“Boundaries of the International”
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To the Columbia Political Theory Workshop:
The paper I am presenting is the introduction to the book I am currently finishing, (tentatively) titled *Boundaries of the International*. Thank you for reading it; I look forward to your comments.

Book manuscript table of contents:
Chapter 1. Empire and international law
Chapter 2. Oriental despotism and the Ottoman Empire
Chapter 3. Nations and empires in Vattel’s world
Chapter 4. Critical legal universalism
Chapter 5. The rise of positivism?
Chapter 6. Historicism in Victorian international law
Epilogue

[Epigraph to the introduction]

If by despot we mean an absolute master, who disposes of the goods, the honor, and the life of his subjects, using and abusing an authority without limits and without control, I see no such despots anywhere in Asia…. I see only a certain number of places where nothing is respected, where accommodation is unknown and where force reigns without obstacle: these are the places where the weakness and the improvidence of the Asiatics allowed foreigners from distant countries to establish themselves, with the sole desire of amassing wealth in the shortest possible time, and then returning to their country to enjoy it; people without pity for men of another race, without any sentiment of sympathy for natives whose language they do not understand and with whom they share no tastes, habits, beliefs, prejudices….. the foreigners of whom I speak are the Europeans.

A singular race is this European race. The opinions with which it is armed, the reasonings upon which it rests, would astonish an impartial judge, if such a one could be at present found on earth. Drunk with their recent progress and especially their superiority in the arts of war, they look with a superb disdain upon the other families of the human species; it seems that everyone is born to admire and to serve them….They walk the globe, showing themselves to the humiliated nations as the type of beauty in their figures, the epitome of reason in their ideas, the perfection of understanding in their imaginations. What resembles them is lovely, what is useful to them is good, and what strays from their taste or their interest is senseless, ridiculous, or condemnable. That is their only measure. They judge all things by that rule. In their own quarrels they are agreed upon certain principles by which to assassinate one another with method and regularity. But the law of nations is superfluous in dealing with Malays, Americans, or Tungus.

Jean-Pierre Abel-Rémusat, 1829

* Prepared for presentation at the Columbia University political theory workshop, March 8, 2017.
Chapter 1.

Introduction: Empire and international law

In 1829, Jean-Pierre Abel-Rémusat (1788-1832), who held the first chair in Sinology at the Collège de France, reflected on the ideological complex that his fellow Europeans had developed to justify their commercial and imperial depredations of societies throughout the extra-European world. They read their military supremacy as evidence of their moral superiority; they looked with contempt on societies of which they lacked the most basic understanding; and with a stunning parochialism, they not only saw their own standards of beauty, right, and reason as paramount, but they also expected others to embrace those supposed standards despite the Europeans’ consistently abhorrent conduct. Central to this ideology was a story about law: about the supposed absence of law in the despotic empires of Asia, where tyrants dominated their enslaved subjects without any legal or moral restraints, and about the unique virtues of the European law of nations, which had tempered war with consensual rules among free and equal states and whose benefits would one day be conferred on others when they achieved “civilization.” Abel-Rémusat was one participant in a minority discourse of the critique of this legal ideology. As a student of the history of human culture, he particularly lamented the loss of civilizational diversity — the unique “genius” and the “spontaneous progress” of each civilization — that he feared was disappearing as there came to be “nothing left on earth but Europeans.” He also eloquently condemned, and others in this vein of analysis would stress, the injustices that Europeans were perpetrating in the name of law and civilization.

This book is a study of the ideological and political work that discourses of the law of nations and international law performed during the eighteenth and nineteenth centuries with respect to relations between the imperial powers of Western Europe and states and societies outside Europe. These discourses emerged alongside the expansion and consolidation of Western Europe’s global empires, although the connections between empire and international law went unacknowledged for much of the twentieth century. International law, together with structures of international governance, is in important respects a product of the history of European imperial expansion. International law also aspires to universal legitimacy. These features are in certain obvious ways in deep tension with one another. How can a set of institutions and discourses developed at least in part to sustain and justify the domination by a handful of western European states over much of the rest of the globe hope to win the allegiance of those whose societies historically suffered under those institutions? Moreover, international law’s universalism itself is more deeply bound up with its imperial features than such an observation about the tensions between universalism and domination would suggest.

The law of nations was, until the mid-nineteenth century, an almost exclusively European discourse in the sense that the texts that circulated were produced, with limited exceptions, by Europeans and addressed to other Europeans, although their theoretical questions and conceptual categories reflected the extent and significance of European states and other agents’ relations and activities outside Europe. As a study of law of

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nations discourse and its imperial entanglements, this book focuses primarily on authors of the two major imperial powers of the period, Britain and France, where, until the consolidation of international law as an academic discipline in the second half of the nineteenth century, the law of nations was a language and framework for political argument used broadly in public debates and works of political thought.³

The implication of international law in the West’s domination over other societies is an important part of a larger story of the imperial career of European universalisms.⁴ As recent studies of the mutually constitutive relationship of liberalism and empire have shown, imperial tendencies have been as internal to liberal universalism as anti-imperial, or emancipatory, or egalitarian ones, despite liberalism’s ostensible commitments to the moral equality of all human beings and to the value of self-government.⁵ Liberalism has often had a parochializing effect on the European imagination, thanks in large part to a linear view of progress that figured European civilization, and European commercial society, as the vanguard or the telos of world history, as at once unique and a model for the rest of the world. Even as it came to understand itself in global terms, Europe

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³ Christopher Warren, *Literature and the Law of Nations 1580-1680* (Oxford: Oxford University Press, 2015), argues that the significant presence of the law of nations in early-modern literature waned in the eighteenth century as the law of nations began to take on more concrete institutional and disciplinary forms such as specialized curricula, and as literature came to be more narrowly linked with imaginative writing (19-22).

⁴ As Teemu Ruskola writes, “For moderns, the state is the primary medium for the articulation of the universal, and law is the privileged language in which that universality is expressed”; *Legal Orientalism: China, the United States, and modern law* (Cambridge, MA: Harvard University Press, 2013), 9.

“diminished its own ethical possibilities.” Paradoxically, scientific and scholarly attention to global phenomena in the nineteenth century was in part driven by, and can be said to have contributed to, European parochialism, as thinkers came to see Europe as an entity with global reach and global significance, both because of its outsized power and because of the apparent uniqueness of European progress in human history. This process is particularly striking in the field of international law, which became an increasingly disciplinary, and self-consciously European, endeavor over the course of the nineteenth century, alongside the development of that parochial moral universalism.

