Seeking Change by Doing History
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Rede

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door

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Mevrouw de Rector,
Mijnheer de Decaan,
Your Excellencies,
Dear Colleagues and Students,
Dear family and friends,
Thank you for attending this lecture today.

1 Opening

‘This Cannot Be How the World Was Meant to Be’.¹

This is a quote from Philip Allott, one of the most important international legal theorists of our time.² He chose it as the motto for a Symposium organised on the occasion of his retirement from Cambridge University in 2004. Philip had penned it down when he was 16 years old.

Many of our students today have had a similar thought around that age. I know I have. Overwhelmed by the disorder and injustices of the world around us, one asks oneself: Could humanity live differently? And: could international law play a role in that change? If not, why not? If so, how?

Back then – the late 1980s – I asked my parents for a subscription to the Leiden Journal of International Law. Two years later I started my studies at Leiden University. I joined the Leiden Journal as an editor in the second half of the 1990s. Last month, we celebrated the Journal’s 30th anniversary with a symposium on ‘The Trajectories of International Legal Histories’.³ Initially, the Leiden Journal was not particularly focused on international legal history. Its current historical interest is illustrative of the development of international law scholarship in the course of the last two decades.⁴

This development is now captured as the ‘turn to history’: a surge of historical inquiry into international law and – most notably – international legal thought. Whence emerged what may be called ‘history and theory of international law’, the research and teaching commitment of my Chair. As a relatively new subfield of international law,⁵ it is not well-defined – and that is a good thing. It brings together history and theory, which is not without its tensions
and challenges, methodological and otherwise. The responses to the title of this lecture are wonderfully illustrative. My friends the intellectual and legal historians are, in polite terms, intrigued by the ‘seeking change’ part of the title. Critical international lawyers praise the ‘seeking change’ part, but show some doubt about the ‘doing history’.

This inaugural lecture prompts me to discuss the field of ‘History & Theory’ somewhat further. First, I will situate the ‘turn to history’. Subsequently, I will discuss the relationship between history and theory and how, in my view, this can be a productive one. Finally, as is only fair, I address a self-reflexive question ‘if doing history is a form of seeking change, what then is the change I am seeking?’ By the end of this lecture we will come back at the opening quote.

2 Situating the ‘turn to history’

International legal scholarship has turned to history in the late 1990s-early 2000s. Benedict Kingsbury was among the very first international lawyers to take up historical research into international legal thought – engaging with the work of Hugo Grotius and Alberico Gentili – and to start a ‘History and Theory of International Law’ course at New York University. His innovative scholarship – and the chance I had to study in this course – influenced significantly my own work. André Nollkaemper then gave me the opportunity to bring this relatively new subfield to the University of Amsterdam.

To understand the recent ‘turn to history’ in international law, we should situate it in the political context of globalisation and the End of the Cold War, as well as in the intellectual context of postmodern or critical thinking.

The end of the Cold War impacted international politics, reinforced globalisation, and triggered high-level discussions on a New World Order. Some liberal internationalists turned to history out of optimism, hoping that the cosmopolitan project of international law might be possible after all. Soon, however, disappointment with the state of international law sank in: the envisaged New World Order failed to come about and instead the War on Terror developed into the new normal. Accelerating economic globalisation and integration put pressure on the culturally diverse world – and international legal scholarship was confronted with questions about the relevance and foundations of international law and institutions. Traditional doctrines such as the separation between national and international law, the primacy of states and invisibility of non-state actors, state sovereignty and territorial jurisdiction, universality of human rights – all of these came under scrutiny.
Dissatisfied with the conditions of international society, scholars started to ask about the history of the international legal system as well as about their own role in the development of international law over time. The unreflexive pragmatism that had dominated mainstream international legal scholarship during the Cold War decades and that had left little space for history, or theory, for many international legal scholars now became untenable. This was all the more so because of the developing intellectual context. Since long we have been aware that doing history of thought is a profoundly hermeneutic exercise: it is about the interpretation of historic texts and the construction of historical narratives, which necessarily has a subjective element. In the course of the 20th century the grand narratives of Western thought came under scrutiny. ‘Postmodernist’ or ‘critical’ theories challenged the assumptions of mainstream international legal scholarship too. Post-structuralist theory, post-colonial theory, linguistic studies and other postmodern theories – in short, the ‘linguistic turn’ in the philosophy of history – have impacted the historical narratives of international law profoundly. Poststructuralist philosopher Michel Foucault and post-colonial critic Edward Said, revolutionised our thinking about doing history of thought. Focus shifted to discontinuity and contestation. With his ‘history of the present’, Foucault stimulated the writing of genealogies of fundamental concepts that define a field, such as ‘sovereignty’ in international law. Edward Said was one of the scholars who sensitised our discipline to the ongoing reproduction of orientalist and imperialist knowledge, to the link between the Western Enlightenment and colonialism, and to the possible value of doing history of thought as a critique of imperialism. It is impossible to discuss all these ‘-isms’ and ‘post-somethings’ here – I will come back briefly to their impact on international legal thought later –, but it is fair to say that postmodern thinking shattered existing certainties and paradigms, such as the separation of object and subject. The discontent with international law and legal theory converged with a discontent with the orthodox teleological, Eurocentric and hagiographic histories of international law. When critical thinking arrived in international law scholarship, it hit hard. With for some the result of a cynical outlook on international law’s possibilities.

