Book Reviews

Is International Law a European Conspiracy?

Asked by the International Community Law Review to read and comment on B.S. Chimni’s “Third World Approaches to International Law,”¹ I was struck by how similar Chimni’s critique of modern international law is to a criticism of international law that might be made by an American or Chinese or Russian realist. At first, I thought, more or less: “poor old international law – yet another 19th century liberal construct attacked both by left and by right.” But, on reflection, deciding to evaluate such critiques on their own terms, I concluded that international law does seem too often to offer too much community and too little sovereignty both to left-leaning “weak” states of the Third World and to right-leaning “strong” states of the bigger powers, the United States, China, and Russia. This seems to leave the “middling” states, especially many European states, in between. For many Europeans, international law as it is may seem just about right. So perhaps both Dr. Chimni and the realists have a point – international law is, in a way, a European conspiracy, a movement of the middle against the weak à la Dr. Chimni, and the strong à la the realists. If so, perhaps the task of transforming international law is on the shoulders of the Europeans. Can they remodel the discipline so as to attract weak and strong states, as well as their own?

Let me use Dr. Chimni’s essay as my template. It appears that by “third world,” a term he uses well over a hundred times, he means those countries that were once the colonies of the 17th, 18th, 19th, and 20th century European imperial powers: Spain, Portugal, Great Britain, France, Russia, the Netherlands, Belgium, Germany, and Italy. Of course, the present territory of the United States was, for almost two centuries made up of what were European colonies – British, Dutch, French, Spanish, Russian, and Swedish. China, too, was partially colonized in the 19th and 20th centuries, especially by the Japanese, Russians, and British. Only Russia of the nowadays strong states was, more or less, free of colonization, and indeed, itself an imperial power both on its European and on its Asian frontiers. On behalf of the “third world,” Dr. Chimni launches eleven criticisms against modern international law. Most of his critiques seem to be shared by strong state realists. Let me look at Dr. Chimni’s critiques in turn.

First, Dr. Chimni objects that “international law is now in the process of creating and defining the ‘democratic State.’” He considers this a sham meant to facilitate the transfer “through ‘voluntary’ undertaken obligatory, national sovereign economic space (pertaining to the fields of investment, trade, technology, currency, environment, etc.) to international institutions that enforce the relevant rules.” This seems to be much the same criticism made by realists who wish to keep economic decisions within national government control.

Second, Dr. Chimni attacks international law because it “now aspires to directly regulate property rights [to achieve] the internationalization of property rights.” This critique would not be entirely shared by some realists who might support the protection of private property no matter where located.

Third, he critiques international law because it “inter alia lays down rules with regard to the sales of goods, market access, government procurement, subsidies, and dumping.” Here realists would join him part-way, glad to see international trade facilitated but unwilling to cede national economic sovereignty.

Fourth, Dr. Chimni attacks the fact that “international law increasingly requires the ‘deterritorialization of currencies’ subjecting the idea of a ‘national currency’ to growing pressure.” Here realist voices would rise to support his proposition, all keen to maintain national currency control.

Fifth, Dr. Chimni laments “the internationalization of the discourse of human rights.” This internationality of human rights has led, in his opinion, to unwanted international interference in internal control of human rights discourse. Such a lament is, of course, shared by strong state realists.

Sixth, he complains that “labor market deregulation prescribed by international financial institutions and international monetary law has caused the deterioration of the living conditions of third world labor.” This is not a realist complaint.

Seventh, Dr. Chimni objects to the tendency of international jurisdiction to make “a hash of geopolitical boundaries,” giving as an example the prosecution of the Pinochet case. This objection would be happily accepted by realists, concerned as they are to insulate their national legal processes from outside influence.

Eighth, Dr. Chimni objects to the “proliferation of international tribunals that subordinate the role of national legal systems in resolving disputes.”

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2) Id. at 52.
3) Id. at 53.
4) Ibid.
5) Id. at 54–55.
6) Id. at 55.
7) Ibid.
8) Id. at 56.
9) Id. at 57.
10) Ibid.