

## THE PROCESS OF INTERNATIONAL LEGAL REPRODUCTION

That all states are free and equal under international law is axiomatic to the discipline. Yet even a brief look at the dynamics of the international order calls that axiom into question. Mobilising fresh archival research and drawing on a tradition of unorthodox Marxist and anti-colonial scholarship, Rose Parfitt develops a new 'modular' legal historiography to make sense of the paradoxical relationship between sovereign equality and inequality. Juxtaposing a series of seemingly unrelated histories against one another, including a radical re-examination of the canonical story of Fascist Italy's invasion of Ethiopia, Parfitt exposes the conditional nature of the process through which international law creates and disciplines new states and their subjects. The result is a powerful critique of international law's role in establishing and perpetuating inequalities of wealth, power and pleasure, accompanied by a call to attend more closely to the strategies of resistance that are generated in that process.

ROSE PARFITT is a Lecturer in Law at Kent Law School, a Senior Fellow at Melbourne Law School, where she holds a Discovery (DECRA) Award from the Australian Research Council, and teaches regularly at Harvard Law School's Institute for Global Law and Policy (IGLP) Workshops.

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THE PROCESS OF  
INTERNATIONAL LEGAL  
REPRODUCTION

*Inequality, Historiography,  
Resistance*

ROSE PARFITT

*Kent Law School, University of Kent and  
Melbourne Law School, University of Melbourne*



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Benjamin felt a nose nuzzling at his shoulder. He looked round. It was Clover. Her old eyes looked dimmer than ever. Without saying anything, she tugged gently at his mane and led him round to the end of the big barn, where the Seven Commandments were written. For a minute or two they stood gazing at the tarred wall with its white lettering.

‘My sight is failing,’ she said finally. ‘Even when I was young I could not have read what was written there. But it appears to me that the wall looks different. Are the Seven Commandments the same as they used to be, Benjamin?’

For once Benjamin consented to break his rule, and he read out to her what was written on the wall. There was nothing there except a single Commandment. It ran:

ALL ANIMALS ARE EQUAL  
BUT SOME ANIMALS ARE MORE EQUAL THAN OTHERS.

George Orwell, *Animal Farm* (1945).

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*I am, as I am writing this, in my office at Melbourne Law School, where most of this book has been written. The Law School stands on land which belongs to, and has never been ceded by, the Wurundjeri people of the Kulin Nations, and it is therefore to them that this book owes its greatest debt of gratitude. I would like to acknowledge the Wurundjeri people as the traditional owners and custodians of this land, and pay my respects to the Elders of the Kulin Nations, past, present and future.*

\* \* \*

In late 2015, I was lucky enough to be awarded a Discovery Early Career Research Award (DECRA) by the Australian Research Council to undertake a three-year project on the historical relationship between fascism and international law. Not long afterwards, I found myself in the archives of the Italian Ministry of Foreign Affairs in Rome, sifting my way through a mountain of documents from the 1920s and 30s with the help of Alice Riccardi, my entirely brilliant research assistant and friend. The hunch I was working with was that ‘fascism’ in the 1920s and 30s (insofar as a stable meaning can be attached to that term) was actually far closer to its purported nemesis, ‘international law’, than scholars of international law have so far tended to assume. As I read through report after telegram after letter after speech, I had what many historians will recognise as a very typical archival experience. Some of the things I discovered were extremely exciting. Other things, however, told me about nothing in particular beyond the minutiae of the day-to-day diplomatic grind for those of Mussolini’s ministers, ambassadors, government lawyers and secretaries whose initials I was learning to recognise. In short, sometimes these officials did indeed employ a recognisably ‘fascist’ discourse and logic in their work. At other times, however, they used a much more familiar rationale, grounded firmly in the accepted liberal doctrine of international law.

As I worked, one episode that came up again and again was an episode I already knew something about: the gigantic diplomatic crisis that

