

*Universal International Law:
nineteenth century histories of imposition, appropriation and circulation*

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Introduction

International law is generally understood to be universal: a single set of legal rules, principles and institutions governing interstate behavior on a global scale. International law, however, became a global legal order only during the course of the nineteenth century. Before that, according to the prevalent view, international law's range of validity was circumscribed to the interaction between European states, for international law – both as an idea and as a concrete legal order – was born and developed in 17th century Europe. In consequence, most international lawyers understand that the process through which international law became global involved the expansion of European international law.¹

For some, international law expanded when non-European states were admitted as new members of the international community. For others, it expanded when international legal rules, doctrines or ideas were imposed outside Europe to enable and justify formal or informal colonialism.² This paper explores a different story, suggesting that what brought about international law's universality was not the expansion of European international law through inclusion or imposition, but its appropriation during

¹ Wilhelm Grewe continues to be the most influential exponent of the idea of expansion of European international law in the nineteenth century, see 'Vom europäischen zum universellen Völkerrecht' 42 ZaöRV (1982) and generally Chapter Two, Part Three of his 'The epochs of international law', Michael Byers trans. 2000 at p 445 ff.

² See respectively, Ian Brownli, 'The expansion of international society: the consequences of the law of nations, at p. 358 in Bull, Hedley, and Adam Watson. 1984. The Expansion of international society. Oxford [Oxfordshire]: Clarendon Press at p. 360; and Antony Anghie, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth Century International Law, 40 Harv. Int'l L. J. 1 (1999).

the course of the second half of the nineteenth century by a generation of non-European international lawyers situated in the semi-periphery.

I explore the work, life and professional trajectory of this generation of semi-peripheral lawyers who visited or moved to Europe during the second half of the nineteenth century. Consider for example the following sample of lawyers from various nations: Carlos Calvo (Argentinean, 1822-1906); Etienne Carathéodory (Turk {ethnic Greek} 1836-1907); Fedor Fedorovich Martens (Estonian-Russian {ethnic German}, 1845-1909) Nicolas Saripolos (Greek, 1817-1880); Tsurutaro Senga (Japanese, 1857-?).

These lawyers were as prolific as they were strategic. They published hornbooks and general studies intended to teach international law in their own languages and to demonstrate the assimilation of European international law. But they also wrote specific monographs in French, English or German, publishing them in Europe and for European audiences. Engaging with European authors and their ideas, these latter works appropriated the conceptual and doctrinal machinery that European thinkers had developed to both distinguish an exclusively European law of nations and thus demarcate within its boundaries the range of validity of a law between sovereign equals. Throughout their writings, semi-peripheral internationalists pursued a distinctively non-European interpretation of the European law of nations, in which its fundamental elements –e.g. absolute sovereignty and the standard of civilization– were re-signified and then redeployed to advocate for a change in extant rules of international law and justify the extension of the privileges of formal equality to their own states in their interaction with Western powers. These non-Western appropriations of international law offer lessons to overcome the Eurocentrism of our understanding of international law today.

The global appropriation of classical international law

1. Absolute Sovereignty

Semi-peripheral internationalists endorsed an absolute notion of sovereign autonomy.³ Unlike their Western counterparts, however, non-European publicists

³ Calvo's treatise, for example, reviews Vattel's definition of sovereignty as the capacity of the nation to govern itself, regardless of form, as long as it remains independently from any foreign people. Calvo then

understood absolute sovereignty to include the rights of states as well as the obligations vis-à-vis other sovereigns. Stressing the sovereign rights - correlative duties dyad, these internationalists affirmed the formal equality between sovereign states deriving from it a series of principles that safeguarded the political independence of their nations and the preservation of their territorial integrity.⁴ More important than a conceptual definition of sovereignty, non-Western lawyers ventured a delineation of the doctrinal contours of sovereignty narrowing the range of potential exceptions to the rule, intervention and consular jurisdiction among the most imperious ones.

