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Introduction by Thomas Maddux

Benjamin Allen Coates. *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century*. New York: Oxford University Press, 2016. ISBN: 9780190495954 (hardcover, $36.95).

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Introduction by Thomas Maddux, Emeritus California State University Northridge

For the past forty years, American specialists have devoted considerable analysis and debate to the origins and nature of the United States' arrival as a major power, with particular attention to the influence of material considerations on one hand, most notably an 'Open Door' for markets for American exports, and on the other, security and status as the major powers scrambled to complete their overseas empires around the globe.[1] Benjamin Allen Coates does not directly address this debate but does provide an important focus on the consequences of the U.S. arrival as an imperial power by examining the efforts of American international lawyers, who served as Secretaries of State and important advisers to Washington policy makers, to build the new American empire, to use international law to advance U.S. interests, and to adjust the U.S. presence in the Caribbean and the Philippines to an informal empire and a 'legalist' one. Coates persuasively demonstrates how lawyer officials, like Secretary of State Elihu Root and William Howard Taft, and lawyers John Bassett Moore and James Brown Scott, provided legal rationales for the new U.S. empire and how international lawyers advanced and defended the interests of U.S. corporations overseas. "Well-connected, well-respected, and well-compensated," Coates suggests, "they formed an integral part of the foreign policy establishment that built and policed an expanding empire" (3).

Coates examines the efforts of the international lawyers from before 1898 through World War I to create a professional international law presence in the U.S. as well as advance their perspective in the international area with respect to world order and at the Hague Peace Conference in 1907. These lawyers also used international law to bolster U.S. hegemony in Latin America on issues such as disputes between Latin American governments and U.S. businesses. As Coates points out, the legalists demonstrated a degree of commitment to this perspective by opposing U.S. policy when it went against established international law. The outbreak of World War I, as Coates notes, created new opportunities for legal experts on neutrality and U.S. legal rights. The U.S. entry into World War I in 1917, however, fragmented American legalists and President Woodrow Wilson's League of Nations moved away from their views.

All the reviewers praise aspects of Coates's study as a significant contribution to scholarship on the topic and period under review. Christopher Nichols, for example, notes "many contributions in this book—the focus on the intersection of law and empire, subtle tracing of intellectual distinctions about legalism and change over time, compelling intellectual biographical and institutional portraits of key legalists, and new insights about how law both aided and abetted but also altered the path of American empire." Katharina Rietzler notes the strength of Coates's biographical focus, which highlights the different roles of the international lawyers, such as "advising national bureaucracies or corporations, working as government servants, and contributing as scholars to transnational and national communities of inquiry." Despite having a few questions about some of Coates' assessments, John Thompson concludes that "such doubts in no way detract from the substantive value of this extremely well-researched, perceptive, and illuminating study of a central element in the nation's relations with the world in the early twentieth century." Stephen Wertheim also raises questions about *Legalist*

[1] For contrasting assessments, see, among many others, Walter LaFeber, *The New Empire: An Interpretation of American Expansion 1860-1898* (Ithaca: Cornell University Press, 1963); David Healy, *U.S. Expansionism: The Imperialist Urge in the 1890s* (Madison: University of Wisconsin Press, 1970); Ernest R. May, *American Imperialism: A Speculative Essay*, rev. ed. (Chicago: University of Chicago Press, 1991); and Kristin Hoganson, *Fighting for American Manhood: How Gender Politics Provoked the Spanish-American and Philippine-American Wars* (New Haven: Yale University Press, 1998).

Empire, but suggests that the author "delivers an indispensable analysis of the birth, and perhaps the apex, of international law in America."

The reviewers do express some reservations about Coates's analysis, starting with Nichols's request for more development of the post-1918 developments in the ideas of the legalists, their involvement with the League of Nations, and their failure to realize that traditional American unilateralism and sense of exceptionalism remained as a strong barrier to their legalist agenda. Rietzler requests clarification on the legalists' acceptance of an "expansion of American power and influence as a victory for international law" as opposed to typical great powers claims to exceptionalism. A second point of concern is Coates's suggestion that international lawyers shifted after 1907 to emphasize the U.S. having a duty to move from civilizing 'backward' peoples to civilizing the whole world, including Europe. Rietzler suggests that this may have been only a "slight change in emphasis rather than a real break." Thompson concludes that Coates's individual chapters support the study of international law and the "connections between this and the evolution of U.S. foreign policy" but that the "stories they tell complicate, and to some extent contradict, the author's more general claim that the promotion of international law should be seen as part of an imperial or hegemonic effort to project American power in the world." Thompson notes the underlying resistance to the claims of international law as expressed in Congress, and the fragmentation of the legalist movement in the aftermath of 1914. In pointing out some of the ways in which the legalists found their positions transformed by international politics and World War I, Wertheim concludes that they ended up "creating a politics of defending law" rather than "challenging state sovereignty" which left "sovereign states to anoint themselves as the enforcers of what was supposed to bind them." Wertheim suggests that Coates stops short of the "vast transformation of American power" which suggests that the legalists could not move from the U.S. as a great power to an "armed superpower" with the will and means to use force to support international law and order.

In his conclusion Coates reviews the rise and decline of the legalist perspective in U.S. foreign policy, noting the dismissals of the relevance of international law by the George W. Bush administration officials in the aftermath of September 11th, 2001 and on the U.S. invasion of Iraq in 2003 and most recently by the Trump administration. He emphasizes, however, that the legalists used international law to both support imperialism in 1898 and then support the "spread of international legal institutions as a means of enforcing a basic standard of treatment for American overseas capital" (178). The legalists assumed that the American sense of exceptionalism and national interests would integrate very well with their agenda.

Participants:

Benjamin Coates is Assistant Professor of History at Wake Forest University. He is the author of *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford, 2016) and "Securing Hegemony Through Law: Venezuela, the U.S. Asphalt Trust, and the Uses of International Law, 1904-1909" *Journal of American History* (2015) which won the 2016 Binkley-Stephenson Award from the Organization of American Historians. Coates has also published in *Diplomatic History* and other venues. He is currently working on a history of economic sanctions in the twentieth century.

Christopher McKnight Nichols is Associate Professor of History at Oregon State University and Director of the OSU Center for the Humanities. A 2016 Andrew Carnegie Fellow, Nichols is writing a book on conservative foreign policy in the early Cold War and a sweeping study of isolationism and internationalism. His works include: *Promise and Peril: America at the Dawn of a Global Age* (Harvard, 2011, 2015), co-editor and co-author, *Prophesies of Godlessness: Predictions of America's Imminent Secularization from the Puritans to*

the Present Day (Oxford, 2008), Senior Editor, *Oxford Encyclopedia of American Military and Diplomatic History* (2013), co-editor, *Wiley Blackwell Companion to the Gilded Age and Progressive Era* (2017); he is co-organizing, co-editing, and co-authoring *Rethinking Grand Strategy* (Oxford, forthcoming).

