[p 3] My broad argument is that colonialism was central to the constitution of international law in that many of the basic doctrines of international law -- including, most importantly, sovereignty doctrine -- were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation. In making this argument, I focus on the colonial origins of international law; I attempt, furthermore, to show how these origins create a set of structures that continually repeat themselves at various stages in the history of international law. In so doing I seek to challenge conventional histories of the discipline which present colonialism as peripheral, an unfortunate episode that has long since been overcome by the heroic initiatives of decolonization that resulted in the emergence of colonial societies as independent, sovereign states.

I examine the relationship between international law and colonialism by focusing on the civilizing mission, the grand project that has justified colonialism as a means of redeeming the backward, aberrant, violent, oppressed, undeveloped people of the non-European world by incorporating them into the universal civilization of Europe. I argue that in the field of international law, the civilizing mission was animated by what I crudely term the question of ‘cultural difference’.

[p 107] The jurisprudence of the nineteenth century has had profound and enduring consequences for the non-European world. Basically, it presented non-European societies with the fundamental contradiction of having to comply with authoritative European standards in order to win recognition and assert themselves. [p 108] Achieving the European ideal becomes the goal of the non-European states. Consequently, for the non-European world, the achievement of sovereignty was a profoundly ambiguous development, as it involved alienation rather than empowerment, the submission to alien standards rather than the affirmation of authentic identity.

[p 180] The Mandate System [of the League of Nations] having transformed the native and her territory into an economic entity, proceeded to establish an intricate and far-reaching network of economic relationships that connected native labour in a mandate territory to a much broader network of economic activities extending from the native’s village to the territory as a whole, to the metropolis and, finally, to the international economy. Integrated in this way into a dense and comprehensive network of economic power, the native -- and, indeed, the entire mandate society -- became vulnerable to the specific dynamics of the network. Given that the mandate territory was inserted into this system in a subordinate role, its operation inevitably undermined the interests of mandate peoples.

[p 214-15] [During decolonization] several colonial powers sought to protect their interests by manipulating the essential expression of the Third World state’s sovereignty, its constitution. These colonial powers did so by incorporating provisions protecting fundamental rights and freedoms in the constitutions to be inherited by the newly independent states; the purpose of such provisions was not simply to enhance liberal-democratic institutions in the newly independent states, but also to protect their
own property interests. As a consequence, not only was the Third World attempt to reform international law largely thwarted, but it had to contend with a new set of rules, the ‘international law of contracts’, that sought to expand the powers of MNCs well beyond the powers those corporations had enjoyed under the traditional law of state responsibility.

The principle of universality creates, even as it encompasses, the difference that must be sanctioned; universality is created to disempower the party to which it applies. Indeed, the construction of the universal and the international is not by any means an innocent act for here, it would seem, the ‘international’ is formulated precisely in order to subordinate the Third World.

International law is in a permanent state of emergency; it could not be otherwise, over the centuries, given that international law has endlessly reached out towards universality, expanding, confronting, including and suppressing the different societies and peoples it encountered. At the peripheries, then, sovereignty was continuously demarcating and policing these boundaries, applying and reinventing the emergency powers which incorporated, excluded and normalized the uncivilized, hence enabling conventional sovereignty to appear to operate unperturbed, stable and following its own course. International law can maintain its coherence and play its classic role of regulating state behaviour only by carefully defining the cultural sphere, the civilized world, in which it operates.

The United States denies imperial ambitions because, it claims, it is not intent on colonizing the Iraqi people but rather, on restoring their sovereignty by guiding them towards self-government. … ‘Self-government’ here stands for the massive transformations entailed in turning Iraq into a democratic state.

[The United States] attempt[] to repudiate the claim that it is in any way ‘imperial’ by repeatedly proclaiming that it is intent simply on promoting self-government, thus eliding the fact that the whole campaign of using massive force to conquer a territory as a prelude to attempting to civilize and liberate its people by recreating them in the image of the conqueror is one of the defining aspects of colonialism over many centuries.

The disturbing point for me is that, whatever the contrasts and transitions, imperialism is a constant.

What is required, then, is a jurisprudence that draws on all cultures, both Western and non-Western, to address the problems of imperialism. [But] there is no one agent (the ‘Third World state’) nor any one method (‘positivism’ or ‘pragmatism’) that will ensure the emergence of an anti-imperial international law.