

REVIEW ESSAY

THE MISERY OF INTERNATIONAL LAW: CONFRONTATIONS WITH INJUSTICE IN THE GLOBAL ECONOMY EDITED BY JOHN LINARELLI, MARGOT SALOMON AND MUTHUCUMARASWAMY SORNARAJAH (OXFORD UNIVERSITY PRESS, 2018) 336 PAGES. PRICE GBP 70.00 (HARDCOVER) ISBN 9780198753957.

Over a decade ago, China Miéville concluded his Marxist critique of international law with the damning assessment that ‘[t]he chaotic and bloody world around us *is the rule of law*’.¹ The categorical nature of his argument that ‘[a] world structured around international law cannot but be one of imperialist violence’² and thus his claim that international law fundamentally and inherently lacks the capacity to further a just international order as ‘systematic amelioration of social and international problems, cannot come through law’,³ was one that even many ideologically sympathetic scholars sought to moderate. Susan Marks, although she shares Miéville’s analysis that international law ‘has failed and goes on failing millions ... not “on occasion”, but overwhelmingly and systematically’ and that the ‘chaos and conflict’ of the world exists not ‘in spite of’ but ‘is in part because of’ international law,⁴ nonetheless felt he was ‘unnecessarily negative’ about the emancipatory potential of law.⁵ Whilst recognising the evident dangers involved in basing a progressive critique on international law, she cautions against ‘eschewing legal argumentation altogether’ and suggests that international law retains value for critique.⁶ Similarly, Umut Özsu warned that Miéville’s critique is blind to the ways international law can also function as an empowering force by ‘supplying oppressed and marginalized groups with an impressive arsenal of techniques with which to resist aggression and assimilation’.⁷ He notes that in practice resistance often entails ‘strategic, self-conscious deployment of such structures, often with great effect’.⁸ In his analysis, Robert Knox powerfully reframed these debates by suggesting that critical scholars should not focus on debating, often in abstracted and decontextualised terms, whether or not international law can contribute toward emancipatory projects, but rather on interrogating, in situated and concrete ways, *how* social movements can best engage with or against international law to achieve social emancipation.⁹ His analysis showed that

¹ China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2005) 319 (emphasis in original).

² *Ibid.*

³ *Ibid.* 318.

⁴ Susan Marks, ‘International Judicial Activism and the Commodity-Form Theory of International Law’ (2007) 18 *The European Journal of International Law* 199, 202.

⁵ *Ibid.* 199.

⁶ *Ibid.* 211.

⁷ Umut Özsu, ‘Between Equal Rights: A Marxist Theory of International Law by China Miéville’ (2008) 72 *Science and Society* 371, 372.

⁸ *Ibid.*

⁹ Robert Knox, ‘Marxism, International Law and Political Strategy’ (2009) 22 *Leiden Journal of International Law* 413, 436.

international law is more open to contestation than Miéville's account suggests, and thus that it is possible — although invariably a 'gamble fraught with tension' — for progressive forces to advance their interests through international law.¹⁰ Moreover, Knox stressed that questions about international law's role in social change invariably are and 'only make sense as practical and contextual ones',¹¹ requiring careful, situated considerations of strategy, tactics and methods.¹²