Katharina Rietzler teaches American and transnational history at the University of Sussex. She holds a Ph.D. from University College London and has been a Mellon Fellow in American History at the University of Cambridge. She has published articles on the history of twentieth-century internationalism, international law and the discipline of international relations, and she is currently completing a book manuscript on the transnational history of U.S. philanthropic internationalism. Her most recent article is "Counter-Imperial Orientalism: Friedrich Berber and the Politics of International Law in Germany and India, 1920s-1960s", *Journal of Global History* 11:1 (2016): 113-134.

John A. Thompson gained his BA and PhD from the University of Cambridge where he is now Emeritus Reader in American History and an Emeritus Fellow of St Catharine's College. His publications include *Progressivism* (British Association for American Studies, 1979), *Reformers and War: American Progressive Publicists and the First World War* (Cambridge University Press, 1987), *Woodrow Wilson* (Longman, 2002), and numerous articles and book chapters. His latest book, *A Sense of Power: The Roots of America's Global Role* (Cornell, 2015) was the subject of an H-Diplo Roundtable in May 2016.

Stephen Wertheim is a Lecturer in American history at Birkbeck, University of London. He specializes in U.S. foreign relations and world order, emphasizing concepts of politics and law since the nineteenth century. Stephen's first book, provisionally entitled *Tomorrow the World: The Birth of U.S. Global Supremacy in World War II*, is forthcoming from Harvard University Press. His academic articles have appeared in *Diplomatic History*, *Journal of Genocide Research*, *Journal of Global History*, and *Presidential Studies Quarterly*. In 2015-2017, he was a Junior Research Fellow at King's College, University of Cambridge, and a Postdoctoral Research Associate at the Woodrow Wilson School and the Center for Human Values at Princeton University. He received a Ph.D. in History from Columbia University in 2015.

Review by Christopher McKnight Nichols, Oregon State University

Legitimizing Empire

International law and the U.S.'s rise to world power go hand in hand. Yet, very often, the two have been cast as antithetical. How can both be right?

The outline of this story of antagonism is relatively well known. After all, international law's universalism seems at first incompatible with long-standing U.S. policy precedents founded on unilateralism and exceptionalism. Consider, for example, the Senate rejections of U.S. entry into the League of Nations and later the World Court in the years after WWI; or, consider the continued antipathy to the U.S. being bound by international law, including such ignominious moments as the Bush Administrations post-9/11 positioning against the conventions of international law regarding human rights, preemptive war, and torture. Thus, the familiar historical trajectory of international law and U.S. power as co-constitutive is one that tends to rest on an instrumental view of American use of international law as partial, provisional, self-serving, often cast in terms of crass hard power, and tends to treat the U.S. international law relationship as a largely post-1945 phenomenon.

Such an account is incomplete. In his brilliant new book *Legalist Empire* Benjamin Coates points us back to the 1890s to revisit and revise the rise of international law, lawyers, and their relationship to U.S. empire. He persuasively argues that the received narrative of an oppositional-instrumental relationship between international law and American international engagement misses the longer history of how and why the U.S. rose to commercial, military, and diplomatic power. The late nineteenth century development of American empire—formal and informal, in its myriad commercial, military, and diplomatic forms—was, according to Coates, "in important ways a legalist one" (2). International law united the disparate parts of American empire. This insight, in turn, opens up new historical vistas to more accurately perceive understated, sometimes elusive intellectual and institutional linkages. Coates's journey moves from diplomats and hard power advocates to lawyers working for U.S. corporate interests to those invested in market access, education, agriculture, industry, and including those seeking inroads for missionaries. As *Legalist Empire* demonstrates, it was American lawyers whose legalist commitments to "expanding the use of legal techniques and institutions to resolve international problems" thereby helped to "reconcile imperial power with republican traditions and universal principles" (3).

Coates shows that from the 1890s through the 1920s legalists pushed back in a variety of ways against the apparent opposition of international law and bedrock American foreign policy Washingtonian-Jeffersonian unilateralism. The most consistent such repositioning maneuver took form as legalists designed and endorsed an intellectual-marketing approach that rejected assumed antagonisms; starting at the turn of the twentieth century legalists aimed to turn assumptions about the law-exceptionalism opposition on their heads by mooring international law to American principles. The idea was simple and effective. By making the case that the legalist project amounted to an expansion and extension of American ideas abroad, legalist thinkers such as Elihu Root, operating inside and outside government made a compelling case that international law was not a threat to core U.S. values. In turn, it was the lawyers and those of a legalist mindset who legitimized empire; they helped to expand U.S. foreign access and territories as they envisioned and sought to achieve a legal internationalist world empire of nation-states.

What Coates does so well is to blend legal and intellectual history with U.S. foreign policy analysis to show how over a generation these ideas became embedded in many layers of U.S. policymaking--in legal-professional attitudes, in training, in journals, in organizations, and in formal policy. Taken together, this institutionalization of legalism cuts against the law-exceptionalism dichotomization evident in a fair amount of the (often older) historiography.

Legalist Empire is one of the best new works on the ideas and figures who helped to shape the U.S.'s role in and with the world during the "long" Progressive Era. New scholarship has explored empire and race, law and borderlands, Wilson and Wilsonianism, internationalism, isolationism, interventionism, humanitarianism, citizenship, migration, neutrality, space and place.[1] While scholars have continued to focus on transnational exchanges and networks, *Legalist Empire* is a U.S. history which moves over a fairly broad swath of U.S. imperial spaces with an emphasis on individuals, ideas, and groups operating at the intersection of law and empire. Coates's archivally-rich and compelling analysis reveals the people and ideas who helped to make international law a "means of expanding power, in part by exploiting the hegemonic potential of international norms" (6).

Ideology and rhetoric are crucial here for understanding the evolving worldviews of the legalists. So, too, Coates underscores the significance of the burgeoning body of knowledge available to international lawyers as a professionalized discipline. Here Coates reconstructs the intellectual history of the legalists in creating knowledge, advocating positions, establishing precedents, and circulating in and building up a wide array of networks in government, in the private sector, and beyond. This legalist project, Coates writes, "suggested a way for the United States to engage with an ever-closer world without sacrificing any of its national traditions" (11). And within that effort we see international laws as "imperial actors and proponents of expanded legal remedies" (9). This is a highly original point of argument and not what you get in a stand

[1] Representative important works from roughly the last decade include: Lloyd Ambrosius, *Woodrow Wilson and American Internationalism* (New York: Cambridge University Press, 2017); Brooke Blower, *Becoming Americans in Paris: Transatlantic Politics and Culture between the World Wars* (New York: Oxford University Press, 2010); Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (New York: Oxford University Press, 2008); Donna Gabaccia, *Foreign Relations: American Immigration in Global Perspective* (Princeton: Princeton University Press, 2012); Julie Greene, *The Canal Builders: Making America's Empire at the Panama Canal* (New York: Penguin Books, 2009); Julia Irwin, *Making the World Safe: The American Red Cross and a Nation's Humanitarian Awakening* (New York: Oxford University Press, 2013); Paul Kramer, *The Blood of Government: Race, Empire, the United States, and the Philippines* (Chapel Hill: The University of North Carolina Press, 2006); Adriane Lentz-Smith, *Freedom Struggles: African Americans and World War I* (Cambridge: Harvard University Press, 2009); Jana Lipman, *Guantánamo: A Working-Class History between Empire and Revolution* (Berkeley: University of California Press, 2008); Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (New York: Oxford University Press, 2007); Daniel Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011) Robert McGreevey, *Borderline Citizens: The United States, Puerto Rico, and the Politics of Colonial Law and Migration, 1898-1934* (Ithaca: Cornell University Press, forthcoming, September 2018); Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belkanp Press of Harvard University Press, 1998); Trygve Throntveit, *Power without Victory: Woodrow Wilson and the American Internationalist Experiment* (Chicago: University of Chicago Press, 2017); Ian Tyrrell's recent works *Crisis of a Wasteful Nation: Empire and Conservation in Theordore Roosevelt's America* (Chicago: University of Chicago Press, 2015) and *Reforming the World: the Creation of America's Moral Empire* (Princeton: Princeton University Press, 2010); Katherine Unterman, *Uncle Sam's Policemen: The Pursuit of Fugitives across Borders* (Cambridge: Harvard University Press, 2015).

