

International Law and Its Histories: Methodological Risks and Opportunities

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The history of international law has recently come to the forefront of legal debate. Broadly defined as the field of study that examines the evolution of public international law and investigates state practice, the development of given legal concepts and theories, and the life and work of its makers, in recent years, the history of international law has attracted growing attention. Despite this flourishing, the history of international law is still in search of a proper methodology. Two cultures of writing compete in the making of international legal history: a “historians’ history” and a “jurists’ history.” While historians are interested in the past for its own sake and put legal history in context, lawyers tend to be interested in the past for its effects on the present. The existence of, and sometimes competition between, these two methodologies raises an important question: should international legal historians confine themselves to choosing between these two methodologies, or should they be free to adopt a comprehensive and interdisciplinary stance? This Article aims to address this question and investigate the methodological risks and opportunities of writing the histories of international law.

I. INTRODUCTION

The history of international law has recently come to the forefront of legal debates. Defined as the field of study that examines the evolution of public international law and investigates state practice, the development of legal concepts and theories, and the life and work of its makers, the history of international law or international legal history¹ has attracted the growing attention of international lawyers, legal historians, and other interested audiences. New monographs and edited books have been published; new

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1. This Article uses the terms “history of international law” and “international legal history” synonymously. See David Kennedy, *International Law and the Nineteenth Century: History of an Illusion*, 17 QUINNIPIAC LAW REVIEW 99, 99 (1997) (using the terms “international legal history” and “history of international law” interchangeably).

book series and journals have been established.² The linkage between international law and history has attracted an increasing wealth of promising research.³

Several factors have prompted this renaissance. First, legal historians, who have traditionally focused on the history of domestic law, have begun to recognize the history of international law is unmapped, under-researched, and in need of systematization, and have started investigating the history of international law. In turn, international lawyers have dedicated sustained attention to the field. The proliferation of international law and its governance of almost any field of human activity has resulted in some growth pains and legitimacy concerns, thus requiring some reflection as to international law's origins, aims, and objectives. Second, the end of the Cold War, the opening of archives that had been previously closed to the public and academic researchers, and the digitization of these archives have facilitated access to newly available sources. Third, like in other eras of major political, economic, and cultural upheaval, many have begun to perceive history as crucial to understanding the past and better forging the future.⁴

Although the field has developed, the history of international law still lacks a proper methodology. Two approaches to writing history compete in its making: a "historians' history" approach and a "jurists' history" approach.⁵ Two different epistemic communities—historians on the one hand and international lawyers on the other—put different questions to legal texts. While historians are interested in the past for its own sake and want to put it in context,⁶ lawyers tend to be "interested in the past for the light it throws on the present"⁷ and consider it as "a self-contained universe,"

2. Matthew Craven, *Introduction: International Law and Its Histories*, in *TIME, HISTORY AND INTERNATIONAL LAW* 1, 2 (Matthew Craven et al. eds., 2007) ("In recent years, there has been an extraordinary outpouring of articles and monographs written on the history of the discipline," and an "emergence of new specialist journals on the topic.").

3. See, e.g., Randall Lesaffer, *International Law and Its History: The Story of an Unrequited Love*, in *TIME, HISTORY AND INTERNATIONAL LAW*, *supra* note 2, at 28 ("[D]uring the last decade, the interest in the history of international law has suddenly risen.").

4. See, e.g., Stefan-Ludwig Hoffmann, *Human Rights and History*, 232 *PAST AND PRESENT* 279, 304 (2016) (noting that without the past, the present seems bound to regenerate the past and "the future is seen no longer as a promise but as a threat"); Craven, *supra* note 2, at 5 (noting that "historical reflection may be useful as a way of situating the present" if not "the only way to move on"); Lesaffer, *supra* note 3, at 29 (noting that at all critical moments in the history of international law, scholars have typically turned to revisit the discipline's foundations).

5. Lesaffer, *supra* note 3, at 29 ("The historiography of international law is an interdisciplinary subject with two natural constituencies: international lawyers and legal historians.").

6. See MICHAEL KAMMEN, *SELVAGES & BIASES: THE FABRIC OF HISTORY IN AMERICAN CULTURE* 116–17 (1987) (noting the paradigm shift among historians in the mid-twentieth century from searching for a "usable past" to focusing on the "pastness of the past," that is, "accept[ing] the past on its own terms" rather than translating it "into our own contemporary frame of reference").

7. See, e.g., Edward M. Wise, *Legal History*, in 2 *A GLOBAL ENCYCLOPAEDIA OF HISTORICAL WRITING* 551, 551 (Daniel Robert Woolf ed. 1998); Lesaffer, *supra* note 3, at 29 ("On the whole, the interest displayed by international lawyers in their history is functional and is dictated by current needs.").

tracing the genealogy of given concepts with little, if any, attention on the context.⁸

Several questions arise in this context. Should scholars stick to one discipline only—be it international law or legal history? Or should they adopt a comprehensive and interdisciplinary stance? Or should they adopt post-disciplinary approaches abandoning existing disciplines in order to think beyond old boundaries?⁹

If one reasonably assumes equality between international law and legal history, both then should have equal footing in mapping the history of international law. However, as most international lawyers are not historians by training and most historians do not have in-depth expertise in international law, doubts regarding the adoption of a proper method remain. Should one be concerned with the historical record or its legal significance? Should historians be cognizant of current international law to understand its past? In parallel, should international law scholars be cognizant of historical method(s) for writing the history of the field? Should they focus on the history of institutions or concepts across time and space, or rather prefer the biographical genre? Should they look at the context in which international law came into being? Can one expect them to visit archives and critically engage with historical sources? Is the history of international law a *sui generis* field of study that in fact requires *ad hoc* methods and approaches?

This Article aims to address these questions by investigating the methodological risks and opportunities of writing the histories of international law. The history of international law is a sufficiently developed field to merit discussion of rigorous methods. The objective of the Article, however, is not to prescribe a certain method to use in all scholarship moving forward: international legal history is a diverse field, and some flexibility will always be required. There is no single history of international law. Rather, multiple histories can and have been written depending on the selected topic, method, and perspective. Different methods and approaches can co-exist; it is up to the researcher to identify a suitable method for addressing his or her research questions.

The identification and calibration of the research method is not an arbitrary endeavor; rather, there are a number of tested, rigorous and consolidated methods that researchers can use. Analogously, there is no ideal form of research, as histories of concepts, legal biographies, and institutional histories all contribute to the complex kaleidoscope represented by the history of international law. This Article contends that the battle of ideas about the proper methodology of the history of international law should be gradually overcome by a growing awareness of the complementarity of the expertises

8. Wise, *supra* note 7, at 551.

9. See generally Bob Jessop and Ngai-Ling Sum, *Pre-disciplinary and Post-disciplinary Perspectives*, 6 *NEW POLITICAL ECONOMY* 89, 89 (2001) (refusing disciplinary boundaries and committing to transcending the same).

of both international lawyers and legal historians. Acknowledgement of cultural backgrounds and methodological awareness promote better narrations of the history of international law. The Article examines both intra-disciplinary and interdisciplinary approaches to the history of international law. Intra-disciplinary approaches require researchers working on given research questions to use the same set of methods within given disciplinary boundaries (for instance, legal history or international law). They are consolidated but obsolete.¹⁰ The Article also examines interdisciplinary approaches, given that both legal history and international law are necessary components of the emerging field of the history of international law. Interdisciplinary approaches enable the combination and integration of knowledge from various scientific disciplines (including but not limited to legal history and international law).¹¹

This Article proceeds as follows. First, it explores why history matters in general and the reasons for the growing interest in the history of international law in particular. Second, it examines the battle of ideas between historians and lawyers on how to write the history of international law. Third, it investigates the four dimensions of international legal historiography: 1) global/local, 2) internal/external, 3) diachronic/synchronic, and 4) micro/macro. Fourth, it examines the principal historiographical currents for writing the history of international law, analyzing and critically assessing their pros and cons. The Article does not aim to offer a complete summary of the work done in the area. Rather, it provides an introduction to some of the relevant key issues and debates in international legal history, with the goal of stimulating interest in field and contributing to its development. Fifth, it discusses three modes of writing history—the history of events, the history of concepts, and the history of individual people—and examines the use of legal biography as a literary genre within international legal history, addressing the question of whether the history of international law might benefit from further work in this direction. Finally, after providing a critical reflection on the promises and pitfalls of the turn to history of international law and the international turn to legal history, this Article concludes that there is no single method for writing the history of international law. Rather, scholars can select their own appropriate method among a variety of different approaches. The selected method should be appropriate to address the specific research questions of the author. Both international lawyers and

10. See, e.g., Lesaffer, *supra* note 3, at 37 (arguing that international legal historians “should approach the past with proper respect”); *id.* at 41 (suggesting that “the field presupposes an interdisciplinary approach”); David J. Bederman, *Foreign Office International Legal History*, in *TIME, HISTORY AND INTERNATIONAL LAW*, *supra* note 2, at 46 (suggesting that “there is a very real risk that international law advocacy and scholarship could be tainted by the same improper historiographic methods, just as ‘law office historians’ have done for domestic law”).

11. See, e.g., Friedrich Kratochwil, *A Guide for the Perplexed? Critical Reflections on Doing Inter-Disciplinary Legal Research*, 5 *TRANSNATIONAL LEGAL THEORY* 541, 541 (2014) (discussing “the limits and opportunities” of interdisciplinary legal research).

legal historians can benefit from dialogue, mutual exchange, and methodological awareness. This Article argues that the history of international law should transcend the borders of pure international law and legal history analysis and should perhaps constitute an autonomous field of study.

II. DOES HISTORY MATTER?

While the history of international law received little to no attention in the past two centuries—historians were not interested in international law, while international lawyers were not interested in legal history—this has started to change.¹² The shift in the number of books and the quality of these books has bolstered the perceived importance of the field.¹³ Reputable

12. See Lassa Oppenheim, *The Science of International Law: Its Tasks and Method*, 2 AMERICAN JOURNAL OF INTERNATIONAL LAW 313, 316 (1908) (“[I]n spite of the vast importance of this task it has as yet hardly been undertaken; the history of international law is certainly the most neglected province of it.”). A century later, the assessment has not changed. See Stephen C. Neff, *A Short History of International Law*, in INTERNATIONAL LAW 31, 31 (Malcolm D. Evans ed., 2003) (“No area of international law has been so little explored by scholars as the history of the subject.”).