Reading *The Misery of International Law: Confrontations with Injustice in the Global Economy* in the wake of these debates, it is both striking how this book so compellingly illuminates the violence of, and misery produced by, the international legal order, but also unfortunate how it sidesteps these complex questions of whether and how international law can contribute towards social transformation in our present. The authors of *The Misery of International Law* powerfully present evidence and arguments about the violent impacts and immiserating effects of international law that too often are marginalised as fringe, as an unavoidable description of the reality of our world. John Linarelli, Margot Salomon and Muthucumaraswamy Sornarajah compellingly show the role that international law plays in enabling and promoting a harmful and unjust international economic order.¹³ The authors are concerned not with violations of the law, but 'with the law itself', the violations international law enables and the 'ways in which international law operates at the service of injustice'.¹⁴ They provide a forceful account of the misery and immiseration that is the outcome of an international legal order that 'enriches the few at the expense of everyone else, ... wrongs women with particular efficiency, and ... is environmentally destructive and unsustainable'.¹⁵ Canvassing the fields of global investment, trade, finance and human rights, Linarelli, Salomon and Sornarajah show 'how categorical the assumptions and premises of neoliberal capitalism are in international law'.¹⁶ They do not shy away from asserting that 'the widespread immiseration we know today is in good part a result of the pivotal role played by the international legal system'¹⁷ and that the international law we have 'is the international law that capitalism has constituted and ... that capitalism's ambitions can rely on'.¹⁸ However the authors also insist their analysis is not informed or determined by a specific ideological position but is instead the product of a 'pluralist' and eclectic toolbox. The foregrounding of the 'suffering' and 'misery' produced by law rather than a distinct ideologically informed theoretical framework for understanding international law helps position their analysis to speak to a more mainstream international legal audience. Yet, perhaps

¹⁰ Ibid.

¹¹ Ibid.

¹² See also Robert Knox, 'Strategy and Tactics' (2010) 21 *Finnish Yearbook of International Law* 193.

¹³ John Linarelli, Margot E Salomon and Muthucumaraswamy Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy* (Oxford University Press, 2018).

¹⁴ Ibid 1.

¹⁵ Ibid.

¹⁶ Ibid 19.

¹⁷ Ibid 22.

¹⁸ Ibid 10.

too, the mainstreaming of such analysis and the ‘inescapable conclusion’¹⁹ that international law is implicated in the production of misery speaks more to the current historical conjuncture: in a world where the number of people who can fit into a ‘single golf buggy’ own the same wealth as the poorest 3.6 billion people on the planet,²⁰ the veneer that masks the violence of the liberal order is stripped bare and the role of legal rules in concentrating social and economic power is more overtly visible.

Nonetheless, this book unavoidably also poses questions about the nature of radicalism in international legal scholarship today. As the authors write, in rather tongue-in-cheek fashion:

If one is said to have adopted the position of ‘radical critique’ by suggesting that international law institutionalizes domination by some states over others, and domination by transnational corporations over poorer or weaker states and their citizens and that the ‘current institutions of global governance can be seen as ‘imperial’ institutions, furthering the goals and stabilizing the dominance of Northern industrialized countries at the expense of the South, and the dominant capitalist classes at the expense of subaltern peoples’ then we are all to be labeled radicals. Except so-called ‘radicals’ abound today.²¹

Yet, even as *The Misery of International Law* presents a damning critique of our present international law, Linarelli, Salomon and Sornarajah’s project is one that maintains a ‘critical faith’ in the possibilities of a different international law, or a reformed international law.²² Unlike some scholars, such as Miéville, they do not posit that resistance to the injustice of international law does not demand ‘the total replacement of the object of that resistance’.²³ Rather, as does much of the Third World Approaches to International Law (‘TWAIL’) scholarship from which they draw clear inspiration, they are ‘more interested in overcoming international law’s problems while still remaining committed to the idea of an international normative regime largely based on existing institutional structures’.²⁴ They are thus cautiously optimistic, writing that ‘[t]he arguments herein for a different type of international law, one that better accords with demands of justice, implies that there may still be hope, but if there is it is faint’.²⁵ They see their efforts ultimately as part of an ‘uphill battle to recover international law’,²⁶ but are agnostic about what sort of orientation to international law this may call for, acknowledging that parts of their analysis ‘reflect a dedication to fixing some of the vilest tendencies of the system whereas

¹⁹ Ibid 27.

²⁰ Mark Goldring, ‘Eight Men Own More Than 3.6 Billion People Do: Our Economics Is Broken’, *The Guardian* (online), 16 January 2017 <<https://www.theguardian.com/commentisfree/2017/jan/16/eight-people-earn-more-billion-economics-broken>> archived at <<https://perma.cc/CM5P-9A5A>>.

²¹ Linarelli, Salomon and Sornarajah, above n 13, 35 (citations omitted).