narrative of the era of U.S. expansionism, imperialist-anti-imperialist debates, the 'big stick' through dollar diplomacy, interventions in Mexico and the Dominican Republic, and into the onset of WWI, which still often highlight military and economic developments.

Coates recovers the stories, thought, and actions of a range of legalist figures—such as Elihu Root, William Howard Taft, John Bassett Moore, James Brown Scott, and more—to demonstrate the centrality of American lawyers and the development of a legalist mindset in U.S. foreign policy from the late nineteenth century through World War I and thereafter. This is not a project that aims to find precise causal relationships between particular ideas and developments and policies at all times; as a whole, however, the book does an excellent job linking ideas, individuals, and outcomes (see for example the sections on American Society for International Law, or the United States' role in Panama, Mexico, and the Dominican Republic). In Coates's hands many figures come to life. Legalist ideas do not float above lived experience. His treatments of Root and Moore are especially thought-provoking and his readings are simultaneously generous and critical.

It is obvious to any scholar of the U.S. at turn of the twentieth century that the rise of professionalization meant that disciplinary conventions and training dominated elite American discourse. This was as true in the professionalization of diplomacy as it was of history and medicine, with large shares of (un-credentialed) 'amateurs' in the fields well into the 1920s but with the reins of disciplinary institutions (e.g. the American Historical Association, the American Medical Association) firmly in the hands the professionals as early as the turn of the century. Also central to any thinking about U.S. engagement with the world—or at home (especially in terms of debates over racial injustives and a range of progressive reforms)—was the charged discourse of 'civilization,' privileging as it did racist Anglo-Saxon and civilizational hierarchies. Professional lawyers often marries disciplinary logic and training with this sort of racialized cultural-civilizational thinking. Theirs was not simply "strategic legalism" (a term from Peter Maguire and a charge often levied across the twentieth century and convincingly refuted in *Legalist Empire*), or simply a product of racism and prejudice, as Coates illustrates (50). Legalists tended to be true believers, at least until sometime in the midst of WWI. They often infused a "moralizing rhetoric of progress and uplift" into their efforts, both for better and worse. (50)

The American legalists at the end of the nineteenth century and through the first few decades of the twentieth century who appear in Coates's work blended these two developments: disciplinary and discursive. They were in the fray, often part of formal policymaking structures, including in the foreign service, and they were usually but no in all cases credentialed lawyers; they tended to see themselves as part of something much bigger, for the U.S., of course, but also for the world in terms of bringing civilization and modernity to 'backward' places and peoples; they frequently and forcefully made the case for law as an arm of diplomacy and perceived it as a safeguard of interests as part of a broader global civilizational project, more likely to minimize rather than end conflict; in turn, they established organizations to advance their interests and aims, such as the American Society for International Law (ASIL, founded in 1906) and the Carnegie Endowment for International Peace (CEIP, 1910). As Coates perceptively explicates, there was no single school or monolithic "legalism" for the Americans developing such concepts in the late nineteenth century, indeed international law itself was very much in formation in this era.

One data point can stand in for much of this disciplinary-discursive project: virtually every Secretary of State in the period this book covers was a trained lawyer. They—and many of their legalist assistants and allies—presented legalist rationales for continued occupation of the Philippines, for the acquisition of Panama, for a transition into less formal imperial regimes, and for entry into WWI. Almost always legalists worked with a

vision of protecting and expanding the reach of American capital and U.S. investors, their efforts to establish and advance international law, particularly into 'un-civilized areas' were at heart about broadening the United States' reach ("empire") while safeguarding capital (11, 21-24, 43). In a novel intellectual-biographical approach, Coates shows how this sort of cost-free, or less-costly version of commercial empire was the *sine qua non* of most legalist internationalist efforts. As he puts it, "a world of laws perfectly suited a nation happy its maintain its territorial footprint while keeping an open door for market expansion" (11).

All this began to change by the early 1910s as legalism in U.S. foreign policy thought had shifted. First, the profession and the new institutional networks were firmly entrenched. A more "judicialist" sensibility had taken root, which, in its "purest form" rested on "a claim that a proper system of legal procedure not only solved conflicts in the present but also created a proper mindset for preventing them in the future" (3). As Coates rightly notes, this position rarely advocated for world government but, rather, its proponents advocated for firmer international binding connections centered around a permanent court, with regular conferences and codifications of law, staffed by legal professionals from around the globe, as the best hope for settling conflicts and establishing a "trusted source of neutral order" (3, 27-28). Coates's superb work on U.S. legalists in Latin America (especially chapter 5, legalists from 1904-1914 justifying the U.S. role in Panama) does an excellent job clinching his case for how ideas about legalism shaped not just worldviews but also policies, expanding the reach of international law as part of a hemispheric hegemonic project.

Second, however, this perspective was partly shattered by the Great War. Modern states and leaders once seemingly committed to a world of laws became belligerents and not only could not prevent but actively perpetrated some of the worst violence in human history. In the midst of the war the question of how to keep peace was critical. For American legalists and especially judicialists this led to a divide around the issue of collective security and to contests over the development of a more restrictive international entity to bind nation states, such as the League to Enforce Peace (LEP). For some, such as John Bassett Moore, on the precipice of U.S. entry into the war, the ultimate resolution mechanisms were absolutely essential to getting America's role right; the LEP, he said, represented a mistaken vision for world order, it would be less a sheriff and more a lynch mob. "Thus at a crucial moment," Coates finds, "key international lawyers fundamentally disagreed on how international law was to bring peace to the world" (158). Their disagreements fractured the shared legalist consensus, yet also opened some new avenues for the pursuit of legal internationalism. Even as more absolute faith in law, or "civilization" no longer seemed possible in light of the devastation of the war, elements of judicialist legalism endured to shape many of the structures of U.S. foreign policy, emerging new post-war internationalist projects, such as the Kellogg-Briand Pact to outlaw war (1928), and key aspects of the international legal system in the years leading up to a second cataclysmic conflict.

