

University at Buffalo School of Law

Digital Commons @ University at Buffalo School of Law

Book Reviews

Faculty Scholarship

2010

Jeremy I. Levitt's *Africa: Mapping New Boundaries in International Law*

Makau wa Mutua

University at Buffalo School of Law, mutua@buffalo.edu

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/book_reviews



Part of the [International Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Makau w. Mutua, *Jeremy I. Levitt's Africa: Mapping New Boundaries in International Law*, 104 Am. J. Int'l L. 532 (2010).

Available at: https://digitalcommons.law.buffalo.edu/book_reviews/44



This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Book Reviews by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY RICHARD B. BILDER

BOOK REVIEWS

Africa: Mapping New Boundaries in International Law. Edited by Jeremy I. Levitt. Oxford, Portland OR: Hart Publishing, 2008. Pp. vii, 333. Index. \$70.

African history is often written as though the continent had no existence worth noting before its invasion by Europeans, suggesting that nothing happened there during its “prehistory.” This blotting out of early African history as well as its contributions to human knowledge has been part of the willful dehumanization used to justify the continent’s subsequent enslavement, colonization, and exploitation. Moreover, international law, construed as the project of European nations, has played a role in this plunder.¹

Perhaps in no other continent was the conquest harsher than in Africa. Crawford Young has described the ruthlessness of the “Scramble for Africa”:

Africa, in the rhetorical metaphor of the imperial jingoism, was a ripe melon awaiting carving in the late nineteenth century. Those who scrambled the fastest won the largest slices and the right to consume at their leisure the sweet, succulent flesh. Stragglers snatched only small servings or tasteless portions; Italians, for example, found only deserts on their plate.²

To justify the plunder of the continent, it was important for Europeans to racialize Africans

¹ Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, 5 SOC. & LEGAL STUD. 321 (1996).

² Crawford Young, *The Heritage of Colonialism, in AFRICA IN WORLD POLITICS* 19 (John W. Harbeson & Donald Rothchild eds., 1991).

and portray them as subhuman with no knowledge of law or international law. Racism then became, as Basil Davidson describes it, the moral justification and “the conscious and systematic weapon of domination, of exploitation, which first saw its demonic rise with the onset of the trans-Atlantic trade in African captives sold into slavery, and which, later, led on to the imperialist colonialism of our yesterdays.”³ The erasure of Africans from the creation, and use, of international law has even been extended to African-Americans.⁴

Africa: Mapping New Boundaries in International Law, edited by Jeremy Levitt, an associate dean and professor at Florida A&M University College of Law, seeks to explicitly counter the racist mythology that Africans were a *tabula rasa* in international law. Through his own powerfully written introduction in the book, Levitt smashes the assumption that Africa was devoid of law, and international law in particular. His opening sentence proclaims that “Africa is a legal marketplace, not a lawless basket case” (p. 1). The book combines both Levitt’s work and that of eight other renowned scholars, each of whom has written a chapter on Africa’s place in international law. Levitt argues, as do the other contributors to the book, that Africa has always made—and continues to make—international law.

Perhaps the question to ask is whether Africa has been more of an object or a subject of international law. If there is a weakness in Levitt’s volume,

³ BASIL DAVIDSON, *AFRICAN CIVILIZATION REVISITED: FROM ANTIQUITY TO MODERN TIMES* 3 (1991).

⁴ HENRY J. RICHARDSON III, *THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW* (2008), reviewed at 104 *AJIL* 313 (2010), by Ruth Gordon. Richardson notes that African-Americans have long utilized, and contributed to, international law.

this is the one issue not fully addressed by the authors. To what extent did the norms of international law developed by Africans—or with their participation—find centrality in the system? Have African states been able to defang international law of its imperialist and exploitative biases against the global South⁵? In other words, is international law still just a handmaiden of the West?

