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The history of international law on matters pertaining to slavery has come under scrutiny over the last decade. Renowned scholars such as Jean Allain and Emmanuel Decaux have challenged the traditional narrative that presented the role international law played in fighting slavery in a generous and self-glorifying way. In their respective works, *Slavery in International Law. Of Human Exploitation and Trafficking* (Martinus Nijhoff, 2013) and *Les formes contemporaines de l'esclavage* (Martinus Nijhoff, 2009), both scholars provided a more thorough and realistic account of the history of abolition and the role of international law therein. Nonetheless, much work still has to be done in order to uncover the close but intricate relationship between the legal abolition of slavery and European imperialism. This is where Michel Erpelding's book *Le droit international antiesclavagiste des 'nations civilisées' (1815–1945)* comes in. As the product of Erpelding's doctoral research, which won the prestigious Varenne University Institute's thesis contest, this book provides a major contribution to the existing international legal scholarship on slavery.

Erpelding's basic proposition is that an 'international anti-slavery law' emerged in 1815 at the Congress of Vienna that stood *prima facie* in stark contrast to the old *ius gentium*. The latter had, until the end of the eighteenth century, authorized slavery and trading in human beings. What Erpelding focuses on are the ambivalences and contradictions of the new law: in the name of civilization, European powers aimed to abolish *slavery* (understood narrowly in terms of a right of property over another human being) worldwide, while also allowing for *forced labour* (understood loosely as grounded in public power) to take place in their colonies. It is only after the Second World War and the traumatic experience of forced labour by Europeans themselves, Erpelding argues, that the distinction between slavery and forced labour was revisited, and international law redrafted, so as to acknowledge that forced labour could amount to slavery and that there could be circumstances where they converge.

The structure of this voluminous (952-page long) book is organized around the rise and the fall of what Erpelding calls 'international anti-slavery law'. In the first part ('the rise'), Erpelding explains how European states, i.e., those who had used international law to provide a legal framework for their slave trade, gradually translated the nineteenth-century anti-slavery discourse into international legal obligations. The notion of civilization played a decisive role in this process. It was invoked to justify the fight against slavery first among European ('civilized') powers and then to non-European political entities,

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whose 'civilized' character was systematically questioned. During the last quarter of the nineteenth century, Europe's civilizing mission played another role as the abolition of slavery grew into a major justification for the colonisation of Sub-Saharan Africa by European powers. Erpelding shows that the practice of slavery acquired different meanings in 'civilized' or 'uncivilized' territories. To be more precise, a distinction was made between *slavery*, redefined as an illegal institution of private law, and *forced labour*, now described as a 'civilizing practice' permissible in the colonies under public law. Although this distinction was briefly questioned after the First World War, it remained unchanged and was even formalized under the League of Nations: states that had been granted mandates had the obligation to fight chattel slavery in their territories but retained the right to resort to forced labour 'for essential public works and services' (p. 357).

In the second part ('the fall'), Erpelding moves on to show how European nations failed in the 1920s to resolve the contradictions inherent to international anti-slavery law's conceptual framework. First, they failed to provide a coherent codification of slavery and forced labour as two distinct legal institutions. The 1926 Slavery Convention was a step forward insofar as it provided, for the first time, a definition of slavery in international law – but this definition could be interpreted either way, either as encompassing forced labour or as excluding it. In a similar vein, the 1930 Forced Labour Convention allowed forced labour to take place as a residual privilege of public power, but it also suggested that certain forms of forced labour could amount to slavery (p. 376). Secondly, European states failed in their practice to stick to a strict distinction between slavery and forced labour. They gave very variable interpretations of both conventional definitions depending on whether they referred to occurrences in their own colonial possessions or in non-European states. In their own colonies, the persistence of *de facto* or ancestral slavery (such as domestic slavery) was played down as a social ill that would eventually fade away (as the population became more and more 'civilized'); the negative effects of forced labour were also minimized. The law applied differently in non-European states: their sovereignty was questioned as soon as slavery was deemed to exist. To substantiate this claim, Erpelding examines the cases of Liberia and Ethiopia. In 1935, Ethiopian sovereignty was violated, and the country occupied, by a fascist Italy whose 'civilizing mission' was officially recognized by other European states (p. 527). In the end, Erpelding argues that the attitude of European states towards forced labour only changed when their own populations were confronted with it. Following the Second World War, the Allies moved away from the categories elaborated by 'civilized nations' and used the term slavery to condemn the forced labour regime established by Nazi Germany.

