

The Europeanization of the World: On the Origins of Human Rights and Democracy

by John M. Headley, Princeton University Press, 2008, 308 pp.

Matthew Omolesky

In an effort to provide a suitably thick patina of legitimacy for an institution whose beginnings date no further back than the time of Arthur Salter and Jean Monnet, the European Union has often made recourse to what can be called the 'usable past.' The language of the preamble to the European Union Constitution, to be incorporated in the Treaty of Lisbon, refers to 'the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.' As part of the current 'Year of Intercultural Dialogue,' the Slovene Presidency last month organised a conference in Ljubljana entitled 'Europe, World and Humanity in the 21st Century,' which focused in part on the question 'What message can the Europe of today send to the world about understanding global issues, given its own humanistic tradition?' For those seeking to better comprehend this much-emphasised humanistic tradition, its inheritance, and its impact on universalistic human rights values, a useful starting point from a narrative historical perspective is John Headley's *The Europeanization of the World: On the Origins of Human Rights and Democracy*. Yet in attempting to trace the origin and evolution of contemporary human rights law, Headley all too often, though unintentionally quite instructively, runs afoul of the Enlightenment jurist Emmerich de Vattel's warning that treatments of the law of nations are as a rule 'vague, superficial, and often even mistaken.' [1]

For those grown accustomed to the pronounced bifurcation in popular public discourse as it relates to European affairs, Headley's framework, which alternates between optimism and pessimism, is actually quite refreshing. Whereas Europhiles like Jeremy Rifkin, T.R. Reid, and Mark Leonard figure European mandarins to be the chief proctors of the 'global test,' destined to 'run the Twenty-First Century' [2] with an admixture of soft power and enlightened self-interest, while others, prominent amongst which are Mark Steyn, Bruce Bawer, Walter Laqueur, and Bruce Thornton, view European nations as the canaries in the collective coalmine of Western decadence and demographic decline, Headley avoids both extremes. For him, Europe (and even the West as a whole) is a kind of Mithraic bull, nobly bequeathing its universalistic values while in the midst of its own decline.

The *raison d'être* of Headley's book is frankly stated at the outset: 'As dusk begins to settle on the abruptly curtailed "American century", the time seems long overdue for an assessment of that hitherto distinct civilisation, the West, which is in the process of merging now with other civilisations and cultures' (p. 1). (Evidently the much-lamented American *hyperpuissance* was quite short-lived!) In any event, by concentrating on two areas of Western political and legal thought – the 'program of natural, human rights' and the 'faculty for self-criticism' (p. 2), Headley hopes to show the value of the European intellectual tradition, for without these two 'distinctively Western political principles,' the 'enthusiasm for diversity alone can descend into nasty tribalism' (p. 6). Headley's rejection of relativism and subjectivism is certainly welcome; nevertheless from a historical perspective his essentially teleological treatment of the development of human rights norms during the 'initial, brittle engagement of European civilisation with the globe and its peoples' (p. 4) – the period from the Renaissance to the Enlightenment – is not entirely convincing.

After beginning his account with Renaissance Europe's cartographic encounter with the newly-discovered *terra nullius*, [3] Headley moves swiftly to the crux of his book: the development of the idea of a common humanity, the essential groundwork for future human rights regimes. Originating in the Roman *jus gentium* (law of peoples), incubated by Christianity, coming to fruition in the Renaissance, and going to seed in Western thought during the Enlightenment, this notion of universality is, for Headley, the defining product of European thought. In the process,

Something distinctively new, a new confidence, a new civility long maturing, a new civilization capable of contending with the most ancient and established had in the meantime come into being; its leadership, from Leibniz to Metternich, from Gibbon to Burke, recognized it as a single country, Europe; a single civilization, European (p. 94).

Headley is entirely correct that this was a period during which public intellectuals like Montesquieu announced that '*tout est extrêmement lié* (everything is extremely intertwined), [4]' Voltaire could speak of Europe as a kind of 'great republic' [5] that was often described as '*ein bewunderswertiges Ganze* (a marvelous whole).' [6] Yet, from the practical standpoint of the evolution of human rights, it is quite immaterial that Edward Gibbon felt at home in Lausanne. Jurists have long derived international legal custom from two sources, *opinio juris sive necessitatis* (the belief that there exists a legal obligation) and state practice. The point is that words alone are not enough; they must be implemented.

OMOLESKY | The Europeanization of the World?