Though the book moves chronologically and goes beyond WWI to culminate in the early 1930s, with a brief conclusion that traces key ideas and developments through the near past, the bulk of the book deals with circa 1898 to 1918. While it is unfair to ask for more, I will. This elegantly and clearly written book is not too long. By the post-WWI period I yearned to see Coates grapple more with the paths these legalist ideas and actors travelled. In particular, the sections on the "new international law" and what Coates terms the "mirages of interwar legalism," both subjects of increasing historical interest today, seem ripe for further development (167, 170). So, too, the trials and tribulations of U.S. activities (partial, as a non-member) within the orbit of the League of Nations strike me as territory the old legalists in the new era certainly were involved in yet there is not much in *Legalist Empire* on that. Putting the book in conversation with new work on the League, such as the path-breaking *Guardians* by Susan Pedersen, or Stephen Wertheim on "legalist-sanctionist" ideas for the League and later international legal regimes, I couldn't help but wonder how that League participation

might have reshaped the thinking of American legalists about their own earlier "legitimizing" efforts, about the looming crisis of empire so evident in the League's mandate system, for example, and in the expansion of U.S. trade and informal empire in the 1920s.[2] To be fair, Coates notes these trends in the conclusion, mentioning alternative sanctionist regimes (as he did in the sections on the LEP) and about later post-WWII decolonization as a driver of U.S. distancing from international law.

Coates's insight that CEIP leader, ASIL co-founder, and Paris Peace Conference delegate James Brown Scott's "tepid" response to U.S. public antipathy for the Permanent Court of International Justice (PCIJ, which was the sort of court Scott and Root had once pined for) is illustrative of how changing notions about American national identity impacted "embracing international law" (171) strikes me as incomplete. I wondered if perhaps this sentiment about "ensur[ing] American political non-entanglement" had been there all along (171) even as ideas about international civilization "came under attack from many angles" (172). Legalist lawyers and their allies had been able to maneuver around some of those concerns but only insofar as they never quite achieved their international organizational aspirations. Once those aspirations became reality, some of their preferred legalist notions became possible and institutions emerged from the cataclysm of war—and once international law and structures had developed sufficiently to be robust enough to constrain all member states—perhaps many of those legalists who had helped to legitimize American empire (and market international law as an extension of American values) were caught flat-footed by what had been there all along. In my research, at least, there appears to have been more continuity in U.S. foreign policy thought from the 1890s through the 1930s regarding the benefits of a quasi-Washingtonian-Jeffersonian perspective on not limiting what anti-League 'Irreconcilables' termed 'autonomy', protecting the U.S.'s 'free hand,' and policy pillars like the Monroe Doctrine to the point of even advancing more unilaterialist ideas about anti-imperialism in the 1920s (as Coates notes).[3] In the final analysis (at least as of the 1920s and through the 1930s), it seems that Root, Moore, and others never quite realized how much their legalist project still rested on a form of American unilateralism and exceptionalism that made an embrace of binding collective security and international justice too much even for a nation now firmly entangled with the world via formal and informal empire and law.

Informal empire and the laws (as well as legalist assumptions undergirding it) seemingly extended formal empire's trappings, but they also made formal empire less necessary as they tended to advance a western universalism that was compatible with informal commercial empire. In turn, it seems to me, this became all too obvious during and in the wake of WWI when the large-scale judicialist aims of many legalists came crashing down. If the second half of the twentieth century "witnessed a disenchantment with international law and an increasing repudiation of it by the United States," (182) as Coates suggests, to what extent might

[2] Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (New York: Oxford University Press, 2015); Stephen Wertheim, "The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914–1920," *Diplomatic History* 35:5 (2011): 797-836.

[3] See for example: Christopher McKnight Nichols, *Promise and Peril: America at the Dawn of a Global Age* (Cambridge: Harvard University Press, 2011). Nichols, "The Enduring Power of Isolationism: An Historical Perspective," *Orbis: A Journal of World Affairs* 57:3 (Summer 2013): 390-407.

that have been derived from the legalist and judicialist sensibilities that shaped the discourses and foreign policy decisions of the first several decades of the century?

There are many contributions in this book–the focus on the intersection of law and empire, subtle tracing of intellectual distinctions about legalism and change over time, compelling intellectual biographical and institutional portraits of key legalists, and new insights about how law both aided and abetted but also altered the path of American empire. *Legalist Empire* will likely be widely read and assigned in legal, intellectual, and U.S.-and-the-world history courses.

Review by Katharina Rietzler, University of Sussex

If international law constrains states' freedom of action by binding them to international norms, why did Americans embrace and even promote the expansion of international law just at the point when the United States rose to great power status? Historians of international law have argued for some time that the first premise is problematic. Not so much a constraint, international law turned out to be extremely useful to nineteenth-century and early twentieth-century European powers as it regulated rivalries between them, helped them administer colonial possessions and justified ruthless action against those deemed to be outside the so-called standard of civilization.[1] *Legalist Empire* acknowledges this scholarship and builds on it to show how a distinct group of Americans, identified as legalists, attempted to make international law useful to the United States between 1898 and 1917. Coates does justice to doctrinal debates, for instance in an illuminating section on classical legal thought and legal realism. However, his focus lies on what such debates meant in the context of American foreign policy. American legalists understood that adhering to international norms and integrating legal knowledge into statecraft was a marker of great power status. International law's inbuilt civilizational hierarchies justified American empire in the Philippines and Latin America. Legal techniques championed by the United States, such as arbitration, could be used both to dissolve conflicts with other great powers and as a prelude to military intervention in weaker nations (115).

One of the book's strengths is its biographical focus. More than other professionals, international lawyers can wear different 'hats' at the same time, advising national bureaucracies or corporations, working as government servants, and contributing as scholars to transnational and national communities of inquiry.[2] Coates provides examples of all of the above. Elihu Root, originally a corporate lawyer, became one of the United States' most respected statesmen. He used legal arguments and institutions in conjunction with an "adept politics of suasion" (123) to stabilize Central America under U.S. hegemony. This was helped by Root's ability to at least engage with Latin American approaches to international law such as the anti-interventionist Drago doctrine of 1902 which rejected the forceful collection of debts by any foreign power, including the United States. James Brown Scott, a long-neglected figure, emerges as an academic entrepreneur who almost single-handedly consolidated the profession of international law in the United States, using Carnegie money as he saw fit. At the same time, he prepared briefs for the State Department.[3] John Bassett Moore was an adviser to presidents and author of important treatises of international law but also had a lucrative sideline working for

[1] See, for instance the following canonical studies: Antony Anghie, *Imperialism, Sovereignty and The Making of International Law* (Cambridge: Cambridge University Press, 2005); Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge: Cambridge University Press, 2000); Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2010).

[2] Guillaume Sacriste and Antoine Vauchez, "The Force of International Law: Lawyers' Diplomacy on the International Scene in the 1920s," *Law & Social Inquiry* 32:1 (2007): 83-107.

[3] There is a resurgent interest in Scott's judicialism and institution-building. See e.g. Paolo Amorosa, "James Brown Scott's International Adjudication between Tradition and Progress in the United States," *Journal of the History of International Law* 17:1 (2015): 15-46; Katharina Rietzler, "Fortunes of a Profession: American Foundations and International Law, 1910-1939," *Global Society* 28:1 (2014): 8-23; John Hepp, "James Brown Scott and the Rise of Public International Law," *Journal of the Gilded Age and Progressive Era* 7:2 (2008): 151-179.