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What is particularly impressive about Erpelding's thesis is the use of historical work to support his argument. By this I mean the meticulous treatment of often previously unexamined documents. The amount of legal material that is analysed – including colonial laws and treaties – as well as the retrieval of archival sources – in no less than six languages, namely French, English, German, Latin, Italian, and Spanish – is outstanding.[1] It is also highly appreciated that a number of these otherwise scattered sources are regrouped in an annex (p. 601). That said, Erpelding's ambition is not only one of historical excavation; he wants to use these sources in order to identify the law applicable at the time and its interpretation over time. He offers a detailed description of both official discourse ('state practice') and doctrinal discourse ('auxiliary source', as per Article 38 of the ICJ Statute) over 130 years. Erpelding posits that his methodology is similar to Olivier Corten's *critical positivism*,[2] whereby one hopes to create an unveiling effect when one leaves aside political, economic, and other 'non-legal' considerations, and focuses exclusively on the applicable law and scholarly writings on it (p. 30). Even though this methodology is not without criticism, Erpelding's mode of writing is powerful: it is meant to be non-polemical and yet it is unforgiving. Over and over again, as the story unfolds, we read how international law and lawyers have allowed for the exploitation of men by men in the name of liberal and humanistic values. This explains the bracketing, in the book's title, of the 'civilized' status of those (i.e., Europeans) who drafted and promoted international anti-slavery law.

The lens through which Erpelding examines the rise and fall of international anti-slavery law from 1815 to 1945 is the 'standard of civilization' (pp. 17–18). He argues that the evolution of international law in the nineteenth and twentieth centuries in relation to slavery was closely dependent on the capacity of Western states to define themselves – in contrast to the rest of the world – as 'civilized nations' (p. 22). A recurring question was whether a civilized nation, which had formally abolished slavery at home, could still be accused of breaching international law when tolerating or exacting certain forms of forced labour that were not based on the recognition of property rights over human beings. To answer this question, Western politicians and their legal advisors resorted to the well-known practice of creating new legal categories: slavery was prohibited in international law, they said, but not forced labour. A civilized nation had to be slavery-free; it could however use forced labour for civilizational purposes. In a similar vein, chattel slavery became prohibited

1 That Erpelding found 473 anti-slavery treaties concluded in the nineteenth century shows how strong his commitment to historical work is.

2 Corten, O. *Le discours du droit international. Pour un positivisme critique* (Paris: Pedone, 2009).

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in international law, but not ancestral or domestic slavery, said to be 'softer' (p. 253). In other words, Erpelding shows that Europe's civilizing mission was a flexible legal argumentative tool that allowed for the creation of new legal distinctions (slavery/forced labour, chattel slavery/ancestral slavery, etc.) and that these dichotomies helped maintain human exploitation in the Global South. Bringing out these categories is where Erpelding excels: his story is one of legal ingenuity or legal imagination that European lawyers deployed for imperial purposes, that it so say, in order to 'enable optimal extraction of value from foreign territories while disciplining populations that were felt as inferior and dangerous'.[3]

This is all very convincing. But one can regret that Erpelding did not push his analysis further and explore the various meanings attached to the standard of civilization. For the anti-slavery discourse was full of economic (and not only moral) considerations. How did this affect international anti-slavery law? Take the speech the Scottish jurist and Whig politician James Mackintosh (1765–1832) delivered in 1824 in the House of Commons: thanks to commerce, he said, 'enslaved countries' would receive knowledge about 'the importance of the middle and lower classes of society'; they would 'reform social institutions' and 'establish equal liberty'. Commerce was 'the real civilizer and emancipator of mankind' (footnote 154). This contrasts with the apologetic explanation given by Octave Louwers (1878–1959), an *eminence grise* of the Belgian colonial establishment, more than a century later. In 1934, reflecting back on the use of forced labour by Belgian authorities in the Independent State of Congo, he asked: 'Does one really need to recall the circumstances in which we had to find workers for the exploitation of mines […] and for […] major public works? We did not have a working class […]' (p. 445). Many arguments for the abolition of the slave trade and slavery, and then for the maintenance of forced labour in the colonies, touched on issues of political economy – free trade, economic development, liberty of work, etc. An examination of these arguments would have highlighted the connections between the moral imperatives of the anti-slavery movement and the evolution of manufacturing and agricultural political economies premised on free labour regimes.

