in the hierarchy between civilised and non-civilised states, as reflected in the General Act of the Berlin Conference (1885) and the Brussels Conference Act (1890). This was also a time of further expansion of European colonialism and territorial domination; actions taken under the project of civilising »barbarous« states were normalised through the appearance of mere collaborations for the perceived natural course of history.

Part II starts by discussing, in Title I, the process of the preparation and formalisation of the legal framework of the League of Nations Convention on Slavery of 1926 and the ILO Convention No. 29 of 1930. Combined, the resulting documents reveal the lengths the Western powers went to avoid addressing the links between slavery and forced labour. Erpelding highlights that the documents also consolidated two general images born in the previous century in a *summa divisio* of slavery and forced labour: on the one hand, the image of slavery as resulting from a constraint of a private origin and strictly linked to uncivilised and colonial contexts; on the other, forced labour as allowed if resulting from a constraint by the sovereign power, according to public interests.

The final moments of the erosion of the anti-slavery international law of the »civilised nations«

* Michel Erpelding, Le droit international antiesclavagiste des »nations civilisées«, Paris: Universitaire Varenne / LGDJ 2017, 952 p., ISBN 978-2-37032-140-4

are recounted in Part II, Title II. Erpelding stresses that the anti-slavery legal framework was subject to very different and harsher interpretations when non-Western peoples were concerned. Meanwhile, only minor limitations were put on forced labour, and even so those were not observed in places under the Western powers' domination. Measures against slavery (to be »progressively« abolished, under the treaties) varied significantly among colonies, protectorates and diplomatic protectorates. Simultaneously, the period saw the progressive decay of the principle of freedom of work in the domestic law of Western powers, which Erpelding argues culminated in the inhumane practices of the Second World War, leading to the end of the anti-slavery international law of »civilised nations«.

That final moment of historical rupture identified by Erpelding deserves some attention for the light it sheds on the book's main point: the practices of slavery and forced labour during the Second World War were responsible for leaving the terms of the liberal abolitionist ideas (through the formal legal categories of the *summa divisio*) in open contradiction. The Second World War was not the first event mentioned in the book that threatened these notions: in the case of the forced labour in the Congo Free State under Leopold II of Belgium or of the German deportations of civilians for forced labour during the First World War, the links with slavery and the slave trade had been spotted by Europeans, but were not seen as posing a fundamental challenge to the legal compartmentalisation of slavery and forced labour. Erpelding maintains that the regulatory framework renounced the *summa divisio* only after the atrocities of the Second World War. The discourse in Nazi Germany had broken with the »civilising mission« by adopting the ideology of »racial superiority« as legitimising collective enslavement. With that, the idea of the private origin of slavery had also been shattered.

Another fundamental point of the book is that, if the phrase »civilised nations« was considered obsolete by some authors already before 1945, after that year it disappeared from doctrinal writings completely. According to Erpelding, this reflected a new balance of power, a change from the idea of »civilisation« to that of »Western values«. Within that new paradigm, material working conditions would assume a central position under anti-slavery international law with its new foundation on human rights. Erpelding points to major legal texts such as the Nuremberg Statute, under which deportation for forced labour of civilian populations from occupied territories was made a war crime, and enslavement of civilians was considered a crime against humanity; the Declaration of Philadelphia of 1944, which affirmed the principle of non-discrimination for the freedom of work, leaving no doubt that it applied to colonised peoples; and the Universal Declaration of Human Rights of 1948, which adopted a global reading of slavery and slave trade, proscribing it in »all its forms«.

The book does add to the most recent research by Jean Allain, Suzanne Miers and Joel Quirk – as anticipated in its introduction. Those works address, on different levels, the anti-slavery international normative history, yet Erpelding brings more complexity to their accounts by taking one step further into the origins and development of the legal conceptions of slavery and forced labour as intertwined in the idea of civilisation, and also by linking it to European domestic legal developments.

However, despite the book's broad and ambitious timeframe and scope, it should not be sought as an exhaustive compendium on anti-slavery law, particularly because one will not find much about the actual interpretative and argumentative implementation of international law or the derivative regulation of anti-slavery. Episodes of their employment are only leveraged as evidence of the variety of particular trends in legal developments related to key treaties, which are the true centre of the book.