American corporations that pursued their overseas business interests with scant regard for the sovereignty of host nations.

Moore takes center stage in a carefully researched episode in which Coates analyzes the powerful position American international lawyers occupied at the nexus of politics and scholarship. In 1903 Moore advised President Theodore Roosevelt on how to justify his 'taking' of Panama in two influential messages to Congress. Colombian sovereignty meant nothing, Moore argued, in the face of the United States' "mandate from civilization" to build an Isthmian canal (56). After furnishing Roosevelt with arguments that went directly, at times word-for-word, into the President's speeches, Moore recorded them in his own *Digest of International Law*, published by the American government in 1906. Thus, legal advice furnished by Moore became state practice, and state practice recorded by Moore became a recognized source of international law. Moore the adviser became a source of law because of Moore the scholar. This may be the most crucial and creative work that early twentieth-century international lawyers did, crafting, as Coates calls it, the "illusion of an unbroken tradition" (58).

There are two aspects of the book's argument which could be clearer. The first is the suggestion that it was a major achievement for American legalists to reconcile the United States' support for international law with American exceptionalism. Legalists were adamant that international law owed its most important norms to American political experience and should use the United States' institutions, notably the Supreme Court, as models. Sometimes they held their own government to account—as Root did when he opposed an exemption for American ships from tolls incurred by using the Panama Canal in 1913—but mostly they regarded an expansion of American power and influence as a victory for international law. But such claims to universalism, legal scholars argue, are typical of great powers, and what international law is rests on a consensus that is always in flux.[4] In their exceptionalism were American legalists not quite unexceptional?

A second and related point concerns the ways in which legalists approached the notion of 'civilization' between the turn of the twentieth century and the end of the First World War. Coates argues that from about 1907, international lawyers moved from focusing on the United States' duty to civilize 'backwards' peoples to a more ambitious project to civilize the whole world, including Europe. Yet, this may have represented a slight change in emphasis rather than a real break. American jurists continued to regard international law as it was formulated by Europeans as crucial to the development of doctrine. James Brown Scott's dealings with the Belgium-based *Institut de droit international* were a mixture of courting and cajoling. Coates himself suggests that American legalists did not cease to confront the continuing reality of the United States' civilizing mission in its formal colonies after 1907 (83). It would have been interesting to hear more about these writings and to get a stronger sense of whether legalists regarded Americans and Europeans as partners in the civilizing mission or as actors who were at odds with each other.

Legalist Empire ends with a reflection on how the United States has turned its back on international law in recent decades. Decolonization, the Cold War, and changes in the composition of the U.S. foreign policy establishment are all cited as reasons why American policy makers have chosen to ignore and openly deride international law. But where does that leave everyone else? "For the rest of the world, the lesson might instead be the need to reshape legal order instead of focusing on holding Washington to current rules" (183). If the

[4] Anu Bradford and Eric A. Posner, "Universal Exceptionalism in International Law," *Harvard International Law Journal* 52:1 (Winter 2011): 3-54.

implication here is that international law will have to be reshaped to accommodate American actions, the international legal community might be in for profound change in the Trump era. We can already see signs that this is happening. In April 2017, President Trump authorised a missile attack on a Syrian air base as a response to the suspected use of chemical weapons on Syrian civilians by the Assad regime. By most accounts, the American airstrikes broke existing international law. Yet foreign nations supported the United States, with the exception of Russia and Iran.[5] Whether state practice in this case will result in new norms allowing for the unilateral punishment of governments that use chemical weapons remains to be seen. However, the episode indicates that the deep relationship between international law and American diplomacy, so compellingly traced in *Legalist Empire*, continues to evolve.

[5] John Bellinger, "What Was the Legal Basis for the U.S. Air Strikes Against Syria?," *Lawfare* (blog), 6 April 2017, https://www.lawfareblog.com/what-was-legal-basis-us-air-strikes-against-syria; Jan Lemnitzer, "Is Trump's strike in Syria changing international law?," *The Conversation*, 12 April 2017, https://theconversation.com/is-trumps-strike-in-syria-changing-international-law-76073 .

Review by John A. Thompson, University of Cambridge

In this wide-ranging book, Benjamin Allen Coates examines the role of American lawyers in the development and promotion of international law in the late nineteenth and early twentieth centuries, and the connections between this and the evolution of U.S. foreign policy. The individual chapters focus on various aspects of this theme in an illuminating and often original way, but the stories they tell complicate, and to some extent contradict, the author's more general claim that the promotion of international law should be seen as part of an imperial or hegemonic effort to project American power in the world (178-179).

Coates begins by reviewing the movement to develop international law that stemmed from the establishment of the *Institut de droit international* in Ghent in 1873. Like Martti Koskenniemi's fuller treatment of this subject, Coates emphasizes that the movement reflected an historicist rather than positivistic view of law, and that this was allied with a progressive view of history in which the Christian West represented the vanguard of an evolution from savagery through barbarism to civilization.[1] The hope was that war between civilized nations could be superseded by other means of settling international disputes, notably arbitration. Indeed, James Brown Scott expatiated in 1897 on how to avoid the "industrial panic" that would follow when nations disbanded their armies (60). Scott, who figures largely in this book, was active in founding the American Society of International Law in 1906, and as Secretary of the Carnegie Endowment for International Peace from 1910 was able to ensure that the movement was well-funded both at home and abroad. He cultivated close contacts with lawyers in many European countries, an illustration of the "transatlantic milieu" in which these reformers operated (11, 95-98). The account of all this is sophisticated in its treatment of ideas and based on extremely thorough research in both the scholarly literature and a variety of primary sources. (There is a particularly impressive footnote reference to a student's notes on lectures Professor Woodrow Wilson gave at Princeton University in 1894-1895 (203)). Coates makes the interesting and original point that American lawyers distinctively laid stress on the desirability of going beyond the essentially diplomatic process of arbitration by establishing a permanent 'judicial' court whose judgments would build up a body of international law in a manner analogous to the development of the common law.

Among the advocates of such a court were William Howard Taft and Elihu Root [This is a bit difficult. Both Taft and Root were very prominent public figures in the early 20th-century and they held a variety of positions, including in Taft's case President of the United States and Chief Justice of the Supreme Court and in Root's Secretary of State and U.S. Senator. It is hard to know which of these offices to mention and in any case neither man really needs any introduction to historians] (of whom Coates presents an insightful and balanced pen-portrait). Both Taft and Root played important parts in the management of the overseas empire that the United States acquired in 1898, and their role and activities are the first of the ways in which Coates links international law to U.S. foreign policy. He points out, too, that the justification for imperialism rested on the same assumptions about the evolution of civilization as the legalist project for world peace. Moreover, the Supreme Court's upholding of the right of the United States to hold colonies relied on "theories of inherent sovereign powers and authority under international law" (48). Coates shows that it was the international lawyer John Bassett Moore who wrote the section of Theodore Roosevelt's 1904 Message in which the President justified his actions in Panama by claiming that the United States had "a mandate from civilization" to build an inter-oceanic canal "in the interest of mankind" (55-57). More broadly in "the

[1] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2002).

circum-Caribbean," Root as Secretary of State sought to maintain stability by using law to resolve both inter-state disputes and those involving foreign business interests. Through exercising hegemony in this way, the United States created what Coates calls "an empire of nation-states" (8, 110).