13. See, e.g., THE ROOTS OF INTERNATIONAL LAW/LE FONDEMENTS DU DROIT INTERNATIONAL: LIBER AMICORUM PETER HAGGENMACHER (Pierre Marie Dupuy and Vincent Chetail eds., 2014) (analyzing the origins and foundations of the international legal system, with particular focus on Hugo Grotius); DOMINIQUE GAURIER, HISTOIRE DU DROIT INTERNATIONAL: DE L’ANTIQUITE À LA CRÉATION DE L’ONU (2014) (tracing the origins of the law of nations back to antiquity, examining its evolution until the end of the Society of Nations in 1945 and using primary sources in abundance); THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW (Bardo Fassbender & Anne Peters eds., 2012) (analyzing the history of international law from the fifteenth century until the end of World War II, adopting a global history approach, and briefly examining the lives and theories of those individuals who shaped the development of international law); AMNON ALTMAN, TRACING THE EARLIEST RECORDED CONCEPTS OF INTERNATIONAL LAW: THE ANCIENT NEAR EAST (2500–330 BCE) (2012) (surveying legal theories and practices relating to international relations in the Ancient Near East between 2500 and 330 BCE); CARLO FOCARELLI, INTRODUZIONE STORICA AL DIRITTO INTERNAZIONALE (2012) (covering the history of international law from antiquity to the present); EMMANUELLE JOUANNET, LE DROIT INTERNATIONAL LIBÉRAL—PROVIDENCE: UNE HISTOIRE DU DROIT INTERNATIONAL (2011) (placing the origins of international law in the eighteenth century); RESEARCH HANDBOOK ON THE THEORY AND HISTORY OF INTERNATIONAL LAW (Alexander Orakhelashvili ed., 2011) (analyzing the theory and history of international law from the Middle Ages to the present); GUSTAVO GOZZI, DIRITTI E CIVILTÀ. STORIA E FILOSOFIA DEL DIRITTO INTERNAZIONALE (2010) (examining the evolution of international law from the sixteenth century onward); TIME, HISTORY AND INTERNATIONAL LAW, *supra* note 2 (identifying and discussing different ways in which the relationship between international law and (its) history may be conceived); LUIS FERNANDO ÁLVAREZ LONDOÑO, LA HISTORIA DEL DERECHO INTERNACIONAL PÚBLICO (2006) (covering the history of international law from antiquity to the twentieth century); HISTORIA ANTE PORTAS: L’HISTOIRE EN DROIT INTERNATIONALE—HISTORY IN INTERNATIONAL LAW (PÉTER KOVÁCS ed., 2004) (discussing the evolution of selected international law doctrines, cases, and institutions); RAM PRAKASH ANAND, STUDIES IN INTERNATIONAL LAW AND HISTORY: AN ASIAN PERSPECTIVE (2004) (criticizing the Eurocentrism of international law and proposing a different perspective); SLIM LAGHMANI, HISTOIRE DU DROIT DES GENS, DU *JUS GENTIUM* IMPÉRIAL AU *JUS PUBLICUM EUROPEUM* (2004) (investigating the global evolution of the law of nations from antiquity to the end of World War I); MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960 (2002) (placing the origins of international law in the nineteenth century); CARLO FOCARELLI, LEZIONI DI STORIA DEL DIRITTO INTERNAZIONALE (2002) (examining the evolution of international law from antiquity to the present); WILHELM G. GREWE, THE EPOCHS OF INTERNATIONAL LAW (2000) (Michael Byers trans., 1984) (dividing the history of international law into periods characterized by the hegemony of specific powers); A. TRUYOL Y SERRA, HISTORIA DEL DERECHO

book series and journals have been established in the field.¹⁴ International law and legal history journals have increasingly featured articles on the history of international law.¹⁵ Histories of subfields of international law have also emerged.¹⁶ This represents a shift from the past, when most legal historians focused on the vicissitudes of domestic law and international lawyers used the past instrumentally to investigate legal concepts or institutions rather than as the specific object of their inquiry. Scholars have increasingly researched the historical backgrounds of institutions,¹⁷ mapped the evolutions of key concepts,¹⁸ or narrated the history of the discipline.¹⁹ Scholars now write about the history of international law—whether they see themselves as scholars of both history and international law, scholars of history who happen to study international law, international lawyers who happen to study history, “scholars in some other discipline entirely who happen to study history and law, or scholars who are resistant to disciplinary categori-

INTERNACIONAL PÚBLICO (1998) (adopting a universalist approach to the history of international law). For earlier studies, see, e.g., ARTHUR NUSSBAUM, *A CONCISE HISTORY OF THE LAW OF NATIONS* (1947) (focusing on diplomacy and treaty relations); JOHAN H. W. VERZIJL, *INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE* (Brill 1968–1998) (considering international law by subject matter). For a general bibliography, see Peter Macalister-Smith and J. Schwietzke, *Literature and Documentary Sources relating to the History of International Law*, 1 *J. OF THE HIST. OF INT'L L.* (1999) 136.

14. See *JUS GENTIUM*; *J. OF INT'L LEGAL HIST.*, the first dedicated journal in the United States addressing the history of international law, launched in January 2016 (“encourag[ing] further exploration in the archives, . . . but welcoming the continued reassessment of international legal history in all of its dimensions.”) (last visited Sept. 20, 2016) <http://www.lawbookexchange.com/jus-gentium.php>. See also *J. OF THE HIST. OF INT'L L.*, launched in 1999; Ronald Macdonald, *Editorial* in 1 *J. OF THE HIST. OF INT'L L.* 1, 1 (1999) (noting that the *Journal of the History of International Law* aims at “contribut[ing] to the effort to make intelligible the international legal past, however varied and eccentric it may be, to stimulate interest in the whys, the whats and the wheres of international legal development, without projecting present relationships upon the past . . .”).

15. See, e.g., Amanda Alexander, *A Short History of International Humanitarian Law*, 26 *EUR. J. INT'L L.* 109 (2015) (“[I]nternational humanitarian law is not simply an ahistorical code, managed by states and promoted by the International Committee of the Red Cross. Rather, it is a relatively new and historically contingent field that has been created, shaped and dramatically reinterpreted by a variety of actors, both traditional and unconventional.”); Ziv Bohrer, *International Criminal Law’s Millennium of Forgotten History*, 34 *L. HIST. REV.* 393–485 (2016) (challenging the consensus that international criminal law was “born” at Nuremberg, and arguing that its history spans centuries).

16. See, e.g., PETER H. SAND, *THE HISTORY AND ORIGIN OF INTERNATIONAL ENVIRONMENTAL LAW* (2015) (tracing the evolution of international environmental law); Alex Mills, *The Private History of International Law*, 55 *INT'L COMP. L. QUART.* 1, 4 (2006) (demonstrating that international private law has always been part of international law).

17. See, e.g., ANTONIO R. PARRA, *A HISTORY OF ICSID* (2012) (narrating the origins and evolution of the International Centre for Settlement of Investment Disputes).

18. See, e.g., Ruti Teitel, *Transitional Justice Genealogy*, 16 *HARV. HUM. RTS. J.* 69 (2003) (analyzing the evolution of the concept of transitional justice).

19. See, e.g., KATE MILES, *THE ORIGINS OF INTERNATIONAL INVESTMENT LAW: EMPIRE, ENVIRONMENT, AND THE SAFEGUARDING OF CAPITAL* (2013) (delineating investment law’s origins in the quest for imperial control over the resources of the colonized world); CHARLES LIPSON, *STANDING GUARD: PROTECTING FOREIGN CAPITAL IN THE NINETEENTH AND TWENTIETH CENTURIES* (1985) (investigating how investors have protected their investments abroad in the nineteenth and twentieth century); ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2004) (narrating the history of international law from the perspective of the non-European).

zation altogether . . . [e]ven in the absence of a grand theory about why or how one should go about it.”²⁰

Two distinct converging phenomena have contributed to the renaissance of international legal history: the “historical turn” in international law and the “international turn” in legal history. The expression “historical turn” in international law “refers to a constant and growing need on the part of international lawyers to review . . . the history of international law and to establish links between the past and the present situation of international norms, institutions and doctrines.”²¹ In parallel, the term “international turn” in legal history refers to the growing interest of historians in global phenomena.²²

The motivations behind the historical turn in international law can be traced back to several global trends. International law has become increasingly important and governs almost every aspect of “life, universe and everything.”²³ This proliferation of international law has been accompanied by some growth pains. History provides a lens through which to examine and address these challenges, facilitating reflection as to the origins, aims and objectives of international law.²⁴ International lawyers increasingly pay attention to the history of international law in the quest for the meaning, sense, legitimacy, and/or contestation of international law. In turn, the history of international law has provided them with a sense of identity, inspiration, and continuity in some cases, or unease, rage, and disruption in others.

However, the historical turn has also raised a number of interpretative challenges. In some cases, investigating the history of international law has been like opening Pandora’s box. Far from finding clear-cut, black and white answers to their legitimacy conundrum, international lawyers have found multi-layered complexity, conflicting accounts, and diverging interpretations of past events.²⁵ This opening of new frontiers has created new opportunities of critical reflection and ongoing research.

20. Catherine L. Fisk and Robert W. Gordon, “*Law As . . .*”: *Theory and Method in Legal History*, 1 UC IRVINE L. REV. 519, 523–24 (2011) (pointing out that “it is perfectly possible, and indeed very common, to write first-rate history uninformed by a grand theory.”).

21. George Rodrigo Bandeira Galindo, *Martti Koskenniemi and the Historiographical Turn in International Law*, 16 EUR. J. INT’L L. 539, 541 (2005) (arguing that Koskenniemi’s *The Gentle Civilizer of Nations* “led to a historiographical turn in Koskenniemi’s work and has . . . encouraged a historiographical turn in the field of international law as a whole”).

22. DAVID ARMITAGE, *FOUNDATIONS OF MODERN INTERNATIONAL THOUGHT* 17 (2013) (noting the “international turn in intellectual history”).

23. I borrow this expression from Catherine Redgwell. See Catherine Redgwell, *Life, Universe and Everything: A Critique of Anthropocentric Rights*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION* 71 (Alan Boyle and M. Anderson eds., 1996).