The law of nations proved a powerful political discourse in the context of European commercial and imperial expansion, in at least three respects. It supplied justifications for the actions of imperial states and their agents: from the conquest of territory, to the seizure of other powers’ ships, to the imposition of unequal or discriminatory trade regimes. It also furnished resources for the criticism of abuses of power by imperial states; it had, as international law still does, both “imperial” and “counter-imperial,” critical, or emancipatory, dimensions. Third, law of nations discourse could efface the imperial dimension of European states: for instance, by conceptualizing the states of the international legal community as territorially compact peoples rather than the sprawling

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and stratified global empires that the most powerful of them were. As accounts of the law of nations came to be structured by a conception of nations as moral communities equal in status with, and independent of, one another, they had the effect of denying theoretical space for the consideration of European imperial actions. (Some narratives simultaneously delegitimized non-European states as atavistically imperial in a modern world of equal nations.) Such occlusions characterized dominant narratives of international law well into the twentieth century and arguably continue to shape not only mainstream international law but also much of the discipline of international relations and to shore up the major institutions of international governance. As James Tully has argued, “the world legal and political order is best characterized as an imperial order of some kind,” yet “our dominant languages of disclosure and research conceal and overlook the imperialism of the present.” This book traces some of the languages of disclosure and political argument in the eighteenth and nineteenth centuries that contributed to the current conjuncture Tully so powerfully depicts.

The complexity of global political interactions means that all conceptualizations of and narratives about those interactions necessarily abstract and simplify, drawing attention to certain features or patterns or continuities, and rendering others obscure. Legal discourse has long been central to the project of describing, conceptualizing, and envisioning what has come to be called the international, and since the early-modern

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9 Recent critiques within international relations include Tarak Barkawi, “Empire and order in international relations and security studies,” in Robert Denemark, ed., The international security studies encyclopedia (Chichester: Wiley-Blackwell, 2010), vol. 3, 1360-79; David Long and Brian Schmidt, eds., Imperialism and internationalism in the discipline of international relations (Albany: SUNY Press, 2005); Philip Darby, ed., At the Edge of International Relations: Postcolonialism, Gender and Dependency (London: Pinter, 1997); L.H.M. Ling, Postcolonial International Relations: Conquest and Desire between Asia and the West (Basingstoke: Palgrave, 2002); Branwen Gruffydd Jones, ed., Decolonizing international relations (Lanham, MD: Rowman & Littlefield, 2006);

period that legal discourse has relied on historical narratives, whether more or less explicitly, for its work of conceptualization. For early modern thinkers like Grotius and Gentili, a grasp of the principles of international law was inextricable from a sense of its history, especially its Roman history. From the time that the first histories of the law of nations began to be written, in the late eighteenth and early nineteenth centuries by figures like D.H.L. von Ompteda (1785), Robert Ward (1795), and Henry Wheaton (1841), historiography has been used to stage disputes and stake claims over the normative foundations of legal principles, to justify novel practices as conventional, and to demarcate the boundaries of the international legal community. Accordingly, this book examines how authors deploying the language of the law of nations and international law conceived of the international both spatially and temporally. What did it encompass: what were its contours and limits? How had it come into being and developed over time? What were its possible futures? I should note that this book is a study of reflections by eighteenth- and nineteenth-century legal and political thinkers on these questions of scope, rather than an attempt to chart something like the scope of international law in practice.¹¹

Tensions between a consciousness of particularity and an aspiration to universality have been a persistent feature of European conceptualizations of the law of nations. The history of law of nations debates underscores the enduring challenge of thinking the particular and the universal together, and of accommodating perceived differences within a normative edifice. Legal discourse itself presses toward uniform application, so that

¹¹ Paulina Starski and Jörn Axel Kämmerer write that “a still open question is how to conceptualize and categorize legal relations that…sometimes still existed between European and non-European entities”; “Imperial Colonialism in the Genesis of International Law — Anomaly or Time of Transition?” *Journal of the History of International Law* 19 (2017), 1-20; I am interested in the somewhat different question of how thinkers at the time conceptualized them.
exceptions or variations must be explained and justified. Thus Vitoria began his *De Indis* by canvassing the possible reasons that the Amerindians conquered by Spain might not have “true dominion”: if they had, if “innocent individuals [had been] pillaged of their possessions and dominions, there are grounds for doubting the justice of what has been done.”

Many of the key terms in international law have had a double-edged quality: while such concepts as equality and reciprocity are apparently inclusive, they have been used as discriminatory standards. Legal discourse could be used to impose particular practices or standards on others in the name of their universally obligatory nature, and to characterize and judge societies as worthy (or not) of reciprocal treatment, or as having standing to make certain kinds of claims.

The question of the relationship between particular norms and practices and universal principles permeates the history of law of nations theorizing most obviously and enduringly through the question of the relationship between the law of nations and the law of nature, “positivism” and “naturalism.” There are good reasons, as Jeremy Waldron has urged, to think of natural law and the law of nations as inextricable, and further, to approach natural law by way of positive law. Waldron locates such an approach in the work of Alberico Gentili (1552–1608), who wrote, citing Cicero, that “‘The agreement of all nations about a matter must be regarded as a law of nature’.”

Waldron argues that Gentili’s equation of the two kinds of law entails not an “obliteration” of the “distinction between rational/normative and positive/descriptive elements in legal theory, but an

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imbrication of the two.” We should not, Waldron argues, attempt to hive off our reasoning about the normative standards that guide our judgments of positive laws from the content of those laws themselves (as a common view holds, in the name of preserving moral clarity as well as clarity about what the law is).\textsuperscript{14} Rather, we should engage in a kind of “back-and-forth” reasoning that balances a sense of actual practices and positive laws with our judgment of the moral quality of those practices and laws, and that allows us to consider a principle’s viability for governing social life, whether it makes reasonable demands on people and can be stable over time. “Natural law,” as Waldron puts the point, is best understood not as something like pure moral philosophy, but rather “as something discernable most reliably from a careful, critical, and morally well-informed study of universal or consensual human practices.”\textsuperscript{15} Such an approach to the law of nations represents a form of reflection that draws on actual practice to help establish our normative standards, while at the same time always preserving an overtly critical and evaluative orientation toward practice.\textsuperscript{16}

Waldron’s reflections about how best to think about the relationship between the law of nations and the law of nature shed light on the pitfalls, the limitations, and occasionally the promise of other ways in which European legal thinkers have navigated the encounter between particular and universal, practice and norm. In what follows I want to highlight a set of connected arguments that is this book’s major object of normative critique. This view, which can be summarized as holding that the law of nations is

\textsuperscript{14} Waldron associates this view with English positivists such as H.L.A. Hart and traces it to Bentham’s analytical separation of “expository” from “censorial” jurisprudence; Waldron “\textit{Ius gentium},” 286.