Beyond these particular connections, Coates persuasively links the importance attached to international law to the sense, particularly among the eastern elite, that the growth of America's power brought with it a wider responsibility for the global environment (2, 139). But he points out that this sense of moral obligation was buttressed by the compatibility of international law with the national interest. The structure of international law favored status quo powers, of which the United States was one (151). More particularly, "a world of laws perfectly suited" a nation with no territorial ambitions but desirous of "keeping an open door for market expansion" (11, also 82). Indeed, Coates could have pushed this argument further for an era in which Americans cherished their non-involvement in power politics. Thus he sees Secretary of State Robert Lansing's view that Germany had to be defeated in World War I because of its disregard for international law as arising from an ideological rather than simply strategic conception of the national interest (147-148). But Lansing would not have recognized the distinction because, like Root and many others, he believed America's security as a free society was dependent upon the existence of a law-governed world.

Nevertheless, as Coates' account reminds us, the promotion of international law was at this time a broadly western project rather than a uniquely or particularly American one. It thus required the United States to respect, and sometimes to heed, the viewpoints and interests of other nations. This could act as an impetus to the projection of American power. The Roosevelt Corollary of 1904 was the product of an acknowledgement that European nations were legally entitled to uphold the rights of their citizens against Western Hemisphere governments, in the last resort by force. On the other hand, the collective, multilateral nature of international law could constrain the exercise of U.S. muscle. Scott and Root cultivated their relationships with Latin American lawyers, cooperating with the Chilean jurist Alejandro Álvarez in setting up the American Institute of International Law. The United States did not accept the 1902 "Doctrine" of the Argentine politician, Luis Maria Drago, which would have ruled out all diplomatic or military intervention to support the claims of foreigners. But Root had some sympathy for this viewpoint – not least, Coates interestingly points out, because he did not like the activities in the Caribbean of U.S. financial speculators. At The Hague Conference of 1907, the United States sponsored the Porter Convention prohibiting the "recourse to armed force for the recovery of contract debts"—although still permitting it if the debtor nation refused arbitration or an arbitral ruling. As Coates observes, "it is too simple to see international law as a mere imposition on unwilling or naïve neighbors" (119-122).[2] He thus sees less of a contradiction between the actions of the United States in the western hemisphere and its promotion of war-prevention programs elsewhere than have other scholars.[3] Not only did Root and Scott play central roles in both, but both rested on the same assumptions about 'civilization.'

[2] On this, see Juan Pablo Scarfi, "In the Name of the Americas: The Pan-American Redefinition of the Monroe Doctrine and the Emerging Language of American International Law in the Western Hemisphere, 1898-1933,' *Diplomatic History* 40:2 (April 2016): 189-218.

[3] Notably, Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations (1898-1922)* (Durham: Duke University Press, 1999), 86-87.

Domestically, the claims of international law were always open to challenge by those who took a narrower view of the nation's interests, as was shown by the Senate's rough handling of arbitration treaties and the strong Congressional support for exempting U.S. shipping from Panama Canal tolls in contravention of the 1901 Hay-Pauncefote treaty. Coates gives a full account of the Canaltolls controversy, and he also draws attention to a less well-known example of the conflict between narrow and broad interpretations of the national interest – the naval strategist Alfred Thayer Mahan's proposal in 1904 that the United States should abandon its customary support for the immunity of private property from capture at sea on the grounds that "what was expedient to our weakness of a century ago is not expedient to our strength today." Mahan's argument did not carry the day at the time. Immunity of private property, the international lawyer Joseph Choate responded, "made for civilization" and the question ought not to be reduced to "the level of national needs and interests" but considered "from the humanitarian and international standpoint" (139-140).

But within a few decades it was Mahan's viewpoint that governed the practice of the U.S. Navy. This is a concrete illustration that what Coates describes as 'the legalist project' was very much of a period. After 1914 the hope that the development of an international judicial system would end wars between 'civilized' powers was hard to sustain. In his final chapter, Coates shows how the movement he has been tracing fragmented in this context. Many, including Taft, came to support the League to Enforce Peace (LEP), which proposed that states should be collectively compelled to have recourse to arbitration or conciliation before embarking on war. But Scott and Root remained doggedly committed to the centrality of law and the need for an independent international court. Indeed, Coates shows, Scott used his institutional power at the Carnegie Endowment to discourage peace groups from endorsing the LEP's program. As Coates emphasizes throughout, Wilson had little time for international law – or, indeed, lawyers generally – and the President's original draft of the League of Nations Covenant made no reference to a court. Its disregard for the Hague Conventions and other prewar achievements was one of the major reasons Root gave for opposing Wilson's League. By the 1920s and 1930s, it was opponents of collective security such as Senator William E. Borah and Yale Professor Edwin Borchard who were the most vocal and vehement proponents of international law.

In his Conclusion, Coates contrasts the attitude of the George W. Bush administration to international law to that of policymakers a hundred years earlier. It is possible to exaggerate the difference in this respect between the early twentieth and early twenty-first centuries. American politicians have always been reluctant to submit the nation's actions to the judgment of foreigners. And U.S. policymakers continue to cite the need to uphold international law, not least the United Nations Charter, in justification of their actions. Nevertheless, Coates is right to see the Reagan administration's response to the 1986 World Court judgment over Nicaragua and the refusal to join the International Criminal Court as reflecting a perceived right to exercise power across the world unilaterally without external constraint. This attitude may justly be termed 'imperial', but that it has arisen as the commitment to international law has declined itself raises questions about the title of this book and the interpretation it expresses. However, such doubts in no way detract from the substantive value of this extremely well-researched, perceptive, and illuminating study of a central element in the nation's relations with the world in the early twentieth century.

Review by Stephen Wertheim, Birkbeck, University of London

In the United States, international law started out behind. International lawyers organized themselves into a profession at the turn of the twentieth century, three decades later than international lawyers in Europe. But they made up for lost time. As Benjamin Coates shows in his equally erudite and lucid *Legalist Empire*, international lawyers outfitted the United States in "world-power clothes," as one put it, between the conquests of 1898 and the peacemaking of World War I (1). American power dramatically expanded not despite but because of the fact that lawyers and law exerted more influence in the making of foreign policy than ever before or since. In turn, the achievement of world power legitimated the new profession of international law, which secured its credentials, at least for a time, as an ally of American exceptionalism.

Coates is not the first scholar to conclude that international law and hegemonic power have constituted one another.[1] But his concrete demonstration of the techniques and ideology of legalism makes his monograph indispensable reading for scholars of American foreign relations and international law alike. In treating this subject, historians and political scientists have tended to oscillate between an uncritical idealism and a dismissive realism, the former accepting the self-presentation of international law, the latter content to unmask it as ineffectual or interested. Coates transcends this dichotomy. He does so by focusing squarely on the productive power of international law, which he divides into a set of rules, a political and ideological project, and a professionalized discipline (8).