As James Thuo Gathii and other international legal scholars have argued, modern international law is normatively heavily Eurocentric and has been deployed to impoverish the global South.⁶ Others have pointed out this Eurocentric focus while trying to reconcile international law with universality.⁷ The point is that European predicates have largely shaped the current expression of international law used to dominate and colonize the global South.⁸ Mohammed Bedjaoui, the famous judge of the International Court of Justice, has been clear on this point.⁹

While the book is explicit on contemporary contributions of Africa to international law, it is less clear about the continent's place in antiquity. What precisely were Africa's contributions to international law before its conquest? More specifically, what legal order or nomenclature governed relations between African states—and between African states and states outside the continent—in earlier times? These are not idle questions given that African statehood predated the Scramble for Africa and the imposition of the modern Eurocentric state on Africa.¹⁰

⁵ Jean-Philippe Thérien, *Beyond the North-South Divide: The Two Tales of World Poverty*, 20 *THIRD WORLD Q.* 723–42 (1999).

⁶ James Thuo Gathii, *International Law and Eurocentricity*, 9 *EUR. J. INT'L L.* 184 (1998) (book review).

⁷ SURYA PRAKASH SINHA, *LEGAL POLYCENTRICITY AND INTERNATIONAL LAW* (1996); SIBA N'ZATIOULA GROVOGUI, *SOVEREIGNS, QUASI SOVEREIGNS, AND AFRICANS: RACE AND SELF-DETERMINATION IN INTERNATIONAL LAW* (1996).

⁸ Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 *HARV. INT'L L.J.* 1 (1999).

⁹ MOHAMMED BEDJAOU, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (1979).

¹⁰ Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 *MICH. J. INT'L L.* 1113 (1995).

Historically, international law has been made largely by states—specific territorial political societies governed by central authorities.¹¹ The existence of states necessarily implies a corpus of law to regulate interstate relations, and evidence suggests that rules governed the relations between states. Traditional modern international law, largely a “civilized” European creation, claimed the right to determine which other entities qualified as “states.”¹² Without such recognition, societies lacked sovereignty and were therefore liable to colonization by European “states” that could decide which entities to admit into full statehood.

The issue is whether so-called “states,” as defined by European standards, properly existed in Africa and, if so, how Europeans justified their colonial conquest of the continent. In terms of international law, perhaps the most vivid example of an African “state” is Ethiopia, one of the longest continually enduring states in the world. France, Britain, and Italy even recognized Ethiopian sovereignty between 1898 and 1907.¹³ Furthermore, there can be no argument that states existed in Africa long before colonization. Roland Oliver has written that although “[n]ot all of the Africans tried to found states,” most “lived, apparently from quite early in the Iron Age, in states, and these states were invariably in some sense hereditary monarchies.”¹⁴ Some, such as the Soninke Kingdom in West Africa, have been traced as far back as the fourth century, as were the Tekkur and Mandingo kingdoms in Senegal and Mali, respectively. Starting in the ninth century, recorded history of sophisticated states exists for ancient Ghana, Mali, Songhai, Benin, among others. In

¹¹ The British, for example, regarded international law as the province of “Christian nations.” James Crawford, *The Criteria for Statehood in International Law, 1976–1977* *BRIT. Y.B. INT'L L.* 93, 98 (citing 1 HERBERT ARTHUR SMITH, *GREAT BRITAIN AND THE LAW OF NATIONS* 12 (1932)).

¹² U. O. UMOZURIKE, *INTRODUCTION TO INTERNATIONAL LAW* 9–10 (1993).

¹³ IAN BROWNLIE, *AFRICAN BOUNDARIES: A LEGAL AND DIPLOMATIC ENCYCLOPEDIA* 775 (1979).

¹⁴ ROLAND OLIVER, *THE AFRICAN EXPERIENCE* 145 (1991).