²² I take the term ‘critical faith’ from Sundhya Pahuja. See Sundhya Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011).

²³ Luis Eslava and Sundhya Pahuja, ‘Between Resistance and Reform: TWAIL and the Universality of International Law’ (2011) 3(1) *Trade Law and Development* 103, 110.

²⁴ Ibid.

²⁵ Linarelli, Salomon and Sornarajah, above n 13, 37.

²⁶ Ibid.

others veer towards an overhaul of it'.²⁷ They describe their approach as 'navigat[ing] the perennial tension and intractable dichotomy between the positions of radicals who denounce the legitimation that comes from efforts to improve the current system and those of reformers and pragmatists'.²⁸

In essence Linarelli, Salomon and Sornarajah's project is to make international law subject to the demands of accountability and of justice, particularly for international law to be more accountable to the persons whose lives it affects: 'International law must be justifiable to those who are subject to it'.²⁹ This need for accountability they describe as 'unassailable' and they argue that without it international law lacks any 'moral legitimacy'.³⁰ They continue:

International law is subject to the demands of justice because of its role as an institution essential to global cooperation, because it intrudes far into the distributional issues linked closely to how people live their lives, because of its historic and ongoing role in perpetuating and legitimizing moral wrongs, and because it can, and indeed does, lead to domination and the deprivation of freedom if states and international organizations do not get matters rights: international law is subject to the demands of justice because it is constitutive of the current economic order.³¹

While they set out detailed normative argument about why international law should be subject to the demands of justice, they do not provide a vision of how this might be actualised. As they carefully clarify, this is a book of 'critique and not of prescription'.³² Although they remain optimistic about future more emancipatory prescriptions for international law, they stress a temporal priority for 'exposure through critique', noting that '[p]rescription cannot be effective and will be prone to wrong answers unless the problems of international law are laid bare'.³³ The gap the authors insist on between critique and prescription is both highly productive *yet also* somewhat unsatisfying. It is productive in that it facilitates coalition building by drawing in and speaking to a wider audience who share a concern about the role of law in perpetuating injustice in this world, but who hold divergent positions on what global justice looks like, and the role of law in such a vision and in its implementation.

Insisting on a pause between critique and prescription also allows the authors to benefit from an eclectic methodological toolkit and sidestep the inevitable tensions this would produce on a more normative register. The authors describe their approach as 'pluralist',³⁴ due to their openness in drawing on liberal, radical and other traditions or methodological tools to 'expos[e] unconscionable dimensions of the global economic order, the false premises upon which it is built, and the role of international law in constituting and sustaining it'.³⁵ They claim to neither seek to defend liberal nor radical notions of justice, but instead

²⁷ Ibid 6.

²⁸ Ibid 6 n 7.

²⁹ Ibid 273.

³⁰ Ibid.

³¹ Ibid 34.

³² Ibid 274.

³³ Ibid.

³⁴ Ibid 6.

³⁵ Ibid.

employ a diverse toolkit to clarify values and highlights the root causes of exploitation. They defend and reconcile their ‘synthetic approach drawing from different perspectives and methods’ by stressing that their underlying aims any of these approaches is the same, and moreover, that regardless of which approach is adopted, the book ‘reaches similar conclusions whichever approach is applied’.³⁶ Whilst there is a clear pragmatic value in this eclecticism, particularly how it facilitates discussions across ideological differences and the identification of common concerns from diverse perspectives, it also creates a too easy alignment of aim, methods and outcomes. Their agnosticism about the underlying theoretical framework that informs their analysis is on display when they write:

There is little difference today in whether the language used to describe this dominant set of economic and ultimately social rationalities are practices is that of ‘neoliberalism’ or the ‘commodity-form of capitalism’ or the ‘free market’ understood as either the ‘free play of market forces’ or ‘liberalized markets’ or ‘market capitalism’ or just ‘the markets’ or ‘market fundamentalism, or ‘global capitalism’.³⁷