Aiming at delimiting intervention as an exception to sovereign autonomy, Carlos Calvo, for example, devotes several pages to gather views of international law authorities both justifying the right of intervention and supporting the principle of non-intervention. Calvo lists a number of conflicting views, sufficient enough to conclude that: 'there are almost as many different opinions as there are authors.'⁵ It proves highly unsatisfactory to approach the right of intervention as a theoretical matter, Calvo asseverates. Instead, Calvo directs the attention to the historical record of interventions since ancient times up to the nineteenth century. This turn to history allows him to introduce a distinction between interventions of states in Europe and interventions of European states in the internal affairs of the states of the Americas. As regards the former, Calvo argues that in modern times and especially since the independence of Greece, intervention has followed high principles of international politics, such as the equilibrium among nations and the protection of moral or religious values.⁶ The legitimacy or illegitimacy of intervention, according to Calvo, is therefore not intrinsic but subordinated to the situation of the country involved and the international impact that it produces. In the European cases, having followed 'sound reason and equity', interventions have been

contrasts this definition with his own: 'the essential character of a state's sovereignty does not rest on being more or less dependant from another state, rather it rests on the power that it has to give itself a constitution, establish its laws, establish its government, without any intervention of a foreign nation.' Carlos Calvo, 'Le droit international théorique et pratique : précédé d'un exposé historique des progrès de la science du droit des gens' 1896 at p. 171.

⁴ 'Absolute sovereignty implies necessarily complete independence. Hence for states, as moral persons, it implies a primary right, that of pursuing freely the achievement of their own destinies, and a no less pressing obligation of recognizing and respecting the sovereign rights and the absolute independence of other states.' Calvo Ibid at p. 264.

⁵ Calvo ibid at p. 278.

⁶ Ibid, at p. 322-324.

‘favorable to the development of civilization.’⁷ What has been the character of European interventions in the New World? –asks Calvo. On the basis of an examination of the French (1838-1840) and Anglo-French (1843-1850) interventions in Rio de la Plata, as well as the Anglo-French-Spanish intervention in Mexico (1861-1868), Calvo strongly affirms:

‘regardless of the point of view adopted, it is impossible to discover a single serious and legitimate reason that could justify up to a certain point the European interferences in the domestic affairs of the Americas.’⁸

Interventions, Calvo laments, have been either politically motivated or have been justified under the pretense of the protection of private interests in the demands for pecuniary compensations against American states, without any liquidation or examination of their authenticity. Regarding politically motivated interventions, if American as well as European states are independent nations and therefore if they owe each other reciprocity in their treatment, Calvo concludes that the assertion of a right of Europeans to interfere in the domestic affairs of the New World would in turn give way to an equivalent right by the states of the Americas to intervene in Europe, situation that would render impossible the preservation of amicable and pacific relations between habitants of both continents. Considering economically motivated interventions, Calvo points out that never have the recovery of debts or the pursuance of other type of private claims justified the use of armed force by one European state against another, and there is no reason for him to change that rule in relation to the states of the New World.⁹

If intervention becomes a legal principle, just as of non-intervention is a principle of the law of peoples, the question Calvo asks is which of them becomes the rule and which the exception. Historically, non-intervention has in general prevailed in the political relations between states. Thus, Clavo concludes affirming that the absolute principle of non-intervention is a corollary to the principle of nationality and admits

⁷ Ibid, p. 323, besides the intervention of Britain and Russia in Greece’s independence, Calvo mentions also the intervention of France in Italy as contributing to the latter’s unification.

⁸ Ibid p. 348.

⁹ Ibid. 348-351 Then both intervention and non-intervention are general principles of the law of peoples, the task is to identify the rule, which is non-intervention.

exceptions only when a state freely appeals another state for assistance in defending or recovering its autonomy threatened by a foreign power.¹⁰

On the other hand, consular jurisdiction posed challenges similar to intervention, in that delimiting the scope of this exception to sovereign autonomy elicited responses analogous to Calvo's. Whereas it is undeniable that all limitations to the fundamental rights of the sovereign state are exceptional –reminds a German speaking Senga to his European readers– the attempt to justify consular jurisdiction by pointing out its normal character in Asia and Africa in contrast to its inexistence in Europe is untenable.¹¹ Senga, in this way, unpacks the contention that European international law's validity outside Europe depended on the extent to which the social and consequently legal relations between the European and non-European states were immediate enough. Holtzendorff, a German publicist, for instance, had classified legal bonds among states in four groups, according to which consular jurisdiction was justified in Turkish lands, Africa and Asia on grounds of the weakness of the relationship between these nations and Europe.¹² Senga opposed this interpretation by distinguishing between two issues that he deemed to be separated, namely the possibility of identifying regional groupings around a similar class of legal bonds, on the one hand, and the limitation of sovereign autonomy, on the other. If there are actually shared and regular particularities in the international legal relations within a group of states, Senga reasons, the differentiation in the conventional rights held by them have to conform to the distinctive economic or social relations in those parts of the world. Senga asserts that these variations in the rights applicable to legal interactions, however, remain within the realm of each of the group of states, so that distinctions between regional groups does not justify restricting the absolute rights belonging to each sovereign as an international legal subject, namely, it does not make lawful for European states to discriminate against Asian states –as in the case of the unequal treaties establishing consular jurisdiction.¹³