Yet time and time again one is struck by how divorced from reality and concrete state practice *The Europeanization of the World* can be. As noted previously, Headley's historical narrative is teleological, in theory tracking the gradual ripening of European notions of universality from the Renaissance onwards. Yet, as the historian Garrett Mattingly noted in his magisterial *Renaissance Diplomacy* (1955), a rather different political evolution occurred during this period:

The enthusiasm of the humanists for Greece and Rome, their attempt to restore a direct connection with antiquity by a backward leap across the 'dark centuries,' meant, in the end, a rejection of the greater part of the usable European past. [7]

There followed, according to Mattingly, a 'rise of national feeling which was beginning to divide European society,' while

the imitation of classical patriotism was already supplying one element: the worship of a special fatherland which the humanists drew from their favorite reading was replacing the sense of belonging to an ecumenical community. As the Bible became the common property of the people of Europe, it was open to any group of them, national or religious, to imagine themselves, like the ancient Jews, divinely authorized to any lengths of guile or violence in the pursuit of their peculiar ends. [8]

It should be easy enough to distinguish Headley's founding myth from Mattingly's steely reality.

For all Headley's highlighting of inchoate but burgeoning principles of human rights and universality, the chief international political and legal development of this age, sovereignty (best expressed in the Treaty of Westphalia of 1648), receives almost no mention – the word 'sovereignty' itself occurs but twice in the text and never with any significance attached. The reader is treated to a thoughtful analysis of the accretion of natural legal principles, but these passages are more or less divorced from contemporary concerns. Universality was never so straightforwardly maintained. It was the Romans who, despite their formulation of a *jus gentium*, were perfectly willing to divide the world into categories like *pars melior humani generis* (the better part of humankind) and *hostis humani generis* (enemies of humankind). Classical concepts of a common humanity were no obstacle to any number of enormities, including for instance those of the Emperor Domitian, who after slaughtering the combatants and

non-combatants of an African polity in 85-86 AD bragged to the Roman Senate that he had 'forbidden the Nasamones to exist.' [9] And it was Grotius, that champion of state sovereignty, who in the context of the rise of imperialism insisted that

Kings, and those who are invested with a Power equal to that of Kings, have a Right to exact Punishments, not only for injuries committed against themselves, or their Subjects, but likewise, for those who do not particularly concern them, but which are, in any Persons whatsoever, grievous Violations of the Law of Nature or Nations...War may justly be undertaken against those who are inhuman to their Parents, against those who kill Strangers that come to dwell amongst them [i.e. settlers], against those who eat human flesh, and against those who practice Piracy. [10]

Headley's version of Grotius, one suspects, would be appalled by the actual Grotius, whose seemingly universalistic notions of the law of nations were in no small part designed to further Dutch sovereignty and its colonial expansion.

It is important to remember that this was an era in which, as Montesquieu put it, 'the object of war is victory; that of victory, conquest, and that of conquest, preservation,' [11] and, as the historian Pieter Van Geyl pointed out, the moment 'when the movement away from universality [could] be observed most strikingly.' [12] It is little wonder that the Europe of *Candide's* warring 'Bulgars' and 'Abars' was often described as an 'armed camp.' Headley, a distinguished historian, is of course aware of all this, but his intellectual history, which ignores political realities, only reinforces the idea that modern notions of universally applicable natural, human rights are typically illusory and aspirational, and thus all too often (to borrow Disraeli's phrase) the 'baseless fabric of a vision.' A more accurate view of the evolution of universalism and human rights during this period might have taken into account observers like Baron Bielfeld, who noted that '[i]n matters of politics one must not be deceived by speculative ideas which the common people form of justice, equity, moderation, candor, and other virtues of nations and their leaders. In the end everything is reduced to force,' or Rousseau, who regretted that 'this pretended brotherhood of the nations of Europe seems nothing but a term of derision to express ironically their mutual animosity.' [13]

In actuality, the unabashedly imperialistic Grotian principles and the growing adherence to 'special fatherlands' were arguably the respective foundations for the key events of Europe's 19th and 20th centuries, colonialism and world war. Meanwhile,

OMOLESKY | The Europeanization of the World?

Westphalian sovereignty remains the most important legacy of the period under Headley's consideration, and the most significant stumbling block for the potential enforcement of universal human rights. None of these notions receive any real mention in *The Europeanization of the World*, as they are obstacles in that chimerical early modern march towards 'a common humanity.'

