READING AND READINGS OF *CAPITALISM AS CIVILISATION*

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I. INTRODUCTION

Ntina Tzouvala's monograph, *Capitalism as Civilisation – A History of International Law*, is, among many things, an elegant, profound and discursive account of *reading* and readings. Through *reading* as a methodological approach and processual mode, Tzouvala engages symptomatically and materially with international legal texts and terrain. And her *readings* of international law, located in a reconciliation of Marxism and deconstruction,[1] vitalise civilisation as a conceptual category in new and enduring ways. By embedding the dynamic of difference[2] in the ever-expanding logic of capital and capitalist production, she brings to the fore the very contradictions that make the 'standard of civilisation' categorically tenable and conceptually imperishable. Oscillating between the two oppositional points of the 'logic of biology' and the 'logic of improvement',[3] the 'standard of civilisation' is a shapeshifting, moving target placed onto dynamic iterations of the capitalist state at every stage. And it is precisely this indeterminacy that allows a wide

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1 Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2020) 35.

2 Anthony Anghie, Imperialism, Sovereignty and the Making of International Law (Cambridge University Press 2005).

3 Tzouvala (n 1) 5.

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(but not unlimited) range of political actors[4] to articulate their agenda in its terms – leading to both homogenisation and polarisation.[5]

A book review is traditionally understood as a form of evaluation in which the reader is expected to provide an analytical account of their reception of or engagement with the author's work. I, however, will depart from this tradition by performing a *reading* of her readings and read productively with (and against)[6] her. This departure is strategic[7] in that I hope to subversively use the textual format of a book review to move towards a transubstantiation of the terms and forms of normative scholarly engagement.[8] So instead of doing what a review *ought* to do, I will engage with Tzouvala's work to expand the scope of what a review *could also* do – read each other in a way where contradictions are very much a part of our work and where reconciling the seemingly irreducible differences becomes plausible and probable.[9] I also hope to reclaim the discursive and political potential of narrative through *this*

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4 As a host of CLS scholars point out, there is a consistent articulation of these categories of actors, even though it appears as if disparate communities can join their ranks. Tzouvala (n 1); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019); Susan Marks, *A False Tree of Liberty: Human Rights in Radical Thought* (Oxford University Press 2019).

5 Tzouvala (n 1) 40.

6 This is a logical extension of what Tzouvala refers to in her acknowledgments (Tzouvala (n 1) vi), and also in keeping with Anne Orford's technique in Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003) ch 2.

7 I use this term as understood by Rob Knox, 'Strategy and Tactics' (2012) 21 The Finnish Yearbook of International Law 193.

8 Even within the communities of Critical Legal Studies and Critical Approaches to International Law, the forms appear to be inadvertently reproducing the hegemony. Another reviewer of this symposium, Daniel R. Quiroga-Villamarín, points to this in his work about how we unwillingly reproduce imperial dynamics and Eurocentric practices in our own work.

9 My approach here takes from both Claire Hemmings' analysis of the teleology of feminist accounts in Claire Hemmings, 'Telling Feminist Stories' (2005) 6(2) Feminist Theory 115 and Tzouvala's own efforts to prepare a methodological toolkit using the otherwise irreconcilable methods/theories of deconstruction and Marxism.

processual account of history[10] where the dialogical relationship of structure and indeterminacy are very much a part of the Critical Legal Studies (CLS) analytical terrain.

This process of reading is also located in three specific contexts, two of which are articulated by Tzouvala as undergirding her own work as well. The first is the figure of the lawyer as an intellectual of global capitalism,[11] contextually embedded within the textual (and extra-textual) contradictions themselves. As a critical international lawyer, my *reading* of Tzouvala and her readings cannot transcend the complicity and contamination of this all-pervasive neoliberal system. The second is the debate surrounding what constitutes a disciplinary turn (to political economy)[12], the formulations of a discipline, its others[13] and its methods[14]. Perhaps our disciplinary boundaries and contestations are more porous than we let ourselves believe,[15] and different ways of reading law may be a close encounter in how we think within (and of) another discipline.

For instance, international law's turn to historiography may seem unexpectedly similar to a post-colonial moment in sociology and/or a queer reading of international relations, emphasizing the close, circuitous relationship between disciplines, critique and mainstream.[16] And this, along with our frequent epistemological impasse of 'where do we go from here' (within our so-called theoretical homes) may have an impact on our self-

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10 Michel-Rolph Trouillot, *Silencing the Past; Power and the Production of History* (Mass Beacon Press 1995).

11 Tzouvala, (n 1) 216.

12 John Haskell and Akbar Rasulov, 'International Law and the Turn to Political Economy' (2018) 31 Leiden Journal of International Law 243.

13 Tzouvala (n 1) 40; Akbar Rasulov, 'International Law and the Poststructuralist Challenge' (2006) 19 Leiden Journal of International Law 799.