\textsuperscript{15} Waldron, “\textit{Ius gentium},” 296.

\textsuperscript{16} Relatedly, Koskenniemi has argued that naturalism and positivism should be seen as complementary rather than as oppositional, as framework and routine, respectively, and that eighteenth-century German lawyers all “oscillated uncertainly between the relative emphasis” they lay on each, even as they saw them as “intimately linked”; Koskenniemi, “Into Positivism: Georg Friedrich von Martens (1756-1832) and Modern International Law,” \textit{Constellations} 15.2 (2008), 189-207 at 192.
Europe’s distinctively successful solution to universal problems of order, entails a combination of particularism and universalism that, as I will argue, was especially pernicious as source of justifications for and obfuscations of European imperial domination. This parochial universalism saw its own local principles as universally obligating and therefore in a position to judge others not just as enemies but as “outlaws,” thereby making itself both a party to conflict and the judge.

Thanks to qualities or developments unique to Europe, the argument has gone, Europeans alone managed to develop a body of legal doctrine that ought to be authoritative for the entire globe, and that they were therefore justified in imposing on others. The dominant register in which this view was expressed shifted from the religious to the civilizational, but these shared a basic narrative structure: Europe was, for the moment, uniquely in possession of universal moral and political truths. The discourses also coexisted and mingled: medieval canon law documents deploy tropes of civilizing as well as converting infidel barbarians or wild men, and international lawyers continued to insist into the late nineteenth century on the distinctively Christian character of international law. Proponents of such a view have sought a variety of candidates for the decisive European features: a varied geography that led to a plurality of states that existed in close proximity to one another and were forced by their relative equality to accommodate themselves to one another, as opposed to the steppes of Asia that encouraged vast and despotic empires; respect for the individual as a unique legacy of Christianity; a distinctive appreciation for the rule of law as a legacy of Rome; and many

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17 Robert Phillimore wrote that although international law is binding among “heathen” states, “[u]nquestionably, however, the obligations of International Law attach with greater precision, distinctness, and accuracy to Christian States in their commerce with each other”, Commentaries upon International Law (London, 1871-1874), vol. 1, p. 24.
others. Rousseau encapsulated the view in his “Abstract of Monsieur the Abbé de Saint-Pierre’s Plan for Perpetual Peace,” which argues that Europe shared a common culture of “maxims and opinions” based on Roman law. The position of mountains and rivers “seem to have settled the number and extent of these Nations; and one can say that the political order of this Part of the world is, in certain regards, Nature’s work.” Finally, the “multitude and smallness of the States” bound by commerce and intellectual culture meant that Europe produced “not merely an ideal collection of Peoples who have nothing in common but a name like Asia or Africa, but a real society which has its Religion, its morals, its customs and even its laws.” Notably, the blinkered Eurocentrism of such projects was remarked by some Enlightenment commentators. Voltaire cheekily parochialized Rousseau’s abstract with his mock commentary by the Emperor of China, criticizing peace plans such as Rousseau/Saint-Pierre’s not just for their futility and utopianism but relatedly for their failure to recognize non-European states as members of the international community, for their presumptuousness in placing Europe figuratively at the center of the world, and for their complicity, whether witting or unwitting, with those profiting from unjust global commercial enterprises.

The universalist claim that European international law should be binding on all states and that China, or the Ottoman Empire was a lawless exception worked in tandem with the particularist claim that international law was the law of Christendom alone and that

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there was no community of law at all between European states and others. In both cases, the effect was to entrench asymmetries of power in legal form and to render difference from Europe as moral and legal inferiority. As Teemu Ruskola has recounted of the arrival of the 1844 arrival of Caleb Cushing, the first American ambassador to China, to negotiate a commercial treaty for his country in the wake of the first Opium War between China and Britain, Cushing’s ships were asked not to fire a twenty-one gun salute, as China did not observe such a custom and it might frighten the inhabitants. Cushing was also denied an imperial audience, since there was, he was told, no precedent for American ambassadors to be received in the capital by the emperor. Cushing was outraged about both incidents, insisting that it was his “duty, in the outset, not to omit any of the tokens of respect customary among Western nations” and predicting trouble for China if it persisted in refusing “the exchange of the ordinary courtesies of national intercourse.” Cushing’s self-righteous response neatly encapsulated what was becoming the standard Western approach to relations with non-European states, in its appeal to supposed principle, to the ideal of mutual respect among states, and to Western customs as normative for the entire world, and its use of all these to place China in a subordinate legal position. Cushing managed to claim both universality and particularity for the European (Christian, Western) law of nations. When China declined to follow a Western practice, even one as purely ceremonial as the gun salute, it was failing to uphold a standard it ought to recognize. And yet Western states could not be expected to extend forms of legal recognition standard among themselves to China and other such states.

In addition to charting iterations of that parochial universalism in eighteenth- and nineteenth-century international legal discourse, this book also examines alternative

efforts to navigate the tensions between international law’s universal aspirations and its parochial European features. One alternative understanding has stressed that even if Europe constituted a distinct political-legal community that had emerged over time as the result of particularly dense interactions and shared history, this community had to be understood in the context of its global connections, and, moreover, Europeans ought to seek to regard their relations with states and societies everywhere as bound and constrained by law. Although they might encounter some differences in both domestic and intercommunal legal principles, Europeans ought, in their dealings with other societies, to seek to discover shared legal principles. Europeans ought moreover to respect their own legal principles in dealing with extra-European societies, and to seek mutual intelligibility, even when they could not impose their own standards on others. This approach to the tension between the parochial and the universal could lead to a posture of interpretive generosity with respect to others’ legal principles. Though never a dominant strain of political-legal thought, it had distinguished exponents in the eighteenth century and weaker echoes in the nineteenth, and one of the aims of this book is to recapture it.

The injustices that Europeans perpetrated in and on other societies with the help of the law of nations as a tool and justificatory discourse have sometimes been characterized as due to the exclusion of those other societies from the international legal community. But critiques that focus on exclusion are limited. As Richard Tuck has argued, Asian states that had been excluded from treaty relations with Europeans by the Christian ban

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on treaties with infidels had good reasons to regret their inclusion within European treaty practices — and the wars and military alliances these governed — as that inclusion became more standard in the seventeenth century. Tuck sees Grotius’s criticism of a ban on treaties with infidels as a feature of his imperializing bent, and he argues that it may have been because the ban was more respected in Spanish and Portuguese discourse that those empires lagged behind the Dutch and later the English in imperial expansion into Asia. Treaty and legal recognition were instrumental in the expansion of the British Empire in North America and the Pacific. Nineteenth-century Europeans likewise recognized the sovereignty of African rulers and concluded treaties with them precisely to facilitate their dispossession and subjugation. An apparent recognition of the validity of non-European laws also served as the basis of one important justification of slavery before the nineteenth century. The celebrated barrister John Dunning, for instance, representing the slaveholder in *Somerset v. Stewart* in 1772, argued that the purchase of slaves in Africa rested on a recognition of the right of African societies to make laws.