24. Martti Koskenniemi, *Histories of International Law: Significance and Problems for a Critical View*, 27 TEMPLE INT’L & COMP. L. J. 215, 216 (2013) (“[W]hat seems needed is a better understanding of how we have come to where we are now—a fuller and a more realistic account of the history of international law.”).

25. Bederman, *supra* note 10, at 63 (noting that “the historic record is often sparse and incomplete” and that “even in cases of abundant historical materials, the historical record can still be ambiguous or

This type of “jurists’ history” has been promising, but it remains beleaguered by traditional assumptions. Often international lawyers equate the history of international law with international law itself. However, the two fields remain conceptually distinct. International legal history and international law are not the same thing: international legal history narrates the historical evolution of international law, while international law is the output of such development and broadly indicates the law governing transnational relations. International lawyers’ histories often lack any reference to non-legal sources, including historical sources. Occasionally, international lawyers have authored “histories” of their field, relying almost completely on legal sources, as though the history of international law is a self-contained regime, completely detached from history itself. However, some international lawyers have adopted a more reflexive approach to the field and various methods to successfully overcome the disciplinary boundaries of international law and enter into the world of international legal history.²⁶ Others have conducted painstaking work in archives to chart long-neglected jurisprudence.²⁷

The “international turn” in legal history refers to the growing interest among historians in international legal issues. Why are legal historians interested in global phenomena? Legal historians have taken global phenomena, such as imperialism and subsequent decolonization, more seriously for two principal reasons. First, globalization has led to the realization that domestic histories are a component of global histories that participate in and reflect their broader contexts. Second, international law and comparative law have become more important in legal education.²⁸ Because international law has grown tremendously in breadth and importance, legal historians have gradually started to investigate its origins and evolution.

Characterized by historical investigation, archival research, and a variety of historiographical methods, the historians’ history of international law has been quantitatively limited—growing only in the past decades—but qualitatively impactful.²⁹ By unveiling archival information, mapping intellec-

contradictory. History does not provide answers, or at least not in a form recognized by international lawyers”).

26. Alexandra Kemmerer, *Völkerrechtsgeschichten—Histories of International Law*, EJIL: TALK! (Jan. 6, 2015) (pointing out that “historians and lawyers discuss, debate and dispute (their) histories of international law” and highlighting the need of “intellectual encounters and spaces for conflict and cooperation that will in turn challenge and promote reflexive disciplinarity in the respective fields. Of crucial importance here is the researcher’s awareness of her own position and situatedness”).

27. JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* 210 (2012) (referring to archival material).

28. Anne-Marie Slaughter, *The International Dimension of Law School Curriculum*, 22 PENN STATE INT’L L. REV. 417, 418 (2004) (arguing that legal education should “teach students not only to be boundary-crossers but to be cosmopolitan”).

29. See, e.g., Lesaffer, *supra* note 3, at 27 (identifying the linkage between international law and legal history as that of an “unrequited love”); Randall Lesaffer, *The Classical Law of Nations (1500–1800)*, in RESEARCH HANDBOOK ON THE THEORY AND HISTORY OF INTERNATIONAL LAW 408–40 (Alexander Orakhelashvili ed., 2011) (examining the evolution of international law from the sixteenth century to the

tual networks, and contextualizing legal texts in their historical backgrounds, historians have contributed depth to the field.³⁰

Moreover, after the Cold War, the opening of long-classified archives and the increasing accessibility of historical sources has made it more possible to do insightful, reliable, and ground-breaking research. The digitization of these resources and their accessibility online have also facilitated further research.

A core premise that underlies both of the phenomena described above is simply that history matters. As the French medieval historian and Resistance leader Marc Bloch pointed out, knowledge of the past enables our understanding of the present.³¹ As in other eras of crisis, history is perceived as a master key to understanding the past and the present, as well as to providing new perspectives.³² Like other linkages such as law and anthropology,³³ law and geography,³⁴ law and literature,³⁵ and law and culture,³⁶ the linkage between law and history provides an additional perspective and a

nineteenth century); Randall Lesaffer, *The Grotian Tradition Revisited: Change and Continuity in the History of International Law*, 73 BRITISH YEARBOOK OF INT'L L., 103, 103 (2002) (noting that “[f]or a long time, the history of the law of nations has been neglected by legal historians and over-simplified and distorted by international lawyers.”); Alain Wijffels, *Early Modern Scholarship and International Law*, in RESEARCH HANDBOOK ON THE THEORY AND HISTORY OF INTERNATIONAL LAW 23 (Alexander Orakhelashvili ed., 2011) (examining the development of international law scholarship from the sixteenth until the eighteenth century).

30. See, e.g., Mira Siegelberg, *Unofficial Men, Efficient Civil Servants: Raphael Lemkin in the History of International Law*, 15 J. OF GENOCIDE RESEARCH 297, 298 (2013) (noting that “as historians have begun to page through the archival records of international organizations and the papers of Raphael Lemkin, the principal creator and publicist of the Genocide Convention,” the innovations of the post World War II period in the areas of human rights, humanitarian law, and international criminal law “appea[r] more fractious and divided, and less like a moment of internationalist grace.”).

31. MARC BLOCH, *THE HISTORIAN’S CRAFT* 36 (Peter Putnam trans., 1992) (“Misunderstanding of the present is the inevitable consequence of ignorance of the past”; at the same time, a person cannot “understand the past, if he is totally ignorant of the present.”).

32. See Hoffmann, *supra* note 4, at 26.

33. See Sally Engle Merry, *Anthropology and International Law*, 35 ANNUAL REV. OF ANTHROPOLOGY 99, 100 (2006) (showing “how anthropological theory helps social scientists, activists, and lawyers understand how international law is produced and how it works”).

34. See, e.g., LAUREN BENTON, *A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES, 1460–1900* (2010) (approaching world history by examining the relation of law and geography in European empires between 1400 and 1900); Upendra V. Baxi, *Some Newly Emergent Geographies of Injustice: Boundaries and Borders in International Law*, 23 IND. J. OF GLOB. LEGAL STUD. 15 (2016) (examining the interplay between the boundaries in international law and the production of geographies of injustice); Tayyab Mahmud, *Colonial Cartographies, the Postcolonial Borders, and Enduring Failures of International Law: The Unending War Along the Afghanistan–Pakistan Frontier*, 36 BROOK. J. INT’L L. 1, 73 (2010) (noting that the colonial rule “reconfigured space” and that these territorial demarcations “often cut across age-old cultural and historical social units,” thus determining “a host of endemic political and security afflictions”); Daniel Bethlehem, *The End of Geography: The Changing Nature of the International System and the Challenge to International Law*, 25 EUR. J. INT’L L. 9 (2014) (looking at the changing place of geography in the international system and the challenges that this poses to international law).

35. See CHRISTOPHER N. WARREN, *LITERATURE & THE LAW OF NATIONS* (2015) (charting a literary history of international law); see also Matthew Windsor, *Narrative Kill or Capture: Unreliable Narration in International Law*, 28 LEIDEN J. INT’L L. 743, 743 (2015) (evaluating the benefits of a “turn to narration” in international legal scholarship).

36. RICHARD NED LEBOW, *A CULTURAL THEORY OF INTERNATIONAL RELATIONS* (2008) (examining the influence of culture and identity on the development of the international political order).

tool kit to understanding the international legal system. It can “unravel [international law’s] blind spots, biases and . . . hidden emancipatory potentials.”³⁷ Hence, the history of international law “constitutes a major field of inquiry for those engaging critically with international law.”³⁸ Not only can the history of international law explain the features of the current international legal framework,³⁹ but it can also provide a critical lens through which to investigate the past and envision the future of the field.

III. THE HISTORY OF INTERNATIONAL LAW AS A BATTLEFIELD

Two visions of history compete in the making of international legal history. On the one hand, international lawyers are naturally driven to explore the origins of their discipline, and tend to investigate the field using traditional international legal interpretive tools. They “value the ‘historical pedigree’ of legal concepts, and mine the past in search for precedents and customs.”⁴⁰ Yet, they lack awareness of historiographical methods, and this has affected the quality of some of their historical inquiries. Lack of consultation of primary sources and limited engagement with secondary historical sources have also contributed to make some of their histories of international law fundamentally flawed. Moreover, many international lawyers consider international law the product of “progress in the evolution of ideas.”⁴¹ International law scholars often assume that the progress of international law is underway.⁴² They “have little appreciation for detailed contextualization.”⁴³ They tend to adopt genealogical and a-historical approaches “to

37. Ntina Tzouvala, *New Approaches to International Law: The History of a Project*, 27 EUR. J. INT’L L. 215, 224 (2016) (reflecting upon critical international scholarship).

38. *Id.*

39. Matthew Dyson, *If the Present were the Past*, 56 AM. J. OF LEGAL HIST. 41, 50 (2016) (“[T]he historical connection allows us to see the inner substance of the present.”).

40. Laura Kalman, *Border Patrol: Reflections on the Turn to History in Legal Scholarship*, 66 FORDHAM L. REV. 87, 107 (1997) (noting that lawyers “treat the past as legitimating”).

41. Philip Alston, *Does the Past Matter? On the Origins of Human Rights*, 126 HARV. L. REV. 2043, 2063 (2013) (reviewing JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (2012)) (noting that “[i]nternational law scholars have long been accused of portraying their discipline as an intrinsically or inexorably progressive one”).

42. See Ian Hurd, *Enchanted and Disenchanted International Law*, 7 GLOBAL POLICY 96, 96 (2016) (suggesting the existence of two attitudes to international law: 1) an enchanted attitude that presumes the normative valence and political wisdom of following international law, and 2) a disenchanted one that treats the merit of and compliance with international law as open questions for inquiry and discussion; and noting that international lawyers usually adopt the former). For a critical view of the progressive nature of international law, see, e.g., THOMAS SKOUTERIS, *THE NOTION OF PROGRESS IN INTERNATIONAL LAW DISCOURSE* (2010) (examining the notion of progress in international law); NATHANIEL BERMAN, *PASSION AND AMBIVALENCE: COLONIALISM, NATIONALISM AND INTERNATIONAL LAW* (2011) (rejecting the so-called history of events (*histoire événementielle*)—meant as a progressive narrative that tracks landmark developments in the field—and focusing instead on less evident, but allegedly more deeply significant, historical events).