The recent turn to history and historiography by international law scholars and the new orientation towards international affairs by intellectual historians have reinforced each other and spurred a vibrant new scholarship, that is different from the orthodox forms of international legal history because of the extent to which it is intertwined with international legal theory. The field of ‘History and Theory of International Law’ then may be characterised by
historical work that is open to theory, and international legal theorisation that is grounded in the history of international legal thought.\textsuperscript{17}

3 \textbf{Why and how ‘History and Theory of international law’?}

Now, let us first explore what the study of the history of international legal thought is for. Closely related to this is the question how to study it. Twenty years on, ‘history and theory of international law’ is marked by what I would call a \textit{Methodenstreit} – a debate about the methods of the field. For reasons of clarity, I stage three positions that mark the field. On the one hand, those scholars who do international legal history for the sake of history. On the other hand, those international lawyers who do history exclusively as critique or theory. And, thirdly, moving beyond these two positions, there is what I call ‘history and theory’. I would argue that the significance of this field lies in the opportunity to organise a fruitful dialogue between history of international legal thought on the one hand, and philosophy or theory of international law on the other.

Why do international lawyers study the past? Clearly, international lawyers turn to the past all the time. It is the place where lawyers go to find whether legal obligations have been forged through treaties or customary law. Or where they go to determine “original title” of sovereignty as for example in the 2008 Malaysia/Singapore case at the International Court of Justice, when judges read Grotius’ work to find evidence of territorial sovereignty of the Sultanate of Johore.\textsuperscript{18} In the context of ‘history and theory of international law’, by ‘turning to history’ and ‘doing history’ we mean research and teaching focused on international legal thought, on ideas, concepts, \textit{mentalités}, historiographical narratives, principles and so on and so forth; \textit{and} focused on the jurists who developed and worked with these, often in response to a contemporary event such as a peace treaty.

Let us turn to the three positions I mentioned before (with some necessary simplification) on why and how we study past international legal thought.

3.1 \textit{History for history’s sake: history without theory}

First, doing history for history’s sake. There are those who argue that we do – and should do – history out of sheer curiosity about the past as it actually \textit{was}. These historians aim to ‘approach the past “in its own right, for its own sake, and on its own terms”’\textsuperscript{19} as Quentin Skinner put it. Doing history of thought
then is a technique to conserve political or legal ideas. It is empiricist and antiquarian in nature, it insists on objective representation as a standard for dealing with past thought. Any social utility approach to history is rejected; the past should be respected as the past and not be taxed with today’s concerns.

Some international legal historians accordingly defend the position that historical inquiry into international law should come from a genuine, non-instrumentalist interest in past events and ideas. My Tilburg colleague and friend Randall Lesaffer has repeatedly condemned the tendency of doing international legal history out of a ‘functional interest’ related to needs and concerns of the present.

The tone of the Methodenstreit gets quite harsh at times. Ian Hunter speaks of ‘debilitating anachronism’, and ‘self-congratulating postcolonial moralism.’ While I agree that avoiding anachronisms is valuable when doing history of international legal thought, I find these statements questionable, and would argue that respect for the context and intentions of an historical author when seeking understanding of his ideas, does not preclude an evaluation of how past texts and concepts produced present repression and injustices.

It is too easy to set aside evaluation as anachronistic, provided that the historic contextualisation plays a role. It is moreover not true that to bring in moral concerns with the VOC’s violent conduct overseas is altogether anachronistic, as is often suggested. The VOC’s violence in the protection of its trade interests around the globe was for example subject of serious criticism by its Anabaptist and Mennonite shareholders.

