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International Law as a Belief System

This book reflects on the way in which international lawyers construct international legal discourse. It particularly zeroes in on the organisation of international legal discourse around some fundamental doctrines that constrain legal reasoning as a result of their inventing their own origin and their regulating their own functioning. It is argued in this book that the articulation of international legal discourse around fundamental doctrines that invent their own origin and regulate their own functioning thereby constraining legal reasoning constitutes the mark of a belief system.

The following chapters constitute an attempt to expose the extent to which international law bears the characteristics of a belief system. The exposition of international law as a belief system is meant to serve critique and should be read as an invitation to international lawyers to temporarily suspend their belief system and unlearn some of their knowledge and sensibilities about the fundamental doctrines they have been trained to reproduce and respond to. Exposing and suspending the international belief system constitute the ambitions of the discussion that follows.

This introduction starts by sketching out the main expository claim developed in the following chapters whereby international law bears the characteristics of a belief system (1). It continues by situating such a descriptive claim in contemporary legal thought, especially in relation to the liberal pattern of legal thought that such a belief system epitomises (2). It then substantiates the ultimate ambition of this book, namely, the temporary suspension of the international belief system with a view to making room for a re-imagining of international law and its fundamental doctrines outside the belief system (3). A few observations on the related inquiries that are left at the periphery of the discussion carried out here are subsequently formulated with a view to preventing any misunderstanding as to the object of this book (4). And finally, this introduction

ends with a presentation of the chapters that populate this volume and indicates the way in which the discussion proceeds (5).

A few preliminary caveats are warranted. The claim that international law bears the characteristics of a belief system is exclusively applied to international legal discourse and, more specifically, to the way in which international lawyers build their arguments in relation to the fundamental doctrines of international law. It is true that the exploratory framework around which this book is constructed draws extensively on insights, reflections and tools developed in relation to domestic law and jurisprudence and could potentially be transposed to a whole series of non-international legal discourse. Yet the discussion unfolding in this book remains without prejudice to the question of whether a similar belief system is inherent in legal argumentation as a whole.[1] By the same token, it must be emphasised that this book exclusively grapples with contemporary understandings of the formation and functioning of the fundamental doctrines of international law as they emerged in the second half of the nineteenth century and were consolidated in the twentieth century. Although it is undeniable that such understandings are inherited from international classical legal thought as is discussed below,[2] the following chapters concentrate solely on the modern and contemporary variants of the fundamental doctrines of international law. Finally, it must be highlighted that the image of the formation and functioning of the fundamental doctrines that is produced in the following chapters is not meant to be exclusive of possible alternative outlooks.[3] The account offered here acknowledges that other models can similarly help us to understand

[1] Cf. the argument made by Pierre Schlag in relation to US law. See P. Schlag, 'Law as the continuation of god by other means' (1997) *California Law Review* 85.

[2] See Section 2.

[3] For other challenges to current models of cognition of international legal discourse, see Fredrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989); M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005); Philip Allott, 'Language, method and the nature of international law (1971) 45 *British Yearbook of International Law* 79; Fleur Johns, *Non-Legality in International Law: Unruly Law* (Cambridge: Cambridge University Press, 2013); Jutta Brunnée and Stephen J. Toope, *Legitimacy and Legality in International Law* (Cambridge: Cambridge University Press, 2010); I. Scobbie, 'Towards the elimination of international law: some radical scepticism about sceptical radicalism' (1990) 61 *British Yearbook of International Law* 339–62. More recently, see Justin Desautels-Stein, 'Chiastic law in the crystal ball: exploring legal formalism and its alternative futures' (2014) 2 *London Review of International Law* 263–96.

the formation and functioning of the fundamental doctrines of international law and the ways in which international legal discourse is constructed.[4] In this sense, the image produced here amounts to just one of the many possible representations of the formation and functioning of fundamental doctrines without the present account having any kind of rational or empirical superiority.[5]

1 The Expository Claim: International Law as a Belief System

This book makes the claim that international law bears the attributes of a belief system, for the fundamental doctrines (e.g. sources, responsibility, statehood, personality, interpretation, *jus cogens*) around which international legal discourses is articulated invent their origin and dictate their own functioning. According to this expository framework, fundamental doctrines' invention of their origin and regulation of their functioning are made possible by their representation as rules