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23 Tuck, “Alliances with infidels,” in Sankar Muthu, ed. *Empire and Modern Political Thought* (Cambridge: Cambridge University Press, 2012), 61-83. Peter Borschberg makes a similar suggestion by showing how the Dutch secured their monopoly over East Asian trade not, as the Portuguese had done, on the basis of first occupation but rather precisely on the basis of treaties with local powers, treaties that Grotius argued the Dutch had a right to compel the Asians to honor. Borschberg is perhaps too magnanimous when he writes that “as a result of his efforts to safeguard the independence of Asian rulers from encroachments by Spain and Portugal, Grotius (perhaps quite inadvertently) lent his support to preparing the legal and commercial ground for almost three and a half centuries of Dutch colonial rule in Southeast Asia”; Borschberg, “Hugo Grotius, East India Trade,” 248.


imposing slavery as a punishment for offenses against society; he argued that it would be 
an unjustifiable chauvinism not to recognize the legality of such enslavements. Arnulf Becker Lorca has charted the disillusionment that semi-peripheral international lawyers felt in the early twentieth century as they saw that the bid for inclusion in the international community of states that was pursued by a previous generation of non-European lawyers repeatedly failed to curb European states’ use of international law to bolster and justify their disproportionate power. Inclusion on unequal terms arguably cannot properly be called inclusion at all. But perhaps instead it is misleading or unhelpful to think of exclusion as the primary problem, since the critical lens of exclusion tends to suggest that problems will be solved if the excluded are simply included. It may be more productive to see the problem as one of domination, which more clearly enables us to see how the emancipatory and dominating sides of international law are intertwined.

2. The “European state-system” and the law of nations

A conception of the international came into focus in Europe in the seventeenth and eighteenth centuries, and relations among European states had priority within this conception. It was during this period that historians and political writers came to understand Europe as a system, a “states-system,” worthy of analysis in its own right.

26 As Dunning argued, “We are apt (and great authorities support this way of speaking) to call those nations universally, whose internal policy we are ignorant of, barbarians (thus the Greeks, particularly, stiled many nations, whose customs, generally considered, were far more justifiable and commendable than their own;) unfortunately, from calling them barbarians, we are apt to think them so, and draw conclusions accordingly…. There are of these people, men who have a sense of the right and value of freedom; but who imagine that offences against a society are punishable justly by the severe law of servitude…. the law of the land of that country disposed of [James Somerset] as property, with all the consequences of transmission and alienation”; Somerset v. Stewart (1772), English Reports 98, 499-510 at 505.

27 On the coming into being of a conception of the international, the “creation of the international as a category” see Armitage, “Modern International Thought: Problems and Prospects,” History of European Ideas 41 (2015), 116-130 at 126, and Foundations of Modern International Thought. The story of the rise of the international as a conceptual category is in important respects the story of the differentiation between the domestic and the international domains; Armitage, Foundations, 13.
rather than simply the product of actions by states and statesmen, and whose coming into being was one of the great achievements of modern European civilization. Other parts of the world were said to be unable to match this achievement, as they were characterized by, perhaps doomed to, great and oppressive empires. The relationship of this “state-system” to the “international,” to the law of nations, and to humanity as a whole was complex and ambiguous, but by the turn of the nineteenth century the European state-system and its public law were coming to be seen as standing in for the international as a whole, representing a proto-international community or the germ of a more global international community. The law of nations was one of the most important discourses in which Europeans articulated Europe’s claim to regard itself uniquely as the bearer of universal values.

The project of creating an international order has long been commingled with that of European consolidation and informed by European exceptionalism, from Christendom’s global project of conversion in medieval and early modern Church doctrine, through eighteenth-century projects for perpetual peace, to contemporary theorizations of the European Union as a democratic model for a post-sovereign world. Europeans, as Martti Koskenniemi has noted, have never “thought of Europe in merely local terms, but

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generalized it into a representative of the universal.” The Abbé de Saint-Pierre reported in 1713 that he had initially conceived his project for perpetual peace as encompassing “all the Kingdoms of the World” but had concluded that “even though in following Ages most of the Sovereigns of Asia and Africa might desire to be receiv’d into the Union, yet this Prospect would seem so remote and so full of Difficulties, that it would cast an Air of Impossibility upon the whole Project.” He disarmingly projected that a Christian European union “would soon become the Arbiter of the Sovereigns” of “the Indies,” who would place their faith in it when they recognized that its only interest was in mutually beneficial commerce and not in conquest. Immanuel Kant’s federation of republics is described in universal language but is often read as a project of European federation.

Projects for European union have in this way long seen it as having a vocation both as a political archetype for the rest of the world and as an authoritative arbiter of the political legitimacy of extra-European states: a model for the future and a judge for the present.

To be sure, certain political developments largely internal to Europe and Christianity partly shaped the development of European understandings of the international and ideas of universal validity. As Richard Devetak has argued, Renaissance statesmen and the humanist historians who served them “helped give shape to a conception of the

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31 The work was published as he was serving as a French secretary during the Utrecht treaty negotiations. Charles-Irénée Castel de Saint-Pierre, Projet pour rendre la paix perpetuelle en Europe (Utrecht, 1713) Préface xix-xxi; translation from A Project for Settling an Everlasting Peace in Europe (London, [1714]), Preface, viii-ix.

international as a world of states," in the course of a battle against the political theology of the church as having supreme universal authority.\(^\text{33}\) Andrew Fitzmaurice has argued that the universalist gestures of the European law of nations took shape in the context of the religious warfare unleashed by the Reformation: “These rules applied between European states, but their principles necessarily had to have some claim to universality or they risked falling back into the communal ideas that had fed more than a century of war.”\(^\text{34}\) Edward Keene has argued that the shift from naturalism to positivism, which involved an insistence that the law of nations was particular to Europe, was due as much to a counter-revolutionary context within Europe as it was to reflections on European states’ relations with other parts of the world.\(^\text{35}\) Yet for too long the dominant narrative of international politics was one of a system that emerged within Europe — a Europe understood in isolation from the rest of the world — and that then expanded in the nineteenth and twentieth to encompass the world. The profound, and constant, role of extra-European developments in the evolution of the law of nations was long ignored.