Yet, on another level this approach remains unwieldy, because the tensions between these approaches cannot be quite so easily sidestepped nor can the registers of critique and prescription be neatly delineated. As David Dyzenhaus has argued, ‘theory, in seeking to understand what is, makes sense of its object of inquiry in a way that is prescriptive for the future’.³⁸ That is, the way in which we — legal scholars — describe the world that is the object of our critique *matters*, and it is therefore unsurprising that ‘description’ and ‘critical redescription’ have been praised and deployed as methodological tools in the present conjecture.³⁹ Descriptions of the world are not neutral, especially in the extent to which they represent power structures as inherent and stable, or instead foreground the ways in which structures of power are vulnerable to resistance. For example, depicting international law as totalising and over-determining risks leaving us without ‘a map to resist, revolt or strategise against the effects of the regulatory proliferation of international law’.⁴⁰ Relatedly, descriptions that presume or take for granted the authority of specific forms of law, without interrogating the way in which its authority to speak in the name of law has come to be authorised,⁴¹ risks taking as given that ‘one variant of jurisdiction is “law” *tout court*’ and presenting ‘a limited range of authority ... as law-giving’.⁴²

³⁶ Ibid.

³⁷ Ibid 10 (citations omitted).

³⁸ David Dyzenhaus, *Legality and Legitimacy: Carl Schmidt, Hans Kelson and Hermann Heller in Weimar* (Oxford University Press, 1997) 164, quoted in Anne Orford, ‘In Praise of Description’ (2012) 25 *Leiden Journal of International Law* 609, 625.

³⁹ On this, see especially Anne Orford, ‘In Praise of Description’ (2012) 25 *Leiden Journal of International Law* 609 as well as Sundhya Pahuja, ‘Laws of Encounter: A Jurisdictional Account of International Law’ (2013) 1(1) *London Review of International Law* 63.

⁴⁰ Eslava and Pahuja, above n 23, 129.

⁴¹ I am drawing on an analysis of ‘jurisdiction’ as the ‘power and authority to speak in the name of the law’, see Peter Rush, ‘An Altered Jurisdiction: Corporeal Traces of Law’ 6 *Griffith Law Review* (1997) 144, 150 and Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge, 2012).

⁴² Pahuja, ‘Laws of Encounter’, above n 39, 65.

Description is a performative activity of ‘world making’ that participates in the production and the stabilization of specific ways constituting worlds. Thus critical description — an ‘attempt to redefine through narrative, a world we take for granted, inviting it to be seen differently’ — can be understood as a mode of political engagement.⁴³ Crucially, a focus on description as critical methods demands greater self-reflectivity about ‘how we might understand what we are doing when we practise, write, or think about international law’ and thus the complexities of ‘taking responsibility for our own role in the conduct of law and legal relations’.⁴⁴ Through the routine repetitions of description and redescription, forms of international order that produce acute misery appear more or less stable, more or less subject to contestation, more or less encompassing, and alternative (international) laws more or less evident and visible.

The really significant and critical intervention this book makes is through its insistence that any engagement with international law needs to adopt the standpoint of those who are suffering and whose misery is produced by the international legal order. *The Misery of International Law* exemplifies this through its ethical commitment to ‘give voice to human suffering, to make it visible, and to ameliorate it’.⁴⁵ The introduction presents a powerful critique of the international economic and legal order. Importantly the authors reject false dichotomies that often structure critical accounts: firstly between the economic and non-economic realms (insisting instead that the economy is not separate from the political or social realms);⁴⁶ secondly between protectionism and liberalisation (insisting that all markets are regulated and that the key concern is not degree of regulation but how different forms of regulation produce difference ‘distribution of immiseration’);⁴⁷ and finally that one must either be for the market or the state.⁴⁸ By doing so, they hope to ‘leave open the space for imagining more radical futures than between the capitalist state and the capitalist market, futures that may not involve the state or the transnational market at all, as we currently understand them’.⁴⁹ Moreover, they also draw a critical distinction between calls for redistribution and their more radical call for ‘reconfiguring the current model of *predistribution*’, that is ‘making international law just in a structural sense’.⁵⁰ They highlight the limitations of models of redistribution, which ‘address[] the symptoms not the causes of immiseration’,⁵¹ highlighting instead that transformation requires a different vision of law, political economy and their relation.