East Africa, precolonial states arose in present-day Uganda, including Buganda, the most sophisticated of them, as well as Bunyoro and Ankole. Other states existed in present-day northern Tanzania among the Hehe and Nyamwezi peoples. Other well-known states in the region were Rwanda and Burundi. The Luba/Lunda and Kongo states of Angola-Congo, the Mwanamupata kingdom in Zimbabwe, and the Swazi, Tswana, Zulu, and Sotho states can be traced to around the fifteenth century in central and southern Africa.¹⁵

But what evidence exists that precolonial African states made international law? Historical records show not only that precolonial African states engaged in regulated interstate relations, including commerce with states as far afield as the Middle East, but also that diplomatic relations existed between precolonial African states and European countries.¹⁶ In the fourteenth century, Mansa Musa, ruler of the Mandingo kingdom of Mali, engaged in regular interstate commerce with Arab states to the north.¹⁷ In the sixteenth century, the *Oba* (king) of Benin, the West African precolonial state, sent envoys to Portugal to procure arms.¹⁸ Levitt's volume could have further extrapolated on these interstate relations and sought to show how they contributed to the development of a corpus of international law before the emergence of modern international law.

Admittedly, these relations between Africa and other states soured later as the trade in African captives by Europeans replaced any semblance of diplomacy. The European conquest of Africans

served as the basis for the doctrine of white supremacy in international law development. But, as Basil Davidson describes, white supremacy was at odds with previous European scholarship about Africa:

European scholarship knew that the foundations of European civilization derived from *classical* Greek civilization. That scholarship further accepted what the Greeks had laid down as patently obvious: that classical Greek civilization derived, in its religion, its philosophy, its mathematics and much else, from the ancient civilizations of Africa, above all from Egypt of the Pharaohs. To those "founding fathers" in classical Greece, any notion that Africans were inferior, morally or intellectually, would have seemed merely silly.¹⁹

Thus, the notion that Africa was *terra nullius*—a no-man's historical and cultural wasteland ready to be taken over by Europeans—is a figment of the imagination of European illusionists, who had ample reason to paint Africa as "dark" and "prehistoric" even though they knew better. The historical record suggests the exact opposite—that Africa contributed to human civilization, including, most likely, the classical civilizations of the West.²⁰ No matter on which side one falls, the debate reveals a need to revisit and reexamine notions of white supremacy in the construction of global civilization. But Davidson is clear when discourses of white supremacy took hold:

The advocates of this discourse [white supremacy and the African inferiority]—[George] Hegel most typically, but duly followed by a host of "justifiers"—declared that Africa had no history prior to direct contact with Europe. Therefore the Africans, having made no history of their own, had clearly made no development of their own. Therefore they were not properly human, and could not be left to themselves, but must be

¹⁵ *Id.* at 145–58; BASIL DAVIDSON, *AFRICA IN HISTORY: THEMES AND OUTLINES* 141–83 (rev. ed. 1992) [hereinafter *DAVIDSON, AFRICA IN HISTORY*]; BASIL DAVIDSON, *THE LOST CITIES OF AFRICA* (1987); CHEIKH ANTA DIOP, *PRECOLONIAL BLACK AFRICA: A COMPARATIVE STUDY OF THE POLITICAL AND SOCIAL SYSTEMS OF EUROPE AND BLACK AFRICA, FROM ANTIQUITY TO THE FORMATION OF MODERN STATES* (Harold Salemson trans., 1987); T. OLAWALE ELIAS, *GOVERNMENT AND POLITICS IN AFRICA* 1–12 (1963).

¹⁶ Davidson, *supra* note 3, at 77–124.

¹⁷ ELIAS, *supra* note 15, at 6–15.

¹⁸ T. O. ELIAS, *AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW* 11 n.25 (Richard Akinjide ed., 1988).

¹⁹ DAVIDSON, *AFRICA IN HISTORY*, *supra* note 15, at xxii–xxiii.