Since the nineteenth century, such an account of the history and sources of international law has been the dominant one. That narrative said that international law had its origins within Europe, between sovereign European states that viewed each other as free and equal.\(^\text{36}\) It saw a decisive moment in the Westphalia treaties, which, it said,

\(^{33}\) Devetak, “Historiographical foundations,” p. 65.

\(^{34}\) Fitzmaurice, *Sovereignty, property and empire*, p. 10; also see Armitage, *Foundations*, pp. 38-9, for the argument that universalism began as a matter that applied to the Christian world only. As Robert Williams has argued, “The emergence of a style of legal discourse [during the Reformation and Enlightenment] that spoke of universal norms binding all humankind into a world community provided reassuring continuity with the West’s medieval discursive traditions of unity and hierarchy”; Robert A. Williams, *The American Indian in Western legal thought: the discourses of conquest* (Oxford, 1990), p. 107.

\(^{35}\) Keene, *Beyond the Anarchical Society*; and see Armitage, *Foundations*, pp. 42-3.

\(^{36}\) E.g., John Westlake, *Chapters on the principles of international law* (Cambridge, 1894): “The society of states, having European civilisation, or the international society, is the most comprehensive form of society among men….States are its immediate, men its ultimate members,” 78; Lassa Oppenheim, *International
above all set out to protect states’ independence from intervention by outsiders. And, it concluded, this essentially European system gradually came to incorporate other states as these reached the appropriate “standard of civilization,” or, as more recent language would have it, as they entered the state system or decolonized and became independent.

The Victorian historical narrative persisted well into the twentieth century. Both defensive in the face of, and dismissive toward, the challenges to international law raised by lawyers and leaders from decolonizing states, the Dutch jurist Jan Verzijl insisted in 1955 that the body of international law was exclusively the product of “the European mind”: it had been generated by a combination of European theoretical activity and European state practice, and it had integrity and coherence, such that it could be described as a body of “general principles and customary rules of law which have shown their vitality by standing the test of time and circumstance.” With the kind of reflexive positivism that characterized Victorian international legal thought, as I discuss in chapter 6, Verzijl offered a peremptory prediction: that “[i]t would seem very unlikely that any revolutionary ideas will appear as a result of the entrance of these new members which will have power to challenge or supersede the general principles and customary rules of law which have shown their vitality by standing the test of time and circumstance.”

Verzijl, that is, posited a continuity to the tradition of international law that he attributed

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to the essential conceptual and normative soundness of the legal totality, rather than to its imposition by and collaboration with force. He argued not simply that non-Europeans had adopted international law without materially altering it, but that they could not help but adopt without altering it, since they had no useful alternative legal traditions on which to draw. He depicted non-European resistance and critique as if these were driven by a kind of impotent *ressentiment*; “we in the West can only regard with a certain amount of amusement because it offers curious evidence of the lasting dependence of non-Western nations in the conduct of their international affairs upon fundamental concepts of the Western world from which their political leaders nevertheless so ardently crave to liberate their States.” Rather than recognizing international law as a space of contestation in the past and present, he presented it as an organic whole, “which originated in the West, but which has been adopted by the East,” and he saw in this narrative of European past and global future “one of the outstanding proofs of the ultimate unity of the human race.”

Although it departs significantly in tone from Verzijl’s smug Eurocentrism, Adam Watson’s *Evolution of International Society* (1992) represents a late-twentieth century articulation of the conventional narrative that recapitulates some of the narrative’s key themes and performs some of the same ideological work. Watson’s book was one of several prominent products of the British Committee on the Theory of International Politics led by Herbert Butterfield, Martin Wight, and Hedley Bull (the nucleus of the “English school” of international relations). Its framing narrative, that the contemporary international system is the result of the global expansion of an originally European

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system of equal and independent states, takes up the basic nineteenth-century narrative, even if it was far more global in its outlook. This approach downplays the fact that the so-called European system of independent states was dependent on, indeed constituted by, the global relations of politics, economy, and war in which those states were embedded, and it downplays the ongoing asymmetries of power and legal status after decolonization, because sees the relevant story as the rise of a global society out of a European one, rather than as transformations of legal form within a global system characterized by domination and asymmetry.

Thus, while acknowledging the fact of European empires, Watson tells a narrative sanitized of European domination in several ways: he writes (in a Vattelian vein that I explore in chapter 3) of the European states system of free and equal members as if this system existed independent of global imperial structures; he writes of European relations with the Ottoman empire and Asian states as “a compromise or hybrid,” and he summarizes decolonization as the acceptance by Europeans of all other independent states on the same terms as themselves: “[w]hen Europeans took it for granted that all other independent states should be admitted to their international society on the same terms as themselves, the European society can be said to have given way to a global one.”41 Such a gloss disregards the fact that Europeans fought through much of the twentieth century to constrict the legal rights and standing of non-European states, from League of Nations members Liberia and Ethiopia in the 1920s and 1930s, through constraints on sovereignty forced on decolonizing states, through the imposition of onerous and often destructive loan conditions on third-world states through international institutions such as the International Monetary Fund and the World Bank: so that the

41 Watson, Evolution of international society, 258.
admission on equal terms never in fact occurred.\textsuperscript{42} If it was “taken for granted,” this was arguably only in a more perverse sense than Watson intended, namely that the very insistence that post-colonial states were incorporated as equal members itself served to obscure their ongoing legal subordination. Watson concludes that “since both the letter and the spirit of the European society of states were essentially non-imperial, and fluctuated within the independences/hegemony half of the spectrum, the nineteenth-century European dominance over the rest of the world proved to be less durable than it once seemed.”\textsuperscript{43} The choices Watson makes to render global interactions analytically tractable, that is, his framing historical narrative and spatial conceptualization of the global order as the expansion outward of the community of equal nation states from Europe to the world make it hard to see some of the major phenomena of modern world history. An alternative framing would highlight the evolution of a capitalist world system in which European metropoles and extra-European states and societies (whether formally colonized or not) developed interdependently through a profoundly asymmetrical process, with international law playing an important role in justifying and stabilizing inequalities of wealth and military power.\textsuperscript{44}

The conventional narrative, that is, disregarded the constitution of modern Europe by an imperial order and discounted the role of imperial domination in the history of


\textsuperscript{43} Watson, \textit{Evolution of international society}, 262.

international law by narrating that history as a product of egalitarian relations among nation-states. It largely ignored the global and imperial contexts and sources for international law — the profound preoccupation with imperial concerns by thinkers deemed foundational, such as Vitoria\textsuperscript{45} and Grotius\textsuperscript{46}; the influence of Roman legal concepts developed in the course of Roman imperial expansion; and the inter-imperial rivalries that contributed to so many of the decisive wars, treaties, and theories.