By concentrating on the development of Continental human rights norms (however aspirational), Headley inadvertently underscores the extent to which modern human rights law is based on Continental thought. As Mary Ann Glendon has described elsewhere, modern instruments like the Universal Declaration of Human Rights have been

far more influenced by the modern dignitarian rights tradition of continental Europe and Latin America than by the more individualistic documents of Anglo-American lineage. The fact is that the rights dialect that prevails in the Anglo-American orbit would have found little resonance in Asia or Africa. It implicitly confers its highest priority on individual freedom and typically formulates rights without explicit mention of their limits or their relation to other rights or responsibilities. The predominant image of the rights bearer, heavily influenced by Hobbes, Locke, and John Stuart Mill, is that of a self-determining, self-sufficient individual. Dignitarian rights instruments, with their emphasis on the family and their greater attention to duties, are more compatible with Asian and African traditions. [14]

This would explain why those greatest (concrete) guarantors of civil rights and liberties – *habeas corpus*, *posse comitatus*, common law property rights, the US Bill of Rights, the twin pillars of the British constitution, etcetera – are hardly mentioned by Headley with respect to the origin of human rights, in favor of the vague and often unrealised notions of a common humanity which have had such a profound impact on modern human rights theory (if not always on human rights practice).

Headley's discussion of the rise of the 'faculty for self-criticism' in the West, the result of which was that dissent 'had come of age' and became 'integral to the effective political process and no longer required exile, incarceration, and extermination' (p. 170), is rather more straightforward. Yet this requires a shift on Headley's part, as traditionally Anglo-Saxon principles of freedom of expression are more suitable for this analysis. Yet European and international human rights institutions, which stem ideologically from the dignitarian rights tradition mentioned above, have shown

themselves to be far less sympathetic to broad notions of freedom of expression and speech. When dealing with, for example, headscarf laws (*Sahin v. Turkey*, 2005), or alleged religious blasphemy (*Otto-Preminger-Institut v. Austria*, 1994, or *Wingrove v. United Kingdom*, 1996), the European Court of Human Rights has consistently developed the doctrine of 'margin of appreciation,' wherein the state was found to be best-placed to determine the limits of freedom of expression. Likewise the Human Rights Committee has validated prosecution for Holocaust denial in cases like *Faurisson v. France* (1996). The point here is certainly not to comment on the appropriateness of these rulings, which are grounded in rational policy objectives. Rather, it must be acknowledged that Headley's rather fine discussions of Voltairean dissent and Madisonian faction have precious little bearing on contemporary European and international human rights institutions and frameworks. Developments like the recent resolution at the UN Human Rights Council (passed thirty-two to zero) that called for the body's free speech expert to police negative comments on Islam in the interests of 'mak[ing] freedom of expression responsible' [15] could not be farther from the ideals espoused in *The Europeanization of the World*. Indeed, one is, in spite of the title of the book, led to the conclusion that these notions (at least with respect to dissent) are not necessarily 'European,' and in any case have hardly taken over the world.

Headley concludes his book with a damp squib of an 'Aftermath,' which is in effect an intellectual salutation over the last two centuries, and thus over imperialism, world wars, ethnic strife, and race murder, and everything else that would undermine the concept of an increasing acceptance of European-developed universality, on its way towards the War on Terror. (The author does note in passing the 'spasms of civilisational suicide' (p. 206) in the 20th century, albeit with the redemption of an ensuing Universal Declaration of Human Rights.) At which point, sadly, *The Europeanization of the World* devolves into anti-American invective. For Headley, the United States 'has become in effect a leading rogue state' (p. 210). 'As in the Germany of 1933, so in the United States in 2001, and again in 2004, the effects of fear and confusion have caused citizens to value leadership and commitment, no matter to what, in place of any considered weighing of alternatives in the interest of justice' (pp. 210-11). The US even has in Guantánamo Bay 'our own gulag archipelago with its searing violation of legal procedures' (p. 211). It would seem that Headley is attempting to put his own discussion of the West's 'faculty for self-criticism' into practice, but these exhausted bromides are entirely out of place in what up to this point had at least been a serious work of scholarship.

OMOLESKY | The Europeanization of the World?

