

THE CAMBRIDGE HISTORY OF
INTERNATIONAL LAW

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VOLUME I:
The Historiography of International Law

Volume I of *The Cambridge History of International Law* introduces the historiography of international law as a field of scholarship. After a general introduction to the purposes and design of the series, Part I of this volume highlights the diversity of the field in terms of methodologies, disciplinary approaches and perspectives that have informed both older and newer historiographies in the recent three decades of its rapid expansion. Part II surveys the history of international legal-history writing from different regions of the world, spanning roughly the past two centuries. The book therefore offers the most complete treatment of the historical development and current state of history writing on international law, using both a global and an interdisciplinary perspective.

RANDALL LESAFFER is Professor of Legal History at KU Leuven in Belgium and Tilburg University in the Netherlands. He is the author of *European Legal History: A Cultural and Political Perspective* and co-editor of *The Cambridge Companion to Hugo Grotius*. He is the editor-in-chief of the book series *Studies in the History of International Law*, an editor of the *Global Law* series and an editor of the *Journal of the History of International Law*.

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INTERNATIONAL LAW

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Volume I	The Historiography of International Law
Part I	The Historiography of International Law: Methods and Approaches
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Part III	International Law in Asia during the Modern Age
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Part II	International Law in Late Medieval Europe
Volume vi	International Law in Early Modern Europe
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Part II	International Law in Old Regime Europe
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Vermeer, *The Art of Painting* (1668), painting Clio, Museum of Art in Vienna

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VOLUME I

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*Max Planck Institute for Comparative Public Law and International Law,
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 remain, accurate or appropriate.

Contents

<i>List of Plates</i>	<i>xi</i>
<i>List of Tables</i>	<i>xii</i>
<i>List of Contributors</i>	<i>xiii</i>
<i>Preface</i>	<i>xvii</i>

1 · Scope, Scale and Humility in the History of International Law	1
<i>RANDALL LESAFFER</i>	

PART I THE HISTORIOGRAPHY OF INTERNATIONAL LAW: METHODS AND APPROACHES

2 · A Thousand Flowers Blooming, or the Desert of the Real? International Law and Its Many Problems of History	49
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NEHAL BHUTA

3 · Political Thought and the Historiography of International Law	107
<i>MARK SOMOS</i>	

4 · The Turn to the History of International Law in the Field of International Relations	136
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GIOVANNI MANTILLA AND CARSTEN-ANDREAS SCHULZ

5 · Economic History and International Law: A Peculiar Absence	162
<i>CHRISTOPHER CASEY</i>	

Contents

PART II

THE HISTORIOGRAPHY OF INTERNATIONAL LAW:
REGIONAL TRADITIONS

- 6 · The Historiography of International Law in East Asia: A Tale of Two
Centrisms 187
KEUN-GWAN LEE
- 7 · The Historiography of International Law in Sub-Saharan Africa 216
INGE VAN HULLE
- 8 · The Historiography of International Law on the
European Continent 244
FREDERIK DHONDT
- 9 · The Historiography of International Law in Russia and Its
Successor States 273
LAURI MÄLKSOO
- 10 · ‘The Most Neglected Province’: British Historiography of
International Law 293
DAVID ARMITAGE AND IGNACIO DE LA RASILLA
- 11 · The View from the US Leviathan: Histories of International Law in
the Hegemon 330
JOHN FABIAN WITT
- 12 · Using History in Latin America 378
ARNULF BECKER LORCA

Index 428

The plates will be found between pages 212 and 213.

Plates

- 1 Meeting of the *encyclopédistes*
- 2 François Laurent
- 3 Ernest Nys
- 4 Cheonha Chongdo
- 5 Keiji Nishitani
- 6 Yasuaki Onuma
- 7 Tomb of Grotius in Delft
- 8 Sir Hersch Lauterpacht
- 9 Leo Gross
- 10 Taslim Elias at the ICJ
- 11 Dipesh Chakrabarty
- 12 Lauren Benton
- 13 Sundhya Pahuja

Tables

11.1	A matrix of international legal histories in the hegemon	334
11.2	The eras of international legal histories in the US	336

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Preface

RANDALL LESAFFER AND ANNE PETERS

Since the end of the Cold War, the history of international law has grown as an academic field. In the wake of this growth, studies that investigate the historiography of international law itself have emerged.