14 Hemmings (n 9) 130.

15 I arrive at this proposition through my reading of Haskell and Rasulov and, following a conversation with Tzouvala and Haskell at the Asser Workshop: International Law and Political Economy, 20 January 2021.

16 What we think is critique or oppositional may sometimes be the borders of the mainstream/discipline itself, notes Margaret Davies in Margaret Davies, 'Ethics and Methodology in Legal Theory a (Personal) Research Anti-Manifesto' (2002) 6 Law Text Culture 7.

identification as theoretically-methodologically critical. Thus, while I agree with Daniel R. Quiroga-Villamarín[17] that this monograph is a masterful *rereading* of classical legal documents and secondary literature about these episodes,[18] how they are received cannot be accounted for by anybody's disciplinary, theoretical or methodological scaffoldings. Simply, any reading is entirely a question of a *reading* in context. The third context is the affective premise of Tzouvala's book, where we are called to praxis by the unprecedented urgency of our times[19] and it is with this tone that I mostly do my reading – as if everything were at stake.

In the following sections, I offer three accounts of reading as a praxis, leaving room for the readers (Tzouvala's as well as mine) to contemplate their own reading processes. In Part II, I engage with the various reading forms and methods Tzouvala applies to read international law within a Marxist-deconstructionist framework and against the grain. How *she* reads is central to this segment. Part III, then, looks at how this reading emerges as interpretations and analysis of international law in and through specific events and outcomes. In other words, this part examines her *readings* as a record of *what* she reads and the results they produce. In part IV, I present my own reading of her work and what it leads me to question and contemplate: an imagination of reading as within and beyond textual sources.

II. THE VARIOUS ACCOUNTS OF *READING* AND (TZOUVALA'S) *READING*

The first chapter is a heuristic and framework through which Tzouvala offers various accounts of *reading* traditions she leans into to perform her readings of international law. She adopts a Marxist-Deconstructionist toolkit to deconstruct 'empiricist or metaphysical oppositions between discourse and some "brute" reality beyond it'.[20] She demonstrates that contrary to its unitary appearance, civilisation is a binary between the logic of biology and

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17 See Daniel R. Quiroga-Villamarín, 'Victorian Antics: The Persistence of the"Law as Craft" Mindset in the Critical Legal Imagination' (2021) 13(1) European Journal of Legal Studies 101.

18 Ibid.

19 Tzouvala (n 1) chapter 6.

20 Terry Eagleton, 'Marxism, Structuralism and Post-Structuralism' (1984) 13(1) Economy and Society 103; Tzouvala (n 1) 39.

the logic of improvement, represented by fundamentally different visions on how rights and duties are to be distributed amongst the international legal community – carrying the self and other within itself. To ground this in materiality, in the subsequent chapters, she looks at political, economic and institutional structures that make the continuing presence, persuasiveness and even invisibility of this contradictory, unstable and unpleasant argumentative pattern possible.[21] Through this, she seems to address Matsuda's and the overarching Marxist concerns on post-structuralism's obsession with the textual without progressive politics or a material component.[22] And, in centering the oppositional tension between the standard of civilisation and its inclusive potential to bring within its fold some of those who are seemingly extrinsic to it because of the logic of biology, she addresses yet another paradox. The progressionist mirage of this tension renders Third World Approaches to International Law's[23] (non-materialist wing) voluntaristic approaches to international law, explicable.

Tzouvala performs other significant functions through her Marxist-Deconstructionist toolkit as well. First, in integrating these two methods, she executes a reading that is strikingly similar to Hemmings' historiography of feminist readings,[24] in that both of them (inadvertently) interrogate the teleology of the stories about these methods and disciplines themselves. For Hemmings the outcome is imagining the feminist past differently - as a series of contestations at every assigned decade instead of distinct feminist epochs (essentialized 70s and post structuralist 90s, for instance). This re-imagining leads us to confront that what we *think* we know of the iconic figures of these disciplinary turns (Spivak, Butler, Irigaray and others), and how the histories of them and their work are restricted and possibly (mis)constructed. Similarly, Tzouvala, *in* and *through* her reading, makes contingent what are presumed to be (incompatible) deconstructionist and Marxist readings of texts. In addition, through these heuristics, she draws our attention to *her*

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21 Tzouvala (n 1) 40.

22 Mari Matsuda, 'Beyond, and not Beyond, Black and White: Deconstruction Has a Politics' in Francisco Valdes, Jerome McCristal Culp and Angela P Harris (eds), *Crossroads, Directions, and a New Critical Race Theory* (Temple University Press 2002); Tzouvala, (n 1) 36.

23 Hereinafter referred to as TWAIL.

24 Hemmings (n 9).

reading and makes us acutely aware of *our* reading of her work as part of the process. While she limits her work solely to the Western, textual, argumentative account of law, [25] it is precisely here that the non-textual emerges as the unrealisable 'other' in her text. While pointing out the many widely practiced misreadings of international law[26] both as an *ad hoc* technique and/or juridical bad form, she advances a theory of reading to account for her performance of productive reading of and for international law through its texts.