¹⁰ Ibid 351-355 Note how Calvo takes on the principle of nationality at the center of reconstruction of Europe to give it a twist.

¹¹ Tsurutaro Senga, 'Gestaltung und Kritik der heutigen Konsulargerichtbarkeit in Japan' 1897, at p 134.

¹² This four groups included relations between European states, between European and American states, between Christian European states and Turkish lands and between European and American states on the one side and Asian and African states on the other side. See Franz von Holtzendorff, *Handbuch des Völkerrechts: auf Grundlage europäischer Staatspraxis* (1885-1889).

¹³ Senga op cit at p. 134-135

Consular jurisdiction in Japan, Senga concludes, is in contradiction with the principle of sovereign autonomy.¹⁴ Highlighting the contradiction was not enough to assure the success of the legal argumentation in Japan's favor, for Senga had to show also that Japan was actually sovereign. Japanese publicists, in consequence, had to confront the standard of civilization, that is, the yardstick used by Western international lawyers to justify or deny the recognition of international legal personality.

2. The Standard of Civilization

Semi-peripheral international law experts developed legal arguments to justify the recognition of their countries as sovereign states. They internalized the standard by demonstrating the civilized status of their respective nations, alternatively and less frequently, lawyers challenged the standard as not scientifically sound and therefore legally useless to recognize or deny international legal subjectivity.¹⁵

Non-European publicists not only conformed to the idea of civilization as defining the minimal conditions that nations had to fulfill in order to be recognized as sovereigns and thus to be included as members of the 'family of nations', but also accepted that the adoption of the political institutions, and in particular the law of Western states, was the most visible indicator of a country having satisfied the standard. Lawyers from nations trying to achieve or secure recognition of their international personality, however, did not simply leave up to Europeans to determine who had met the standard of civilization. On the contrary, they were actively engaged, in European diplomatic circles and in the international law professional scene, arguing for the recognition of their civilized status.¹⁶ Writing on the legal aspects of the interaction between their own state and Western states, the semi-peripheral international lawyer

¹⁴ Ibid at p. 107 ff. Specifically, consular jurisdiction violates constitutional sovereignty (Staatsrechtliche Souveränität) at p. 108 ff, violation of sovereignty of the head of state (Fürstensouveränität) p. 109 ff, and violation of international legal sovereignty 123 ff.

¹⁵ Anghie op cit and Gerrit Gong, 'The Standard of Civilization in International Society' (1984) have studied the construction of the standard by Western international lawyers.

¹⁶ Carlos Calvo, for example, was a founding member of both the Institute de Droit Internatinoal and the International law Association.

strived to demonstrate that he not only understood what international law was about, but also that his government followed international legal precepts and thus in fact behaved as a civilized thus sovereign state all right. Non-European publicists saw their publications in Europe –books as well as articles in prestigious European law journals– mainly in French, the dominant language of the period, but also in English, German and Dutch, as underscoring the inclusion of their states in the society of civilized nations.

Following conventional wisdom, semi-peripheral international lawyers included, in their effort to substantiate the compliance with the standard of civilization, both its domestic and international facets.¹⁷ That their respective states had enacted laws and introduced legal institutions that guaranteed the respect of basic rights to nationals and foreign citizens alike was a central demonstration of having set the path to progress and modernization. In other words, while the idea of civilization was utilized by publicists from Western powers to justify the exercise of extraterritorial sovereign power over ‘uncivilized peoples’ –colonial rule– and special rights on ‘quasi sovereign’ nations, such as consular jurisdiction for instance, lawyers from countries in the latter situation, that is, exercising only limited or formal sovereignty, appropriated the standard to overcome its legal consequences and to assert full sovereign autonomy.