Another related theme that runs through the book but that remains unaddressed is the importance of private (or property) law. Because states are, in Erpelding's understanding, the real subjects of international law, they are foregrounded, i.e. they are the ones creating international law through their affirmative or 'positive' acts. Businessmen and other private actors such as corporations remain in the background, together with private law rules. This is not

3 Koskenniemi, M. 'Colonial Laws: Sources, Strategies and Lessons?', *JHIL* 18 (2016), 248 at 251.

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to say that they are absent in Erpelding's story: slave ship owners appeared in front of mixed commissions in the mid-nineteenth century (pp. 94–97) while chartered companies ensured order and recruited labourers in the 'scramble' for Africa (pp. 303–304). The infamous efforts by the Belgian King Leopold II to colonize the Congo region are also well-studied (pp. 317–322). But because states are deemed to be the driving force behind international anti-slavery law, Erpelding obscures more than he clarifies of the hybrid nature of slavery as a private-public institution. What is more, because the focus is on public law mechanisms (such as treaties), Erpelding comes close to suggesting that abolition arose as an effect of law (i.e., bilateral treaties) and not as a critique of law. This is misleading: there was an enormous amount of law that upheld slavery and the slave trade in all European countries. In the case of France, the *Code Noir* served as the basis of the law of slavery in Saint-Domingue and the other French plantation colonies, while the *régime de l'indigénat* contained administrative sanctions that applied to colonial subjects first in Algeria and then beyond. These legal regimes are only briefly examined (pp. 284–285).

This brings me to the overall structure and argument of the book. As mentioned earlier, the book is divided into two parts: the first part deals with the emergence of an international legal regime prohibiting the slave trade and slavery in the nineteenth century and early twentieth centuries; the second part looks at the weakening of that law from the 1920s onwards. Although this dual structure might have been chosen to fulfil the formal requirements of a French academic thesis, there is something unresolved or unconvincing about it. First, Erpelding wants to show that both European and non-European states worked together to abolish the slave trade and slavery in the nineteenth century, 'thereby establishing a universal international anti-slavery law' (p. 166). At the same time, however, Erpelding implies that international anti-slavery law was doomed to fail from the start: there was never one coherent principle prohibiting slavery that would have been applicable worldwide, because of the standard of civilization (p. 483). Accordingly, all the ingredients for the fall were already there when international anti-slavery law rose in the first place. This explains why there are so many references to the first part of the book ('the rise') when Erpelding analyses the decline of international anti-slavery law – this makes the book stylistically repetitive and, at times, tiresome reading. Secondly, one could argue that the codification of slavery and forced labour under the League of Nations did not jeopardize but rather gave institutional credence to international anti-slavery law. Thus the inter-war period should not be seen as one of decline but rather one of institutional management of international anti-slavery law, whose ambivalence (or double standards) continued to thrive well after the Second World War. Yet Erpelding argues that

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post-1945 international anti-slavery law is radically different from before as it rests on 'proper' universal principles (i.e., human rights) and no longer on a standard of civilization (p. 575). But Erpelding's faith in the universality of human rights is disconcerting, at best, especially in light of his own demonstration of the imperial character of international anti-slavery law. If there is anything to be learned from international legal history, including Erpelding's own story, it would be to be attentive to the tragedies and violence inherent in the project of the civilizing mission, and its continuing operation in international law. Erpelding could have used the important postcolonial (TWAIL) literature that has analysed the role of subjective rights in the consolidation of Western economic or ideological hegemony following decolonization.

These critiques should not overshadow the importance and brilliance of Erpelding's book. It is a welcome addition to the field, not least because it makes references to the widespread debates that took place in France, Belgium, and Germany at the time of abolition – thereby counterbalancing the relentless Anglo-centrism character of existing literature. Let us hope that an English translation will be made available so that it reaches a larger audience.

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