Over the twentieth century, when international legal history was a marginal and much-neglected topic, reflections on the historiography of international law were few and far between. They did not move beyond addressing basic methodological questions such as the understanding of 'international law' through historical typologies, periodisation or the use of a comparative approach.¹

The recent interest in the historiography of international law as an object of reflection goes in two directions. The first strand is formed by studies and debates on the relative merits of different methods, perspectives and trends for current and future research. In view of the multidisciplinary nature of the community of historians of international law, these studies are often inspired by methodological insights from adjacent fields and sometimes take the form of a mild 'contest of the faculties', in particular between law and history.² Out of these neighbouring fields, the methodological insights from the

¹ Some of the more profound studies of the later twentieth century include A.M. Connelly, 'The history of international law: a comparative approach', *Yearbook of World Affairs*, 32 (1987) 303–19; Wolfgang Preiser, 'Die Epochen der antiken Völkerrechtsgeschichte', *Juristenzeitung*, 11 (1956) 737–44; Wolfgang Preiser, *Die Völkerrechtsgeschichte. Ihre Aufgaben und Methoden* (Wiesbaden: Steiner 1964); Wolfgang Preiser, 'History of international law: basic questions and principles' in Rüdiger Wolfrum and Anne Peters (eds.), *Max Planck Encyclopedia of Public International Law*, vol. 4 (3rd edn, Oxford: Oxford University Press 2012) 896–902; Georg Schwarzenberger, 'Historical models of international law', *Current Legal Problems*, 25 (1972) 219–48; Heinhard Steiger, 'Probleme der Völkerrechtsgeschichte', *Der Staat*, 26 (1987) 103–26.

² Lauren Benton, 'Beyond anachronism: histories of international law and global legal politics', *Journal of the History of International Law*, 21 (2019) 7–40; Andrew Fitzmaurice, 'Context in the history of international law', *Journal of the History of International Law*, 20 (2018) 5–30; Anne Orford, 'In praise of description', *Leiden Journal of International Law*, 25 (2012) 609–25; Anne Orford, 'On international legal method', *London Review of*

Preface

history of political thought have cast the longest shadow. Oddly enough, most historians of international law have drunk less from the flush fountain of writings on the methodologies of other legal history – such as histories of Roman private law, canon law, common law, the *jus commune*, private law, constitutional law or criminal law.³

The second strand is historical surveys and analyses of past history writing, or histories of history writing on international law, often focusing on a particular author.⁴ The most impressive effort in this respect is the 2021 monograph by Ignacio de la Rasilla. The book surveys the historiography of international law of the past 200 or more years, combined with reflections on the various methods and perspectives. The author discusses nine different approaches: contextual, critical/postmodern, TWAIL/postcolonial, global, feminist, normative (legal-doctrinal), sociological, institutional and biographical.⁵

The first volume of *The Cambridge History of International Law* has the history of writing the history of international law as its prime subject. The

International Law, 1 (2013) 166–97; Anne Orford, 'International law and the limits of history' in Wouter Werner, Marieke de Hoon and Alexis Galan (eds.), *The Law of International Lawyers. Reading Martti Koskenniemi* (Cambridge: Cambridge University Press 2017) 297–320; Anne Orford, *International Law and the Politics of History* (Cambridge: Cambridge University Press 2021).

³ An exception forms Valentina Vadi, 'International law and its risks: methodological risks and opportunities', *Harvard International Law Journal*, 58 (2017) 311–52; Valentina Vadi, 'Perspective and scale in the architecture of international legal history', *European Journal of International Law*, 30 (2019) 53–72. For one of the most sophisticated recent authors on legal historiography, see Robert W. Gordon, *Taming the Past. Essays on Law in History and History in Law* (Cambridge: Cambridge University Press 2017).