[4] These argumentative patterns can be approached from the perspective of the aesthetics of legal arguments. See e.g. P. Schlag, 'The aesthetics of American law' (2002) 115 *Harvard Law Review* 1047. They can also be approached from the perspective of the episteme. See e.g. Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford: Oxford University Press, 2016), pp. 12–13. See also the other structural conditions of legal reasoning identified by Kratochwil, *Rules, Norms, and Decisions*, pp. 38, 232. For a constructivist account of the processes that drive the operation of international legal arguments, see generally Jutta Brunnee and Stephen J. Toope, 'International law and constructivism: elements of an interactional theory of international law' (2000) 39 *Columbia Journal of Transnational Law* 19. For a structuralist account of the constraints on international legal argumentation, see Justin Desautels-Stein, 'The judge and the drone' (2014) 56 *Arizona Law Review* 117. For another famous theory of constraints, see M. Troper, 'Les contraintes de l'argumentation juridique dans la production des normes', in O. Pfersmann and G. Timsti (eds.), *Raisonnement Juridique et Interpretation* (Paris: Publication de la Sorbonne, 2001), pp. 35–48. See also the communitarian of constraints famously identified by Stanley Fish in *Is There a Text in This Class? The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1980), for whom interpretation is itself a structure of constraints (in particular see p. 356). See also J. Vinuales, 'On legal inquiry', in D. Alland, V. Chetail, O. de Frouville and J. Vinuales (eds.), *Unity and Diversity of International Law: Essays in Honour of Professor Pierre-Marie Dupuy* (Leiden: Martinus Nijhoff, 2014), pp. 45–75. Vinuales construes beliefs, practices, norms, institutions, treaties, laws and instruments as topography. See also R. Collins, *The Institutional Problem in Modern International Law* (Oxford: Hart, 2016). Collins explains and evaluates the self-created deficiency of international law through the common application thereto of some kind of rule of law idealism.

[5] For a similar attempt to describe legal reasoning and generate readers' imaginative empathy for a certain image of legal reasoning without claiming superiority over others, see P. Schlag, 'The aesthetics of American law' (2002) 115 *Harvard Law Review* 1049 at 1054.

derived from some key international instruments (e.g. the Statute of the International Court of Justice, the Montevideo Convention on Rights and Duties of States, the Vienna Convention on the Law of Treaties, the Articles on State Responsibility, the Reparations Advisory Opinion of the International Court of Justice), thereby allowing the formation and functioning of fundamental doctrines to be explained by fundamental doctrines themselves.

According to the expository claim made in the following chapters, three specific features of international legal discourse are construed as forming a belief system: the idea that fundamental doctrines constitute rules (*ruleness*), the derivation of fundamental doctrines from international instruments as a result of a fictive history (*imaginary genealogy*) and the explanation of the formation and functioning of fundamental doctrines by fundamental doctrines themselves (*self-referentiality*). It is by virtue of such ruleness, imaginary genealogy and self-referentiality that fundamental doctrines come to invent their own origin as well as dictate their own functioning, thereby generating an experienced sense of constraint among international lawyers.[6] This phenomenon is construed here as the expression of a belief system.

The following chapters will expound on these features of international legal discourse that are characteristic of a belief system.[7] Yet a few preliminary definitional and methodological observations are warranted at this stage. According to the understanding informing the expository framework developed in this book, a belief system is a set of mutually reinforcing beliefs prevalent in a community or society that is not necessarily formalised.[8] A belief system thus refers to dominant interrelated attitudes of the members

[6] Regis Debray, *Transmitting Culture*, trans. Eric Rauth (New York: Columbia University Press, 1997), pp. 19–20: '[S]trictly speaking, there are no "founding key words" or "founding principles" (ill-chosen expressions at best) from which traditions and institutions of transmission originate . . . The institutional body supposed to relay these disembodied word-principles has gradually invented its own origin.'

[7] See esp. Chapter 2.