The appendix provides a selection of such significant documents out of the 473 analysed by Erpelding. Making them available in this way is by itself an invaluable service to the field, by increasing the accessibility of primary material otherwise spread in physical and digital archives behind a number of practical boundaries and paywalls. Those materials make it easier to follow the book's legal analyses and help readers (including non-lawyers) bridge the gap to the technicalities of international legal design and conception.

The author makes a point of stressing that the primary documents on which his study is based include not only agreements between Western powers, but also their treaties with non-European political entities. This definitely contributes to a much richer approach to a topic inextricably intertwined with inequality and economic exploitation. Yet the European (or Western powers') perspective

in the design of international law as well as in its interpretation remains the central point of the book, around which references to the »others« gravitate. For that reason, the book does not rule out the need for further inquiries into the actual dialogical and asymmetrical employment of those mechanisms to convey a more accurate description of the international practices for the suppression of slavery. Modes of resistance and appropriation by the »non-civilised« not only are constituent of that practice but could also challenge some of the book's findings regarding the history of the anti-slavery international law of (and by) the »civilised states«.

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Matthias Schwaibold

Vorgebliche Antworten auf eine falsche Frage*

Die Berner Dissertation weist 160 nummerierte Seiten auf, von denen einige (7) leer und andere (11) mit nur ganz wenigen Zeilen bedruckt sind. Macht mit weiteren, höchstens hälftig gefüllten Seiten noch 140 Seiten Text.

Von diesem Text sind vieles Zitate, die meisten aus Werken von Bluntschli und Huber, aber auch viele von ihren Zeitgenossen, wobei Bluntschli und Autoren »vor« Huber doch deutlich überwiegen. Wyss hangelt sich also von Zitat zu Zitat. Das ist als Konstruktionsidee an sich gar nicht so schlecht. Die Autoren schrieben indessen weder lateinisch noch altgriechisch, auch nicht mittelhochdeutsch, sondern gepflegtes Deutsch des 19. bzw. beginnenden 20. Jahrhunderts. Eine Sprache also, die jeder heutige Leser zu mindestens 99% problemlos noch versteht, auch dann, wenn sie nicht immer der aktuellen Duden-Rechtschreibung entspricht. Kein einziges fremdsprachiges Zitat wird angeführt. Was macht Wyss? Er präsentiert diese Zitate, um sie danach jedes Mal in eigenen Worten zu wiederholen. Das ist nicht nur unnötig und ohne Informationswert, sondern auf Dauer ziemlich nerventötend. Man liest alles doppelt, und meist ist die nachgelieferte Fassung von Wyss nicht nur umfangreicher, sondern vor allem umständlicher. Der Nettotext des Verfassers, also eigene Darlegung, die nicht aus Zitaten und ihrer Paraphrasierung besteht, dürfte damit deutlich unter 100 Seiten sein.

Ebenfalls wenig nachvollziehbar die vielen »sic« in den Zitaten, mit denen wahlweise eine aus heutiger Sicht allenfalls seltsame Rechtschreibung, eine in der Tat ungewöhnliche Formulierung oder eine zwar völlig korrekte, wenn auch etwas anspruchsvollere Ausdrucksweise angemerkt wird, als handele es sich um Fehler. Dass der Verfasser selbst ganz überwiegend nur einfachste Hauptsätze schreibt, höchst selten noch um einen kleinen Nebensatz ergänzt, macht die Lektüre seines Textes zusätzlich anstrengend.

Die Titelfrage zielt auf zwei schweizerische Gesetzesredaktoren, von denen der eine – Johann Caspar Bluntschli – in seiner ersten Heimat, Zürich, vor allem als Verfasser des Privatrechtlichen Gesetzbuches (PGZ) bekannt ist. Das ist die kantonale Kodifikation des Privatrechts, die im Zuge der hinreichend bekannten, nach-napoleonischen

* Daniel Arne Wyss, Wie viel Bluntschli steckt in Huber? Ein Vergleich der allgemeinen Grundsätze des Erbrechts bei Johann Caspar Bluntschli und Eugen Huber (Europäische Rechts- und Regionalgeschichte 22), Zürich / St. Gallen: Dike 2018, XXVI + 160 S., ISBN 978-3-03891-041-1 (Diss.)