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to INTERNATIONAL LAW *Review*



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Foreword: The League of Nations Decentred

Kathryn Greenman & Ntina Tzouvala *

This special feature in the *TWAIL Review* was inspired by the conference ‘The League of Nations Decentred: Law, Crises and Legacies’ convened by Anne Orford, Kathryn Greenman, Luís Bogliolo and Ntina Tzouvala and hosted at Melbourne Law School from 17 to 19 July 2019.¹ On the centenary of the founding of League of Nations, the conference gathered nearly 30 scholars in international law, international relations and history from around the world to think critically about the League with a view from the Global South. We are thrilled that the *TWAIL Review* is hosting this feature, not only because of its commitment to ‘productive engagement with international law through thinking by and with the sensibilities of Global South’,² but also because TWAIL scholars have played such a central role in the surge of critical studies reappraising the League and its legacy in the last two decades.

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¹ The Conference was funded by the Australian Research Council through Professor Anne Orford’s Kathleen Fitzpatrick Australian Laureate Fellowship (project number FL150100061). The Conference program can be found at ‘Events – League of Nations Decentred: Law, Crises and Legacies’, *Laureate Program in International Law* <http://www.lpil.org/events-2/2019/7/18/call-for-papersltbrgtthe-league-of-nations-decentred-law-crises-and-legacies>. These articles are substantially revised versions of the Conference presentations.

² ‘Founding Statement’, *TWAILR – Third World Approaches to International Law Review*, <https://twailr.com/about/founding-statement/>.

TWAIL scholars have led efforts, in Usha Natarajan's words, to 'contest understandings of the League as a failed international institution [from which international law learnt its lessons and moved on], of relevance primarily for understanding political development in the West' and re-evaluate how the League 'exercised considerable power and lasting influence from the vantage point of some peripheral regions'.³ In the early 2000s, Antony Anghie revisited the League's Mandate System, arguing that the way in which the Mandate System transformed colonies into sovereign states has had 'important and enduring consequences' for non-European states and the peoples of the Third World.⁴ The most significant, he argued, was the 'unique type of sovereignty it brought into being',⁵ which 'incorporated economic inequalities within it' and thus 'suffered – and continues to suffer – a particular vulnerability that arises from the system of economic power into which it was integrated even as it became sovereign'.⁶ For Anghie, the legacy of the Mandate System is the contemporary operation of today's international financial institutions, the World Bank, and the International Monetary Fund.⁷

For Balakrishnan Rajagopal, the Mandate System 'provides the institutional link in the transition between colonialism and development'.⁸ Rajagopal argued that today's international institutions – from trade to human rights – can trace their origins to 'the specific techniques that the Mandate system invented to deal with "natives" in the mandated territories of the League, ranging from traditional developmental planning tools to petition processes'.⁹ This was not a one-way relationship, however. Instead, the 'expansion of the activities of the Mandate system was made possible by a continuous evocation of and interaction with the "natives", a precursor to the "Third World"'.¹⁰ For Rajagopal, international institutions have been shaped by the Third World just as much as the Third World has been shaped by international institutions,¹¹

³ Usha Natarajan, 'Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty' (2011) 24:4 *Leiden Journal of International Law* 799, at 799, 801.

⁴ Antony Anghie, 'Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations' (2001-2) 34:3 *New York University Journal of International Law and Politics* 513, at 623.

⁵ *Ibid.*

⁶ *Ibid.*, 632.

⁷ *Ibid.*, 624-626.

⁸ Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (CUP, 2003) 50.

⁹ *Ibid.*, 51.

¹⁰ *Ibid.*, 43.

¹¹ *Ibid.*, 42-46.

as 'terrains on which both First World domination and Third World resistance played out in the twentieth century'.¹²

Writing in the intersection between TWAIL and Marxist scholarship, Rose Parfitt has also questioned the received wisdom about the League's reluctance and weakness in the face of fascist Italy's aggression against Ethiopia. Where others had seen inertia, Parfitt saw the continuation of the League's transformatory and exclusionary project by other means.¹³ Shifting the lens from collective security to political economy, Michael Fakhri showed that economic treaty-making under the League's auspices allowed elites from the periphery to promote their interests and subjectivity internationally and formed the blueprint for commodity agreements long after the League's collapse.¹⁴

The articles in this special feature thus contribute to decentring the League, moving away from an idea of the League as simply the project of world leaders at Versailles or the practices of bureaucrats in Geneva. The aim is to engage with it as a multifaceted complex of techniques, processes and rules of varying degrees of success, and as a location in which the struggles between a wide variety of actors from North and South and centre and periphery played out. The League was not, of course, a neutral ground and some projects were more likely to succeed than others. The contributions to this special feature show how the League created novel, but not necessarily more emancipatory, formations of regionalism, recognition, and protection. Rejecting a binary idea of failure and success, this special feature asks a more productive and critical question: failure or success for which actors, for what purposes, and against what standards? By centring the South in our understanding of the League, we can reassess the institutional infrastructure of the contemporary liberal international order and ask whether its apparent successes are, in fact, a result of unsustainable political, economic and social arrangements.