²⁰ MARTIN BERNAL, *BLACK ATHENA: THE AFROASIATIC ROOTS OF CLASSICAL CIVILIZATION* (Vol. I (1987), Vol. II (1991), Vol. III, (2006)). For a critique of Bernal's thesis, see *BLACK ATHENA REVISITED* (Mary R. Lefkowitz & Guy MacLean Rogers eds., 1996).

“led” towards civilization by other peoples: that is, by the peoples of Europe, especially of western Europe, and most particularly of Britain and France.²¹

The European expansion into Africa—whether by missionaries, merchants, or colonial administrators—was justified by theories of white supremacy. Africans were considered as a “pre-law” people who were morally inferior and intellectually immature. For example, European missionaries, like Denys Shropshire, considered Africans as a “primitive people,” who did not have the “sovereignty of reason.”²² Another opined that the “mission” to Africa was the “least that we [Europeans] can do is to strive to raise him [the African] in the scale of mankind.”²³ Seen from these perspectives, the European conquest of Africa is presented as a mission to “save” and “civilize” a benighted people. Moreover, according to this construction, if Africans lacked reason and cogent political societies governed by law, they could not have contributed to the development of human civilization, particularly international law.

But, as noted, ample evidence proves the exact opposite, establishing Africa’s normative contributions to human civilization. As Levitt points out in his introduction, an examination of Africa’s heritage right from the ancient and premedieval periods yields a significant corpus of law. In a sense, Africa never stopped contributing to the development of global culture. The book is a push-

back to those who would erase Africa from the map of the intellect.

Mapping New Boundaries is most illuminating when it focuses on Africa’s contributions to contemporary international law. Each of the contributors takes a critical area of the law and shows how Africa’s ingenuity and struggles for a more just world have added to the normative and conceptual diversity of international law. In this regard, the contributors amply demonstrate Africa’s heartbeat in the body politic of the world. The foreword by Adama Dieng, registrar of the International Criminal Tribunal for Rwanda (ICTR), correctly states that “Africa is confirming existing norms of international law and spurring new ones” (p. viii) and that “Africa has made the most progress in generating rules, norms and doctrine to confront its aching problems” (p. vii). It is here that Africa’s presence on the international-law-making scene is most important. Africa must play a large role in correcting the biases and distortions of international law that have historically been used against it. But it cannot do so without producing countervailing norms that bring equity, justice, and equality to the table. Its ability to repeal bad law will depend on its genius to produce better law. In turn, such revisions of international law are bound to give Africa more legitimacy.

Similarly, Adrien Wing, in her chapter “Women’s Rights and Africa’s Evolving Landscape: The Women’s Protocol of the Banjul Charter,” highlights what she calls “an important doctrinal contribution” in the enactment by the African regional human rights system of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa²⁴ (Women’s Protocol) (p. 13). Even though women often have a subordinate societal role in Africa, African states have shown a crucial political and intellectual commitment by adopting this pioneering instrument, the first regional document devoted solely to women’s rights. The Women’s

²¹ DAVIDSON, *AFRICA IN HISTORY*, *supra* note 15, at xxii.

²² DENYS W. T. SHROPSHIRE, *THE CHURCH AND PRIMITIVE PEOPLES: THE RELIGIOUS INSTITUTIONS AND BELIEFS OF THE SOUTHERN BANTU AND THEIR BEARING ON THE PROBLEMS OF THE CHRISTIAN MISSIONARY* xix (1938). Many Europeans believed in the innate inferiority of Africans. One European missionary wrote that “[t]he mere possession on the part of the Bantu of nothing but an oral tradition of culture creates a chasm between the Native ‘mind’ and that of civilized man, and of itself would account for a lack of balance and proportion in the triple psychological function of feeling, thinking and acting, implying that thinking is the weakest of the three and that feeling is the most dominant.” *Id.*

²³ ALFRED HENRY BARROW, *FIFTY YEARS IN WESTERN AFRICA: BEING A RECORD OF THE WORK OF THE WEST INDIAN CHURCH ON THE BANKS OF THE RIO PONGO* 29 (1900).