43. Marcus M. Payk, *The History of International Law—or International Law in History? A Reply to Alexandra Kemmerer and Jochen von Bernstorff*, EJIL: TALK!, (Jan. 8, 2015), <http://www.ejiltalk.org/the-history-of-international-law-or-international-law-in-history-a-reply-to-alexandra-kemmerer-and-jochen->

generate data and interpretations that are of use in resolving modern legal controversies."⁴⁴ Yet, genealogical and a-historical histories of international law can "lead to anachronistic interpretations of historical phenomena" and neglect their historical context.⁴⁵

On the other hand, legal historians claim that the history of international law is merely a subfield of legal history and, therefore, requires the adoption of historiographical methods. They disfavor the "idea of a usable past" and focus on "the pastness of the past."⁴⁶ They aim to "understand the past . . . for what it meant to the people living in it" rather than "for what it brought about."⁴⁷ In their narratives, they look for "alternative paths and roads not taken, elective affinities that do not seem to be obvious connections."⁴⁸ This can lead to three perceived downsides: 1) the possible lack of focus and/or expertise on issues that are perceived as crucial by international lawyers; 2) painstaking attention to historical details and data that may seem irrelevant to international lawyers; and 3) little to no attention to the current relevance of international legal history.

Thus, a turf war has erupted between historians and lawyers on what kind of history of international law we could and/or should have. Far from being a merely theoretical debate, with little or any practical impact,⁴⁹ this is a struggle for the soul of international legal history, and arguably international law itself, that has transformed the field into a battlefield.⁵⁰ It is not only about the methods, form, and procedure, but also about the substance, aims, and objectives of international legal history. Such clash is "a struggle for interpretive power," with the resulting ability to impose a hegemonic discourse and domesticate "divergent narrative visions."⁵¹ The outcome of this debate is important because, far from simply determining the form of legal research, it will likely influence the types of questions and investigations of the same. Moreover, the history of international law can influence

von-bernstorff/ (pointing out that "those who see international law as a force for good per se and who are interested only in tracing the success story of its development will have little appreciation for detailed contextualisation.")

44. Kalman, *supra* note 40, at 115. See also Steven Wilf, *Law/Text/Past*, 1 UC IRVINE L. REV. 543, 533 (2011) (examining legal historians' complex relationship with text); Anne Orford, *On International Legal Method*, 1 LONDON REV. INT'L L. 166, 171 (2013) (noting that "anachronism is today treated as a 'sin against the holy spirit of history,'" but arguing that "judges, advocates, scholars and students all look to past texts precisely to discover the nature of present obligations").

45. Lesaffer, *International Law and Its History*, *supra* note 3, at 34–35.

46. Kalman, *supra* note 40, at 114.

47. Lesaffer, *supra* note 3, at 34–35; see also Quentin Skinner, *Meaning and Understanding in the History of Ideas*, 8 HISTORY AND THEORY 3, 27–30 (1969) (cautioning against the dangers of approaching materials "with preconceived paradigms" as a "form of conceptual parochialism" and of "writing historical nonsense").

48. Wilf, *supra* note 44, at 558.

49. Alston, *supra* note 18, at 2074.

50. Jenny S. Martinez, *Human Rights and History*, 126 HARV. L. REV. FORUM 221, 239 (2012) (noting that "there are deeper issues at work in the debate" about the history of international law).

51. Windsor, *supra* note 35, at 743.

the evolution of international law itself and can become an instrument of power.

The debate between historians and lawyers has taken place in various areas of international law. One example is human rights law: lawyers and historians debate whether genealogy matters in human rights law. While lawyers typically adopt a genealogical approach, and agree that human rights have an old pedigree eventually acquiring different political and legal meanings over time,⁵² historians see human rights as contingent.⁵³

On the one hand, human rights lawyers tend to trace the origins of human rights back to the origins of human history itself. For instance, several lawyers have attributed ideas of “rights,” as mentioned in the abolitionist debates, to current meanings of “human rights,” arguing that the abolition movement was an early victory for human rights.⁵⁴ Although other lawyers will admit that there are differences between the use of “rights” in earlier centuries and today, they still agree that genealogical and analytical approaches matter.⁵⁵

On the other hand, historians believe that the past should not be read as a mere precursor of the present and are wary of genealogical frameworks. For instance, for Samuel Moyn, Professor of Law and History at Harvard University, human rights emerged in 1977, because “they were widely understood as a moral alternative to bankrupt political utopias,” such as socialism, communism, and nationalism.⁵⁶ Accordingly, the human rights movement would be “of such recent provenance as to lack a genealogy worthy of the

52. LYNN HUNT, *INVENTING HUMAN RIGHTS* 21–25 (2007) (arguing for commonalities and continuities between the French Revolution and the postwar human rights moment); Alston, *supra* note 18, at 2074 (pointing out that “genealogy matters”); at 2045 (“arguing that genealogy matters a great deal in these debates”).

53. Several scholarly works describe the human rights movement as a direct result of the end of World War II. See, e.g., ANDREW FAGAN, *HUMAN RIGHTS: CONFRONTING MYTHS AND MISUNDERSTANDINGS* 7, 10, 64 (2009); MARK FREEMAN AND GIBRAN VAN ERT, *INTERNATIONAL HUMAN RIGHTS LAW* 19 (2004); JIM IFE, *HUMAN RIGHTS FROM BELOW: ACHIEVING RIGHTS THROUGH COMMUNITY DEVELOPMENT* 78 (2009). But see SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 3 (2010) (arguing that human rights “emerged in the 1970s seemingly from nowhere” and suggesting that earlier concepts that appear similar in certain respects to contemporary human rights are false cognates (*faux amis*) to the current concept).

54. See, e.g., MARTINEZ, *THE SLAVE TRADE*, *supra* note 27, at 6 (suggesting that the “slave courts were the first international human rights courts”); *id.* at 13 (arguing that “the abolition of the transatlantic slave trade remains the most successful episode ever in the history of international human rights law”); Jenny S. Martinez, *Antislavery Courts and the Dawn of International Human Rights Law*, 117 *YALE L.J.* 550, 550 (2008) (contending that international courts for the suppression of the slave trade established under bilateral treaties between Britain and other countries between 1817 and 1871 were the first international human rights courts); SEYMOUR DRESCHER, *CAPITALISM AND ANTISLAVERY: BRITISH MOBILIZATION IN COMPARATIVE PERSPECTIVE* (1986) (considering abolitionism—the historical movement to end the slave trade—as “the first and, in a narrow sense, the most successful human rights movement”).

55. Alston, *supra* note 18, at 2077 (noting “the intrinsic polycentricity of the human rights enterprise”); *id.* at 2063 (cautioning that international legal historians should not move “from one historical moment to another” without showing causality, verifying continuity, or considering the historical context and should not overemphasize “coherence and continuity,” because such approach risks “marginaliz[ing] competing understandings, and can be used to delegitimize alternative visions.”).

56. MOYN, *supra* note 53, at 3.

name.”⁵⁷ Moyn’s theory has been described as the big bang theory of human rights, evoking the idea of rights emerging suddenly from nothingness.⁵⁸ Moyn’s path-breaking monograph, *The Last Utopia: Human Rights in History*, relied on two conceptual steps. First, Moyn articulated some major criticisms to the lawyers’ history of international law (*pars destruens*). Human rights may currently be “so firmly entrenched in our moral landscape that it is almost impossible for us to imagine what an alternative landscape would look like.”⁵⁹ Moyn cautioned against reading history through the lens of the present. Instead, he encouraged reading the past for what it was.⁶⁰ Second, he developed a thought-provoking (albeit controversial) theory about the origins of the current notion of human rights (*pars construens*), arguing that the contemporary meaning of human rights emerged only in the 1970s.⁶¹ Even without necessarily endorsing Moyn’s *pars construens*, the *pars destruens* of *The Last Utopia* has two major merits. On the one hand, it “revitalized the historical study of human rights by contesting the relevance of a long-term perspective.”⁶² On the other hand, it compelled a deep and healthy rethinking of the history of international law. He raised a fundamental methodological issue in the *pars destruens* of his work: the past should be read for what it was rather than as a mere anticipation of the present.

This framing dichotomy—the clash between lawyers’ histories and historians’ histories—is an analytical effort to depict the heart of the matter. It delineates competing Weberian ideal types,⁶³ that is, conceptual tools for the scrutiny and systematic characterization of how scholars approach the history of international law. The divide represents a valuable methodological tool to achieve a deeper understanding of how the relevant epistemic communities—international lawyers and legal historians—approach the history of international law. The splitting-in-half is not meant to be an accurate description of how each scholar approaches the field. Rather, it functions as a research tool for scrutiny, classification, and comparison. It highlights that most scholars struggle to find a proper language in narrating the histories of international law and that there is a debate between its constituencies.

57. Alston, *supra* note 18, at 2063 (reporting the findings of the revisionist school).

58. *Id.* at 2074 (calling Moyn’s “theory that sees human rights emerging almost out of nowhere in 1977” the “big bang theory” of human rights); Martinez, *Human Rights and History*, *supra* note 50, at 237 (noting that “as Alston describes it, Moyn’s theory is one of a Big Bang: from nothingness, matter”).

59. Adam Etinson, *The Last Utopia: Human Rights in History*, 34 *HUM. RTS. Q.* 294, 296 (2012) (reviewing Moyn’s *THE LAST UTOPIA*); *see id.* at 299 (suggesting that “rather than worrying about how we might preserve the utopian status of human rights into the future, . . . [we should] allow human rights to simply remain there in their proper place, *i.e.*, as rights and not as utopia”).

60. MOYN, *supra* note 53, at 11 (“If the past is read as preparation for a surprising recent event, both are distorted.”).

61. *Id.* at 43 (discussing a “broken history of human rights”).

62. Lynn Hunt, *The Long and the Short of the History of Human Rights*, 233 *PAST AND PRESENT* 323, 323 (2016).

63. Susan J. Hekman, *Weber’s Ideal Type: A Contemporary Reassessment*, 16 *POLITY* 119, 119 (1983) (arguing that Weber’s use of ideal concepts is “methodologically sound and logically consistent”).