My main concern with this approach’s sharp criticism of bringing the present to the study of past thought, is its overly objectivist claim about the production of historical knowledge and the recovery of meaning. It fails to recognise the inseparability of subject and object, and it fails to recognise fully that any historian seeking to understand for example Francisco de Vitoria or Hugo Grotius comes with questions, assumptions and categories that draw on a theorisation formed in the present. It also fails to see that reconstruction of the intended meaning of a text by for example Francisco de Vitoria or Hugo Grotius does not cover the full range of meanings that a text may have. ‘History for history’s sake’ resists theorisation and a proper dialogue with present-day international legal theory.

On a related side note, there is always more than one history in any event: thus the sixteenth century Spanish scholar Francisco de Vitoria, who lectured and advised on Spanish rule in the Americas, expressed himself moral criticism of Spanish violent conduct against the Native Americans. But at the same time – we should mention –, by positing equal standing and natural
rights to both Spaniards and Native Americans, he effectively constructed a legal framework for Spanish *domination* in the Americas. This *inclusion* of the non-European into the legal system, to then *disempower* the non-European, is shown to be reproduced by the structure of international law, even today.24

3.2 *History for the sake of critique: history as theory*

At the opposite side of the spectrum we find ‘doing history as critique.’ This approach deconstructs disciplinary truths and underlying assumptions.25 I already mentioned Michel Foucault and Edward Said. Critical international lawyers took on board the understanding that the production of knowledge, including historical knowledge, is never neutral and always political.26 Historiography is always contextual and contingent upon power structures.27 And so, the grand narratives that have presented international law as a progressive project for humanity,28 bringing civilization and replacing power politics with the rule of law, were challenged.29 The unravelling of these longtime “givens” has contributed to the much needed ‘unsettling’ of orthodox, self-congratulatory histories of international law.30

Harvard professor David Kennedy built on Foucauldian insights for his history-as-*critique* of human rights. While he values the emancipatory, humanitarian cause, he points to what he calls ‘the dark sides of virtue’: the humanitarian and human rights activist exercises power too; she too is ‘a ruler’.31 International legal scholars like Antony Anghie and Martti Koskenniemi have uncovered the violence of the ‘civilizing mission’ of international law in the colonial and post-colonial age; the language of rights comes with the risk of domination.32 Anne Orford explains how history as *critique* involves a heads-on confrontation with – in her words – the ‘willed forgetting of international law’s imperial past.’33 She explains how the colonial conception of sovereignty continues ‘to shape international law in the post-colonial era.’34 This perspective helps us to discern that many of today’s problems in the Global South are ‘the *effects* of a historically constructed global political and economic system ….’ This sensitivity is crucial for example in a United Nations or IMF and World Bank context when global policies are developed and international law is shaped.35

In the *Methodenstreit* about doing history of international law, Anne Orford calls upon lawyers to adopt deliberately and wholeheartedly anachronistic devices,36 or – in Kemmerer’s words – to employ ‘radical anachronisms’.37 In increasingly sharp language, Orford distinguishes the ‘historical method’ from what she calls the ‘international legal method’, where the latter is ‘neces-
sarily anachronistic.’ In my view this distinction is exaggerated. While I concur fully with Orford’s critical agenda, I disagree with the caricature she makes of the Cambridge School’s contextualist approach as necessarily ‘conservative’ and thus without any critical potential. More in general, to make the past fully subservient to the present amounts to effacing the historicity of international legal thought; history dissolves into theory altogether. As such, history as critique fails in creating a true dialogue between past and present international legal thought.

3.3 History for self-knowledge and an enlarged sense of possibility: History and theory

Beyond ‘history for history’s sake’ and ‘history as mere theory’ in my view lies a third possible approach: ‘history and theory of international law’. This would be a conversation between past and present international legal thought that questions the strict distinction between what is ‘merely historical’ and what is ‘genuinely philosophical.’ For it to be a fertile conversation, it should start by doing good history, which will in turn enable us to question present international law and legal thinking and to theorise alternatives. In my view, the Cambridge school approach may well facilitate such a conversation.

The famous historian and philosopher R.G. Collingwood said that ‘history is “for” human self-knowledge.’ Cambridge School historian Quentin Skinner builds on this insight. He says:

[T]he very reason for regarding […] histories [of ideas] as indispensably ‘relevant’, [is] not because crude ‘lessons’ can be picked out of them, but because the history itself provides a lesson in self-knowledge.…

The point is that we may learn from doing history how our present international legal concepts result from past political choices. It helps us realise we live in a political but also a legal world, which we have constructed through thinking – and thus doing –, and to understand where possibilities lie for deconstruction and reconstruction. For history of international legal thought to be such a learning experience and to assist us in questioning our own assumptions, conceptualizations and theories, the material needs initially to be distinctively historical. It is precisely the ‘alien character’ of past international thought, beliefs, and concepts as products of their time that makes them so relevant to our thinking about international law. Doing history of thought crucially is about ‘preventing’ our current moral, political and legal
theories from, as Skinner puts it, ‘degenerating into uncritically accepted ideologies.’