All three aspects operated with particular force in the greater Caribbean, where the United States built an informal empire over formal equals. The rules of international law, inherited from European diplomacy, already favored the interests of strong states and foreign capital. This meant that taking disputes to court was a seldom-lose proposition. The United States won approximately three-quarters of the money awarded in bilateral arbitrations to which it was a party prior to 1914 (101). When the Dominican Republic agreed to enter into arbitration in 1904, for example, the United States won the right to seize Dominican customs houses in order to ensure that New York bondholders got paid. On the other hand, when Venezuela refused U.S. requests to arbitrate its expropriation of the property of a U.S. asphalt company, the refusal backfired too: turning the legitimacy of law against Venezuela, arch-legalist Secretary of State Elihu Root severed diplomatic relations until Venezuela returned the property. Although U.S. officials found the asphalt company "shady," they could not deny its legal argument—partly because the company was represented by the international law grandee John Bassett Moore, who wrote the textbook that supplied the precedents on which the legal argument turned (115).

In such cases, international law plainly amounted to more than a fig leaf ornamenting other agendas. It created reasons to act, not merely justifications, and it provided procedures for advancing national and corporate interests while avoiding costly colonialism. Less clear, despite Coates's title, is the significance of international law in the making of America's territorial empire, namely the occupations of the Philippines and Puerto Rico and the acquisition of the Panama Canal. There U.S. policymakers used legalism relatively

[1] For example, Martti Koskenniemi, "International Law and Hegemony: A Reconfiguration," *Cambridge Review of International Affairs* 17:2 (2004): 197-218; Nico Krisch, "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order," *European Journal of International Law* 16:3 (2005): 369-408; Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004).

instrumentally and non-formalistically, mainly insofar as they deployed the wider discourse of civilization. Although William Howard Taft, as colonial governor of the Philippines, imported American judges to help rule the islands, it remains to be explored how international law figured differently in the American colonial empire than in its European counterparts.

But Coates breaks new ground in revealing how the United States, beyond using international law to conduct foreign policy, also used foreign policy to shape the structure of international law. Led by Root, American diplomats promoted a permanent judicial court to which states could voluntarily bring disputes. This fully judicial court would replace *ad hoc* courts of arbitration, where judges often based their decisions on diplomatic rather than legal considerations. Coates pinpoints the 'judicialist sensibility' that underpinned the court plan and animated the first professional organizations, namely the American Society of International Law and the Carnegie Endowment for International Peace. Legalism at its purest, the judicialist sensibility assumed that law could transcend politics and enforce itself: judicial decisions, backed only by an ill-defined public opinion, would replace diplomatic negotiation and prevent war. Although Root's effort foundered at the Second Hague Conference of 1907, U.S. diplomats helped to create the Central American Court of Justice and, eventually, the world courts of the League of Nations and United Nations.

Legalists today, searching for alternatives to the great-power Security Council and the International Criminal Court, might be tempted to celebrate the original court plan from a century ago. On its face, that plan enshrined the equality of small states, without authorizing the big powers to designate their adversaries as criminals-against-humanity against whom all is permitted. Partly for this reason, many court advocates opposed the turn to collective security during World War I, rejecting both the League Covenant and more legalistic proposals to back judicial rulings with armed force. Yet as Coates shows, even the prewar court plan smuggled in formal hierarchies. A permanent court required permanent judges, whom the great powers, including the United States, wanted the right to appoint.

Moreover, Coates seems to suggest that the judicialist position was but a way station through which classical international law passed into the discriminatory version of the League era. No longer content to defend American rights and duties under international law, judicialists now campaigned for international law as such; they turned "the protection of law into an interest in itself," Coates writes (139). By World War I, this world-ordering impulse led legalists within and beyond the Wilson administration to construe Germany as an enemy of law, apart from its threat to U.S. interests. In a sense, the 'judicialist sensibility' liquidated itself. The very attempt to separate law from politics ended up creating a politics of defending law. Worse, it precluded that politics from challenging state sovereignty, leaving sovereign states to anoint themselves as the enforcers of what was supposed to bind them.

In locating America's ascent to global leadership in the opening decades of the twentieth century, Coates's account accords with two other recent works, Frank Ninkovich's *The Global Republic* and John A. Thompson's *A Sense of Power*.[2] Coates might, however, have situated himself more explicitly in the historiographical corpus on the rise of American power. As the narrative culminates with World War I, Coates notes a "shift of world-historical proportions: the transfer of global leadership from the Old World to

[2] Frank Ninkovich, *The Global Republic: America's Inadvertent Rise to World Power* (Chicago: University of Chicago Press, 2014); John A. Thompson, *A Sense of Power: The Roots of America's Global Role* (Ithaca: Cornell University Press, 2015).

the New" (152). But that shift enters the narrative mostly as scene-setting. Although Coates deftly examines how the war damaged the legalists, who lost confidence in civilization and divided over collective security, he says less about the vast transformation of American power, whether the achievement of economic and financial supremacy or the false dawn of political and military supremacy. Perhaps the legalist project could take the United States only so far, to the rank of a great power but not an armed superpower. In order to realize the latter, Americans would have to stop imagining that law could replace force and assert the reverse: that only through force could law exist at all.

Coates nevertheless succeeds in reinterpreting Progressive Era diplomacy, illustrating the importance of law and lawyers at almost every turn. In the process, he explains how an early form of professional expertise came to suffuse the making of American foreign policy, before the emergence of the national security state after the Second World War and the semiofficial complex of foundations and universities after the First. Some readers may wish Coates had delved deeper into the sources of American expansion; others may wonder how international law related to competing discourses and disciplines, like geography, or operated as a transnational knowledge community. To his great credit, Coates opens both areas for exploration as he delivers an indispensable analysis of the birth, and perhaps the apex, of international law in America.

Author's Response by Benjamin Allen Coates, Wake Forest University

I would first like to express my thanks to Tom Maddux for assembling and introducing this roundtable, and to Professors Christopher Nichols, Katharina Rietzler, John Thompson, and Stephen Wertheim for their thorough and generous readings. All the reviewers have written important works on early twentieth century American foreign relations, from which I have learned a great deal.[1] For this reason I am especially gratified to find that they endorse the central claims of *Legalist Empire*. The book puts international law at the center of American empire in the early twentieth century. Imperial ideas shaped the emergent profession of international law, it contends, and lawyers played key ideological, political, and administrative roles in the expansion of American power. The reviewers find this account persuasive, but they also raise important questions about the precise relationship between international law (as the legalists saw it) and American power, and about where legalism fits into the broader scope of U.S. history. Some of these differences, I believe, can be resolved through further explanation. Others signal the need for further research into the important yet neglected role of law in the history of American foreign relations.

Christopher Nichols wonders to what degree legalists actually departed from longer-running unilateralist trends in American foreign policy. When the United States refused to join the Permanent Court of International Justice in the 1920s and 1930s, was this because attitudes about U.S. national identity, civilization, and the international sphere had changed, as I contend, or because such pro-court attitudes had never really existed in the first place? Perhaps, he suggests, legalists had never really been willing to grant international bodies any real power over U.S. sovereignty, and legalists were therefore "caught flat footed by what had been there all along."

