lived circumstances of some oppressed people somewhere, even without entirely transforming international law. To seek a transformation of international law is a messy task that occupies both its imperial legacy as well as its postimperial promises, including self-determination and human rights.24

Ultimately, Decolonising International Law is an excellent addition to the repertoire of critical approaches to international law. Pahuja adds to this growing literature one of the best critical accounts of the post-World War II international economic order and how its twin concepts of development and economic growth have shaped a new ruling rationality.

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Universality and Continuity in International Law.

This wide-ranging book arose out of a symposium held in 2005 at the Franz von Liszt Institute for International and Comparative Law, located in the Law Faculty of the Justus Liebig University Giessen. Its twenty-three contributors bring a formidable accumulation of knowledge to bear. As they come overwhelmingly from the German-speaking world, many may be comparatively little known to English-language readers. It is therefore especially unfortunate that the book fails to provide any information about the writers’ backgrounds or present positions, which this reviewer has added parenthetically.

As the title of the book indicates, the international law conference had a dual theme: universality and continuity. On both of these themes, the spirit of Wolfgang Preiser (1903–97), the eminent German historian of international law, is palpably present. By universality, he meant that the study of the history of international law should encompass legal phenomena in the history of mankind (i.e., the exposition of the history of international law should avoid excessive Eurocentrism). On the matter of continuity, Preiser contended that certain consistencies in international legal thought had endured over long periods. Most notably, elements of Roman law made an important, and lasting, contribution to the formation of modern international law. On this view, the periodization of international law is largely a matter of convenience in the presentation, rather than of fundamental conceptual breaks. The opposing position, associated most strongly with the German historian and diplomat Wilhelm Grewe (1911–2000), sees periodization as substantive, with the result that international law ought not to be considered as a unitary tradition but rather as a series of distinct conceptual regimes. Moreover, Grewe’s periodization was more a function of power politics in European relations than of an organic development of international law as a coherent system of thought.

In the opening contribution, the editor Heinhard Steiger (based at the host university) addresses both of these themes forthrightly. In the spirit of Preiser, he makes a strong plea for universality—of a sort. More specifically, he aligns himself with Yasuaki Onuma in supporting what he calls “an inter-civilizational” perspective to the study of international law (p. 26). Steiger cautions, however, against interpreting this approach as a study of separate historical traditions, with each regarded as independent of the others. Instead, he suggests searching for a kind of underlying unity, to which he gives the label “functional comparability” (p. 33). The issue of continuity of international law is tied to that of universality since continuity between the distant past and the present is generally seen as being confined to the European

24 Id.; see also Gathii, supra note 12, at 2020. Some scholars have argued international law forestalls substantial or “radical” change. See, e.g., Joel Ngugi, Making New Wine for Old Wineskins: Can the Reform of International Law Emancipate the Third World in the Age of Globalization?, 8 U.C. DAVIS J. INT’L L. & POL’Y 73, 75 (2002) (arguing that “[i]nternational law both enables and prevents any substantial success to challenge domination and oppression”). This view may be contrasted with a recent account that misreads critical accounts as failing to acknowledge international law’s potential for “emancipation and stability.” Bardo Fassbender & Anne Peters, Introduction: Towards A Global History of International Law, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 4 (Bardo Fassbender & Anne Peters eds., 2012).
experience. The more universal the perspective, in short, the less evidence will there be of continuity. Preiser’s solution to this dilemma was to seek continuity not at the normative level—that is, not at the level of substantive rules of law—but instead at the deeper and more abstract level of “non-normative elements such as structures, principles and ideas” (p. 35). Scholars in quest of universality and continuity in international law therefore face a daunting task in attempting to bring some kind of unity to bear upon the diversity of human legal experience. It is hardly surprising, then, to find Steiger concluding that research in the history of international law “must be organized internationally, inter-civilizationally and interdisciplinarily” (p. 43).