Doing history of international legal thought creates a necessary distance to our own understandings, beliefs, assumptions and theories about international law. It thus also offers a means to question these in a more self-critical manner and to test them against ‘alternative possibilities’. With this self-critical perspective comes what Skinner calls an ‘enlarged sense of possibility’.

I return to this sense of possibility below. First I would like to render the contextualist approach to history a bit more concrete with an example, while making three methodological points in passing.

For history of international legal thought to have the alienating – and thus critical – force just mentioned, the method of interpretation must recognise that a classic text, for example Leibniz’ 1693 Praefatio to his Codex iuris gentium, was written in response to a specific political ‘issue at stake’ at the time. Reading such a historical text is not about learning timeless answers to ‘perennial problems’. To understand the text, its intellectual and political ideological contexts should be reconstructed, and the prevailing discursive conventions identified, so that we may know what Leibniz was doing by writing the text and developing his ideas. Leibniz lived during the disintegration of the Holy Roman Empire into what would become the modern Europe of sovereign states. It was a time of disorder, diplomatic confusion and warfare. The traditional ‘universal’ legal order headed by Emperor and Pope was in disarray. Leibniz worked as a legal advisor to both the weakening Emperor and the emerging new actors on the international stage such as the Elector of Hannover, who wanted to be recognised as an international player. For Leibniz, the prime concern was the restoration of order and justice in Europe. In that context he in the Codex argued relative sovereignty for all those who were powerful enough to influence international affairs – that is, those who had a degree of military or treaty-making capacity. Leibniz also introduced international legal personality (that key doctrinal concept and tool of international law). As legal persons all of these new actors counted as lawful and thus legitimate players at the international stage, and at the same time, they were all conferred with the moral and legal obligation to comply with the demands of universal law and justice. A brilliant conceptual move.

This brings me to my first methodological remark. A contextualist approach prevents oversimplified interpretations induced by meta-narratives. In the late 1990s/early 2000, the predominant narrative was (still) that the 1648 Westphalian Peace Treaties had established a European Order of absolutely sovereign states and therewith the inter-state legal order. Proceeding
from this idea an interpretation of Leibniz’s 1693 text would have never allowed for the findings mentioned just now. Contextualist study of this text, on the other hand, has contributed to a critique of the ‘Westphalian Myth’, because it has brought out the unfamiliar understanding of relative sovereignty and the innovative character of Leibniz’s introduction of international legal personality.

This brings me to my second methodological remark. The Cambridge school approach means to avoid anachronisms, yet it allows us to recognise that a scholarly reconstruction of a text’s context and the identification of the author’s intention involve assumptions, understandings, beliefs, and theories that a scholar brings to the reading of the historical text. In other words, to determine what is the ‘relevant’ or ‘appropriate context’ for the interpretation of a historical text includes a subjective element. As Skinner observes, ‘[t]here is no implication that the relevant context need be an immediate one.’\footnote{Denying that present-day context marks the questions with which we turn to the past is scientifically obsolete. I turned to Leibniz’s Codex iuris gentium wondering why he needed the concept of international legal personality, because I was triggered by the vibrant debate on new actors and the subjects of international law in the late 1990s. Similarly, it is no coincidence that at a time of economic globalisation and violent capitalism, there is a marked revival of interest in the Dutch East and West India Company (‘VOC’ and ‘WIC’) and in Hugo Grotius as a corporate lawyer of the VOC. Research into the legal history of the trade companies is an antidote to the forgetfulness regarding the dark past of Dutch trade wars and slave trade and their justifications. And it is not uncommon for such research to be motivated by questions about the possibilities to hold Multinational Corporations accountable under international law for corporate injustices today. This so-called ‘motivational presentism’\footnote{My third methodological remark goes to the critical potential of the contextualist approach by focussing on so-called ‘evaluative-descriptive terms’. With the introduction of “international legal personality”, Leibniz coined such a term for international law. As fundamental and ambiguous concepts of political or legal thinking, these terms are the locus of change: their meanings are contested, ‘manipulated’ and ‘moving’, and bring about change in a thought system as a whole. ‘International legal personality’ has been such a place of political struggle over the international legal system and the moral identity of international society. This is visible in the work of Leibniz, whose political agenda and theory of universal justice as [in his words] ‘wise charity’} of course impacts our reconstructions. Perhaps more than Skinner, I would argue that, in addition, contextual readings generate new, different histories through time.