According to the standard account, international law emerged within Europe as a response to the problems of disorder and violence among states that understood themselves as equal in standing, even if not in size, wealth, or power. It then gradually expanded during the nineteenth and twentieth centuries to encompass ever more states as these achieved a “standard of civilization” or achieved independence under decolonization.\textsuperscript{47} This conventional narrative is problematic in at least two respects: first, it depicts modern international law as developed exclusively within Europe and then exported to the rest of the world, rather than as partly forged in the course of European imperial expansion and through European interactions with extra-European states and societies. And second, it suggests that the (European) building blocks of modern


For a discussion of the broader tradition, see Tuck, The Rights of War and Peace. Also see Alexandrowicz, “Grotius and India” Indian Year Book of International Affairs 3 (1954), 357-67; Alexandrowicz, “Freitas versus Grotius,” British Year Book of International Law 35 (1959), 162-82.

international law were truly universalist, that they did not privilege Europeans or Christians but were (uniquely in the world) of truly universal scope. Critical histories have been challenging both pillars of the conventional narrative.

Jörg Fisch has insisted in response to the standard narrative that “[t]he political aim of the European expansion, from the fifteenth to the twentieth centuries, was never to extend the international society of Europe...The aim was not coordination but subordination.” He concludes that the “real universalization” of the system came not through the extension of European power but in its contraction with decolonization: “and this only because it contained a principle which allowed to build an international society of sovereign equals.” Fisch is interested in law as a political tool rather than as an ideological structure, or rather he emphasizes the former at the expense of the latter.

While his argument makes for a vitally important correction to the conventional narrative, Fisch treats Europeans as purely driven by a material impulse to dominate others for European advantage, and he treats the ideas of international law as free-floating normative principles (equality and reciprocity) that belong to everyone and were embraced by decolonizing nations because they saw those principles as more attractive than the alternative of destroying the system. But the compelling values of mutual respect, political autonomy, and humanitarian concern cannot, I would argue, be divorced from a history in which such principles were deployed to advance and justify imperial domination; to do so would be to risk failing to respond in a sufficiently critical spirit to

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48 See Neff, Justice Among Nations (Cambridge: Harvard University Press, 2014), for the most recent elaboration of this general line of argument.
the ideological work such ideas may continue to do to shore up or occlude global asymmetries of power, a subject I take up briefly in this book’s epilogue.

3. The historical narrative of the book

This book is intended as a contribution to a growing body of literature that might be called the critical history of international law. It is a striking feature of the recent historical turn in international law that it has been deeply shaped by a postcolonial sensibility, so that the revitalization of historical interest in a field that had long lacked it has also entailed a radical challenge to international law’s identity as an emancipatory project with an essentially European genealogy. The book that did more than any other to spark this process was Martti Koskenniemi’s *Gentle Civiliser of Nations* of 2000, and Koskenniemi has continued to be the most influential as well as the most prolific voice in the conversation his book did so much to begin. Antony Anghie’s 2004 *Imperialism, Sovereignty, and the Making of International Law* was another landmark in this turn, extending back in time, and systematizing, the association between international law and European imperial expansion that Koskenniemi had exposed in the lives and work of the generation of international lawyers (the “men of 1873”) who occupied the first university chairs, and founded the first associations, of international law in the name of a vision of global harmony, even as they assisted in the carving up of Africa at the 1885 Conference of Berlin. This new literature challenges the conventional understanding of international law as an emancipatory project with an essentially European genealogy.50 This work

attends to the persistently hierarchical structure of the global order, what Anghie has called the “dynamic of difference embodied in the very structure, logic and identity of international institutions.” Koskenniemi and Anghie had important predecessors from the period of decolonization in the 1950s and 1960s, among figures such as Georges Abi-Saab, R.P. Anand, and Jorge Castaneda at the origins of the movement that came to be known as Third World Approaches to International Law (TWAIL). The massive Oxford Handbook of the History of International Law is the clearest and most extensive evidence of the postcolonial turn in the history of international law; the editors take “overcoming Eurocentrism” and drawing from new developments in global history to be among the book’s most important tasks and contributions. And while international law became the purview of specialists in the later nineteenth century, with the founding of professional societies, journals, and university chairs, the current historicizing moment has brought scholars of international law into conversation with those of other disciplines including history, anthropology, international relations, and political theory. This may make possible something like a return to the pre-disciplinary status of the law of nations as a discourse available to a wider array of writers, thinkers, and publics.

While there has been much recent scholarship on Vitoria and Grotius, as well as on the later nineteenth century, the pre-disciplinary eighteenth and early nineteenth centuries

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have been relatively neglected. And yet even before the most recent wave of scholarship on the intersection of law and empire, a powerful revision of the standard narrative emerged in the 1950s and 1960s alongside the work of the first generation of lawyers from the so-called “New States,” in the historical scholarship of the international lawyer Charles Henry Alexandrowicz. Alexandrowicz grounded his revisionist story precisely in a claim that the period around the turn of the nineteenth century was the transformative moment in the history of international law. Alexandrowicz’s work had both historiographic and normative aims. He meant to set the historical record straight, from what he saw as its long Victorian detour, to show that international law both in theory and in practice had been far more inclusive than it was to become in the nineteenth century. And he sought to recover that greater inclusiveness as a means of combating “European egocentricity” in international law, with all its pernicious effects in the postcolonial period. Alexandrowicz argued that for much of the sixteenth through the eighteenth centuries, Asian states or rulers were routinely respected as fully sovereign; treaties with them were equal and binding, and these treaties were regarded by European lawyers and scholars as evidence of their participation in the law of nations. For instance, the Maratha state, a formidable military power in northwest India, was, he held, “clearly considered a legal entity in the . . . law of nations and there is no doubt as to its membership in the Family of Nations and its capacity of dealing with other members on a

53 Koskenniemi has made the provocative argument that the doctrinal international law that developed beginning with the “men of 1873” was in important ways quite disconnected from the law of nations theories of the previous century; “International law and raison d’état: rethinking the prehistory of international law,” in Kingsbury and Straumann, The Roman Foundations of the Law of Nations, 297-339 at 297. But nineteenth-century writers consistently cited Grotius, Pufendorf, Wolff, Vattel, and the broader ius gentium tradition as their intellectual forbears.

footing of equality and of concluding treaties in the meaning of international law.”