Two of the reading methodologies she draws from are Anne Orford's productive misreading[27] and Bennet Caper's 'read back' and 'read black'[28]. Both these methods are a guide to reading legal texts against the grain and to reading international law in a way that avoids the deployment of 'the axiomatics of imperialism for crucial textual functions'.[29] Orford's productive misreading (against ahistorical and non-contextual reading) is a tribute to feminist and post-colonial literary theory,[30] where she reads to challenge the genre and/or make it produce a different meaning from the one intended by the authors.[31] Thereby, she reads international law in a way it was never 'meant' to be read. In doing this, she calls to attention the history- (and meaning-) making potential of reading, where how we read or misread is governed by the same 'standards of civilisation': a spectrum where knowledge is hegemonic and those who are consistently at the dominant end of these civilization turns are the ones who decide how things are meant to be read.[32]

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25 Tzouvala (n 1) 19.

26 Tzouvala (n 1) 8.

27 Orford (n 6).

28 Bennet Capers, 'Reading Back, Reading Black' (2006) 35(1) Hofstra Law Review 9.

29 Orford, (n 6) 39, Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Harvard University Press 1999) 89.

30 Tzouvala (n 1) 9; Orford (n 6).

31 Orford (n 6); Terry Threadgold, 'Book Review: Law and Literature: Revised and Enlarged Edition by Richard Posner' (1999) 23 Melbourne University Law Review 830, 838.

32 Here, 'standard of civilisation' stands for both a) a Eurocentric reading of international law and b) the Eurocentric hegemonic reproduction of determining figureheads in disciplines and genres as instances of 'who to read' and 'how to

Capers' excavating and revelatory reading, meanwhile, brings to the fore that which is ignored by the mainstream reading but is already present in the text. Tzouvala performs her own reading of international law, modulating Orford and Capers by problematising the discipline's 'given'. However, in this instance, by focusing on the contradictions of 'civilisation' as an imperative, she goes a step further and critiques the 'given' of CLS as well.

The central influence on Tzouvala's reading is that of Althusser and his 'hermeneutic' praxis/methodology of 'symptomatic reading'.[33] She uses his method to perform her reading of international legal texts. Symptomatic reading is a productive reading practice that does not treat the text as a finished object,[34] with meaning residing on its surface. It looks for presences and absences (that are not deliberate omissions), where the absences represent that which is unthinkable and impossible to account for without highlighting the inherent contradictions in the text, discipline, or concept. However, by identifying the text as an unfinished object, symptomatic reading alludes to symptomatic meanings that are not waiting to be unearthed but are intangible and far from self-evident. This indicates that this form of reading, when applied to legal texts in particular, performs a specific interpretative function – something Tzouvala says she departs from in this text. If symptomatic reading is inherently interpretative, then one might ask if the validity of her problematic as well as of her reading is as implicated in the context she is trying to transcend – the violence of the legal interpretative process[35]. The caveat that her reading is an unfinished, transitionary engagement[36] subject to further reading may be partially a

read'. Much like civilisation's contradictions, critical scholars are equally guilty of this practice.

33 Louis Althusser and Étienne Balibar, *Reading Capital* (Librairie François Maspero 1968).

34 Althusser identifies two reading strategies in Marx's work. His earlier reading, up until the 1844 Manuscripts, is textual. But in Capital, when engaging with the works of Adam Smith and others, he moves to a reading that locates what can and cannot be thought within a particular disciplinary framing.

35 Robert Cover, 'Violence and the Word' (1986) 95 Yale Law Journal 1601.

36 Tzouvala (n 1) 14.

displacement of the interpretative function of symptomatic reading onto reading practices external to herself.

To unpack this dialogical association of critical reading[37] -interpretation, Althusser's reading must be revisited through Lacan and subsequently, Žižek. Where the three converge is in agreeing that a text is structured by what it cannot accommodate (a second text) and therefore, necessarily represses. What is repressed is internal to the text and its revelation will threaten to undermine the text itself. This repressed unthinkable, then, leaves traces or symptoms on its surface. However, Lacan and subsequently Žižek, depart from Althusser in what they consider to be repressed. Althusser understands these symptoms as a cipher that *can* be decoded – full (interpretive) meaning can be achieved in the process. Whereas for Lacan[38]and Žižek, the symptom is always somewhat inaccessible, and therefore un-substitutable and uninterpretable. The impossibility of knowing *is* the condition of knowing itself. Moreover, Žižek's response to the repressed symptom departs significantly from Althusser by necessitating the examination of the role of fantasy in ideology.[39] These expositions problematise Althusser's concept of symptomatic reading as one with its interpretive potentials oscillating between the real and the fantastical. Thus, if there is the slightest chance of loosely conceiving interpretation as an act of erasure through excavation,[40] then it may be useful to understand ourselves relationally to the text as objects we approach,[41] possibly extinguish and recreate. The question I ask then (of Tzouvala) is this - if interpretation can explain away the symptom (in Althusserian reading), then is it really just an act of reading?