My third methodological remark goes to the critical potential of the contextualist approach by focussing on so-called ‘evaluative-descriptive terms’.\footnote{With the introduction of “international legal personality”, Leibniz coined such a term for international law. As fundamental and ambiguous concepts of political or legal thinking, these terms are the locus of change: their meanings are contested, ‘manipulated’ and ‘moving’, and bring about change in a thought system as a whole. ‘International legal personality’ has been such a place of political struggle over the international legal system and the moral identity of international society. This is visible in the work of Leibniz, whose political agenda and theory of universal justice as [in his words] ‘wise charity’}
were the drivers for his introduction of the concept of international legal personality. It meant to ground a new *universal* system of law and justice that applied to European, Chinese, Indian, and Russian rulers alike and obliged them to rule justly – that is, wisely and charitably.

In the 19th century, another struggle over who counted in international law and who did not, defined the use of international legal personality as a legal concept. By denying full international legal personality to so-called ‘uncivilised’ nations, international law was reinforced as a system of domination and subordination, while the injustices of colonisation and exploitation were facilitated. In the 20th century, Hersch Lauterpacht among others focused on international legal personality (or in his time: the *subjects* of international law), in order to argue radical change of the international legal system. Lauterpacht held that the human individual, not the State, was the *true* international legal person with rights and duties in international law. These intellectual histories challenge us to question the politics and morality of today’s conception of international legal personality. Thus a historical inquiry into a fundamental concept turns into an inquiry into the politics and justice concerns behind the conceptual innovations or commitments of today.

Doing history thus opens up a critical space that allows for dialogue between past and present international legal thought. This in turn enables us to question our present-day conceptions and underlying politics and notions of justice, and subsequently to theorise change of present-day international law and international legal thought.56

4 ‘Seeking change by doing history’

So, if I claim that ‘history and theory’ projects are also about the present and about theorising change, it is only fair to say something about my own normative interests or: what change I would be seeking.

One example of a project in which doing history develops into theorising about future international law is the joint research project with Beijing-based scholar Anthony Carty. Our project on rule-of-law-for-world-order a.o. seeks to carve out an alternative history of thought by recovering early modern European as well as Chinese ideas about guiding and constraining power. This brings to light a concept of ‘rule-of-law-as-justice’, which allows room for both ethics and practical wisdom in the law. It also provides a basis for a transcultural dialogue between the complex traditions of European and Chinese thought; that is, on *shared* humanity as the basis for global justice and standards to guide judgement in government.57 It is an attempt to move be-
yond Eurocentrism and the European versus non-European dichotomisation in international legal thought.

The project is part of a personal research agenda that engages with questions about the moral identity of international law and fundamental concepts such as personality or subjectivity in international law.

I conclude on this point by briefly looking ahead. In recent years I have been turning to Hugo Grotius’ understandings of the human subject, society and law. Ensuingly I have come to question the so-called ‘Westphalian model’ of the international legal system, which is grounded on a Hobbesian anthropology, and to theorise an alternative conception of international law and justice that is based on the social or intersubjective nature of international life.

Thomas Hobbes transposed what he conceived of as the characteristics of humans living in a state of nature – solitary, fearful, distrustful and pre-emptively aggressive – to the State agent in international affairs. The fully autonomous, self-interested and shrewdly calculating State then has defined the liberal tradition: self-preserving and self-serving actions are by definition legitimate. International life is nothing more than a perpetual struggle for survival. The so-called Westphalian model of sovereignty and international order then has effectuated a strict separation between subjects of law and justice within the territorial state – its citizens mostly –, and outside the state. Justice exists only within the state, not among states. International law and institutions then are merely pretextual.

I have two problems with this reading. First, in my view, the emphasis on Hobbes is unwarranted and has set mainstream thinking about international society and international law on the wrong track. This is all the more so – which brings me to my second contention – as the globalised and hyperconnected world of today demands an alternative for the traditional Westphalian, let’s say Hobbesian, model.