Alexandrowicz argued that this naturalist universalism was displaced by positivism beginning in the late eighteenth century. He saw authors such as D. H. L. von Ompteda and J. J. von Moser as intermediate figures, with Ompteda seeking to defend the law of nature in a kind of rearguard action against the encroaching positivist ideology, and Moser a representative of the latter whose work nonetheless shows that “The concept of universalism was . . . capable of holding a qualified position of its own in spite of adverse doctrinal developments.”

As compelling and as dauntingly erudite as Alexandrowicz’s argument is, it seems flawed in several respects. First, his distinction between natural law universalism and positivism is overdrawn, for theories of the law of nations have always contained elements of both: earlier so-called natural law theories relied on the practice of nations for the content of that law. And even the self-declared positivists of the nineteenth century who eschewed natural law held on to claims of prospective universal validity for their positive law of nations. Second, he overstated the consensus in seventeenth- and eighteenth-century Europe that Asian states were fellow members of an international legal community, for there was much greater doubt and disagreement on this question than his claims about natural law universalism suggest. In what follows I am deeply indebted to Alexandrowicz’s pioneering work even as I seek to challenge aspects of his account.

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Before giving an overview of the argument of the book, I want to summarize a few features of the earlier history of the law of nations. [I have cut this section for the workshop.]

As I explore in chapter 2, the Ottoman Empire was, then as later, perhaps the most prominent fraught case, because diplomatic and commercial ties with the Ottoman Empire were so dense compared with those of any other Muslim or extra-European state. Some saw it as outside Europe; others noted that it was technically part of Europe but not fully a participant in the European legal community. G. F. von Martens, for instance, writing in the 1780s, preferred the term “European law of nations” to “law of civilized nations,” but he added that “European” was not quite right, either, because “although, in Europe the Turks have, in many respects, rejected the positive law of nations of which I here treat; and though, out of Europe, the United States of America have uniformly adopted it. It is to be understood à potiori, and it appears preferable to that of, law of civilized nations, which is too vague.”56 The treaty collections often include caveats about the differences between Ottoman or North African treaties and standard European ones. They state that such treaties were restricted to a few key issues, or that the procedure for enforcing them was distinct. A British collection of maritime treaties published in 1779 noted that treaties with Turkey had to be different from the others, because the Ottomans

were “unacquainted with the Treaties made by us with other Nations in Europe,” and so the usual assumptions and procedures could not be followed. The English emissary Paul Rycaut argued in 1668 that “though the Turks make these outward demonstrations of all due reverence and religious care to preserve the persons of Ambassadors sacred and free from violence,” it was clear from their treatment of ambassadors during wars that “they have no esteem of the Law of Nations,” and it was a principle with them to violate their treaties with unbelievers whenever doing so would contribute to the expansion of their empire or the propagation of their faith. The English diplomat Sir James Porter likewise wrote a century later that “the Turks have properly no idea of the law of nations.” Both Rycaut and Porter were considered unusually sympathetic observers of the Ottomans, and Porter, in particular, insisted that the Ottoman regime was law-governed and not an oriental despotism. But he held nonetheless that the law of nations did not apply in Turkey. Clearly, many Europeans in the seventeenth and eighteenth centuries, despite the fact that their states and trading companies were signing treaties with Asian and Muslim powers, believed these treaties to exist in a different legal space from that of the European treaties that they saw as the basis for a systematic law of nations.

57 See A Complete Collection of All the Marine Treaties Subsisting between Great-Britain and France, Spain, Portugal, Austria, Russia, ... c.: Commencing in the Year 1546, and Including the Definitive Treaty of 1763 (London, 1779), lv.
58 Paul Rycaut, The Present State of the Ottoman Empire (London, 1668), 161; the book was quickly and widely translated and widely cited through the eighteenth century.
At the same time, the great treatises of the law of nations in this period tended to be written in resolutely universalist language. Christian Wolff described his conception of the *civitas maxima* as encompassing “all nations,” and he held that because states are equal, none has the right to impose its own interpretation of natural law on another, so that while all nations have duties of mutual assistance to one another, states cannot compel “barbarous nations” to accept their assistance. His sinophilism, with its suggestion that “pagans and atheists could be just as moral in their daily lives as practicing Christians,” led to his expulsion from his post at the University of Halle. (Characteristically, the Victorian Sir Travers Twiss would take Wolff’s *civitas maxima* to refer narrowly, though “somewhat indistinctly,” to “an ‘Inner Circle’ of the more civilized nations.”60) Vattel, likewise, wrote of “the bonds of that universal society which nature has established among” all nations. He looked forward to the time when the principles of the law of nations would be adopted as state practice, and “the world would have the appearance of a large republic; men would live every-where like brothers, and each individual be a citizen of the universe.”61 At the same time, given the emphatic universalism of Wolff and Vattel’s language, there is remarkably little in their treatises to suggest that they seriously considered the place of treaty relations or legal practices beyond Europe as germane to the emerging doctrine of the law of nations. Like Wolff’s, Vattel’s language tends to be highly abstract, and his examples are drawn primarily from

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deals among Europeans.\(^62\) Beyond his claim that difference of religion has no bearing on legal obligations, Vattel wrote relatively little about how the law of nations might bind Europeans in their dealings with powers outside Europe. The ambiguity of Vattel’s universalism made for diverse ramifications of his theory; he could be cited on behalf of an expansive law of nations that obligated Europeans in their interactions in Asia and the Americas just as within Europe, but he can also be seen as giving voice to invidious distinctions between law-abiding Europeans and Muslims who, though formally included within the law of nations, he often depicted as knowingly violating its provisions. Perhaps still more important, however, for the longer-term consequences of his thought, however, was Vattel’s conceptualization of the international sphere as a space inhabited by free and equal states conceived as national communities, a depiction that for Vattel represented both a normative ambition and a rough description of the world around him, although it profoundly misrepresented the character of the major European powers of his day. I explore these features of Vattel’s thought in chapter 3.