[8] The notion of system of beliefs is sometimes equated with the notion of ideology. See Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1986), pp. 1–3. Ideology does not really capture what I have in mind because of the risk of being equated with grand ideologies, that is, an entire system of thoughts and values. This risk is acknowledged by Shklar (*ibid.*, pp. vii – viii; see also p. 4). Cf. S. V. Scott, 'International law as ideology: theorizing the relationship between international law and international politics' (1994) 5 *European Journal of International Law* 313–25. For some general remarks on the links between belief system, symbol system, idea system and ideology, see also Anthony Giddens, *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (Basingstoke: Macmillan, 1979), pp. 165–97.

of a community or society as to what they regard as true or acceptable or as to make sense of the world. In a belief system, truth or meaning is acquired neither by reason (rationalism) nor by experience (empiricism) but by the deployment of certain transcendental validators that are unjudged and unproved rationally or empirically.[9] This set of validators on the basis of which truth, meaning or sense is constructed is self-explanatory and constitutes what the believers constantly turn to for 'revelation'.[10] The self-explanatory nature of these validators is what allows these validators to acquire a transcendental character and be displaced outside the social praxis where they have been shaped.[11] These validators are simultaneously said to be systemic and to constitute a belief system because of their mutually supportive character and the fact that they explain, justify and vindicate one another.

That law in general is presented as a belief system is not new.[12] Nor is the exposition of international law as a belief system.[13] However, the

[9] Cf. P. Schlag, *Laying Dow the Law: Mysticism, Fetishism, and the American Legal Mind* (New York: New York University Press, 1996). See also P. Schlag, 'Law as a continuation of god by other means' (1997) 85 *California Law Review* 427, esp. 437–40.

[10] In the same vein, see P. Bourdieu, 'The force of law: toward a sociology of the juridical field' (1987) 38 *Hastings Law Journal* 805 at 825 and 844. It could be added that belief systems necessarily come with some form of symbolic violence as they impose hierarchies and ways of being and knowing while also restricting the possibility of an alternative world. On the notion of symbolic violence, see P. Bourdieu and L. Wacquant, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992), p. 15. See the remarks of J. D. Schubert, 'Suffering/symbolic violence', in Michael Grenfell (ed.), *Pierre Bourdieu: Key Concepts*, 2nd edn (Durham, NC: Acumen Press, 2012), pp. 179–94, esp. pp. 191–92.

[11] I owe some of these remarks to an exchange with Dimitri Van Den Meerssche.

[12] A. A. Leff, 'Unspeakable ethics, unnatural law' (1979) *Duke Law Journal* 1229, esp. 1231 and 1245–47 (Leff speaks of the Constitution as putting in place a 'god-based system'); P. Schlag, 'Law as the continuation of god by other means' (1997) 85 *California Law Review* 427; John Hart Ely, 'Constitutional interpretivism: its allure and impossibility' (1978) 53 *Indiana Law Journal* 399. The idea of belief has sometimes been referred to in a more general way. See e.g. B. Tamanaha, 'The history and elements of the rule of law' (2012) *Singapore Journal of Legal Studies* 232, for a description or explanation of the way in which legal argumentation works. In contrast, others have preferred to rely on psychological and behavioural frameworks, for instance, by referring to the role of law as 'father substitute' rather than belief system. This is found in the scholarship of legal realists who reject the theological analogy and claim that law is 'paternalised', not 'divinified'. See Jerome Frank, *Law and the Modern Mind* (New York: Transaction Publishers, 2009), pp. 99, 210–18.

[13] Shklar, *Legalism*. See also J. Beckett, 'Countering uncertainty and ending up/down arguments: prolegomena to a response to NAIL' (2005) 16 *European Journal of International Law* 213 at 214 ('Law exists because we believe in it; we do not believe in it because it exists'). See also Bianchi, *International Law Theories*, pp. 8, 11 (who refers to

claim that international law constitutes a belief system that is made here is more specific and has never been fully articulated in international legal thought. In fact, it is unprecedented to present international law as a belief system where fundamental doctrines are held as transcendental validators that are left unjudged and unproved rationally or empirically by virtue of their self-explanatory character and to which international lawyers constantly turn for guidance without such a turn to being considered the result of a few conventional moves repeated cynically or in bad faith.[14]

It should be noted that from a sociological and comparative vantage point, there is nothing surprising that a discipline such as international law and its practice are organised around a belief system. Most professional groups have belief systems that determine their practice and which they are trained to maintain and respond to.[15] Such belief systems coexist with other belief systems of a very different nature. International law is no different in this respect.