Pulling it back together for one final push, Headley reasons that as ‘America’s moral, economic, and political leadership disintegrates throughout the world and China’s hitherto traditional hegemony of the Middle Kingdom enjoys a renewal’ (p. 217), the West must adapt. (The precise meaning of the ‘renewal’ of the ‘traditional hegemony of the Middle Kingdom,’ it should be noted, still remains unclear to the reviewer.) Thus Headley, it would seem, envisions a future dominated by ‘the Rest,’ while the West exerts soft power and contributes to a new world order primarily by helping to strengthen human rights regimes. Clearly then, ‘the Europeanization of the world’ is a work in progress. Headley’s conclusion certainly acknowledges this. His metaphor, that the ‘spur forged in earlier centuries by elements of European thought and experience must await the direction of a better-endowed rider and a more coherent public’ (p. 218) is a representative mixture of pessimism, aspiration, condescension, and historical inexactitude. Ultimately, while it would be perverse to deny the existence of natural, human rights, to exalt political and legal universality, all the while ignoring sovereignty, the tactical instrumentalisation of international law in the service of *raison d’état*, and the fundamental lessons of state practice throughout history, is to be little more than an ingénue.

Indeed, for all *The Europeanization of the World’s* discussion of the crystallisation of European principles of natural law, there is one crucial natural legal principle which has been left out, and inexcusably so. As David Hume so eloquently postulated,

The Safety of the People is the supreme Law: All other particular Laws are subordinate to it, and dependent on it: And if, in the *common* Course of Things, they be followed and regarded; ’tis only because the public Safety and Interest *commonly* demand so equal and impartial an Administration. [16]

The same is true in international law as in municipal law. It is a harsh lesson that, *pace* Headley, was well understood by our Western forebears, and will continue to be applied just as it has been from time immemorial. In addition to universalistic humanistic notions, Hume’s dictum is likewise, for better or for worse, a necessary part of the usable past.

Matthew Omoleksy is presently a researcher-in-residence at the Inštitut za Civilizacijo in Kulturo in Ljubljana, Slovenija, as well as a juris doctor candidate and research assistant at The Ohio State University’s Moritz College of Law. He has written for the

Whitehead Journal of Diplomacy, Europe 2020, the Düsseldorfer Institut für Außen- und Sicherheitspolitik's Transatlantic Relations section, and The New Times (Rwanda).

References

- Hampson, Norman 1968, *The Enlightenment*, London: Penguin Books.
- Hazard, Paul 1965, *European Thought in the Eighteenth Century*, London: Penguin Books.
- Hume, David 1777, *An Enquiry Concerning the Principles of Morals*, London: A. Millar.
- Mattingly, Garrett 1955, *Renaissance Diplomacy*, Baltimore: Penguin Books.
- Ruddy, Francis 1975, *International Law in the Enlightenment: The Background of Emmerich de Vattel's Le Droit des Gens*, Dobbs Ferry, NY: Oceana Publications.
- Steiner, Henry, Philip Alston, and Ryan Goodman 2008, *International Human Rights in Context: Law Politics, Morals*, Oxford: Oxford University Press.
- Tuck, Richard 1999, *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant*, Oxford: Oxford University Press.
- Van Geyl, Pieter 1967, *Encounters in History*, London: Meridian.

Notes

- [1] Emmerich de Vattel, *Le Droit des Gens* (1758), cited in Ruddy 1975, p. 23.
- [2] See e.g. Mark Leonard 2006, *Why Europe Will Run the 21st Century*, New York: Public Affairs.
- [3] Readers particularly interested in this period would perhaps profit more from David Abulafia, 2008 *The Discovery of Mankind: Atlantic Encounters in the Age of Columbus*, New Haven: Yale University Press.
- [4] Hampson 1968, p. 108.
- [5] Hazard 1965, p. 463.
- [6] Ibid.
- [7] Mattingly 1955, p. 247.
- [8] Ibid., p. 251.
- [9] Cassius Dio's *Roman History*, Book LXVII, pp. 4-6.
- [10] Cited in Tuck 1999, pp. 102-3.
- [11] Cited in Ruddy 1975, p. 45.
- [12] Van Geyl 1967, p. 371.
- [13] Cited in Ruddy 1975, pp. 38-9.
- [14] Cited in Steiner et al. 2008, p. 139.
- [15] Pakistan's Ambassador Masood Khan, quoted in Associated Press, 'Arabs Battle West Over Free Speech at the UN' (April 1, 2008).
- [16] Hume 1777, p. 53.