For Grotius, then, humans are by nature not solitary but social creatures. They have the capacity to reason, to will freely, to care, to make a promise and keep their word. As such, they are capable of being trustworthy and acting responsibly, both as an individual and collectively. In Grotius’ understanding, also international society is a natural society of subjects or agents seeking personal as well as impersonal – that is, institutionally mediated – relations. International legal thought that builds on Grotius’ insights thus tends to explain international law and institutions as developing naturally from social life, enabling production of trust and solidarity. Notwithstanding the ambivalence in Grotius’ thinking, the recovery of his anthropology of the capable subject is an important counterpoise to the Hobbesian anthropology that is predominant in contemporary international law; it provides the earlier men-
tioned ‘enlarged sense of possibility’ about international society and international law. Bringing Grotius into a conversation with the philosophical anthropology or ‘hermeneutics of the Self’ of the French philosopher Paul Ricoeur helps us theorise and operationalise human potentiality in this respect.

Drawing on Ricoeur, I argue for a reconceptualisation of “international legal personality” as a stage in the phenomenology of the human subject, as the ethico-legal identity of humans. I concur with Ricoeur on that the human desire for the good life includes the desire ‘to live well with and for others in just [in the sense of ‘justice’] institutions’. International legal personality then is reconceived as a dimension of the capable human subject, who seeks just institutions to constitute selfhood reflexively through relations with others. In my view, Ricoeur’s philosophy helps us conceive of international law and institutions as ways to mediate mutual recognition and respect globally and to effectuate international or transnational social life. There are obvious reasons – both for normative and explanatory power – to move from the understanding of international life as a struggle for survival to its understanding as a struggle for mutual recognition. Building on research into Grotius’ anthropology, I aim to develop historical research on trust and distrust as foundational concepts for international order, also to create space for critical reflection on today’s international political and legal institutions and their role in the reproduction of distrust and trust, injustices and justice.

As a second and related point, in today’s hyperconnected and globalised world, I would argue, the human desire for life together in just institutions moves rapidly beyond so-called Westphalian, modern territorial state-based thinking and traditional notions of citizenship, to a scale that includes international or global institutions. I see this paradoxically confirmed in the current backlash against these institutions, disappointment with for example the EU and with neoliberal global trade regimes that fail to safeguard social justice.

In our post-Westphalian age, justice claims go across borders. But for now the institutional and legal architecture that can accommodate these claims and assign obligations on a new scale is lagging behind. In view thereof, it is valuable to continue research on the phenomenology of international legal personality and the moral identity of international law and institutions. My aforementioned conceptualisation of just international institutions and international legal personality has focused on legal-cultural recognition and meta-political representation. However, for analyzing and addressing the questions in our time it seems inevitable that the socioeconomic dimension of justice be added. For the global poor, political misrepresentation in the international
system is a real concern. Ricoeur’s theory of justice may be complemented for example with the three-dimensional conception of justice of critical theorist Nancy Fraser (recognition, representation and redistribution).\textsuperscript{64} A three-dimensional conception of justice means to guarantee equal recognition by and representation in international institutions and international law, and also to include \textit{distributive} reasoning in response to neoliberal globalisation and transnational socioeconomic injustices.

5 Conclusion: Between cynicism and commitment

‘This Cannot Be How the World Was Meant to Be’.

Philip Allott’s words bespeak a disappointment with the world as he found it. In my lecture the citation also points to a general dissatisfaction with international law and international legal historiography, which actuated the field of ‘history and theory of international law’.

I have argued moreover that doing history is not just about understanding past and present-day international legal thought; it is also about \textit{seeking change}. About stepping outside old assumptions, conceptualisations and theories, and about creating a critical space to question them and then theorise alternatives in order to change international law and society.

Allott’s complaint may reflect one part of what Martti Koskenniemi has described as an inherent condition of the international law profession: the life-time oscillation ‘between commitment and cynicism’.\textsuperscript{65} Commitment to international law and institutions because of their potential for emancipation and justice. Looming cynicism, or at least profound doubt, because of the dark sides of international law. I agree with Koskenniemi that we cannot escape these two positions – but that is not the same as being trapped. For the international lawyer doing history, this oscillation is no longer \textit{unreflective}. Freely and consciously navigating the critical space that has opened up between present and past international legal thought, the international lawyer is able to situate herself historically and to orient herself morally and politically when reimagining international law and institutions.

6 Gratitude

At the end of this Lecture, I would like to thank the Executive Board of the University and the Dean of the Law Faculty for the trust placed in me with my
appointment to the Chair of ‘History and Theory of international Law’. Also, my thanks go to Edgar du Perron who was Dean of our Law School at the time of my appointment and to Ernst Hirsch Ballin and André Nollkaempfer for their support. I am grateful, and proud, to work at a law school where critical-constructive thinking is an explicit part of teaching and research.