The belief system at work in international legal discourse is not a states' belief system. It is the belief system of a community of professionals who constantly turn to some key unjudged fundamental doctrines to construct their legal discourse. The state is hardly mentioned in the following discussion. This is not only because the presupposition that states can have beliefs has always been conceptually very weak.[16] This is also because the very idea of state-centricism in the making of the fundamental doctrines of international law is itself a product of the belief system discussed in the following chapters. Chapter 5 will show in particular that suspending the belief system brings about a radical departure from the state-centricism that occasionally informs the dominant understandings of the making and functioning of fundamental doctrines of international law.

It should similarly be made clear at this preliminary stage of the argument that claiming that international law bears the characteristic

the beliefs of international lawyers and the ways such beliefs constitute the necessary background for the exercise of their professional skills).

[14] The foregoing is not to say that there is no consciousness at all about the belief system. See the remarks of Judith N. Shklar, *Legalism*, p. 10. On this point, see Chapter 3.

[15] On the possible awareness of the belief system by international lawyers, see Chapter 3.

[16] For a criticism of such anthropomorphic construction in international legal thought and practice, see J. d'Aspremont, 'The doctrine of fundamental rights of states and anthropomorphic thinking in international law' (2015) 4 *Cambridge Journal of International and Comparative Law* 501. See, generally, T. Adorno and M. Horkheimer, *Dialectic of Enlightenment* (London: Verso, 1997), pp. 6–7.

of a belief system falls short of equating international law to a religious belief system. Belief systems can be very diverse and cannot be reduced to formalised religious systems.[17] Although they similarly rely on some transcendental validators to which the believers turn for truth and revelation,[18] religious belief systems have their complex specificities that cannot easily be transposed to international legal discourse.[19] This is why, in the chapters that follow, the notion of belief system is used in a generic sense and in a way that distinguishes it from religious belief system. This is also the reason why theological vocabularies, despite their well-known descriptive and analytical virtues,[20] as well as their

[17] See, generally, Elizabeth A. Minton and Lynn R. Khale (eds.), *Belief Systems, Religion, and Behavioral Economics* (New York: Business Expert Press, 2014).

[18] It is the merit of David Friedrich Strauss to have been one of the first scholars to systematically develop such a critique of the sources of the Christian gospels. See David Friedrich Strauss, *The Life of Jesus Critically Examined*, trans. George Eliot, 4th edn (London [1835]).

[19] Cf. D. Kennedy, 'Images of religion in international legal theory', in Mark Janis (ed.), *Religion and International Law* (Dordrecht: Kluwer Academic Publishers, 1999), p. 153 ('Once our enlightenment narrative has been jostled, the deep and abiding interaction of international law and religion seems unavoidable').

[20] Theological vocabularies are commonly valued for their analytical and descriptive virtues. It is usually claimed that the use of theological vocabularies for analytical and descriptive purposes dates back to Liebniz (this claim is made by Carl Schmitt himself: Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 1985), p. 37). It was, however, Schmitt who – although he himself consciously avoided the use of explicitly theological notions – popularised the idea that law and politics are articulated around secularised theological concepts (see Carl Schmitt, *Political Theology*, esp. pp. 36–38). On this aspect of Schmitt, see Chantal Mouffe, *The Return of the Political* (London: Verso, 1993), pp. 121–22; Marc de Wilde, 'The state of exception: reflections on theologico-political motifs in Benjamin and Schmitt', in Hent de Vries and Lawrence E. Sullivan (eds.), *Political Theologies: Public Religions in a Post-Secular World* (New York: Fordham University Press, 2006), pp. 188–200. For some critical remarks on the use of Carl Schmitt by international lawyers in general, see R. Howse, 'Schmitt, Schmitteanism and contemporary international legal theory', in A. Orford and F. Hoffmann (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016), pp. 212–30. Walter Benjamin also features prominently among those who saw a structural analogy between theological and legal concepts and resorted to theological categories as a descriptive and analytical tool for law. See Walter Benjamin, 'Critique of violence', in *Selected Writings: Volume 1: 1913–1926* (Cambridge, MA: Belknap Press, 1996). See Judith Butler, 'Critique, coercion, and sacred life in Benjamin's 'Critique of Violence'', in de Vries and Sullivan (eds.), *Political Theologies*, pp. 201–19. For a strong rejection of the theological analogy, see Frank, *Law and the Modern Mind*, pp. 200–18.