In chapter 4, I argue that the late eighteenth century saw an unusual, perhaps unmatched, flourishing of critical approaches to the question of the scope of the European law of nations and the nature of legal relations between European and non-European states, and that these approaches emerged on the back of Vattel. The period stands out in the history of the law of nations as one of striking openness on the part of Europeans to

\(^62\) In addition to Wolff and Vattel, see, e.g., Richard Zouche, *An Exposition of Felic Law and Procedure, or of Law between Nations, and Questions concerning the Same*, trans. J. L. Brierly (Washington, D.C., 1911), pt. 1, §1.1: “That which natural reason has established among all men is respected by all alike, and is called the Law of Nations, as being a law which all nations recognize”; it includes both “the common element in the law which the peoples of single nations use among themselves” and the law observed between nations, or “jus inter gentes.” See also J. G. Heineccius, *A Methodical System of Universal Law; or, The Laws of Nature and Nations*, trans. George Turnbull, ed. Thomas Ahnert and Peter Schröder (1741; repr., Indianapolis, 2008), which asserts a universal law of nations based on the law of nature but says almost nothing about contemporary non-European nations (there is a brief mention of systems of barter among “barbarous countries” in “Asia, Africa, and America”; bk. 1, chap. 13, §337).
the possibility of shared legal frameworks and mutual obligations between Christians and non-Christians, Europeans and non-Europeans. Some analysts feared that nations outside Europe would find themselves in a legal vacuum. They saw the law of nations as a discursive resource against injustice and exploitation by Europeans. They cautioned against the moral errors and political costs of a restricted understanding of the legal community. Legal and political thinkers exemplary of these critical approaches—Edmund Burke, the French orientalist Abraham Hyacinthe Anquetil Duperron, and the celebrated Admiralty Court judge William Scott, Lord Stowell—articulated a more inclusive and pluralistic understanding of the global legal order than the view that came to prevail. None was an opponent of imperial rule as such, but they envisaged a global legal order, or network of orders, as a constraint on the exercise and abuse of European states’ power. They wrote during the decades framed by the Seven Years’ War and the Napoleonic Wars: a period when European states were constructing imperial constitutions of global reach, and when states as well as other actors such as trading companies and pirates competed to defend their power and interests in the terms of newly extensive legal regimes. The perhaps obvious point should be stressed that the thinkers considered here were Europeans speaking to European audiences, often with limited knowledge of the extra-European societies, languages, and legal traditions they discussed. They drew, likewise, on the ambiguous status of the law of nations as putatively universal despite its heavily European history. But they did so with the aim of chastening European power through legal constraints and obligations, including asymmetrical constraints that Europeans should recognize as binding themselves even when they could not presume to use them to bind others.
Chapter 5 takes up later and rather different ramifications of Vattel’s thought in the first half of the nineteenth century, exploring the reception of Vattel’s thought in Britain, whose expanding empire, unchallenged as a global hegemon after the Napoleonic wars, was such a significant site for the production of international law, as Lauren Benton and Lisa Ford have argued.\(^6\) Whereas the law of nations had been understood since the sixteenth century to be intimately (if complexly) connected to a universal law of nature, by the turn of the nineteenth century, self-described positivists were declaring a break from their predecessors’ naturalism and universalism. The European law of nations, it was now said, was a historically particular phenomenon that had arisen in the context of dense interactions among states and their subjects; other areas of the world might have their own laws of nations, but Europeans should not consider their own legal principles binding on them in their interactions with societies in other parts of the world. In this chapter I explore these transformations in international law by tracing the question of the scope of the law of nations, and the linked question of the status of Vattel as an authority on the law of nations, from the period of the French revolutionary wars through the first Opium War. Vattel’s *Droit des gens* was arguably the most globally significant work of European political thought through the 1830s, and in the changing reception of Vattel we can track the ragged transition from the intellectual world of the eighteenth-century law of nations to that of the professional international lawyers of the later nineteenth century.

From the mid-nineteenth century, as Chapter 6 argues, legal and political thinkers increasingly argued that although international law was exclusively European in origin, their law was destined, thanks to Europe’s superior civilizational status, to be

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authoritative for all, and Europeans had the right to dictate the terms of legal interaction to backward, barbarous, or savage peoples. The tension between the European and the universal in international law, that is, came to be resolved through a view of global legality as a European order writ large. When, in 1874, the *Institut de droit international* tasked one of its committees to examine whether so-called Oriental nations were full participants in what was called “the general community of international law,” it was taken for granted that international law was European in origin but prospectively authoritative for everyone, and that as non-Europeans reached the standard of civilization they would be admitted to the international community. The nineteenth-century position has tended to go by the name of positivism, among both its proponents and later historians, and to be contrasted with an earlier natural law universalism. Some claimed that unlike natural lawyers, positivists were not engaged in a normative project at all. They were simply interested in recording and codifying actual state practice. But their theories belied their self-description in at least two ways. They were not just recording state practices but selecting the practices they considered worthy as sources of international law, and doing so on the basis of a set of poorly defended cultural and normative assumptions. Thus treaties between European powers but not between European and Asian powers were relevant sources. The others were explained away, for instance as not properly reciprocal, and so not, strictly speaking, part of international legal practice. Moreover, they did have universalist aspirations: they saw the European order they were codifying as the basis for a future international order that would

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65 E.g., Henry Wheaton, *Elements of International Law* (New York, 1845), 327
gradually be extended to or imposed on the rest of the world, in large part through colonial conquest.

The question of the geographic scope of international law was central for theorists of international law throughout the second half of the nineteenth century in a way that it had not been to the thinkers they recognized as the founders of their field. In this chapter, I explore the preoccupation among Victorian thinkers, both international lawyers and participants in a broader public debate, with the question of the scope of international law. I argue that nineteenth-century international lawyers placed questions of membership in international society at the heart of their theories of international law. The many late-nineteenth-century efforts toward codification of international legal standards intensified the era’s exclusionary tendencies by encouraging jurists to specify what might otherwise have remained vague and more implicit prejudices. The debate over the boundaries of international law ranged beyond professional lawyers and involved political thinkers such as J.S. Mill, legislators, colonial administrators, and journalists. Dissident voices in this broader public debate insisted European states had extensive legal obligations abroad. Such authors, including the moral philosopher Francis Newman, and the diplomat and Muslim convert Henry E.J. Stanley, claimed that while the increasing legal exclusions of non-Europeans neatly served an exploitative imperialist agenda, they also provoked hostility and resistance and so proved not only unjust but foolish and impolitic.

Achieving the equality and uniformity to which international law and much international political theory aspire remains tremendously difficult in the face of a global political and economic order marked by gross, and increasing, inequalities. Such tensions between global inequality and aspirations toward universality are ones we inherit from
centuries of European expansion and from the political and legal thought that emerged alongside that expansion. It is my hope that an investigation of the shifting boundaries of the international, and their justifications, may help to illuminate continuing uses of ideas of international law and human rights to obscure dynamics of domination by the global north over the global south. There may be no untainted well to which we can go back, but recovering the perspective of ecumenical strands of the distinctive and unusual period of the late eighteenth century, as well as their occasional heirs in the nineteenth, may provide resources for the critical scrutiny of such dynamics. This book seeks to contribute to the history of legal and political thought as well as to our thinking about the lines of political, economic, and legal exclusion that have long marked, and that continue to cross, the globe.