I am profoundly grateful to Peter Kooijmans, my Doktorvater, who asked me to do my PhD with him in Leiden while I had made plans to go elsewhere. I am so glad I stayed and feel privileged to have learned so much from Peter. I am grateful to Jeanne for continuing the friendship.

Dear colleagues of the Law School, I have had the privilege of working with many of you in different capacities. Whether in the context of teaching the course on Fundamental Rights; or heading the Office to the Faculty’s PhDs together with Kim Bierhoff and Aernout Nieuwenhuis; or supervising Master and PhD theses together with my colleagues at the International and European Law Department, it has always been a great pleasure working with you. I would like to thank all my colleagues at the Department by thanking Yvonne Donders as our much appreciated Chair. To all my colleagues: the stimulating conversations and discussions make our Law School such an enjoyable place. Thank you.

Since doing history and theory is all about dialogue between past and present international legal theory, I am very grateful to Jean d’Aspremont for our collaboration here in Amsterdam and hopefully its transnational continuation. Similarly I value the conversations with Ingo Venzke, Director of the ACIL. I look forward to continuing sharing in both ACIL’s stimulating research environment and our Faculty’s ‘Law and Justice across Borders’ research programme.

Dear students: doing history matters. Without historical knowledge and sensitivity we lose perspective and name a café after slave-trader Peter Stuyvesant, even in 2017; we call for a revival of the “VOC mentality” without recognising the dark sides of Dutch commercial expansion, or we do not know what is meant when the Ministry of Foreign Affairs positions Dutch Foreign Policy in the “Grotian Tradition”. Historical knowledge and sensitivity give you a stronger basis in your professional life, whatever you will do. And, discussing together a case of contemporary history such as the 2002 Torture Memos drafted by US Legal Counsel to construct legitimacy of waterboarding and avoid application of the Geneva Conventions, helps us reflect on our responsibilities as international lawyers.

In his 1893 farewell speech as a professor of this university, Tobias Asser stated, and I quote with appreciation: ‘Much, as one of the old Rabbis said, have I learned from my teachers, even more from my fellow students, but
most did I learn from my students.\footnote{end of quote} Often we hear the call for research-based teaching, but here I would like to underscore the value of teaching-based research. I look forward to continuing our exchanges in class.

Dear colleagues at the Asser Institute, it is a great pleasure working with you all. We are creating a vibrant research community at the Institute and thanks to the dedication and hard work of the whole Asser team we are able to organise many high-level events and educational programmes, thus contributing to critical-constructive thinking in The Hague.

Dearest friends, I am grateful for what we mean to each other. Thanks so much for forgiving me a somewhat workaholic lifestyle. It does in no way reflect the meaning your friendships have for me.

My dearest brother Ronald, you know me so well. Thank you so much for your endless support, wisdom and humour. There are few with whom I can laugh so well. Together with Willemijn and Emma I am sure we will continue to have lots of fun.

I am immensely grateful to my parents for their unwavering and loving support of my academic endeavours throughout the years. Thank you so much for always having faith in me, for being endlessly interested in our lives and work and for the always lively exchanges. We look forward to many years to come.

My final words were the first I wrote; they are for Kiki. I know you do not like these public statements. Allow me just to say that without us, already for many happy years, I would not be standing here today. That you are going to walk this aisle with me, fills me with the greatest joy and gratitude.

Ik heb gezegd.
Notes

3. Papers of this Symposium will be published in the Leiden Journal of International Law.
4. In 1990 the European Journal of International Law immediately started publishing studies of the life and work of early twentieth century international lawyers. The Journal of the History of International Law was launched in 1999. This first issue includes a bibliography: Macalister-Smith and Schwietzke, 1999, p. 136-212. See also e.g. Peters and Fassbender (eds), 2012.
5. See also Bandeira Galindo, 2012, p. 86-103.
15. Histories that portray international law merely as a force for progress of humanity and international lawyers as prophets of peace. The EJIL series mentioned in footnote 4, broke with that hagiographical writing of history. See also e.g. Thomas Skouteris’ work on progress, in history writing on international law: Skouteris, 2010. An example of hagiographic and teleological history writing on Grotius and international law in general may be found in the work of Cornelis van Vollenhoven, e.g. Van Vollenhoven, 1918, with this amazing final sentence: ‘Het volkenrecht van Grotius staat aan de deur, en het klopt. Driehonderd jaar heeft men het laten kloppen. Nu wordt het ons te machtig. Het slot is nog niet om, maar de grendels zijn al weggeschoven.’ See also Laurent, 1869; on the latter, see e.g. Koskenniemi, 2002a and 2011a. On the Eurocentric nature of international legal history, see also Koskenniemi, 2011a, p. 152-176; Becker Lorca, 2012, p. 1034-1057.
17. I use history or intellectual history of international law and history of international legal thought somewhat interchangeably.
21. Geoffrey Elton’s anti-theoretical empiricism set him in opposition to e.g. someone like Michel Foucault or Hayden White, whose *Metahistory* (1973) played a significant role in the ‘linguistic turn’ in history too.