The other editor, Thilo Marauhn (also from the host university), considers the opposition to universalist approaches in a chapter on the relevance of culture to the development of international law. Human rights law is an important focus since this area exhibits a constant tension between universal norms and the heritage of various cultural traditions of the world—a tension that is dealt with (if not exactly resolved) by the use of the concept of “margin of appreciation” in human rights case law. Marauhn tries to tread a middle ground between diversity and universality, between continuity and change. To this end, he endorses the idea that certain “general principles of law,” referred to in Article 38 of the Statute of the International Court of Justice (ICJ), do exist but that these principles must be understood as emanating not from a unitary notion of single “civilized” community, but rather as being common to various distinct legal cultures that jointly contribute to the making of international law (pp. 57–58). Seen in this sense, general principles of law “act as an interface between the need for universal norms and respect for cultural diversity” (p. 58).

The case for continuity in international legal history is strongly made by Karl-Heinz Ziegler (of the University of Hamburg). A distinguished historian of international law, he is also Preiser’s former student. He insists on the existence of “common legal traditions and . . . historical continuity” (p. 133), extending back as far as the ancient Middle East and ancient Greece, which are the subjects of his chapter. He insists that, as early as fifteenth century BC, “a real international legal order practiced in a regular state system” was in operation (p. 136). In support of this thesis, he marshals evidence of treaty making and diplomacy. To the ancient Greeks, he attributes the concept of “a plurality of states mutually recognizing their independence as equal subjects of international relations” and “at least partly following certain rules of law” (p. 141). Greek conceptions of a common law of mankind are regarded as the core of later international legal conceptions.

The battle between the continuity school of thought and its opposition is expounded by Randall Lesaffer (of Tilburg University) in a fascinating historiographical exposition of the debate as it was conducted in the late eighteenth and nineteenth centuries. He selects four writers (Robert Plumer Ward, Henry Wheaton, John Hosack, and Thomas Alfred Walker) and surveys their approaches to two questions about the role of Roman law in the formation of international law. First was the role of the Roman-law concept of ius gentium, and particularly the question of its relation to natural-law doctrine. Second was the significance (or otherwise) of Roman private law in the formation of later norms of international law. Ward strongly held that international law was something quite distinct from Roman law. Walker, along with Hosack, took the opposite position, with Wheaton occupying a middle stance.

The chapter that deals most directly with the universality theme, by Sebastian Heselhaus (of the University of Luzern), concerns universality in the twentieth century. His conclusion is that a truly universal international law—i.e., one that was not merely Eurocentric—was finally achieved only in the second half of the last century, with the end of the colonial era. But this universalism is asserted to be of a rather exiguous character, based as it is on the central conception of the equal status of separate, independent states. A universality more worthy of the name would involve the forging of a set of common values and would also take due account of the array of nonstate actors whose profiles (for both good and evil) are becoming ever
higher. This exalted task is one in which the constitutionalist wing of international lawyers is currently engaged.

Several of the writers provide expositions of non-Western approaches to international law. Eckart Otto (a theology scholar from the University of Munich) has a chapter on international law in the Hebrew Bible, contending that the ancient Jews were well ahead of their contemporaries in envisaging (if not necessarily achieving) “agendas for a universal order of peace” (p. 130). Ebrahim Afsah (now at the University of Copenhagen) deals with Islamic approaches to international law. Much of his contribution is actually about Islamic law in general rather than about international law specifically. He is skeptical about the existence of a distinctive Islamic corpus of international law and is more concerned to expound on the ways in which Islamic law has met, or failed to meet, the challenges of modernity since the eighteenth century. On this subject, he cautions against overreliance on the jurisprudential and religious side of Islamic law (Sharia), in contrast to the policy- and government-oriented aspect (Siyasa). In the study of Islamic law, he endorses what he calls the “historical ‘yes’” over the “dogmatic ‘no’” (p. 229). By this distinction, he means that study in this area would most fruitfully focus on ways in which Islamic law has arisen out of concrete historical and material circumstances. What Afsah calls “the universal struggle over economic and political interests” (p. 232) takes place in the Islamic world as it does in all cultures and in all times. If this view is universalism, it is the universalism of the comparative sociologist rather than of the traditional lawyer.

Anthony Carty (of the University of Hong Kong) shines a pessimistic light on the universalist theme. He deals with the challenge posed by the disappearance of the most obvious source of universalism—the supernatural force of religion. Serious consideration is given to the possibility of a revived natural law, with sustained attention to an attempt in this direction by the moral theologian Oliver O’Donovan. Carty concludes, though, that the necessary moral consensus is not attainable. Nor, in his view, are contractorian approaches adequate to the task of constructing a universal international law, as they are said to be rooted, in reality, in an underlying base of “predatory violence” (p. 85). The sad result is what Carty calls “the inevitability of imperialism” (p. 66)—the basing of international law on power.