This special feature showcases five papers. First, Paola Zichi explores early Arab feminist activism in Mandate Palestine, including Arab women's strategic engagement with the Permanent Mandates Commission (PMC). Following a series of Women's Congresses in the region, Arab feminists petitioned the PMC not only for women's rights but also for national self-determination, decolonisation and broader socio-economic justice. The petitions served as 'a legal tool to hold the Mandatory power accountable for its discriminatory policies in Palestine and to demonstrate

¹² Ibid, 48.

¹³ Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (CUP, 2019).

¹⁴ Michael Fakhri, 'The 1937 International Sugar Agreement: Neo-Colonial Cuba and Economic Aspects of the League of Nations' (2011) 24:4 *Leiden Journal of International Law* 899.

[Palestinian] “preparedness” for self-determination and national government’.¹⁵ For Zichi, this challenges the understanding of early Arab feminism as liberal state feminism, serving the interests of the colonial government and local elites. Rather, in developing transnational networks to promote women’s emancipation in international institutions, Arab feminist activists navigated the tensions between ‘liberalism and colonialism, and race and religious affiliations’, thus ‘shap[ing] an early anti-colonial axis of feminist politics of human rights formation in both the private and public law domains’,¹⁶ an important forerunner of the Third World feminisms that emerged in the decolonisation era.

Also focusing on direct engagements with the League from below, Sophie Rigney examines four interventions by Indigenous peoples at the League between 1921 and 1938. For Rigney, these interventions were manifestations of Indigenous international law: that is, the distinct set of laws and practices that Indigenous peoples create ‘to mediate their [legal] relationships to other communities (Indigenous and non-Indigenous) and political structures (like states and international organisations)’.¹⁷ Considering these interventions together, argues Rigney, can show us how Indigenous international law moves through spaces and times.

Indigenous appeals to the League show a move away from previous Indigenous practices of petitioning the imperial, and predates Indigenous appeals to the state ... [The League] represent[s] a new internationalism ... At the League, we see the possibility of Indigenous justice appeals being heard by an international institution.¹⁸

The League, however, deliberately ignored Indigenous claims, choosing not to recognise them as exercises of sovereignty and law, marking ‘the ascendancy of what would become a challenging obstacle for Indigenous peoples: statehood’.¹⁹ Nevertheless, despite not achieving their immediate objectives, these Indigenous appeals to the League ‘reverberate’ in contemporary examples of Indigenous internationalism and international law-making, such as the Uluru Statement from the Heart, which demand a new relationship with the state on the basis of Indigenous sovereignty. For Rigney, this is a call to re-make international law to ‘ensure ethical

¹⁵ Paola Zichi, “‘We Desire Justice First, Then We Will Work for Peace’: Clashes of Feminisms and Transnationalism in Mandatory Palestine” (2021) 2 *TWAIL Review* 97, at 112.

¹⁶ *Ibid.*, 100-101, 106.

¹⁷ Sophie Rigney, ‘On Hearing Well and Being Well Heard: Indigenous International Law at the League of Nations’ (2021) 2 *TWAIL Review* 122, at 126.

¹⁸ *Ibid.*, 140-141.

¹⁹ *Ibid.*, 142.

and genuine engagements, encounters, and relationships' between Indigenous and other modes of international law.²⁰