23. Hunter, 2013, p. 289: ‘Scholars engaged in the advocacy of present political positions (often postcolonial) have attributed modern doctrines (generally incriminating) to early modern political jurists: as if the truth and impeccability of modern ‘progressive’ scholarship might be demonstrated by inculping the error and venality of its intellectual ancestors. It is thus widely claimed that the early modern law of nature and nations – Grotius, Pufendorf, Vattel – employed perfectionist conceptions of man and stadial conceptions of his progressive civilisation whose Eurocentric character allowed non-European peoples to be viewed as backward and barbarous. This facilitated the exclusion of such peoples from the protective cordon of the law of nations and provided a free field for European imperialism and colonialism.’


26. Doing history is doing politics. See e.g. Becker Lorca, 2014, p. 16, 22-24; also, Anne Orford argues that ‘historical work is itself a politics.’: Orford, 2017, p. 311.


28. See e.g. Becker Lorca, 2014, p. 15; see also Skouteris, 2010.


32. Anghie, 2004; see also e.g. Koskenniemi, 2013a, p. 3-37.


34. Ibid., p. 2. A Third World Approach scholar like B.S. Chimni has also pointed to the negative consequences of treating the past as history. It would create blindspots for how colonialism-imperialism shaped contemporary international law.


39. Kemmerer, 2015, p. 2: Jacob Katz Cogen has pointed out that many international law scholars ‘focus only on the precursors to contemporary law, its institutions and actors, and seek merely to provide the law as it stands with an affirmative historical foundation.’ Skinner is not affirmative history, on the contrary.


41. ‘History wishes to be objective but it cannot. […] It wishes to make past events contemporary, but it must at the same time restore the distance and depth of historical remoteness’, Ricoeur, 1965, p. 76.

42. Collingwood, 1993, p. 10: He who gave the epistemological debate on doing history a definite hermeneutical turn.


44. Skinner, 1988, p. 287.

45. Ibid., p. 287.
46. Ibid., p. 286.
47. Ibid., p. 287.
50. Skinner’s contextualist approach was itself a methodological response to the British historiographical narratives of imperialism and colonialism.
51. Skinner, 2002, p. 116: He explains in 1988 in ‘A reply to my critics’ and in 2002 even more concisely that ‘The appropriate context for understanding the point of such writers’ utterances will always be whatever context enables us to appreciate the nature of the intervention constituted by their utterances. To recover that context in any particular case, we need to engage in extremely wide-ranging as well as detailed historical research’.
52. Armitage, 2015, p. 119. Skinner was in part motivated to break from the grandnarrative of British imperialism.
54. The study of these fundamental concepts as places of political struggle gives us insight into how conceptual change happens, how concepts change while moving through time, and where and how ‘ideological innovation’ is sought.
55. Skinner, 1988, p. 110: ‘It is essentially by manipulating this set of terms that any society succeeds in establishing and altering its moral identity.’
56. With this move to theorising change, the – what Paul Ricoeur called – acquired ‘public meanings’ of a historic text may be brought into play too. The subjectivist dimension of contextual readings, recognises the generation of new, different meanings through time. It suffices to add here that theorising change may be fostered by including what Paul Ricoeur called the acquired ‘public meanings’ of a historic text. Paul Ricoeur has taught us that any text always has more meaning than the intended one by the author. See Ricoeur, 1965.
58. Ricoeur, 1992; Ricoeur, 2005.
60. Ricoeur, 1992, p. 239; Ricoeur, 2000, p. xv, 1-10.
62. Understanding international life as a struggle for recognition rather than for survival helps us better understand international relations and the possibility of international law. It remedies, moreover, the traditional obfuscation of international theorisation. International theory in the sense of speculation about relations between states becomes possible. Wight, 1966, p. 33.
64. Fraser, 2004; Fraser, 2005; Fraser, 2008; Fraser 2009. See also Marcelo, 2016, p. 143-160.
66. Asser, 1893, p. 11.
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