Over half of the book consists of narratives or expositions of particular aspects of international legal history. Some of these discussions do little more than repeat historical snippets that are available in countless existing sources. Stefanie Schmahl (of the University of Würzburg) gives a summary of the development of the laws of land war since the mid-nineteenth century. Andreas Haratsch (of the University of Hagen) similarly traces human rights law since the beginning of the nineteenth century.

Most of the writers, however, expound topics that will be new to most readers. Ernst-Dieter Hehl (a distinguished medieval historian at the Johannes Gutenberg University in Mainz) discusses the contribution made to medieval just-war doctrine by canon law in the twelfth century. His contention is that the writers of the twelfth century were innovators, owing little to their predecessors. Claudia Garnier (of the University of Vechta) takes an anthropological perspective in her narrative history of European diplomatic contacts with the Mongols in the thirteenth century. She gives a fascinating analysis of various forms of symbolic communication, including meals, gifts, rituals, and eye contact. Matthias Lutz-Bachmann (a philosopher at the Goethe University in Frankfurt) discusses the concept of ius gentium in the writings of Thomas Aquinas and Francisco Suárez. This piece is one of the best written in the book, providing admirably clear analyses of the writings of these two key figures.

Several contributors deal with questions of relations between Europe and other parts of the world. Ram Prakash Anand (who taught at the University of Delhi but died in 2011) provides an overview of European-Asian relations from the sixteenth and seventeenth centuries to the postcolonial era. He largely accepts the thesis of Charles Henry Alexanderowicz, the British (originally Austro-Hungarian) legal scholar who taught in India for some ten years. He maintained that the various states of Asia had their own functioning system of international
law prior to the intrusion of the European powers from 1498 onwards and that this existing system was replaced by the European system as a result of superior European firepower. The result was the relegation of the Asian states to the status of second-class citizens (at best) of the Eurocentric international legal world. Even with the attaining of full independence after World War II, the Asian states chose to be content with their promotion to a position of equality and made no attempt to revert to the prior state of affairs.

Cornelis G. Roelofsen (of the University of Utrecht) covers the more specific subject of treaties between European and non-European powers over this same period. He cogently explains how these treaties tended to be differently viewed by the parties to them—by the Europeans as statements of rights and duties and by the non-Europeans as mere general expressions of friendship. Much like Carty, he regards international law, as it evolved, as a triumph of the European view over its rival. Masaharu Yanagihara (of Kyushu University in Japan) gives a useful narrative account of Japan’s experience with international law in the period 1853–1945, though with no real attempt to connect it to the larger issues of continuity or universality.

Peter Haggenmacher (of the Graduate Institute of International Studies, Geneva) contributes an analytical survey of the laws of war. This chapter, too, is one of the most outstanding of the book, clearly written and very stimulating. He contends that the traditions of “just war” and “regular war” have actually coexisted since medieval times, so that it was not a question of one succeeding the other. He also insists that the effective force for moderation in war was not a product of the bilateralization of war (i.e., of the policy of regarding the parties to a conflict as being on a legal par). Rather, it grew out of the just-war doctrine itself, with the constraints that it imposed unilaterally on the just side. He takes the account into the eighteenth century, giving full credit to Emerich de Vattel for his innovation of treating the laws of war as a distinct corpus of law, making him the pioneer of the concept of *ius in bello* in the modern sense of that term. Also on the subject of war is the chapter by Anuschka Tischer (then at the University of Marburg) on declarations of war and grounds for war in Europe in the period from the sixteenth to the eighteenth centuries.

Some of the contributions are on profoundly obscure or abstruse topics. Michael Jucker (of the University of Luzern) tells more than most readers would dream of knowing about the historiography of the Peace of Ensisheim of 1444 (in which France made peace with the Swiss Confederation). This Swiss Confederation treaty was the first to have a long-lasting effect. Christoph Kampmann (of the University of Marburg) supports the cause of continuity in international law by pointing to the Treaty of London of 1518 as a meaningful—if very short-lived—attempt to construct a long-term peace arrangement. The formation of the League of Nations was therefore not the first such effort. Kampmann mentions several later attempts at lasting peace settlements prior to World War I—while inexplicably saying nothing of the peace arrangements of Westphalia (1648), Utrecht (1713), or Vienna (1815).