As the dichotomy between lawyers' histories and historians' histories is not a description of reality but is a construct to understand and analyze the history of international law, no scholar fits neatly within given categories. By no means are the historiographical methods of the history of international law endorsed by legal historians only; several international lawyers have adopted historiographical approaches and/or cautioned purely legalistic approaches to international legal history.⁶⁴ By the same token, some legal historians have adopted a conceptual approach to history.⁶⁵

IV. WHAT KIND OF HISTORY OF INTERNATIONAL LAW SHOULD WE HAVE?

The flourishing of international legal history prompts a reflection on what *kind* of history of international law we should have. Should international lawyers be concerned with the historical record or its legal text? Should historians be cognizant of current international law? Is there anything to be gained by developing a primarily legal rather than historical method in writing the history of international law? Should juridical thinking frame the issues historians raise throughout their research?⁶⁶ In parallel, should international law scholars be cognizant of historical method(s)? Should they focus on the history of institutions and concepts or rather prefer the biographical genre, studying the lives of prominent legal scholars? Should they look at the context in which international law came into being? Can they be expected to visit archives and critically engage with historical sources? Is the history of international law a *sui generis* field of study that in fact requires *ad hoc* methods and approaches?

64. See Alston, *supra* note 18, at 2043 ("Until fairly recently, little attention was paid to the historiography of human rights, and the mainstream histories mostly reflected an uncritical narrative of relatively steady progress in the evolution of ideas But these . . . genealogies have come under strong challenge from a variety of critics."). For instance, Martti Koskenniemi in particular has adopted multiple approaches to the history of international law in his works. See, e.g., MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA—THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT 603 (2006) (noting, albeit not necessarily endorsing, his colleagues' suspicion that he was "taking (postmodern) delight in an endless repetition of paradoxical formulations"); KOSKENNIEMI, *supra* note 13, at 353–509 (2002) (adopting, *inter alia*, the biographical genre).

65. Hayden White, *Foreword* to REINHART KOSELLECK, THE PRACTICE OF CONCEPTUAL HISTORY—TIMING HISTORY, SPACING CONCEPTS, ix (2002) (defining Koselleck as "the foremost exponent and practitioner of *Begriffsgeschichte*, a methodology of historical studies that focuses on the invention and the development of the fundamental concepts (*Begriffe*) underlying and informing a distinctively historical (*geschichtliche*) manner of being in the world").

66. Orford, *supra* note 44, at 166 (arguing that "there is something to be gained—theoretically, politically and empirically—by developing a primarily juridical (rather than historical, philosophical, economic or sociological) method as a basis for exploring . . . contemporary international developments" and explaining that "[j]uridical thinking frame[d] the problems that [her previous book] raise[d], shape[d] the archival choices made throughout its research and the construction of its narrative, structure[d] its argument and provide[d] its conceptual underpinnings"). See also ANNE ORFORD, INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT (2011) (arguing that the philosophical roots of the responsibility to protect principle are to be found in the dilemma of political authority in times of civil war and revolution).

In order to address these questions, this section proceeds as follows. First, it discusses the converging divergences of international law and legal history. If one reasonably accepts the equivalence between international law and legal history, ideally, both should have equal footing in mapping the history of international law. Therefore, it is vital to examine their respective subject matters, languages, and cultures.⁶⁷ Second, this section illustrates the four dimensions of international legal historiography: 1) global/local; 2) internal/external; 3) diachronic/synchronic; and 4) micro/macro. It then concludes with a discussion of the discernible trends of international legal history across these various dimensions.

International law and legal history diverge on a number of issues, including subject matter, language, and culture. Whereas international law constitutes a well-established and flourishing area of law that governs international relations, legal history studies the evolution of law and the reasons behind change.⁶⁸ What matters to a lawyer can be irrelevant to the historian, and vice versa.⁶⁹

International law scholars and practitioners generally adopt a deliberately lucid, objective, and terse language,⁷⁰ relying on the use and re-use of terms in a rather conservative fashion.⁷¹ In fact, “[e]xcept in hard cases, the law doesn’t reward creativity. It rewards logic and experience.”⁷² Whether it is displayed in norms or briefs or academic works, such language is an instrument of persuasion and power, often claiming to be definitive, “inevitable in [its] conclusions”⁷³ and thus preventing “more emancipatory or dissident” discourses about the international order.⁷⁴ The language of historians differs from law, as it bypasses legal technicalities,⁷⁵ displays some literary qualities⁷⁶ and often “convey[s] a vivid representation of characters and situa-

67. Gerry Simpson, *The Sentimental Life of International Law*, 3 LONDON REV. INT’L L. 3, 6 (2015) (acknowledging that international law can and has been conceived “as a language, or culture or collection of people who call themselves ‘international lawyers’ and do things in particular ways employing distinctive speech patterns or tics, and operating within an identifiable set of cultural mores”); Dyson, *supra* note 39, at 50 (reflecting on legal history and its future).

68. *Id.* at 50 (discussing legal history).

69. Carlo Ginzburg, *Checking the Evidence: The Judge and the Historian*, 18 CRITICAL INQUIRY 79, 85 (“[S]ometimes cases a judge would dismiss as juridically nonexistent turn out to be fruitful to a historian’s eye.”).

70. Simpson, *supra* note 67, at 11 (noting that legal scholars have tended “to express [themselves] in a highly particular . . . form” and that “the ideal” has been “a deracinated, anti-biographical, depersonalised, [and] forma[l] . . . prose style”).

71. Wilf, *supra* note 44, at 550.

72. Gerald Lebovitz, *Legal Writing Myths*, 16 SCRIBES J. LEGAL WRITING 113, 114 (2015) (“Lawyers must rely on precedent. A scientist who invents a novel approach is an innovator. Not so the lawyer.”).

73. Wilf, *supra* note 44, at 550.

74. Simpson, *supra* note 67, at 6 (noting that international law is “a form of rhetoric or a diplomatic language that forbids more emancipatory or dissident . . . ways of going about things”).

75. Kemmerer, *supra* note 26 (“Historians . . . don’t like the technicalities, the complex institutional architectures, the intricate cases and convoluted judgments.”).

76. Hayden White, *The Question of Narrative in Contemporary Hist. Theory*, 23 HIST. AND THEORY 1 (1984) (arguing that historians’ narratives of the past are based on literary models and that historians resort to literature to convey meaning to their history).

tions.”⁷⁷ Moreover, historians are aware of the contingent nature of their writings. Historical accounts “never exhaus[t] all future possibility.”⁷⁸

International law scholars and practitioners share an identifiable cultural capital: “a certain way of understanding . . . the world.”⁷⁹ International lawyers “look to the past for authority” and often assume that “there is continuity between past and present.”⁸⁰ By contrast, legal historians examine the past in its context. Often “skeptical of theory,”⁸¹ they rely upon empirical and inferential methods.⁸² They gather information from dusty archives often “scattered across vast distances,”⁸³ with restricted access policies and short opening hours. Their narratives are provisional until further archival research impels revisions.⁸⁴ Despite having been described as “a dry and dusty subject,”⁸⁵ as well as “nonprofessional” in its development,⁸⁶ legal history nevertheless has quite a long tradition.

Yet, these divergences should not be overstated. There are interesting convergences between international law and history.⁸⁷ Both historians and lawyers are required to interpret and reconstruct past events.⁸⁸ Whereas lawyers’ writings do not have a literary aim, their texts “can have literary qualities.”⁸⁹ Moreover, several international lawyers have benefitted from

77. Ginzburg, *supra* note 69, at 79 (noting that for centuries the relationship between “history and law has been very close” and highlighting the convergences and divergences between the historians’ and lawyers’ professions).

78. Koskenniemi, *supra* note 24, at 239.

79. Simpson, *supra* note 67, at 8.

80. George Rodrigo Bandeira Galindo, *Force Field: On History and Theory of International Law*, RECHTSGESCHICHTE—LEGAL HISTORY 86, 87 (2012) (further finding that “[a]rguments grounded on the past have been omnipresent in international lawyers’ discourse, in the making of their doctrines or in their statements before international courts”).

81. Maks del Mar & Michael Lobban, *Preface to LAW IN THEORY AND HISTORY—NEW ESSAYS ON A NEGLECTED DIALOGUE*, v–ix (Maks del Mar & Michael Lobban eds., 2016) (exploring the dialogue between legal theory and legal history).

82. Ginzburg, *supra* note 69, at 84 (“A piece of historical evidence can be either involuntary (a skull, a footprint, a food relic) or voluntary (a chronicle, a notarial act . . .). But in both cases a specific interpretive framework is needed.”).

83. Dyson, *supra* note 39, at 52.

84. See generally LAW IN THEORY AND HISTORY, *supra* note 81.

85. Dyson, *supra* note 39, at 52.

86. Roman J. Hoyos, *Legal History as Political Thought*, AM. J. LEGAL HIST. 56, 79 n.13 (2016) (considering legal history as a type of political thought).

87. Thomas Skouteris, *Engaging History in International Law*, in NEW APPROACHES TO INTERNATIONAL LAW 99, 99 (José María Beneyto and David Kennedy eds., 2012) (stressing the linkage between international law and history).

88. Ginzburg, *supra* note 69, at 84–85 (highlighting that “the tasks of both the historian and the judge imply the ability to demonstrate, according to specific rules, that x did y, where x can designate the main actor, albeit unnamed, of a historical or of a legal act, and y designates any sort of action”); Skouteris, *supra* note 87, at 101 (“legal work inevitably requires a positioned engagement with the past thus . . . contributing to the production of ‘historical knowledge’”). *But see* Bederman, *supra* note 10, at 63 (noting that while lawyers “assemble historical data . . . to support[t] a client’s position in a particular context,” just as the judge examines that material to “reach a decision on the merits of the dispute[.] [l]egal historians just do not think in such result-driven ways”).

89. Brook Thomas, *Reflections on the Law and Literature Revival*, 17 CRITICAL INQUIRY 510, 533 (1991).

historiographical insights. In parallel, intellectual legal historians share methodological affinities with international lawyers, focusing on the genealogy or evolution of concepts and investigating the past, the present, and the future of given ideas.⁹⁰

However, as most international lawyers are not historians by training and most historians do not have in-depth expertise in international law, doubts remain as to the proper methodology to be adopted. This Article does not take a position on whether a given history of international law is better than another; instead it highlights that several histories of international law can and have been written, and illustrates a range of available methods. Despite its flourishing, the history of international law is still in search of a proper methodology. Should international legal historians stick to intra-disciplinary approaches, working within the boundaries of only one discipline, be it international law or legal history? Or should they endorse a comprehensive and interdisciplinary stance in mapping out the history of international law?