The second chapter shifts to a more normative register, and aims to ‘offer a philosophically influenced argument on why the international law on trade, investment, and finance is subject to the demands of justice’, and specifically why these demands of justice call for more than the basic minimum of

⁴³ Ibid.

⁴⁴ Ibid 66.

⁴⁵ Upendra Baxi, ‘Voices of Suffering and the Future of Human Rights’ (1998) 8 *Transnational Law and Contemporary Problems* 125, 127.

⁴⁶ Linarelli, Salomon and Sornarajah, above n 13, 31.

⁴⁷ Ibid 32.

⁴⁸ Ibid 33.

⁴⁹ Ibid 34.

⁵⁰ Ibid 36.

⁵¹ Ibid 36.

subsistence.⁵² In doing so, they explicitly argue against those who deny that distributive justice has a role in the international order and contend that the international order represents only a ‘practical association’ between nations that is not akin to the ‘purposive conception of society and government’ existing within the nation state.⁵³ Against those who would limit distributive justice claims to within the nation, Linarelli, Salomon and Sornarajah offer four arguments. Firstly, they dispute the characterisation of the international order only as a ‘practical association’ concerned with ‘coexistence’, showing instead how international law now powerfully intrudes into the domestic sphere of states, even ‘sometimes in substantially more powerful ways than domestic law’ and is also ‘at work in the most fundamental sites of distribution within the state’.⁵⁴ Secondly, given that international law is implicated in the perpetuation of systematic injustice in the global economy, it necessarily requires the ‘corrective of an international law conforming to principles of justice’.⁵⁵ Thirdly, they argue that domination or the ‘capacity to interfere on an arbitrary basis in the choices of another’ through either coercion or manipulation is — in its worst manifestations — a ‘transborder phenomena’.⁵⁶ Finally, they point to how ‘historic wrongdoing’ constitutively produced the contemporary shape of international law.⁵⁷ Having established that international law is subject to the demands of justice, the authors ask what the demands of justice ask of international law, concluding that those affected by international law have a ‘*right of justification* for the rights, liabilities, burdens, and benefits it allocates’.⁵⁸ As a moral minimum, they propose an ‘anti-misery’ principle, which makes many institutional arrangements that produce ‘impoverishment, great distress, discomfort, hardship, or suffering’ as morally objectionable,⁵⁹ as well as obligations to ‘do no harm’ and to not perpetuate inequalities that cannot be morally justified.

Chapter 3 turns to history and provides a necessary, but for many readers familiar, recounting of how international law is a product of the colonial encounter and was used to justify the violence and hierarchy of imperialism. However the book deliberately adopts a ‘prospective focus’ that looks ‘to history not to establish a legal mechanism for reparations but to critique international law for what it continues to be’.⁶⁰ International law’s colonial history, therefore appears as baggage that international law has not yet escaped from or overcome, but from which it imagined to be possible to instigate a decisive cut or break. While the authors do pose as an open question ‘whether international law is path-dependent’,⁶¹ they also assert that to the extent that colonial structures continue into the present ‘[j]ustice requires the identification and removal of institutions

⁵² Ibid 41.

⁵³ Ibid 46.

⁵⁴ Ibid 51.

⁵⁵ Ibid 52.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid 68.

⁵⁹ Ibid 73.

⁶⁰ Ibid 66.