popularity in international legal scholarship,[21] are avoided in the course of this heuristic exercise.[22]

The notion of fundamental doctrines also warrants a few definitional observations. For the sake of the following chapters, the fundamental doctrines of international law refer to organised clusters of modes of legal reasoning that are constantly deployed by international lawyers when they formulate international legal claims about the existence and extent of the rights and duties of actors subjected to international law and the consequences of breaches thereof.[23] They are distinct from other doctrines that enunciate the standards of behaviour to which international actors recognised by international law are subjected. Fundamental doctrines are diverse. They include clusters of modes of legal reasoning pertaining to sources, statehood, responsibility, interpretation, *jus cogens*, personality and so on. These fundamental

[21] International lawyers themselves have relished using the theological analogy for analytical and descriptive purposes. See e.g. James Crawford, 'International law as discipline and profession' (2012) 106 *American Society of International Law Proceedings* 471; J. Beckett, 'The politics of international law – twenty years later: a reply', *EJIL:TALK!*, 19 May 2009, available at www.ejiltalk.org/the-politics-of-international-law-twenty-years-later-a-reply/; Martti Koskenniemi, 'The fate of public international law: between technique and politics' (2007) *Modern Law Review* 1 at 30; A. Carty, *Post-Modern Law: Enlightenment, Revolution and the Death of Man* (Edinburgh: Edinburgh University Press, 1990); Martti Koskenniemi, 'Miserable comforters: international relations as new natural law' (2009) 15 *European Journal of International Relations* 395 at 396; D. Kennedy, 'When renewal repeats: thinking against the box' (2000) 32 *New York University Journal of International Law and Politics* 2, 335 at 375.

[22] In an earlier version of the argument made here, fundamental doctrines were referred to as 'gospels', and their formal repositories were referred to as 'canonical texts'. For a different use of the idea of 'gospel' in relation to the scholarship produced by some of the most authoritative journals in the field, see J. Dugard, 'The future of international law: a human rights perspective – with some comments on the Leiden school of international law' (2007) 20 *Leiden Journal of International Law* 729–39 at 731 ('As academic international lawyers outnumber international law practitioners, unlike the situation with any branch of national law, the opinions of academic lawyers become the law – at least as far as many academic lawyers are concerned. We have the gospels according to the *American Journal of International Law*, the *British Year Book of International Law*, the *Annuaire français*, and the *Zeitschrift* . . . ').

[23] For a useful overview of the various uses of the notion of 'doctrine', see T. Skouteris, *The Notion of Progress in International Law Discourse* (The Hague: TMC Asser Press, 2010), pp. 94–95. He distinguishes three meanings of the term 'legal doctrine', referring to the writing of the most qualified publicists, the programmes and sets of policies proposed by powerful international players and the clusters of international legal rules and analytical categories that allegedly appear in the minds of legal practitioners to operate as analytically distinct normative blocks. For the sake of this study, and as should be clear by now, doctrine is used in this third sense.

doctrines of international law accordingly constitute the seat of international legal discourse, and they correspond, albeit approximately, to what is sometimes called in the literature 'secondary rules',[24] 'sets of conventional disciplinary protocols of reasoning',[25] argumentative 'codes of conduct',[26] 'operative ideals',[27] clusters of 'topois',[28] 'common tropes/argument patterns'[29] or 'rules of legal art'.[30] To some extent they also bear resemblance to what is sometimes called 'legal conventions'.[31] Based on this understanding, fundamental doctrines establish not only the 'starting points'[32] for arguments but also the 'path'[33] for arguments and counter-arguments in international legal discourse. The notion of fundamental doctrines is further spelled out in Chapter 2.