Neither historians or international law scholars have “monopoly on the past”⁹¹ of international law. Rather, this Article suggests that the history of international law is an interdisciplinary field that can bridge the interest of both historians and international law scholars.⁹² Historians and lawyers should “ris[e] above their traditional antagonism”⁹³ and write international legal history that is of relevance to both historians and lawyers alike.⁹⁴

In order to devise an appropriate method, one needs to be aware of the four dimensions of international legal historiography: 1) local/global; 2) internal/external; 3) diachronic/synchronic; and 4) micro/macro.

First, international legal history can be “local,” focusing on domestic and/or regional trajectories of international legal history, or “global,” adopting “a de-centered . . . perspective, detached as far as possible, from the concrete circumstances and the national identity of the observer.”⁹⁵ Although international legal history by definition focuses on international legal facts, for a

90. See, e.g., Vincenzo Ferrone, *The Rights of History: Enlightenment and Human Rights*, 39 HUM. RTS. Q. 130–41 (2017) (investigating the genealogy of human rights and tracing them back to the Enlightenment).

91. Kalman, *supra* note 40, at 114 (arguing that “historians have no monopoly on the past”).

92. *Id.* at 116 (“hoping for more scholarship that is both ‘valid’ for historians, in the sense that it represents a provocative interpretation of history, and ‘valid’ for law professors, in the sense that it provides useful data from the past”).

93. *Id.* at 118.

94. *Id.* at 116 (arguing that historians and lawyers should “produce work which is at once both good lawyers’ legal history and good historians’ legal history”).

95. Bardo Fassbender & Anne Peters, *Introduction: Towards a Global History of International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 1, 9 (Bardo Fassbender and Anne Peters eds., 2012) (citations omitted) (adopting a global history approach); see also Galindo, *supra* note 80, at 93 (highlighting that in international legal history, those preferring local approaches “reject . . . a singular and unified narrative of the development of international law and instead focus on how such development happened in different ways, at different speeds, and from different perspectives”).

long time it adopted a Eurocentric focus.⁹⁶ Local and global approaches to international legal history aim to overcome the traditional Eurocentrism of the history of international law.⁹⁷ Only recently have scholars approached the history of international law by illustrating the contribution of other regions to its making.⁹⁸ Among these approaches, global history promotes “a de-centered” perspective by focusing on the interactions between peoples rather than states.⁹⁹ Global/local legal histories do not necessarily replace the traditional dichotomy between national and international legal histories. While domestic legal history is predominantly a matter for legal historians, it can be of relevance to international legal historians, too.¹⁰⁰ At the same time, international legal histories can also present a national component. National histories of international law are international legal histories narrated from the perspective of the nation’s foreign policy, including “the domestic laws and treaty-arrangements that regulate the conduct of external relations.”¹⁰¹

Such trends toward local/global histories have both promises and pitfalls. On the one hand, they can map the histories of international law in a plural-

96. See Martti Koskenniemi, *Histories of International Law: Dealing with Eurocentrism*, 19 RECHTSGESCHICHTE 152, 158 (2011) (“Europe served as the origin, engine and telos of historical knowledge”); *id.* at 155 (“European stories, myths and metaphors continue to set the conditions for understanding international law’s past”). See also Arnulf B. Lorca, *Eurocentrism in the History of International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 1034, 1034 (Bardo Fassbender & Anne Peters eds., 2012) (“[t]raditionally, the history of international law has been deeply Eurocentric”); *id.* at 1035 (arguing that the Eurocentric historical narrative can “perform an ideological function—universalizing and legitimizing the particular Western standpoint” and calling for the production of “divergent narrative[s]”).

97. See Fassbender & Peters, *supra* note 95, at 9 (noting that one of the various objectives of global history is “to overcome the (primarily European) heritage of national history”); Galindo, *supra* note 80, at 93 (pointing out that “studies on the way international law was thought of and practiced in the ‘periphery’ of the world [are] becoming important”).

98. See, e.g., ARNULF B. LORCA, MESTIZO INTERNATIONAL LAW: A GLOBAL INTELLECTUAL HISTORY 1850–1950, 10 (2012) (suggesting that international law is not purely of European making and arguing that extra-European countries did not passively receive a “European international law” but instead reshaped such rules and contributed to the making of international law); *id.* at 8 (offering a global and intellectual history of a “mestizo international law”); TASLIM O. ELIAS, AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW (1988) (illustrating the importance of Africa in the history of international law); Arnulf B. Lorca, *International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination*, 47 HARV. INT’L L. J. 283, 283 (2006) (examining international law’s trajectories in Latin America); Liliana Obregón, *Regionalism Constructed: A Short History of Latin American International Law*, in SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW (Mariano J. Aznar & Mary E. Footer eds., 2012) (examining the history of Latin American international law); DANIEL P. MOYNIHAN, ON THE LAW OF NATIONS (1990) (tracing the role of international law in American foreign policy from the founding of the Republic through the beginning of the Bush administration).

99. Fassbender & Peters, *supra* note 95 at 9.

100. See, e.g., Lauren Benton, *Toward a New Legal History of Piracy: Maritime Legalities and the Myth of Universal Jurisdiction*, 23 INT’L J. MAR. HIST. 225, 239 (2011) (stressing that one should “avoid a false dichotomy between the history of piracy as a crime against humanity and the history of piracy as a violation of state law. The greater practical force of municipal law in dealing with pirates was not regarded by its proponents as a rejection of a ban on piracy based on natural law principles.”).

101. Koskenniemi, *supra* note 24, at 237.

istic way.¹⁰² Moreover, they open the door to analysis of the role played by non-state actors in the history of international law.¹⁰³ On the other hand, overcoming epistemic biases remain a significant challenge.¹⁰⁴ International legal histories always require interpretation. Therefore international legal historians play a central role in the production of international legal histories.¹⁰⁵ At the same time there is “a more or less direct connection between the historians’ experience as an individual and his or her approach to research.”¹⁰⁶ In parallel, access to historical data is subject to “power relationships”: as Ginzburg puts it, “the voices of those who belong to . . . oppressed and/or minority groups are usually filtered down to us by extraneous, if not hostile figures: chroniclers, notaries, bureaucrats, judges and so on.”¹⁰⁷

Second, international legal history can be “internal” or “external.” While “internal” international legal history “stays as much as possible within the box of distinctive-appearing legal things,” relying on legal sources and depicting legal matters, external international legal history relies on interdisciplinary approaches, for instance focusing on the interplay between legal matters and “the social context of law.”¹⁰⁸ So far, internal legal history has predominated.¹⁰⁹ Already in the 1960s, the Italian historiographer Arnaldo Momigliano famously contended that legal historians should not write solely from an internal perspective. Rather, since law is a social phenomenon, its history should investigate the interplay between law and its context.¹¹⁰

102. See Fassbender & Peters, *supra* note 95, at 10 (highlighting that global histories enable “a multipolar perspective”).

103. Galindo, *supra* note 80, at 93 (highlighting that “there are possibly ‘local’ histories on a more reduced scale”); Fassbender & Peters, *supra* note 95, at 9 (noting that global historians, *inter alia*, focus on grassroots movements, business, and non-state actors).

104. See *id.* at 10 (mentioning the struggle of international lawyers to overcome “the epistemic nationalism of their discipline,” and for some, the “traditional epistemic Eurocentrism”).

105. Matthew Craven, *Theorizing the Turn to History in International Law*, in THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW, *supra* note 96, at 35 (recognizing that “any work of historical reconstruction will always involve acts of selection and arrangements”); Hayden White, *Interpretation in History*, NEW LITERARY HISTORY 4 (1973) 281 (reporting that some critics of historiography “g[o] so far as to argue that historical accounts are nothing but interpretations.”).

106. Carlo Ginzburg, *Some Comments on the Discussion at the Accademia dei Lincei*, 18 CYBER REV. OF MODERN HISTORIOGRAPHY 128, 128 (2013).

107. Carlo Ginzburg, *Some Queries Addressed to Myself*, 18 CYBER REV. OF MODERN HISTORIOGRAPHY 90, 91 (2013).

108. Robert W. Gordon, *Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography*, 10 L. & SOC’Y REV. 9, 11 (1975) (arguing that whereas American legal history tended to be “internal,” it gradually became more “external” since the publication of the work of J. Willard Hurst).

109. Jacob K. Cogan, *Book Review*, 108 AM. J. INT’L L. 371, 375 (2014) (pinpointing that “Much of . . . [international legal] history is intensely internalist (. . . using the methods and materials that lawyers typically employ.”).

110. Arnaldo Momigliano, *The Consequences of New Trends in the History of Ancient Law*, in STUDIES IN HISTORIOGRAPHY 239, at 240–41 (1966) (“It is inherent in the general recognition that law, as a systematization of social relations at a given level, cannot be understood without an analysis of the sexual orientations, the moral and religious beliefs, the economic production and the military forces that charac-

Nowadays both international lawyers and legal historians seem to regard “self-contained legal history” as outdated.¹¹¹ There is an emerging “recognition that meaningful legal history must be more than . . . internal history.”¹¹² If law reflects society, legal history cannot be separated from law’s context. However, some eclecticism is possible and even desirable.¹¹³ For instance, “[o]ne need not choose between . . . internal and external legal histories.”¹¹⁴ Rather, “[t]he conventional sources of legal history—judicial opinions, statutes, treatises, . . . pleadings and . . . court records” can appear “alongside conventional sources of intellectual and social history.”¹¹⁵

Third, international legal history can be synchronic or diachronic. International legal history is “synchronic” when it investigates legal issues as they exist at one point in time without reference to their evolution. International legal history is “diachronic” when it studies legal phenomena as they change in the long term, the *long durée*.¹¹⁶ Most historians, except for intellectual historians studying the history of ideas and looking at the development of concepts,¹¹⁷ generally adopt a synchronic approach, stressing that “the past is . . . different from the present.”¹¹⁸ For historians, “the past is a foreign country; they do things differently there.”¹¹⁹

By contrast, international lawyers prefer a diachronic approach, considering law and history as necessarily entangled. They focus on a given legal concept and study its evolution. The language of international law has “a strong genealogical or ancestral component in the sense that one generation has provided the foundation or the impetus for the emergence and shaping of the next generation’s usage.”¹²⁰ International lawyers look for continuity with the past. One of the sources of international law, customary law, is based on state practice and thus requires international lawyers to look at past conduct. Although there is no binding precedent in international law, international law courts and tribunals do refer to past cases.

terize a given society at a given moment.”); see also Ginzburg, *supra* note 69, at 84 (suggesting that “No text can be understood without a reference to extratextual realities.”).