I agree that, for the most part, U.S. promoters of international law did not imagine that international institutions would seriously threaten American freedom of action: they did not contemplate an international court that forced the United States to take actions which it fundamentally did not want to take. They also generally opposed the creation of any form of world government beyond a world court. The legalist project, as I write, contained "no serious critique of American society, or even of American foreign relations" (79).

This is not to say that international law was purely reducible to national self-interest. From what I can tell, international lawyers—especially men like James Brown Scott—tended to believe in their own lofty words. At times they forcefully advocated for obeying international law even when doing so threatened U.S. prerogatives, the most obvious example being Senator Elihu Root's spirited arguments in 1912 that the U.S. should not exempt its own shipping from paying tolls at the soon-to-be opened Panama Canal. Doing so, he said, would violate treaties the U.S. had signed with Britain, thus turning the U.S. into a nation of "Pharisees."

[1] See, e.g., Christopher McKnight Nichols, *Promise and Peril: America at the Dawn of a Global Age* (Cambridge: Harvard University Press, 2011); Katharina Rietzler, "Fortunes of a Profession: American Foundations and International Law, 1910-1939," *Global Society* 28:1 (2014): 8-23; John A. Thompson, *A Sense of Power: The Roots of America's Global Role* (Ithaca: Cornell University Press, 2015); Stephen Wertheim, "The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914-1920," *Diplomatic History* 35:5 (2011): 797-836.

But the larger point is that legalists believed that international law and American interests were compatible. There was no fundamental conflict between unilateralism (or the "Washingtonian-Jeffersonian" policy, as Nichols puts it) and international law. This assertion was plausible only if one shared a series of interlocking assumptions: that mankind was essentially rational, or at least capable of being so; that classes and nations had shared interests, making cooperation mutually beneficial and violence irrational; and that international law in the hands of the right authorities provided a mechanism for achieving mutual accommodation by delimiting the rights and duties of states, thereby providing for a stable and peaceful world. International law made sense within a broader set of cultural attitudes—including a belief in a transatlantic civilizing project—and a particular international context in which the U.S. sought no additional territory even as it expanded its influence and economic power. It was not that legalists abandoned the unilateral tradition; rather, they believed that it and international law were mutually compatible.

Legalists did not convince everyone of their beliefs, but their influence—especially on the executive branch—was highest in the early twentieth century. John Thompson is right, then, when he notes that the legalist project was "very much of a period." After World War I, I argue, the claims that international law did not threaten American interests were more difficult to sustain.

Katharina Rietzler accepts the existence of this reconciliation of international law and American exceptionalism, but notes that great powers often make claims to universalism: "In their exceptionalism were American legalists not quite unexceptional?" My point here is not to claim that America was exceptional for marrying international law and the search for power (although in the early twentieth century it was notable for its especially legalistic approach—its representatives took the lead in pushing for a permanent international court at the Hague conferences in 1899 and especially 1907, for instance). Rather I aimed to demonstrate that, contrary to received wisdom, the strong *ideology* of U.S. exceptionalism did not prove incompatible with international law in practice.[2]

The form that each nation's exceptionalism took also mattered. Not all Great Powers embraced international law. Isabel Hull's recent work, for instance, contends that German officials rejected international law because they saw the existing legal system as fundamentally hostile to their interests.[3] But rather than interpreting this behavior as an acceptable clash of competing interests, U.S. legalists saw it as evidence of German barbarism: the rejection of law itself. Stephen Wertheim eloquently points out the consequences of this ideological approach: "In a sense, the 'judicialist sensibility' liquidated itself. The very attempt to separate law from politics ended up creating a politics of defending law. Worse, it precluded that politics from challenging state sovereignty, leaving sovereign states to anoint themselves as the enforcers of what was supposed to bind them."

[2] For instance, one author suggests that American exceptionalism permitted an "a-juridical" expansion that appealed to "a higher law—superior to morality and international law." Serge Ricard, "The Exceptionalist Syndrome in U.S. Continental and Overseas Expansionism," in David K. Adams and Cornelius A. van Minnen, eds., *Reflections on American Exceptionalism* (Staffordshire: Keele University Press, 1994), 74-76.

[3] Isabel V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (Ithaca: Cornell University Press, 2014). For an account emphasizing British law breaking, see John W. Coogan, *The End of Neutrality: The United States, Britain, and Maritime Rights, 1899-1915* (Ithaca: Cornell University Press, 1981).

Thompson points out that empire and international law do not necessarily go hand in hand. He notes that the Reagan administration deprecated international law even as it exercised U.S. power in imperial ways. This "raises questions about the title of this book and the interpretation it expresses," he suggests. I should clarify then that the title of *Legalist Empire* is meant to refer to a particular period of time, namely the early twentieth century. The promotion of international law is not *necessarily* an imperial project (nor are imperial projects necessarily advanced through international law). But the role of legalists in the early twentieth century demonstrates that international law is also not necessarily an *anti*-imperialist project. The task of historians is to examine the precise ways that the legal and the imperial fit together in various contexts. Indeed recent events suggest that the confluence of the legal and the imperial remain possible: as Jack Goldsmith has pointed out, the Obama administration (and the second George W. Bush administration) found ways to (arguably) obey domestic and international laws even as they conducted a war on terror that spread violence across sovereign borders.[4] Thus when I close my book by suggesting that "the lesson might instead be the need to reshape legal order instead of focusing on holding Washington to current rules" I am not arguing, as Rietzler suggests, that "international law will have to be reshaped to accommodate American actions" (although I see how my language might have allowed for that reading). Instead I am suggesting that those who want to use international law to limit American power must grapple with the ways that that law enables many of the actions that they wish to constrain.

Finally, Nichols and Wertheim point to some of the thematic and chronological limits of the book. They both wanted more detailed coverage of how international law changed during the interwar period, how U.S. lawyers engaged with the League and other international institutions, and the role of law in the emergence of the U.S. as a superpower (not a mere great power) after World War II. To this I can only say: I agree! Many of the architects of the Cold War—most famously Secretary of State Dean Acheson—had legal backgrounds and came of age during the time covered by *Legalist Empire.* Tracing the influence of men like Scott, legal adviser John Bassett Moore, and Root into the latter half of the twentieth century is a worthy project, as is understanding how legal knowledge competed with the rise of International Relations as a competing discipline that claimed authority over the understanding of relations between states.[5] Interest in the legal history of U.S. foreign relations is growing and I hope that my book will inspire others to take up where I left off, and to examine in detail how the circulation of lawyers between professional, academic, corporate, and government roles helped to shape the contours of the American empire.[6]

[4] Jack L. Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: W.W. Norton, 2007) and Goldsmith, *Power and Constraint: The Accountable Presidency after 9/11* (New York: W.W. Norton, 2012).

[5] For an account emphasizing the eclipse of international law by IR, see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2002), chapter 6.

[6] On the growing interest in legal histories of American foreign relations, note the inclusion of a chapter on that theme in the new edition of a guide for graduate students in the field. See Mary Dudziak, "Legal History as Foreign Relations History," in Frank Costigliola and Michael J. Hogan, eds., *Explaining the History of American Foreign Relations*, 3rd ed. (New York: Cambridge University Press, 2016), 135-150.