My purpose behind the question is neither a dissention with Tzouvala, nor a concern per se – I see this dialogical critical reading-interpretative praxis as one of the contradictions that are inherent to the idea of critical scholarly

37 Symptomatic reading is understood as a form of critical reading.

38 Jacques Lacan, *The Ethics of Psychoanalysis 1959-60: The Seminar of Jacques Lacan,* (Jacques-Alain Miller ed, Routledge 1992).

39 Slavoj Žižek, *The Sublime Object of Ideology* (Verso Books 1989).

40 Susan Sontag, *Against Interpretation, and Other Essays* (Farrar, Straus & Giroux 1966).

41 Both Tzouvala in relation to the texts she critically reads-interprets and us in relation to her text.

projects. Thus, in locating my reading in Žižek's invocation of fantasy, I reconcile Tzouvala's symptomatic reading with her claims of not engaging in interpretation within the oppositional scope of critique itself. Critique as or in critical legal scholarship serves the unique function of oscillating between the extraordinary and the mundane. If the latter allows us to observe doctrines and nuances in close proximity, the former encourages us to transcend immediate reality and imagine beyond our theoretical, methodological or disciplinary homes. Critique, then, is a site of imagination[42] through interpretation, located in certain reading practices where our desire for full meaning, as opposed to the actual possibility of full meaning, rests in the contradictions of this meaning-making process. To that end, I find Tzouvala's reading of Victor Kattan's[43] account as speculative,[44] interesting. Kattan brings to life an intellectual biography of Zafrullah Khan through historiography and archival engagement. Much of the work in his narrative of the South West African saga, located in a climate of institutional judicial imperialism, lies in excavating the textual interstice. This process demands interpretation and an imagination of history, not unlike Tzouvala's own reading of the events she investigates. As a reader, I wonder about their differential mode of approach to reading, beyond a simple methodological difference in their historiographic processes.

The final form, performed in conjuncture with symptomatic reading is reading law in a manner that does not reflect its presumed 'disciplinary' constraints. Tzouvala departs from doctrinal analysis and what she terms a 'legal argument properly so called' within the confines of a courtroom, that is 'a structured dialogue which assigns a burden of proof in relation to facts, and in relation to norms a burden of persuasion: states must persuade judges of the worth of their argument'.[45] Identifying this as rooted in deep-seated

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42 I am mindful of the theoretical limits and remits of critique, but I impose no such bounds on imagination - academic or otherwise.

43 Victor Kattan, 'Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the South West Africa Cases' (2015) 5(2) Asian Journal of International Law 310.

44 Tzouvala (n 1) 139.

45 Iain Scobbie, 'Towards the Elimination of International Law: Some Radical Scepticism About Sceptical Radicalism' (1991) 61(1) British Yearbook of International Law 339; Tzouvala (n 1) 169.

state-centrism, she rightly notes that any reflection of law outside the courtroom or a lawyer's office should not respond to this interpellation which leads us to adopt this particular form of argumentation as the only one possible (rendering all others unthinkable). Those reading or arguing[46] within the two dimensions of international law offered by Koskenniemi – law-as-fact and law-as-idea[47] - are unable to escape the exhaustive and mutually exclusive nature of their performance without ever problematising the terms of the discourse itself.[48]

The interpretative controversies produced by these two seemingly distinct forms is constantly iterated in *how* international lawyers argue and *what* they argue about, making this 'familiar practice strange'[49] in non-courtroom sites of engagement. Orford gives us an illustration of this range of practice in her reading of arguments against humanitarian intervention where they are arranged across two strands. The first is a close doctrinal reading that questions the legality of the texts permitting or prohibiting intervention as an exception to the use of force. The second is grounded in the implications of extra-legal realities for such doctrines, which allow for external intervention in weaker states. Neither of these strands, however, engages with the root causes that underpin the making of such doctrines[50], indicating that it is outside the remit of what is understood to be reading of or for international law and international lawyering. It is precisely this framing that Tzouvala reads out of and against. By pointing out the epistemological

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46 I am using reading and arguing interchangeably here to indicate that only when we read law in a particular form do we locate ourselves in a corresponding argumentative format.

47 Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006).

48 Instead, they problematise the terms of the debate where applicable law and its contingent realities are the only investigative terrains.

49 Anne Orford, 'Food Security, Free Trade, and the Battle for the State' (2015) Journal of International Law and International Relations 1; Tzouvala (n 1) 170.