⁶¹ Ibid 37.

that perpetuate unjustifiable coercion',⁶² as if such a severing could still leave something familiar called 'international law' in place. The analysis thus avoids the disturbing implications arising from international legal historiography and the recognition that 'colonialism was central in the constitution of international law', namely that 'basic doctrines of international law' were forged out of, and continue to reflect this colonial confrontation and that these origins 'create a set of structures that continually repeat themselves at various stages in the history of international law'.⁶³ As such, the authors do not grapple with the deeper implications arising from the fact that fundamental international legal concepts that continue to circulate carry embedded in them a colonial hierarchical ordering of the world, as do, many of the legal terms and frameworks that we draw on to critique international law's injustices. In the second part of the chapter they revisit the Third World demands for a New International Economic Order ('NIEO') and its articulation of an alternative vision of international law, as well as the backlash against the NIEO and its gradual eclipse. This ultimately unsuccessful episode, they argue, 'should have continuing value for international law for it is the first time that an alternative construct in international law had been articulated since Westphalia'.⁶⁴ Whilst they are open about acknowledging the limitations and shortcomings of the NIEO, its defeat is primarily presented as an ideological backlash to reassert norms that 'reflect the references of actors with private power, the multilateral corporations and the actors with public power, the developed states of the world'.⁶⁵ As such, they also avoid a deeper interrogation of why 'international law, from the perspective of the Third World, [has] been so disappointing' and how international law itself might be a 'contributor to the failure of projects articulated in its name'.⁶⁶ Moreover, there is no reflection on how we should learn from this failure, or the significance of different modalities by which we take up and engage with failures.⁶⁷

The body of the book is made up of a series of chapters focused on trade (Chapter 4), foreign investment (Chapter 5), global finance (Chapter 6) and human rights (Chapter 7) respectively in order to 'evaluate the content of international law in each of these areas, to demonstrate how they have failed to meet the demands of justice'.⁶⁸ Each of these chapters initially turns to history, to show how the violence of 'war capitalism' instigated specific rules and their contemporary resonances and legacies. On trade, they powerfully assert: '[t]rade agreements are not about free markets. They are about distribution'.⁶⁹ As such,

⁶² Ibid 80.

⁶³ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005) 3.

⁶⁴ Linarelli, Salomon and Sornarajah, above n 13, 95.

⁶⁵ Ibid 99.

⁶⁶ Pahuja, above n 22, 1.

⁶⁷ In adopting this formulation, I am indebted to the work of Adil Hasan Khan, Christopher Gevers and Deval Desai and their project on 'Learning from Failure'. See Institute for International Law and the Humanities and Institute for Global Law and Policy, *IILAH - IGLP Workshop: Learning from Failure* (5 June 2018) <<https://law.unimelb.edu.au/centres/iilah/news-and-events/2018-events-iilah/learning-from-failure>> archived at <<https://perma.cc/DA2C-W2JX>>.

⁶⁸ Linarelli, Salomon and Sornarajah, above n 13, 149.

⁶⁹ Ibid 111.

they seek to bring ‘normative ideals beyond those of capitalism into the global trade architecture’ to imagine a form of trade law that facilitates co-operation rather than the enforcement of contractual relations.⁷⁰ The authors also show how ‘[c]oercion in the form of imposition through power ... lies at the very roots of foreign investment protection’.⁷¹ They explain how after the dismantling of the NIEO, a neoliberal order of foreign investment protection was constructed in the era of economic globalisation, through an expansion of the jurisdiction of investment protection and a redefinition of what constituted a ‘taking’ and ‘expropriation’. This chapter however ends (relatively speaking) more optimistically, by noting that the field is currently ‘in the throes of a tussle between forces that seek to change the order based on its prescriptions and the forces that seek to entrench and further stabilize the regime’ whose outcome is not yet determined.⁷² On finance too, the authors stress that a ‘neoliberal form of financial globalization now dominates the global economic scene’.⁷³