⁴ Paolo Amorosa, *Rewriting the History of International Law. How James Brown Scott Made Francisco de Vitoria the Founder of International Law* (Oxford: Oxford University Press 2019); Arnulf Becker Lorca, 'Eurocentrism in the history of international law' in Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press 2012) 1034–57; Ignacio de la Rasilla del Moral, *In the Shadow of Vitoria. A History of International Law in Spain (1770–1953)* (Leiden and Boston: Brill/Nijhoff 2018); Frederik Dhondt, 'L'histoire, parole vivante du droit? François Laurent en Ernest Nys als historiografen van het volkenrecht' in Bruno Debaenst (ed.), *De Belle Époque van het Belgisch Recht* (Bruges: Die Keure 2016) 91–115; Martti Koskenniemi, 'A history of international law histories' in Fassbender and Peters, *The Oxford Handbook of the History of International Law*, 943–71; Carl Landauer, 'The Polish rider: C.H. Alexandrowicz and the reorientation of international law', *London Review of International Law*, 7 (2019) 321–52, and 9 (2021) 3–36; Randall Lesaffer, 'Roman law and the early historiography of international law: Ward, Wheaton, Hosack and Walker' in Thilo Marauhn and Heinhard Steiger (eds.), *Universality and Continuity in International Law* (The Hague: Eleven International Publishing 2011) 149–84. Also see the collections of articles on Camilo Barcia Trelles in *European Journal of International Law*, 31 (2020).

⁵ Ignacio de la Rasilla, *International Law and History. Modern Interfaces* (Cambridge: Cambridge University Press 2021).

Preface

first, shorter, part highlights normative discussions on methodologies by looking at older and more recent historiography from the perspective of different disciplines. Nehal Bhuta offers a broad survey of the literature of the period of ‘the turn to history’ of the late 1990s, analysing the contributions of the two major disciplines – law and history. The part continues with three chapters that show how writing in three adjacent fields has helped mould understandings of the history of international law in more remote (for political thought) or more recent (for the theory of international relations and economic history) times.

The second, more voluminous, part takes readers further into the past. That part assembles eight chapters which tell a history of writing on the history of international law, often surveying one or two centuries, and some even more. The chapters are organised according to regional traditions that cover much, if surely not all, of the globe. The biggest gaps concern the wider Middle East and Southern Asia. We were unable to find authors to assume the daunting task of writing not about the history of international law in the region, but about the related historiography. The collected regional chapters discuss the history writing of international law *from*, and thus not necessarily *on*, the region. The two parts of the book are preceded by a substantial chapter that introduces *The Cambridge History of International Law* series, accounting for its design and the underlying choices.

This volume opens *The Cambridge History of International Law*, whose other twelve volumes are scheduled to appear over the coming years. At this point, we wish to express our thanks to the many people involved in this project. The series seeks to offer a platform for the many historians of international law with their various and often divergent perspectives that make the field blossom. The series can only succeed because over twenty scholars, as editors of the individual volumes or their parts, and over 200 authors have been willing to devote time and effort to it. A special word of thanks goes to the members of the advisory board who were willing to support the project: Lauren Benton (Yale University), Eyal Benvenisti (University of Cambridge), James Crawford (International Court of Justice), Thomas Duve (Max Planck Institute for Legal History and Legal Theory, Frankfurt), Andrew Fitzmaurice (Queen Mary University), Tamar Herzog (Harvard University), Benedict Kingsbury (New York University), Stephen C. Neff (University of Edinburgh), Anne Orford (University of Melbourne), Anne Peters (Max Planck Institute for Comparative Public Law and International Law, Heidelberg), James Q. Whitman (Yale University), Masaharu Yanagihara (Open University Japan). They gave it credence at a time

Preface

(in 2016) when such a grand endeavour hardly seemed viable and made invaluable suggestions for the design of the series, volumes and parts. We would like to single out the late Judge James Crawford, who was not only one of the most brilliant international lawyers of our age, but also one of the kindest, most generous and supportive grandees of academia we have ever met. His genuine interest in, and insights into the history of international law were a great help in the early days of the design of the series. A special word of thanks also goes to Eyal Benvenisti, without whose willingness to come on board in the earliest stages and without whose ideas and understanding the series might never have got off the ground.

A project of the magnitude of this series offers a challenge and lays a considerable burden on the publishing house, Cambridge University Press. We are grateful to the law editors and the syndicate of the press for opening the august halls of their Cambridge History brand to international law. The constant support and hard labour of Elizabeth Hanlon, Marianne Nield and Victoria Phillips were and continue to be crucial to the success of the series. But the greatest merit for this project goes to Finola O'Sullivan, former law editor at the press. It was her dynamism, her vision, her powers of persuasion and above all the radius of her confidence that clinched the decision to venture this – at an ESIL conference breakfast table in Riga.