111. Wise, *supra* note 7, at 551 (noting that “there is unease on all sides when problems of legal history are treated in traditional lawyers’ terms”); see also Galindo, *supra* note 80, at 97 (criticizing “exclusive reliance on canonical authors and the mandarins of the discipline”).

112. *Id.*

113. *Id.* (arguing that “legal historians should not be afraid to adopt a multitude of approaches and experiment in finding different ways to ascertain the truth of the legal past”).

114. Fisk and Gordon, *supra* note 20, at 526.

115. *Id.*

116. FERNAND BRAUDEL, *History and the Social Sciences*, in ON HISTORY 25, 27 (Sarah Matthews trans., 1980) (highlighting the value of “the long time span”).

117. Like law scholars, intellectual historians (those studying the history of ideas) look at the development of concepts.

118. Kalman, *supra* note 40, at 121.

119. DAVID LOWENTHAL, THE PAST IS A FOREIGN COUNTRY 3 (2015) (quoting L.P. HARTLEY, THE GO-BETWEEN 17 (1962)).

120. Alston, *supra* note 18, at 2052.

While a diachronic approach characterizes the toolkit of international lawyers when they deal with international law, questions arise as to whether such an approach remains sound when dealing with the *history* of international law. International law scholars and practitioners now question the sacredness of diachronic approaches within the history of international law.¹²¹ Such diachronic approaches may foreclose in-depth understanding of the meaning of given historical events and the resulting legal texts.¹²² However, questions arise as to the possibility of a purely synchronic study of international legal history. In fact, as Koskenniemi points out, “a clear separation between the object of historical research and the researcher’s own context cannot be sustained; . . . the study of history is unavoidably—and fruitfully—conditioned by the historian’s . . . pre-understandings, conceptual frames and interest[s]”¹²³

Fourth, international legal history can be micro or macro. Micro-history typically involves “a reduction of scale” and focuses on given events or anecdotes or individuals rather than epochal events.¹²⁴ Micro-histories aim to ask big questions in small places and can link law, literature and history. Despite their small scale, such stories can reflect the behaviors, logics, and motives characterizing a given society.¹²⁵ Albeit to a limited extent, international legal historians have mined small episodes, often discovered serendipitously, for insights into major themes of international legal history.¹²⁶ The potential of micro-histories is gradually unfolding.¹²⁷ Not only is there a growing interest in international law scholars and practitioners, whose biographies make great subject of micro-histories, but there is a growing interest in linking institutions, concepts and international legal scholars to their milieu. The small-scale enables researchers to look at given topics from new

121. Galindo, *supra* note 80, at 101 (stating that “[w]hat is necessary, however, is that any international lawyer—practitioner or theorist alike—approach history more carefully, avoiding seeing in the past what is not there at all: the present”).

122. See, e.g., Koskenniemi, *supra* note 96, at 226 (reflecting on anachronism and the legacy of Francisco de Vitoria, one of the founders of international law: “What might Vitoria, . . . professor of theology at Salamanca, have thought if he had learned that he would be downgraded as a ‘jurist’ or addressed as a ‘human rights scholar’ in a world where the expression ‘human rights’ made no sense . . . and ideas that we associate with freedom in a secular community were frankly heretical? Vitoria, after all, was in favor of burning heretics! . . . Surely, anachronism shuts our ears to what Vitoria was actually trying to convey to his Salamanca audience.”).

123. *Id.* at 230 (suggesting that “complete freedom from anachronism is impossible”).

124. For a reflection on microhistory, see, e.g., Ginzburg, *supra* note 107, at 93 (“[T]he reduction of scale in observation (not the object of investigation . . .) is a precious cognitive tool [a]s . . . one intensely studied case can be the starting point for a generalization[,] . . . above all if it is an anomalous case, because anomaly implies the norm.”); Carlo Ginzburg, *Microhistory: Two or Three Things that I Know about it*, 20 CRITICAL INQUIRY 10 (1993).

125. William W. Fisher III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, 49 STAN. L. REV. 1065, 1071 (1997).

126. See, e.g., JAN PAULSSON, DENIAL OF JUSTICE IN INTERNATIONAL LAW 10 (2005) (discussing some historical background).

127. Galindo, *supra* note 80, at 98 (“International lawyers have rarely if ever embarked upon full-length, small-scale histories. Some commendable efforts excavated the doctrine of forgotten authors, but they are generally unconcerned with . . . micro-history.”).

under-researched angles and provide in-depth analysis even of the historical smaller details (*minutiae*).¹²⁸ However, such an approach has also some pitfalls, including the difficulty of selecting a subject suitable for inquiry, dealing with scarce evidence and gaps in the data, and remaining relevant to a broad audience.

In turn, macro-history seeks out large, long-term trends in international legal history, looking at multiple events and concepts over the course of centuries.¹²⁹ It studies the past on large scales. Most international legal histories have focused on large historical events and their legal outputs.¹³⁰ But the fact that macro-historical approaches have predominated does not mean that they should necessarily do so in the future. This approach often loses sight of local and individual contributions to international legal history.

Macro-histories and micro-histories are complementary.¹³¹ Their complementarity is highlighted by what historians call the “issue of framing”: “in writing, as in an art gallery, frames determine what we see and how we see it. By telling us what is inside and what is outside they suggest what is and what is not important. So frames can hide at least as much as they reveal.”¹³² Therefore, investigating international legal history through both micro and macro-historical frames “ought to offer a richer, fuller and more coherent understanding of the past in general.”¹³³ Moreover, international legal historians may well need to “mov[e] back and forth between a wider and a narrower scale in order to gradually come to a clearer view of [their] object.”¹³⁴

Are there discernible trends of international legal history across these various dimensions? For decades, if not for centuries, the history of international law has been Eurocentric. Since the decolonization process took off, this focus has given way to more comprehensive and inclusive histories of international law.¹³⁵ In the late nineteenth and early twentieth centuries, legal history—both national and international—used to be largely inter-

128. See, e.g., PHILIPPE SANDS, *EAST WEST STREET* 3–4 (2016) (connecting the Nuremberg trials to the histories of Hersch Lauterpacht, Rafael Lemkin, and the history of Sand’s own family).

129. See, e.g., GREWE, *supra* note 13, at 1 (discussing the history of modern international law and proposing a “periodization”).

130. See Koskenniemi, *supra* note 24, at 235 (noting that “[h]istories of international law have tended to encompass large, even global, wholes that are supposed to determine the substance of the international laws of a period, such as the ‘Spanish,’ ‘French,’ or ‘British’ ‘epochs’ discussed by Grewe”).

131. See David Christian, *Macrohistory: The Play of Scales*, 4 SOC. EVOLUTION & HIST., 22, 28 (2005).

132. *Id.* at 26 (referring to the traditional neglect of Aboriginal perspectives in historical narratives of domestic history).

133. *Id.* at 27–28 (“By looking at the very small you can sometimes glimpse the very large. But the opposite is also true; by trying to grasp very large themes, you can sometimes find to your surprise that you are closing in on the intimate and the personal.”).

134. Koskenniemi, *supra* note 24, at 236.

135. See, e.g., Onuma Yasuaki, *When Was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilisational Perspective*, 2 J. HIST. INT’L L. 1 (2000) (aiming at overcoming Eurocentrism); DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE*, 27, 43, 45 (2000) (emphasizing that history remains largely Eurocentric and attempting to “provincialize” it—that is, “aim[ing] to displace a hyperreal Europe from the centre”).

nal.¹³⁶ More recently, however, scholars have stressed the need to broaden the types of sources and to adopt a more interdisciplinary stance in order to locate given historical events within a broader context.¹³⁷

Until recently, while historians privileged a synchronic approach to the history of international law, international law scholars privileged a diachronic approach to it.¹³⁸ Law is a peculiar discipline in which lawyers “look to past texts precisely to discover the nature of present obligations.”¹³⁹ However, legal historians have criticized the genealogical approach, . . . for not taking into account historical complexity.¹⁴⁰ For historians, placing a concept or idea outside its proper period of time constitutes “the most unpardonable of sins.”¹⁴¹ For international lawyers, it is daily routine.¹⁴² If the diachronic approach, and even a certain anachronism, works well for the study of international law, this does not necessarily mean that it works well for the study of the history of international law. As the international law scholar, Thomas Skouteris, points out, “the fact that the object of study is ‘law’ does not mean that legal technique alone can provide the answer.”¹⁴³ Doubts remain as to whether anachronism can or should have any role in the making of international legal history.

V. HISTORIOGRAPHICAL METHODS

Methodology—the analysis of the methods applied to a field of study—“involve[s] key decisions about what and how we read, the nature of the material with which we engage, [and] how we conduct our research.”¹⁴⁴ Why should one bother about the method(s) of international legal history? One could contend that any historiographical debate “not only fails to enhance, but actively threatens the practice of history.”¹⁴⁵ Accordingly, to do history, one “should forget theory and get on with the business of doing history.”¹⁴⁶ Following this line of argument, if any guidance were needed for determining how to write international legal history, one could look at the

136. See Kunal M. Parker, *Writing Legal History Then and Now: A Brief Reflection*, 56 AM. J. LEGAL HIST. 168, 168 (2016).

137. See Alston, *supra* note 18, at 2048.

138. See Orford, *supra* note 44, at 172.

139. *Id.* at 171.

140. Lesaffer, *supra* note 3, at 33–35 (criticizing the genealogical approach for “describ[ing] history in terms of similarities with or differences from the present, and not in terms of what it was”).

141. Carlo Ginzburg, *Our Words and Theirs: A Reflection on the Historian's Craft, Today*, 18 CYBER REV. OF MOD. HISTORIOGRAPHY 97, 98 (2013) (quoting Marc Bloch).

142. See Orford, *supra* note 44, at 172 (pinpointing that “lawyers . . . are trained in the art of making meaning move across time”).

143. Skouteris, *supra* note 87, at 115.

144. See Orford, *supra* note 44, at 167.

145. Fisher, *supra* note 125, at 1087 (reporting an analogous criticism with regard to the methods of American legal history).