50 Susan Marks performs a similar analysis of root causes in her discourse on human rights as obfuscating them in Susan Marks, 'Human Rights and Root Causes' (2011) 74(1) The Modern Law Review 57.

affinity of the two forms of international law offered by Koskenniemi,[51] she gives us a glimpse of law's 'second text' as reading narratives, imaginaries, and material practices to help us better understand legal argumentation's continued paradoxes. In this case, they are the paradoxes and contradictions of civilisation as a continuous, adaptable standard, producing and reproducing itself relationally to the capitalist state, where state is both an allusion to statehood and the form that capital takes at a given moment.[52]

III. TZOUVALA'S READINGS OF INTERNATIONAL LAW AND THE LEGAL TERRAIN

1. Symptomatic Readings

Tzouvala's symptomatic reading is masterful, sophisticated, rich, and, in the words of Natsu Taylor Saito, 'legally accessible'[53]. That she manages to advance such elegant analysis in such lucid form is no mean feat and, in Althusserian terms, she textually generates the repressed symptoms to academic legal writing - the forbidden, accessible version of such texts! Having taken that very indulgent interpretative liberty with symptomatic reading, I will try to unpack the way Tzouvala's *reading* transforms into specific readings of international law (and its outcomes) in the given contexts. To do this, I go back to Hemmings' formulation once again. Hemmings' own symptomatic reading[54] of feminist texts lead her to note that

> in order for poststructuralism to emerge both as beyond particularized difference and as inclusive of those differences, this narrative actively

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51 Chapter 5 of this book is a good account of how these forms play out in the occupation of Iraq.

52 This is my reading of Tzouvala and even if this is not the meaning she intended, I subject this to the same paradigm of reading beyond her own reading that she alludes to in Tzouvala (n 1) 14.

53 Tzouvala (n 1) back cover review.

54 Even though she does not call it this or identifies with it as such, I am using the term in a manner where I locate her reading in the same register of analytical lattice as Tzouvala's.

> requires the misrepresentation of interventions within feminism as decade-specific.[55]

For Tzouvala, then, there are three layers of this symptomatic. First, for capital to reproduce and expand in diverse and (sometimes) contradictory conditions, it is necessary for international law to emerge as desirable. Second, for international law to sustain itself as plausible and reformative, it is necessary for the standard of civilisation to be flexible. And finally, for the standard of civilisation to be sustainable, it is imperative for it to move within the oppositional poles (logic of improvement and logic of biology), and to make this contradiction invisible and unthinkable.

Having established this as her analytical core, Tzouvala performs a range of incisive readings to capture this moving target. Within the contradictory logic of capital, she allows for many possible readings, including that of interpellation, in the ideological internalisation of the state. For instance, in early post-war international law, only those political communities that were juridically separate from society and economy were deemed to be civilised.[56] This contained within itself the profound contradiction of the imagination of the state (public) as much less arbitrary than the market (private) and yet somehow, the market was thought of as always self-regulating and fair. Similarly, legal equality was premised on immutable (but not substantively so) differences (race, gender, class) that law disregarded. However, these differences were also embedded in capitalist reproduction through law, and thereby in law itself.[57] In legal texts, this tension arose through dialectic engagement of interpretative adaptations both by the 'civilised' and the 'not there yet'. For example, the battle for extraterritoriality in *SS Lotus*[58] was in fact an intricate, paradoxical process where the conditions for the demise of a rule that was unfavourable to the 'not civilised' lay in the adaptation/appropriation of the rule by those it was looking to disenfranchise in the first place. So, in using extraterritoriality against France (and against its colonial dimensions premised on the logic of biology), Turkey set in motion

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55 Claire Hemmings' symptomatic reading of feminist texts and citation patterns in Hemmings (n 9) 12.

56 Tzouvala (n 1) 62.

57 Tzouvala (n 1) 67.

58 *Case of the SS "Lotus" (France v. Turkey)* PCIJ Rep Series A No 10.

a process where the rule is abandoned and forced to relocate itself in newer, more subtle iterations of the biology-improvement axes.[59] A similar reading could be performed of slavery, where the legal validity of the conditions of slavery were rendered redundant once the differential response to slavery in America as opposed to its practices in Africa allowed for an interrogation of the conditions of slavery itself.[60]