In sum, this collection presents a vast ocean of scholarship. It does not always come in very accessible forms. Sometimes the translations into English leave much to be desired. And some of the contributions make little attempt to appeal to a general readership. In the chapter by Dominique Bauer (of Catholic University Leuven), for example, dealing with continuity in the context of the Middle Ages, the amount of learning displayed is clearly vast. But readers may struggle over the nuances of a “double-sided process of secularization” and its relation to “the abstraction of the social individual and social dynamics” (p. 269). Martin Kintzinger (a medieval historian at the University of Münster), who considers international-law thought in the late Middle Ages, provides neither any reason for his choice of writers nor any context to assist nonspecialist readers. Keun-Gwan Lee (of Seoul National University) purports to survey the reception of Europe-based international law in China, Japan, and Korea, but, instead, sets out a sustained case for what he calls a “transtemporal” approach to law, which means “an epistemological attitude that does not privilege a specific point of time either in the past or the
present” (p. 442). The author’s search for a “meta-positivistic reconstruction of a new normative prism” (p. 443) may be an exhilarating pursuit, but most readers will be hard-pressed to follow it.

In general, the book’s origin at an academic conference speaks somewhat against its usefulness for general audiences. The impression is that the contributors are speaking mainly to each other, and only secondarily to nonexperts peering in from the outside. Too few concessions are made to a general readership—with Lesaffer, Lutz-Bachmann, and Haggenmacher as honorable and outstanding exceptions. The book therefore will be of only limited use for teaching. It also does not constitute—and is not intended to constitute—a general history of international law. Another limitation on the book’s utility is the complete absence of an index.

None of these caveats, however, can detract from the heroic amount of learning that is brought to bear by this galaxy of scholars. And the publisher is to be greatly commended for bringing to the attention of English-speaking audiences so many writers who would otherwise be all too little known. Even if the book is of limited use for general readers or teachers, it needs to be in the armory of every serious scholar of the history of international law.

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The United Nations Human Rights Committee (Committee) is among the most—if not the most—influential international human rights mechanisms, with its impact felt not only across the UN system but also in the jurisprudence of regional human rights bodies and national courts. The Committee monitors compliance with the International Covenant on Civil and Political Rights¹ (ICCPR), a widely ratified treaty that forms one of the three core documents of the International Bill of Human Rights. The Committee has received more than two thousand individual complaints brought under the (first) Optional Protocol to that treaty, a number that other UN treaty bodies do not even begin to approach.² At the same time, the Committee has come under criticism for a variety of factors, including the politicized process by which its members are elected and questions about its efficacy.

Two recent books—The UN Human Rights Committee: Practice and Procedure by Yogesh Tyagi and United Nations Human Rights Committee Case Law 1977–2008 by Jakob Th. Möller and Alfred de Zayas—make significant contributions to our understanding of the valuable role that the Committee has played in developing international human rights standards thus far. The books also provide important perspectives into its future in light of common critiques of the Committee and its inherent limitations.

Aimed at a variety of audiences—states parties to the treaty, states that might be considering ratification, civil society actors seeking to hold states accountable, and individuals seeking to avail themselves of the protection of the ICCPR—The UN Human Rights Committee: Practice and Procedure provides the reader with a clear understanding of the mandate of and mechanisms for engagement with the Committee. Tyagi, a professor of international law at the School of International Studies, Jawaharlal Nehru University in New Delhi, India, comprehensively describes the Committee’s working methods. Yet he goes much deeper than the nuts and bolts of the Committee’s functioning. Recognizing that no human rights mechanism exists in political, social, or economic vacuums, Tyagi provides a historical overview for understanding how the Committee’s practices

¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 [hereinafter ICCPR]. The ICCPR currently has 167 states parties.
² The UN treaty body that has issued the next highest number of individual decisions is the Committee Against Torture, which has received fewer than five hundred individual complaints.