2 The Context: The Belief System of International Law Then and Now

The claim that international law bears the characteristic of a belief system must be situated historically. In this regard, it is submitted here that the characteristics of a belief system born by international legal discourse can be construed as the expression of a liberal paradigm – what has also been

[24] See, generally, H. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1994), pp. 94–95, 110–12. For the reasons justifying why this terminology is rejected here, see Chapter 2.

[25] Akbar Rasulov, 'The doctrine of sources in the discourses of the Permanent Court of International Justice', in C. Tams and M. Fitzmaurice (eds.), *Legacies of the Permanent Court of International Justice* (Leiden: Martinus Nijhoff, 2013), pp. 271–72.

[26] Shklar, *Legalism*, p. 1.

[27] *Ibid.*

[28] See Kratochwil, *Rules, Norms, and Decisions*, p. 38. It must be acknowledged that fundamental doctrines, as they are understood here, do not strictly mirror the four main lists of topoi; see Kratochwil, *Rules, Norms, and Decisions*, p. 232. Yet fundamental doctrines share the same structuring effects. It must also be highlighted that fundamental doctrines are not exclusive of other constraints of reasoning being deployed in international legal argumentation.

[29] See Akbar Rasuov, 'Writing about empire: remarks on the logic of a discourse' (2010) 23 *Leiden Journal of International Law* 449 at 460 ('every discursive field operates on the basis of a certain repertoire of common tropes-argument patterns and templates that are used more regularly than others by its participants').

[30] Julius Stone, *Legal System and Lawyers' Reasonings* (Redwood City, CA: Stanford University Press, 1968), p. 23.

[31] R. Dworkin, *Law's Empire* (Cambridge, MA: Belknap Press, 1986), pp. 120–24.

[32] Kratochwil, *Rules, Norms, and Decisions*, pp. 38, 220.

[33] *Ibid.*, p. 241 ('law creation is . . . path- and field-dependent in that dogmatic (systematic) considerations and/or presidential "starting-points" provide the context in which the decision has to be made. Thus, creativity is circumscribed by guidelines that specify what good legal arguing is'). Please note that Kratochwil borrows the idea of 'path' from Josef Esser.

called 'liberal legalism'[34] or, more simply, 'legalism'[35] – directly inherited from the Enlightenment.[36] Said differently, the international belief system exposed here can be construed as a manifestation of the liberal pattern of legal thought that informed classical and, subsequently, modern international legal thought.[37] This means that the invitation made in this book to suspend the belief system that permeates international legal discourse extends the critique of liberal patterns of arguments that was initiated three decades ago in international legal scholarship. The liberal trappings of the belief system exposed here and the kinship of the latter with the liberal paradigm can be explained as follows.

It must first be recalled that the liberal paradigm with which this book engages certainly does not constitute a monolithic idea. At least two dimensions thereof can be distinguished. On the one hand, the liberal paradigm refers to pluralism, a certain cosmopolitan ethos, the defence of individual liberty and some specific configurations of political institutions. On the other hand, the liberal paradigm refers to some form of rationalism and what has been called 'the illusion of providing itself with its own foundations' that is necessary to create the idea of a rational consensus.[38] Both dimensions of the liberal paradigm have permeated international legal thought and practice. Irrespective of the fate of the former dimension of the liberal paradigm in international legal thought,[39] it is argued here that the belief system discussed in this book – and thus fundamental doctrines' self-invention and self-regulation – is more directly inherited from the latter dimension of the liberal paradigm.

[34] F. Hoffman, 'International legalism and international politics', in A. Orford and F. Hoffmann (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016), p. 961.

[35] Shklar, *Legalism*, pp. viii, 1–28.

[36] For a different use of liberalism in international legal thought by reference to a certain configuration of the international society as a collection of liberal democracies, see D. Joyce, 'Liberal internationalism', in A. Orford and F. Hoffmann (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016), pp. 471–87.

[37] I owe several of the thoughts that follow to exchanges with Justin Desautels-Stein, Sahib Singh, and John Haskell.

[38] On this distinction between two dimensions of liberalism, see Chantal Mouffe, *The Return of the Political* (London: Verso, 1993), pp. 123–24 (drawing on Hans Blumenberg, *The Legitimacy of the Modern Age*).

[39] According to Martti Koskenniemi, the liberal cosmopolitan ethos may have possibly lapsed in international legal thought. See M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).