If the readings speak to capital, and therefore to international law's contradiction by design, then unpacking this oscillatory premise reveals their oppressive underpinning in each stage. For instance, the UNGA resolution 65(I)(1946) concerning the Future Status of South West Africa rejected the results of the referendum supporting its annexation in consideration of the fact that the inhabitants of South West Africa have not reached a 'stage of political development' that enables them to express a considered opinion that the Assembly could recognise. Thus, regardless of the conscious intent of the drafters of this text – the presumption that black Namibians were unable to govern themselves (logic of biology) not only formed the premise of the UN's opposition to South Africa, but also of South Africa's disavowal of the UN. In a way, this extreme racism was the most faithful application of the principles that formed the core of the Mandate System and even the Charter itself.[61] And the participation of non-Western lawyers in this discussion simply changed the balance (and valence) of the two interwoven poles of 'civilisation' rather than doing away with the concept itself.[62] The only time (in Tzouvala's reading of these specific texts) a legal argument came close to interrogating the terms of the debate was when Ethiopia and Liberia, in their first presentation before the International Court of Justice (ICJ), read civilisation against the grain. In identifying the 'intersection between racialisation, labour exploitation and land dispossession in the practice of apartheid and as against the "sacred trust of civilisation"',[63] the argument problematised the artificial boundaries of the context. And in reading them

59 Tzouvala (n 1) 77.

60 I am performing a conjoint reading of chapters 2, 3 and 4 here.

61 Tzouvala (n 1) 142.

62 Tzouvala (n 1) 148 and chapter 2.

63 Ibid.

thus, Tzouvala once again confirms the significance of reading law outside the 'prescriptive' forms and legal terrain.

Ethiopia and Liberia's subsequent turn in argument to human rights and non-discrimination, then, is a far more significant event than the ICJ's change of heart, Tzouvala notes. It is an adaptation to the civilisational standard in a way that is frequently mischaracterised as international law's reformative potential. But more importantly, it is also an account of how an uncontested adoption of (Western) law as a textual discipline limits the scope for transcending its oppressive contexts. Here, I am reminded of Parfitt's use of the 'Shadow Box' as a methodology to unpack Ethiopia's hybrid and sophisticated presentation before the League of Nations – deploying part sameness and part otherness to resist being conformed and homogenised.[64] Much like the formulation of 'sacred trust of civilisation', Ethiopia claimed proximity to the 'true international law' through the cultural foundations that the 'great powers' dismiss as barbaric. Parfitt, whom Tzouvala cites liberally and engages with closely, also deploys a unique reading form like Tzouvala's own (Parfitt calls it the Shadow Box) where the *reading* of the reader in context is transmuted into the viewer's (also in context) gaze. But unlike the generic assertion that all critical reading (if there is such a thing) is done in - and in acknowledgement of - context, what Parfitt and Tzouvala are doing appears to be reconciling oppositions in their *reading* and readings. A form of Marxism + (another oppositional/post-structural form), deployed as a processual-methodological task of reading (doing international law) that focuses on looking for patterns rather than engaging with terms that are (mistakenly) perceived to be wholly pre-determined or wholly contingent. And, as Tzouvala clarifies, the outcomes which are sometimes quite favourable to the 'not civilised' are not the sites of this investigation, because while they can be explained by this inherent contradiction, they cannot be predicted.

2. Deconstruction with(in) the Marxist Tradition

I had the opportunity to ask Tzouvala about her methodological toolkit and why she chose this reading apparatus in the first place. Marxism, she stated,

64 Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019).

offers the best analysis of capitalism both as a totality and a contradiction of totality. Marxism also helps us to think of law as something dangerous in the process of this analysis. Deconstruction, similarly, addresses two important things. It serves as a mirror, showing how critical international law imitates liberalism, and also helps one think of law as powerless. Tzouvala uses these approaches skilfully to decentre liberalisation as the site of critique. In her readings, she demonstrates how the term is misunderstood and how capitalism has not always been liberal. Because of the inherent potential of these forms to contain multiplicity and contradiction, their application need not be limited to political economy alone, as she demonstrates. With these techniques, she seems to successfully relocate herself (and her theory) between forms of writing that privilege 'real political action' and those that are alleged to be 'a kind of intellectual game'.[65]

But the most striking aspect of this reading apparatus is her deconstruction and, movement of the terms - 'structure' and 'indeterminacy'.[66] Each of these words have multiple meanings and, therefore, multiple readings in her text. Tzouvala uses structuralism in one instance to denote structural Marxism,[67] and in another instance to denote structural indeterminacy[68]. Structural Marxism, she argues, is too rigid and textual, formulating law as a determinate process. Structural indeterminacy is located in the so-called 'indeterminacy thesis', articulated most famously in the international law context by Martti Koskenniemi[69] and David Kennedy,[70] where both of them argue that international law is always trapped in an oscillation between 'concrete' and 'normative' forms of justification, which either tend towards 'apologism' or 'utopianism' respectively. With international law, therefore, there is no coherent justification for addressing a problem because things could 'always

65 Terry Threadgold, 'Introduction' in Terry Threadgold and Anne Cranny-Francis (eds), *Feminine–Masculine and Representation* (Routledge 1990) 11, 13.

66 I owe this formulation to Kanad Bagchi, who read Tzouvala's use of the word structure to offer different meanings and context. Following his reading, I located several meanings and usages of 'indeterminacy' as well in her text.