²⁴ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, July 11, 2003, OAU Doc. CAB/LEG/66.6 (entered into force Nov. 25, 2005) [hereinafter *Women’s Protocol*], available at http://www.achpr.org/english/_info/women_en.html.

Protocol, which came into force in 2005, is the first such document in international law to explicitly mention abortion²⁵ and the first to prohibit harmful female genital surgeries.²⁶

The Women's Protocol itself is a product of another pioneering African human rights instrument, the African Charter on Human and Peoples' Rights, which was adopted by the Organization of African Unity (OAU) in 1981.²⁷ The African Charter—the anchor document for the African human rights system—makes significant doctrinal contributions to international human rights law. One of the most significant is its codification of the so-called “three generations” of rights—civil and political rights, known as “first generation” rights; economic, social, and cultural rights known as “second generation” rights; and peoples' rights, such as the rights to the environment, peace, development, and self-determination, known as “third generation” rights.²⁸ The African Charter is also the first human rights treaty to impose duties on individuals as part of its theoretical rights framework. These innovative and pioneering normative contributions on human rights, as well as women's rights, demonstrate beyond a shadow of a doubt that Africa is an important player—conceptually and practically—in the making of contemporary international law.

Apart from Wing, other authors in *Mapping New Boundaries* write powerfully about Africa's contributions to the areas of human rights and humanitarian international law. Francis Deng—special representative of the UN Secretary-General for the Prevention of Genocide and Mass Atrocities, former special representative of the UN Secretary-General on Internally Displaced Persons (IDPs), an esteemed intellectual, and a Sudanese native—was solely responsible for the development of new IDP standards. In his chapter, “Africa's Internally Displaced and the Development of International Norms: Standards versus

Implementation,” Deng argues that the acceptance and implementation of norms by states are not always a function of their legal status. In other words, a text does not have to be a binding treaty to achieve acceptance and implementation by states (p. 65). Consequently, he did not opt for a treaty but instead used “Guiding Principles” on IDPs²⁹ to disarm states reluctant to sign a new treaty and to coax them to implement “new” standards, although many norms in his Guiding Principles were already binding law from refugee and international humanitarian law.³⁰

These Guiding Principles have attained wide acceptance by states, civil society groups, and intergovernmental organizations. The principles not only restate existing legal obligations but also develop new standards to fill gaping lacunae. Elsewhere in his well-researched chapter, Deng shows how Africa has advanced international law. He points to what this reviewer would call the jurisprudence of liberation from colonial rule to highlight Africa's role. For example, he underscores Africa's role in solidifying the principles of self-determination, the inviolability of borders inherited from colonial rule, the notion of the “total emancipation” of colonial and dependent territories, including apartheid South Africa, and the grant of asylum to political refugees, a principle that was enshrined in the OAU 1969 Refugee Convention.³¹

In his own chapter, “Pro-democratic Intervention in Africa,” Levitt shows that African states are slowly turning away from the once ironclad position of noninterference in the internal affairs of sister states (pp. 105–07). Although this principle was once unwavering among African states—especially during the era of the one-party despotic states—there is recognition in Africa today that one country's instability caused by authoritarian rule could doom an entire region. The African Union, which has replaced the defunct OAU, is

²⁵ *Id.*, Art. 14.2(c).

²⁶ *Id.*, Art. 5.

²⁷ African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982) [hereinafter African Charter].

²⁸ Makau wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L. L. 339, 340 n.4 (1995).

²⁹ Guiding Principles on Internal Displacement; UN Doc. E/CN.4/1998/53/Add.2 [hereinafter Guiding Principles].

³⁰ Makau Mutua, *Standard Setting in Human Rights: Critique and Prognosis*, 29 HUM. RTS. Q. 547 (2007).