The final chapter, focused on human rights is one of the most vital analysis in this book in how it pushes back against the common depiction of human rights as a ‘counter-hegemonic force’ that humanises the violence of the international order. The authors explore the way in which human rights ‘work against a transformative or radical agenda’⁷⁴ given that ‘the assumptions and priorities of global capitalism shape them in dangerous ways’.⁷⁵ They contend that human rights ‘are at risk of being a handmaiden to the priorities of global capitalism’, especially in how growth and the market are positioned as a ‘precondition’ for the realization of socio-economic rights. As such, this chapter thus also speaks to broader current debates about the relationship between human rights and neoliberalism,⁷⁶ as well the relationship between human rights and economic inequality.⁷⁷ The authors highlight how a doctrinal focus on a ‘minimum core’ approach to rights realisation distracts from a consideration of broader distributional questions and ‘reproduces the violent appropriations that engender the poverty in the first place’.⁷⁸ After discussing the how the radical demands of the right to development to address the international structures of the political economy producing inequality and disadvantage⁷⁹ have been neutralised, the chapter provides a vibrant critique of how social protections floors are articulated

⁷⁰ Ibid 144.

⁷¹ Ibid 154.

⁷² Ibid 173.

⁷³ Ibid 175.

⁷⁴ Ibid 228.

⁷⁵ Ibid 240.

⁷⁶ See, eg, Samuel Moyn, ‘A Powerless Companion: Human Rights in the Age of Neoliberalism’ (2014) 77(4) *Law and Contemporary Problems* 147; Susan Marks, ‘Four Human Rights Myths’ (Working Paper 10, London School of Economics and Political Science, 2012); Jessica Whyte, ‘Human Rights and the Collateral Damage of Neoliberalism’ (2017) 20(1) *Theory & Event* 137; Paul O’Connell, ‘On the Human Rights Question’ [2018] *Human Rights Quarterly* (forthcoming); Joe Wills, ‘The World Turned Upside Down?: Neo-liberalism, Socioeconomic Rights, and Hegemony’ (2014) 27 *Leiden Journal of International Law* 11.

⁷⁷ Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, Human Rights Council, 29th sess, Agenda Item 3, A/HRC/29/31 (27 May 2015); Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018).

⁷⁸ Linarelli, Salomon and Sornarajah, above n 13, 242.

⁷⁹ Ibid 243.

in the Sustainable Development Goals and how they have been discussed in the Committee on Economics, Social and Cultural Rights. The discussion demonstrates how such measures ‘fail to confront the structural features of poverty and may serve to support them’.⁸⁰ This chapter is a vital antidote for those who might see human rights frameworks as alleviating the misery and suffering caused by regimes of trade, foreign investment and finance. It is a critical reminder that while human rights might at times provide a defence against economic power, they too are ‘circumscribed by that power and in important ways reinforce expression of it’.⁸¹ The aim of the chapter therefore is not to point to whether or how rights might be able to create more just societies, but rather to ‘first expose the ways in which they are a reflection of those societies, and, crucially, how they assist in reproducing the underlying terms of immiseration that will ensure that human rights protection is forever necessary’.⁸²

This an important and compelling book that is necessary reading for all international lawyers, in so far as it comprehensively documents the violence of international’s law immiseration. Growing inequality and extreme deprivation is a reality that urgently needs to be brought more sharply into view in international legal scholarship. The various chapters provide a rich account of different doctrinal areas of international law and demonstrate clearly the authors’ expertise across a range of specialist fields. Nonetheless, whilst vital, this is an account of the violence of the international legal order that is constantly unsettled by the tensions that the book seeks to side-step and avoid. In many ways, this is thus a book that poses more questions than it answers: it exposes for the reader the urgency of structural transformation of international law to accommodate the demands of justice and accountability, yet provides limited guidance for thinking about on what such transformation(s) might could involve or the means by which they could come about. Nonetheless, the authors powerfully demonstrate how urgently necessary it is for scholars of international law to orient themselves not primarily to questions of doctrine, principle or the maintenance of order, but rather to the misery that is produced by international law and the voices of those who are suffering due to the current configuration of the international order. In doing so, *The Misery of International Law* presents its readers with an urgent normative and ethical challenge, one which we can only hope many will take up.

JULIA DEHM*

⁸⁰ Ibid 251.

⁸¹ Ibid 266.

⁸² Ibid 270.

* Lecturer, School of Law, La Trobe University, j.dehm@latrobe.edu.au. Many thanks to Adil Hasan Khan and Ntina Tzouvala for their generous comments on earlier versions of this review.