67 Tzouvala (n 1) 5.

68 Tzouvala (n 1) 6,7.

69 Koskenniemi (n 47).

70 David W Kennedy, 'Theses About International Law Discourse' (1980) 23 German Yearbook of International Law 353.

have gone – and will go – the other way'.[71] Now, it is precisely this indeterminacy that subjects the rigid structural Marxist accounts to critique, by pointing to law's fluctuations and movement. Tzouvala then brings in historical materialism and the structural scaffolding of Marxism to resurrect the critique to Koskenniemi and Kennedy that has been offered in the past by Chimni, Orford, Parfitt, and many others.[72] By reading history and context out of law, the thesis fails to engage with why law is indeterminate in the first place. But by re-locating this indeterminacy in historical materialism, she illustrates that perceiving it as indeterminate is not the problem but rather that the problem emerges from the conclusions we draw from it being indeterminate.

Aside from these express denotations, structure and indeterminacy appear in her readings in less manifest ways. The pursuit of a coherent explanatory theory of international law is grounded in a notion of structure. The requirement to produce a coherent theory, or the outcome of this theory may both be and produce an image of international law (and its social realities) that is indeterminate.[73] Similarly, the structured indeterminacy of 'civilisation' points to a certain sense of (indeterminate) argumentative freedom while also a form of (structural) entrapment within the contradictions themselves. And finally, identifying these structures of constraint opens up indeterminate methods, apparatuses and approaches to engage with them and/or escape them.

IV. My *Reading* of Tzouvala (and her Readings)

1. Reading 'Critically'

Aside from being an enthralled reader, I also read Tzouvala as a (self-identifying) CLS scholar and feminist, moving between disciplines and

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71 Koskenniemi (n 47); Parfitt (n 64).

72 BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, Cambridge University Press 2017); Anne Orford, 'International Law and the Limits of History' in Wouter Werner, Alexis Galán, and Marieke de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniem*i (Cambridge University Press 2015); Parfitt (n 64).

73 Tzouvala (n 1) 214.

traditions and implicating myself in a collective (and individual) context. And here, my observations are primarily of two kinds – textual and regarding that which her text renders unthinkable and yet, plausible. Textually, it is interesting to see the circle of scholars she re-reads and resurrects through her citation praxis. While she does limit herself to a textual analysis, even within the textual, the scholars she re-reads (as against productive misreading) are familiar and frequently cited (in CLS circles). Their unquestionable relevance and brilliant contribution to CLS scholarship notwithstanding, it leaves one feeling a little uneasy about "who" else could have been a part of this conversation (and discursive frame) if we did not limit ourselves to a certain format of scholarly texts. This observation is also made by Daniel R. Quiroga-Villamarín,[74] but we differ in our construction of absences and their significance. While Daniel points to identifiable and notable exclusions within the scholarly discipline, mine pertains to a form of exclusion that this normative academic form and citation pattern produces.[75]

The choice to engage with textual, while clearly tactical[76] in that the current formulation of law *is* textual and hegemonic,[77] has consequences. It overlooks how non-textual *academic* modes of intervention, namely classroom spaces, institutions, and critical pedagogy could also perform a productive reading or viewing of international law texts against the mainstream.[78] The approach of reading becomes a hermeneutic. In choosing reading, we invariably seem to limit ourselves to texts and textual sources. At the same time, reading can also be understood as an act of scrutiny and perusal that goes beyond the text. By closely navigating 'who and what we see' when we bring international law into pedagogic sight and classroom spaces, we allow ourselves space to read beyond its designatively limited context. The distinction I make between textual and non-textual takes from Tzouvala's own rich analysis of what lies

74 See Quiroga-Villamarín (n 17).

75 I am equally guilty of it and consider myself complicit in this process.

76 Once again, I refer to Knox' formulation of these terms in Knox (n 7).

77 Tzouvala (n 2) 18,19.

78 Here, I go back to Spivak's foreword to Mahasweta Devis' Dopdi and the relationship between the first world and third world scholars and subjects in Gayatri Spivak, Foreword to "Draupadi" by Mahasveta Devi (1981) 8 Critical Inquiry 381.

in the non-textual legal realm[79]. We should acknowledge law as performative and versatile, both within and beyond the text.

Another risk of eliminating the non-textual is that the absences in textual or citation patterns allow a certain kind of reductive generalising to persist, where all those 'trained in the same epistemological grammar' (Western liberal academic training) are only speaking among themselves. Perhaps it is here that engaging with the *academic/pedagogic* 'other' becomes incumbent. In this, I speak of not the mainstream international lawyer, but Sumana Roy's 'Provincial Reader' (and possibly scholar) who, as Roy describes, is always arriving after the party is over in a sense of belatedness that is 'dated'.[80] However, what makes these 'dated' interventions or formulations rich is the 'unpredictability of these anachronistic "discoveries" — the randomness and haphazardness involved in mapping connections among thoughts and ideas, in a way that hasn't yet been professionalized'.[81] Someone once told me that in a theory that is Foucault-centric, you can arrive at the same answer without Foucault – it simply takes longer to get there. And it is precisely this longer road or ideating haphazardness that we should engage with to enrich our reading of international law (or any discipline for that matter). But these readers, scholars and ideas lie very clearly outside of our existing citation ecosystems.