accompanied Mussolini's infamously unlawful (and yet successful) annexation, in 1936, of its fellow League of Nations member, the Ethiopian Empire. As I untied the disintegrating ribbon on bundles and yet more bundles of documents, finding more and more fragments relating to that crisis, it struck me that what was so interesting and strange about this episode, from an international legal perspective, was not only the way in which Ethiopia's rights and duties as a sovereign state were being narrated as malleable by Italian officials and lawyers when attempting to justify Italy's use of force against Ethiopia using an overtly fascist discourse and logic. Also and equally curious was the way in which Ethiopia's rights and duties were being narrated as malleable during much more routine diplomatic exchanges with the officials and lawyers of other states and of the League of Nations itself. These included some of international law's most famous figures from this period, from Eric Drummond (Secretary-General of the League of Nations from 1920 to 1933 and later British Ambassador to Rome) to Nikolaos Politis (Greek representative at the League during the crisis itself and later President of the Institute of International Law). In short, whether allied to fascist or to non-fascist states and organisations, the international legal rationale employed by many of the diplomats, lawyers and statesmen (they were all men) during the so-called 'Abyssinia Crisis' was deeply schizophrenic. In the same breath, they described the Ethiopian Empire as a sovereign state *and* as a less-than-sovereign territory whose right to territorial integrity, for instance, was uncertain.

Meanwhile, outside of the Ministero degli Affari Esteri archives in which Alice and I were working, the 'international community' was, in the face of the fall-out from its intervention in Libya in 2011, debating what it might mean to insist that Syria and North Korea had a 'responsibility to protect' their populations (as though these communities, territories and their problems had never before been touched by the hand of 'the international'). And as I tuned in and out of those debates, shuffling them together with the inter-war debates I was then trying to disentangle, I couldn't get the question out of my mind: if the Ethiopian Empire could be simultaneously sovereign *and* less-than-sovereign in the 1930s – if its transformation into an Italian controlled territory could be justified on the basis of the advancement of individual 'freedom' and 'equality' by fascists *and* non-fascists alike – what about all the other states, from the Chinese Empire c. 1842 to Iraq in 2003, which have suddenly found their armour of rights to be made of plastic rather than titanium? How could one even begin to investigate this weirdly hybrid,



both-sovereign-and-not-sovereign quality to ‘international personality’ from within a discipline (international law) whose central assumption it is that all states, due to ‘the simple fact of [their] existence’, are ‘juridically equal, enjoy the same rights, and have equal capacity in their exercise’ (to quote the 1933 Montevideo Convention, Article 4)? I realised during those months in Rome, in other words, as I stared at the fragile documents on the table in front of me, that if I wanted to ask about the relationship between fascism and international law, I needed to start, not with fascism, but with international law. And I needed, most of all, to find a new way of tackling international legal history. At that moment, my project split in two, and this book is the product of the first half of it – a half which brings together elements of the work I have been engaged in over a number of years, with the help of numerous friends, colleagues and institutions, without whom none of this would have been possible. Before I begin, let me stress that all the mistakes (and the translations, unless otherwise stated) are my own.

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## ABBREVIATIONS AND TITLES

### List of abbreviations:

<i>AJIL</i>	<i>American Journal of International Law</i>
CUP	Cambridge University Press
EC	Ethiopian Calendar
<i>EJIL</i>	<i>European Journal of International Law</i>
FO	UK Foreign Office
<i>HIJL</i>	<i>Harvard International Journal of Law</i>
<i>JHIL</i>	<i>Journal of the History of International Law</i>
<i>LNOJ</i>	<i>League of Nations Official Journal</i>
LONA	League of Nations Archives
MAE	Ministero degli Affari Esteri (Italian Ministry of Foreign Affairs)
OUP	Oxford University Press
UKNA	UK National Archives

### List of titles in the Ethiopian Empire<sup>1</sup>

<i>Abba</i>	‘Father’; the title of a priest
<i>Bäjerond</i>	‘Treasurer’
<i>Balabbat</i>	A local official who mediated between the people and the government; meaning ‘one who has a father’

<sup>1</sup> The definitions of Ethiopian titles are based on the glossary in Harold G. Marcus, *Haile Selassie I: The Formative Years, 1892–1936* (2nd edn Lawrenceville, NJ: Red Sea Press, 1995), xv–xvi.

<i>Blatte</i>	A title given to learned men and councillors
<i>Dejazmatch</i>	‘Commander of the Gate’; equivalent to the European title of ‘Count’
<i>Echege</i>	Bishop of the monastery of Debre Libanos and administrative head of the Ethiopian Church
<i>Kenyazmach</i>	‘Commander of the Right’; equivalent to the European title of ‘Baron’
<i>Lijj</i>	‘Boy’
<i>Negus</i>	‘King’; a title granted only to a very few provincial lords who governed directly under the authority of the Emperor
<i>Negusa Nagast</i>	‘King of Kings’; the title of the Emperor
<i>Ras</i>	‘Head’; often translated as ‘king’ but in fact equivalent to the European title of ‘Duke’
<i>Shum</i>	Governor (of a particular district)