Enacting Western law would be an expression as well as a proof of sovereignty.¹⁸ For example, Kentaro Kaneko, a renowned Japanese jurist and diplomat, writes in the *Revue de Droit International et de Législation Comparée* that ‘for certain countries that have already entered the concert of universal civilization since some years’, the question to be examined is if ‘the modifications in the organization of the courts have taken place in order that their jurisdiction can be applied without hindrance to subjects of Christian powers.’¹⁹ Kentaro answers in the affirmative: ‘Such is notably the case of the Japanese Empire, whose laws and institutions are at present at the level of the ones of the states of

¹⁷ Gong’s study offers a useful enumeration of the requirements included in the standard: 1) guarantee of basic rights of foreign nationals, life, property, freedom of travel, commerce, religion; 2) organized political bureaucracy; 3) adhesion to generally accepted international law; 4) fulfillment of international obligations and diplomatic relations; 5) conforming to the accepted norms and practices of the ‘civilized’ international society, prohibition of polygamy and slavery. Gong at p 14 ff.

¹⁸ According to European’s own yardstick, see e.g. John Westlake, ‘Chapters on the principles of international law’ (1894)

¹⁹ Kentaro Kaneko, *Les Institutions Judiciaires du Japon*, *Revue de Droit International et de Législation Comparée* 25 (1893), 338-356 at p. 338 and also at p. 341. Kentaro earned his degree at Harvard law school in 1874 where he was tutored by Oliver Wendell Holmes Jr.

Europe and America.²⁰ Kentaro goes on suggesting that the introduction of Western law in Japan positioned her judicial institutions on equal footing with the ones of the peoples of Europe and America.

Kentaro's argument is subtle, for he implies that a Western legal system is not a sufficient sign to assert a country's status of civilization, but a justification for shifting the basis on which jurisdiction is exercised, from the nationality principle to the territorial principle. Moreover, to grasp the full extent of the successful reception of Western law and institutions in Japan, Kaneko argues, depends on understanding Japan's extensive history, which he sets out to introduce to Western readers. Giving an interpretative twist –typical of non-European thinkers– to the idea of Western law as a European site-specific historical phenomenon and therefore to the ineluctable requirement of its importation, Kaneko presents a story in which Japanese legal institutions had been ripe for modernization and successful assimilation of Western law, only because of the long history that preceded the imperial restoration of 1867. Nineteenth century codification, Kaneko points out, was not the first time in which compilations of laws have been enacted in Japan.²¹ Furthermore, since the reorganization of the judiciary undertaken by the Japanese Empire in the year 660 (AD), Japanese courts evolved in a fashion similar to European courts.²² Accordingly, Kaneko defends the historical legacy enjoyed by Japanese courts, their modernization and the professional expertise of its judges. All of which, makes quite difficult to compare the legal education or experience of Japanese judges with the competences of foreign consuls, who are simply elected by foreign merchants.²³ With a functioning Western legal system, Japanese lawyers could plead in favor of Japan's meeting of the standard of civilization and consequently for the recognition of its sovereignty, on the base of which they could launch a critique of the legality of the unequal treaties and as a result of consular jurisdiction.

In similar fashion, Latin American lawyers internalized the standard by asserting that although sharing with the West the same cultural roots, civilization in Latin America

²⁰ Kentaro enumerates the new laws and institutions that modernized the Japanese legal system, among others: a new constitutional regime (Kentaro himself had participated in the drafting of the constitution of 1889), the law establishing the organization of the judiciary and a series of new codes: of criminal procedure and civil procedure, a civil code and commercial code. Kentaro concludes: 'together they constitute a legislative monument that has called the attention of the scientific community'. *Ibid* at p. 338.

²¹ *Ibid* at p. 341.

²² *Ibid*, p. 356.

²³ *Ibid* at p. 353.

had a history of its own. Carlos Calvo complained resentfully about Europeans' ignorance about the civilization of the 'peoples of the Latin race' in the Americas.²⁴ In order to correct European neglect, Calvo published a monumental compilation of historical and statistical data about Latin America.²⁵ Calvo's revision of a vast record of laws and political institutions since colonial times onwards, on the one hand, and the cultural and political progress made by the republics of Latin American since independence from monarchic Spain and Portugal, on the other, allowed to base the claim to sovereignty and civilization on solid foundations.