The obvious implications of such absences aside, there is a certain form of dissent that emerges from Tzouvala's praxis: An intent to break away from an overpowering and dominating mode of re-interpretation, where the former 'meaning' and 'purpose' must necessarily be obscured or completely obliterated.[82] I then read Tzouvala against *this* genealogy and into Marks' false contingency – where a consciousness of who is reading makes the

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79 Tzouvala (n 1) 19.

80 Sumana Roy, 'The Provincial Reader' *Los Angeles Review of Books (LARB)* (19 April 2020) <https://lareviewofbooks.org/article/the-provincial-reader/> accessed 6 April 2021.

81 Ibid.

82 Friedrich Wilhelm Nietzsche, *On the Genealogy of Morality* (Cambridge University Press 1994) 52.

patterning of privilege obvious and therefore, avoidable.[83] So, while Tzouvala creates an unintended absence in her citation cycle, in her reading, she wonderfully resurrects and problematises (through reinterpretation) those she cites in the first place. In doing this, she avoids posing them grammatically as well as temporally distinct from that history which they have seemingly allowed[84] us to surpass. This she does by reminding us that all international lawyers (including critical legal scholars) are 'subjected to the contradictions upon entering the realm of civilisation in its own terms', no matter how self-reflexive, critically aware and responsible.[85]

2. Reading Reparatively

Most importantly, my reading of Tzouvala is reparative,[86] in the sense that I am happy to learn from her, walk with her, and freely immerse myself in the text. To that end, my earlier symptomatic reading is simply offered as a comradely reflection. While I suspect Tzouvala's own reading of international law (against the grain) is suspicious, and rightfully so, in *our* collective (and individual) endeavours of thinking, arguing and acting, suspicion is not called for, at least not in my reading of this text. For me, then, the most profound thing about this book, aside from its brilliant interrogation of 'civilisation', is the political economy in and of reading it generates.[87] Tzouvala's reading is non-linear, and she consistently harmonizes different strands of thinking as bringing in different approaches to a common

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83 Susan Marks, 'False Contingency' (2009) 62 Current Legal Problems 1, 14, quoting Terry Eagleton, *The English Novel* (Blackwell, 2005) 311.

84 This charge is directed particularly at the interventions that are made by/attributed to key figures in critical scholarship as distinct from the context within which they operate. Particularly when we announce the 'death' of an old way of thinking through these processes.

85 Tzouvala (n 1) 216.

86 Eve Kosofsky Sedgewick, 'Paranoid Reading and Reparative Reading; or, You're So Paranoid, You Probably Think This Introduction is About You' in Eve Kosofsky Sedgwick (ed), *Novel Gazing: Queer Readings in Fiction* (Duke University Press 1997).

87 I borrow and reframe this usage from Maria do mar Pereira, who discusses the interconnectedness of our theoretical and methodological premise as a political economy in her course entitled 'Producing Feminist Research'.

problem and leaving room for more.[88] Much like her readings of 'civilisation', throughout her *reading* she demonstrates that what is typically perceived as oppositional can be seen as comparable and even reconciliatory. And it is not necessary to present a text or the intent behind it as free from contradictions and coherent.[89]

Reading and writing critically about international law is about much more than an engaged community of recruited readers and it is precisely because of this, I believe, that Tzouvala places demands on them (us): as a form of respect. The stakes, for me, are located in the feeling that simmers just beneath all possible readings of her text – all of us, the 'civilised', 'not civilised' and the 'nearly there' are moving within these contradictory poles of 'civilisation' on *its* terms. And while most of us are in varying, hierarchical degrees of awareness, even those framing the terms of the debate do not fully control this expansion process and its consequences. The symptom to Tzouvala's text, then, is the 'traumatic kernel, which resists symbolization, totalization, symbolic integration'[90]- a feeling of dread where an escape from capitalism 'feels' improbable. And therefore, in keeping with the logic of contradiction, my reading of her is reparative and with admiration. I read her in the hope of using her analysis as a way to engage with mainstream[91] international law, to comprehend the analytic she and other Marxist scholars offer to TWAIL, to dwell upon the absences in her text, and most importantly, to join her in contemplation in imagining an end to capitalism.

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88 She offers this caveat multiple times and earmarks this in her introduction and conclusion.

89 This is my reading of what Tzouvala's writing can lead us to and not a claim she makes in her text.

90 Žižek (n 39).

91 Our relationship with the purported mainstream is far more complex than it seems, but that is not within the scope of this review.