Third, Shaimaa Abdelkarim traces the similarities between the practices of recognition of the League and the United Nations through two moments in Egyptian political history: first, the League's reception of the al-Wafd party upon Egypt's accession to League membership in 1937; and second, the UN's reception of the 2011 uprising against Hosni Mubarak. For Abdelkarim, the League's recognition practices, based on admission by two-thirds of the League's Assembly, 'focused on structuring the relation between its founding members and potential members rather than on fulfilling sovereign independence'.²¹ Thus, recognition by the League did 'not affirm the sovereign agency of the recognised ... [but] sustain[ed] their lack of agency against European exemplarity'.²² While League membership promised former colonies self-government, Abdelkarim – drawing on the work of Jacques Derrida and Frantz Fanon – argues that in fact it demanded 'the production of a unified central authority' and 'enforced the production of national identities that do not necessarily expel colonial desires'.²³ In the case of al-Wafd, the quest for League membership channelled anti-colonialism into modernisation, while domestic political tensions were disavowed. The UN's recognition practices replace modernisation with democratisation with the result that the 2011 uprising was 'predetermined' as a struggle for democracy and human rights, in a way that pacified complex social unrest and affirmed

the significance of the UN as the representative of international values and the will of the international community. Just like the self-governing fable that was being sold to formerly colonised societies under the Covenant of the League of Nations, the United Nations preaches for a democracy that never comes.²⁴

In the fourth contribution, Parvathi Menon explores the entanglement between the protection of property and the protection of people in the Mandate System through a consideration of the Iraq Mandate. Menon argues that the Iraq Mandate

proved a viable means to protecting British rights to Iraqi property (without annexation), embedding the principle of foreign property protection as the basis for future relations between capital exporting and importing states. At the same time, the mandates protected the Iraqi people in preparation for their emancipation by

²⁰ Ibid, 150.

²¹ Shaimaa Abdelkarim, 'Nuances of Recognition in the League of Nations and United Nations: Examining Modern and Contemporary Identity Deformations in Egypt' (2021) 2 *TWAIL Review* 154, at 161.

²² Ibid.

²³ Ibid, 162.

²⁴ Ibid, 178.

introducing welfare measures, development, and 'order' that could support the protection of (foreign) property.²⁵

For the peoples of the mandated territories, the protection of the mandatory power was thus a means to their emancipation while at the same time serving to ensure their obedience. Healthcare, education and infrastructure served to pacify internal conflict and thwart resistance among workers and nationalists in the interests of foreign capital as much as Iraqi independence. While protection was not a new basis of authority, what was novel about Mandatory protection was its combination with international supervision and free trade. In this way, the Mandate System represented 'the fluidity between the imperial and the international'.²⁶ Menon argues that with the Anglo-Iraqi Treaties of 1922 and 1930, Britain sought to separate the protection of people from the protection of property, recognising Iraqi sovereignty while maintaining economic influence. This embodied how the recognition of political sovereignty was not incompatible with economic subjugation in a way that 'laid the groundwork for entrapping postcolonial states in a web of dependencies in the global economic order'.²⁷

Finally, Ryan Martínez Mitchell considers Article 21 of the League Covenant, which provided that '[n]othing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace' in the context of China–Japan relations. Mitchell looks at what Article 21 – with its prospect of 'a world divided into "great spaces" with distinct internal orders' – meant for regional hegemony in Asia, in particular for Japan's aspirations to take a role akin to that of the United States in the Western Hemisphere, and how this shaped both Japanese and Chinese experiences of the League.²⁸ For Mitchell, Article 21 'served as one key focal point for efforts by Great Powers, and sometimes their weaker neighbors, to articulate arguments about how interstate relations should be restructured' after Versailles.²⁹ Even though Article 21's meaning was never clearly defined or its hegemonic possibilities realised, Mitchell argues that its legacy and that of efforts to resist regional hegemony continues. For Mitchell, 'the problem of excluding "external" interventions into regional order' and the 'inherent, aporic tension between a strict focus on each

²⁵ Parvathi Menon, 'Negotiating Subjection: The Political Economy of Protection in the Iraqi Mandate (1914-1932)' (2021) 2 *TWAIL Review* 180, at 182.

²⁶ *Ibid.*

²⁷ *Ibid.*, 193.

²⁸ Ryan Martínez Mitchell, 'Monroe's Shadow: League of Nations Covenant Article 21 and the Space of Asia in International Legal Order' (2021) 2 *TWAIL Review* 200, at 200.

²⁹ *Ibid.*, 202.

state's own territorial sovereignty and the necessity of a cooperative and "secure" regional environment' were central to Cold War geopolitics, as well as contemporary disputes such as the South China Sea.³⁰

By considering the League of Nations with a view from the South, the articles in this special feature encourage us to scrutinise categorical assertions of the League's success or failure. They help us to understand the League as a new experiment in international organisation that existed alongside competing visions of law, community, governance and society, while the struggles that played out through and parallel to the League continue to resonate in present conflicts over the future of life on a shared planet.

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³⁰ *Ibid*, 229.



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