As soon as semi-peripheral international lawyers contended to have fulfilled the domestic prerequisites to count their legal system and therefore their nation within the civilized world, they had also to supplement the assertion by demonstrating that the international facet of the standard was also met.²⁶ Japanese jurists, for instance, directed the attention to Japan's record of compliance with the general principles of international law and with the rules and obligations contained in a series of universal treaties signed by all 'civilized nations' during the nineteenth century.²⁷ Compliance was not enough, for Japanese internationalist had to show also that Japan behaved like a civilized state in its international dealings. In this regard the standard was internalized analogously to the way it was erected by nineteenth century Europeans, namely by recognizing a barbarian other

²⁴ 'Latin America has been discovered, conquered and populated by Europe, however, she is not known as it should be.' *Op cit infra* at p ii. Furthermore, Calvo complains that Latin America is frequently confused with other uncivilized regions of the world, or it is still mistakenly identified with the period of colonial domination disregarding the incessant progress Latin America has made since independence: America is seen as 'conserving its primitive and savage state: its civilized and intelligent habitants are considered as the Indians or the blacks from Africa, going all naked or covered with feathers.' (sic) *Ibid.* at p. ii.

²⁵ Calvo published in Paris, Buenos Aires and Madrid, both in Spanish and French, eleven volumes between 1862 and 1868, collecting legal documents and various figures on geography, populations and commerce, from discovery to mid nineteenth century.

²⁶ Nagao Ariga, for instance, linked the political and social reforms implemented by Japan with the declaration of the Empire to carry on hostilities against China respecting the law of nations. Nagao Ariga, *La guerre sino-japonaise au point de vue du droit international* (1896) Paris, at p. 4.

²⁷ In particular, Japan signed the treaties that laid the foundations of the laws in war. For example, in 1886, Japan acceded to the 1864 (First) Geneva Convention for Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and in 1887 acceded to The Paris Declaration of 1856 on maritime law in time of war.

in relation to whom their own civilized status could be discerned. Sakuyé Takahashi exemplifies this attitude when distinguishing between Chinese 'barbarian' behavior and 'Japanese law-abiding spirit' during the Sino-Japanese war of 1894-1895.²⁸ Similarly, Nagao Ariga affirms Japan's civilized behavior by pointing out that while the laws of war were based on reciprocity, Japan raised herself above the minimum legal duty staying firm in her 'gracious commitment' to comply with international law, notwithstanding Chinese recurring violations of the laws of war.²⁹

Latin Americans also constructed the civilizatory process in the region in contradistinction to other nations.³⁰ In this case, however, the civilized/barbarian dichotomy was projected less into countries in other regions of the world than into the indigenous peoples of the Americas, regarding whom Latin American elites had claimed an exclusive right to guide their passage to civilization. Similarly, in the Ottoman as well as in the Russian Empire, the internalization of the standard of civilization was redeployed domestically to justify the policy of modernization and Westernization and to attach to the groups opposing reform the 'barbarian' mote.³¹ For example, Etienne Carathéodory, an ethnically Greek international lawyer at the service of the Ottoman rulers, is recalled to have championed for the displacement of the civilized/barbarian dichotomy inwards to move Turkey towards the West, expressing that 'Turkey will be rescued, if she ceases to be pan-Islamic and becomes truly European.'³²

It is interesting to note that in the same manner Japanese located in their own ancient history and culture the fundamental cause for the stage of civilization achieved through modernization in the later part of the nineteenth century, Latin American lawyers have also at some occasions made rhetorical use of the pre-Colombian, Inca and Aztecan Empires' civilization, to differentiate Latin America from other regions of the

²⁸ 'So barbarous was the conduct of the Chinese authorities that if reprisal were the prevailing principle of International Law, Japan need have stopped at nothing in revenging herself. But Japan refrained from revenge, for it was her intention, in spite of the nature of her opponent, to set an example of generosity by carrying on hostilities in an enlightened fashion.' Sakuyé Takahashi, 'Cases on International Law During the Chino-Japanese War' (1899), at p. 3.

²⁹ Nagao Ariga op cit.