³¹ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 UNTS 45 (entered into force June 20, 1974).

more willing to authorize interventions to restore democratic governance or reverse military coups. As Levitt points out, this development grows out of the recognition that democracy is becoming an entitlement in international law. Thus, African interventions by the Economic Community of West African States (ECOWAS) in Liberia, Sierra Leone, Guinea, Guinea Bissau, and Côte d'Ivoire, among others, vindicate this commitment. Similarly, African interventions have solved problems in Lesotho and ended electoral disputes in Kenya.³² Levitt notes that African states are developing these norms of intervention because the international and UN systems have been ineffective there in addressing humanitarian crises, state instability, and armed conflicts.

Pacifique Manirakiza and Dino Kritsiotis weigh in separately on Africa's work on international criminal law and humanitarian warfare respectively. In his chapter, "Customary African Approaches to the Development of International Criminal Law," Manirakiza focuses on how Africans resort to customary African approaches to address war crimes, crimes against humanity, and genocide. Rwanda and its traditional *gacaca* courts are presented as an alternative and more desirable mechanism to deal with mass atrocities—despite criticisms of these courts' stances on due process and gender issues—because these courts seek to resolve conflicts while maintaining cohesiveness and social harmony. In contrast, international criminal tribunals, such as the ICTR, are retributive with little or no concern for social healing. Manirakiza also offers the South African Truth and Reconciliation Commission as another example of justice from below, as opposed to the top-down approach of international criminal tribunals. Kritsiotis, in his chapter, "Humanitarian Warfare: Towards an African Appreciation," tabulates the many ways in which African states have acted on issues of international humanitarian law, including child soldiers, prosecutions and amnesties, and truth commissions.

Finally, *Mapping New Boundaries* looks at governance and development. In "African Constitutionalism: Forging New Models for Multi-ethnic

Governance and Self-determination," Peter Pham looks at the challenge of nationhood in Africa given the artificiality of the Eurocentric-imposed state. He argues that African states are finding novel ways to build "nations" out of many "sub-nations" or ethnicities. This challenge had led to the collapse of some states. African constitutionalism has explored a wide range of options, including autonomy regimes for ethnic groups, accommodation of traditional authorities, and even guarantees for cession, as is the case in south Sudan. Elsewhere, states are also experimenting with typical liberal constitutions to create viable political societies. These experiments yield a new frontier in constitution-making.

Joel Samuels, in his chapter "Redrawing the Map: Lessons of Post-colonial Boundary Dispute Resolution in Africa," focuses not on internal—but external—relations between African states on the contentious issue of borders (p. 227). In spite of the artificiality of African borders—and the prevalence of internal conflicts within states—virtually no external conflicts have arisen between African states because of border disputes (notwithstanding the recent armed conflicts between Ethiopia and Eritrea as well as between Chad and Libya). Remarkably, African states have routinely submitted their border disputes to the International Court of Justice and generally abided by its opinions. In this respect, African states have strengthened the ICJ's role as an arbiter between states.

The last chapter by Maxwell Chibundu on "NEPAD and the Rebirth of Development Theory and Praxis" looks at a new way of thinking by African leaders to solve African problems. The New Partnership for African Development (NEPAD) is a conceptual and institutional framework for leadership with accountability in which African elites tackle corruption and institute good governance toward a continental renaissance. This partnership is an acknowledgment that African leaders failed the continent and therefore need to take responsibility.

The book brings together old voices with new and seeks to establish that Africa has been active—and oftentimes leading—in the making of international law. With this book, Levitt aims to

³² MAKAU MUTUA, *KENYA'S QUEST FOR DEMOCRACY: TAMING LEVIATHAN* 247 (2008).

debunk the myth that Africa is just a passive recipient of ideas. What he and the other contributors have shown is that, indeed, Africa is participating effectively at the table of international law and is changing that regime to its benefit. As a result, *Mapping New Boundaries* is a powerful installment presenting a welcome and fresh view of Africa.

MAKAU MUTUA
University at Buffalo Law School