³⁰ See e.g. Calvo, affirming that from a positive point of view international law is limited only to the states of Europe and the Americas, op cit at p. 155.

³¹ See note 245 infra and accompanying text, discussing the internalization of the standard by Martens.

³² M. Streit, *Notices necrologiques*, Etienne Carathéodory, *Annuaire de l'Institut de droit international*, 22 (1908) p. 345.

world populated by ‘uncivilized tribes’, regions that were in that period falling under the occupation of European states. This rhetorical move continued to be an internalization of the standard by rooting it way back into an ideal past, rather than a challenge to the idea of a Western standard of civilization on the base of which to measure non Western social organizations.³³

Nineteenth century semi-peripheral international lawyers rarely critiqued the standard of civilization. Only at the end of the century the standard started to be challenged. Tsurutaro Senga criticized the predominant view that conditioned the full enjoyment of the fundamental rights of sovereignty on states’ meeting a standard of civilization. Considered under an ethnographic standpoint, the standard was ‘unscientific and deceitful’ since –according in Senga– it assumes the existence of various stages of civilization.³⁴ It is quite remarkable that following this comment, Senga’s sharpest criticism comes in the form of a two and half pages long and dense footnote:

‘It is to be regretted that modern international law authors use in their works such an unscientific expression as “civilization” (resp. “culture”). The definition of civilization evidently lies beyond [the competence of] jurisprudence. But which science has defined this expression? None!’³⁵

Following a rhetorical strategy familiar to non-Western intellectuals, this footnote continues recounting an extensive list of European thinkers who have used the expression civilization in a variety of ways. On the base of this appraisal Senga concludes affirming that:

‘each one arbitrarily bestows to the expression “civilization” a subjective sense after their own Weltanschauung, so that each religious denomination or philosophical school cherishes a peculiar conception of civilization. When European international law scholars speak about “civilization” or “civilized states”, they do so likewise from the subjective standpoint of their own Weltanschauung.’³⁶

³³ See e.g. Amancio Alcorta ‘Droit International Publique’ (1887), at p. 202-213, See also Amancio Alcorta, ‘El Derecho Internacional en las antiguas civilizaciones Americanas’, Nueva Revista de Buenos Aires, entrega de Abril, Tomo I vol I, 1881. p. 82. Evoking Latin America’s pre-Columbian civilizations was rhetorical not only because by the time of independence there were only tenuous ties between elites and indigenous peoples, but also because the Creole elites were committed to positivism and modernization.

³⁴ Senga, op cit at p. 135

³⁵ Ibid at p 135.

³⁶ Ibid at p. 136.

Senga then uncovers subjective considerations and logical inconsistencies in the use of the notion of civilization by prestigious international lawyers like von Martens and von Holtzendorff, which is probably why he kept his critique within a lengthy footnote. Senga finds the standard of civilization not only scientifically useless, but also ideologically charged, since it disguises the subjective preferences of the lawyer who invokes it. In Senga's view, it is thus untenable to use the idea of civilization to limit the sovereign rights of states and the geographical range in which international legal relations are governed under equality.

The challenge Tsurutaro Senga waged against the use of the standard of civilization sets him apart from most semi-peripheral international lawyers who instead internalized the standard. This challenge is also exceptionally powerful, since it is articulated from within the European intellectual and legal discourse under their own premises, inaugurating a mode of critique adopted by semi-peripheral internationalists ever since. It is extremely important to uncover this unique critique of the standard of civilization, for it amounts to a patent demonstration of the purposive and strategic appropriation of international law by non-European practitioners facing the challenges of nineteenth century Western imperialism. Resistance, therefore, is not exclusive patrimony of third worldist international lawyers who were active during the 1960s decolonization. Defying the Eurocentric assumptions of international legal scholarship is not an exclusivity of contemporary international lawyers acquainted with postcolonial literature. Widespread interpretations of nineteenth century history of international law prove inadequate as well. The account whereby international law appears as an intra-European affair is not complete if the debate between European and non-European international lawyers –over consular jurisdiction or intervention for instance– as well as the use of their arguments in international disputes are left aside. Interpretations that underscore the mutually constitutive relationship between international law and formal/informal colonialism, on the other hand, are problematic if they assume Western publicists' hegemony in the configuration of the discourse of international law, erasing non-European's role in the mutual constitution of the discourse itself.