146. *Id.*

work of peers.¹⁴⁷ In a nutshell, trying too hard to understand the history of international law would prevent one from appreciating just how interesting the history of international law really is.¹⁴⁸

The problem with this apparently liberal approach is that if one adopts it, she will be left in a muddy zone of uncertainty and confusion as to the best way(s) to proceed. Reference to the works of peers can be illuminating, but the current literature is rather fragmented, given the extraordinary expansion of international legal history to cover fields as diverse as international criminal law, international economic law, the law of the sea, and others. Scholars often fail to explicitly acknowledge the method they adopt. This is not to say that method is irrelevant to their work, just that often they take it for granted. Moreover, recent methodological debates, as illustrated in Part III, can make it difficult to draw sound conclusions about the lessons to be learned from the debate.

Therefore, mapping and critically assessing the available methods of international legal historiography is a useful, timely, and crucial endeavor. Not only can it clarify the range of available options, but it can also enable the researcher to identify the best method(s) for pursuing her research objectives. A scrutiny of the available methods does not replace creative effort with a pre-determined path; rather, it aims to contribute to the understanding of the field and empower the international legal historian to devise an appropriate method to address given research questions. It is like providing a map: not only is one free to select possible destinations, but she is also free to choose possible routes and/or draw alternative maps. No single paradigm dominates the historiography of international law. Rather, there is an array of methods by which international legal historians can do their work. While this Article may not provide the ultimate map, and other maps are possible, it aims to contribute to the emerging field of the history of international law, facilitate further research in the field, and open space for fruitful debate.

While this section offers a significant sample of historiographical methods, it does not purport to be exhaustive. In particular, it does not aim to map all of the available methods of international law or the methods of legal history. Rather, it identifies a selected range of methods that can and have been used for writing the history of international law.¹⁴⁹ This section examines the defining characteristics of these methods. It acknowledges that "each is a living method, employed by a diverse community of scholars," and that therefore, each method may evolve.¹⁵⁰

147. *Id.*

148. *Id.* at 1086.

149. For a similar approach, albeit related to American legal history rather than international legal history, see Fisher, *supra* note 125, at 1065 (referring to four schools of thought in intellectual history that have been used by law historians: structuralism, contextualism, textualism, and new historicism).

150. For a similar approach, albeit related to the identification of methods of international law rather than methods of international legal history, see Steven R. Ratner and Anne-Marie Slaughter, *Appraising*

This Article identifies seven major methods and/or approaches to international legal historiography: 1) Structuralism; 2) Post-structuralism; 3) Contextualism; 4) Textualism; 5) Critical Legal Studies; 6) Third World Approaches to International Law; and 7) Law and Society. The first four schools of thought—Structuralism, Post-structuralism, Contextualism, and Textualism—derive from intellectual history; the remaining three schools of thought—Critical Legal Studies, Third World Approaches to International Law, and Law and Society—derive from international and domestic law.

Structuralism assumes that the historian's job is to map "universally transcendent [legal] structures . . . without paying any attention at all to social context."¹⁵¹ Focusing on doctrinal dogmas, it produces a type of history that is not really history at all.¹⁵² It investigates "the evolution of legal rules, paying attention to how those rules have changed over time."¹⁵³ According to the structuralists, law can be understood as a "timeless and universal"¹⁵⁴ "language-system . . . governed by a deep grammar."¹⁵⁵ Accordingly, they focus on the "deep grammar" of international law.¹⁵⁶ Whereas structuralism "had only a modest following among intellectual historians in general," it "profoundly influenced the scholarship of a substantial group of legal historians."¹⁵⁷ Nonetheless, structuralist legal history has been increasingly criticized and "sidelined in the last decades of the 20th century," for its alleged rigidity.¹⁵⁸

Post-structuralism advocates critical ways of thinking. The contextualists, the Gramscians, the feminists, and the Frankfurt School could be included in this large group. Such movements share, for example, the perception that the historical and cultural context should be investigated, as well as a common approach of constant re-assessment of facts, events and theories. In other words, post-structuralism transforms historiography into a critical project.

Contextualism, the mainstream historiographical current, highlights the need to relate texts to their context and to constantly re-assess facts, events

the Methods of International Law: A Prospectus for Readers, 93 AM. J. INT'L L. 291, 295 (1999) (highlighting the fact that methods evolve).

151. Justin Desautels-Stein, *A Context for Legal History, Or, This Is Not Your Father's Contextualism*, 56 AM. J. LEGAL HIST. 29, 35 (2016).

152. See *id.* (criticizing structuralist legal history as "an embarrassing kind of history").

153. *Id.* at 36.

154. Fisk & Gordon, *supra* note 20, at 530.

155. Justin Desautels-Stein, *Structuralist Legal Histories*, 78 LAW AND CONTEMPORARY PROBLEMS 37, 45 (2015).

156. CHINA MIÉVILLE, BETWEEN EQUAL RIGHTS: A MARXIST THEORY OF INTERNATIONAL LAW 3 (2005); see also Martti Koskenniemi, *What is Critical Research in International Law? Celebrating Structuralism*, 29 LEIDEN J. INT'L L. 727, 727 (2016) (defining "structuralism" as a "form of analysis that separates phenomena of social life that are immediately visible from others that are usually 'hidden' but in some way contribute to producing the former so that once the operation of that 'hidden' background is revealed we feel we 'understand' the more familiar phenomena better").

157. Fisher, *supra* note 125, at 1073.

158. Desautels-Stein, *supra* note 151, at 37; see also Alston, *supra* note 18, at 2080.

and theories. It constitutes a post-structuralist reaction to structuralism. Contextualists highlight that the meaning of a text depends upon its historical context, and that “the central job of the . . . historian is to reconstruct that context and then to interpret the text in light of it.”¹⁵⁹ According to Quentin Skinner, the founder of the Cambridge school of intellectual history,¹⁶⁰ legal texts “should not be read as sources of timeless truths”—rather, they should be seen as “political interventions in particular social contexts and political power struggles.”¹⁶¹ Therefore, international legal historians should approach past events and texts in their own historical contexts, rather than studying them anachronistically in light of current debates.¹⁶² In fact, the context—meant as the social, cultural and political background of a given text—can constitute a sort of “shibboleth,” the master key to the proper meaning(s) of a text.¹⁶³ In turn, “the understanding of texts . . . presupposes the grasp both of what they were intended to mean, and how this meaning was intended to be taken.”¹⁶⁴ Several international law scholars have expressed some sympathy for this approach,¹⁶⁵ but have also cautioned that the choice of the relevant contexts is a subjective endeavor that is unavoidably influenced by the (current) concerns of the researcher.¹⁶⁶

Textualism suggests that “each document produces . . . a multiplicity of meanings.”¹⁶⁷ Textualists argue that “it is futile to try to give meaning to an ambiguous text by looking to its context since the context is equally

159. Fisher, *supra* note 125, at 1068.

160. The Cambridge School of Intellectual History is a historiographical movement traditionally associated with the University of Cambridge and includes a number of intellectual historians who aim to “reconstruct[] an intellectual context within which major works of philosophy could be studied, as opposed to the traditional way of studying philosophy, where great texts tended to be examined for their internal coherence and for the truth status of the claims that they made.” Cambridge School of Intellectual History, http://www.history.ac.uk/makinghistory/themes/cambridge_school_of_intellectual_history.html (last visited Apr. 7, 2017).

161. Anne Orford, *On International Legal Method*, 1 LONDON REV. INT’L L. 166, 170 (referring to Skinner, *supra* note 47, at 3).

162. Skinner, *supra* note 47, at 40, 48 (arguing that the method of contextual reading “provide[s] the appropriate methodology for the history of ideas,” “paying due regard to the historical conditions which produced the texts themselves”); see also, Lesaffer, *supra* note 3, at 38–40 (proposing “a two phased methodology” in which international legal historians “should try to read [texts] as the contemporaries of the author would . . . and thereby “construct an evolutionary theory that truly moves from past to present”).

163. Skinner, *supra* note 47, at 43 (emphasis and quotations omitted).

164. *Id.* at 48.

165. Koskeniemi, *supra* note 96, at 156 (arguing against the sin of anachronism). See also Martti Koskeniemi, *Why History of International Law Today?*, 4 RECHTSGESCHICHTE 61, 64–65 (2004) (pointing to the Cambridge School as a model for work in the history of ideas); Nathaniel Berman, *But the Alternative is Despair: European Nationalism and the Modernist Renewal of International Law*, 106 HARV. L. REV. 1792, 1795 (1993) (arguing that understanding “the transformation of international law in the period between the First and Second World War requires explicating its underlying framework of assumptions”).

166. Koskeniemi, *supra* note 24, 239 (“[t]he reduction of a historical narrative to its context is relative to the way the historian frames the context, decides its scope, and chooses its scale”).

167. Fisher, *supra* note 125, at 1069.

dependent on interpretation [of texts] for its meaning.”¹⁶⁸ Moreover, treating a text as a mere “respons[e] to the ideas of [its] author[’s] contemporaries” seems rather determinist and neglects the “transcendent potential” of a given text.¹⁶⁹ Textualists instead promote the existence of a continuous dialogue between a text and its readers and favor anachronism.¹⁷⁰ For them, there is a living bond between the past and the present. Textualist analyses “oscillat[e] between explications of texts themselves and reflections upon how those texts illuminate and are illuminated by . . . present-day legal thought and practice.”¹⁷¹ Some international lawyers have adopted textualist methodological tenets, albeit implicitly.¹⁷²

Since the 1970s, Critical Legal Studies (CLS) have contributed to the history of international law.¹⁷³ CLS has “no definitive methodological approach”; rather, their proponents use a variety of methods “to address separate, but interrelated, failings perceived in the international legal project” including but not limited to poverty, cultural imperialism and violence.¹⁷⁴ CLS seems committed to “reappraising basic approaches to legal scholarship.”¹⁷⁵ In a post-structuralist way, CLS transforms historiography into a critical project, addressing the perceived failings of international law. CLS calls for “any approach to the past that produces disturbances in the field – that inverts or scrambles familiar narratives . . . ; anything that advances rival perspectives (such as those of the losers rather than the winners) for surveying developments, or that posits alternative trajectories that might have produced a very different present.”¹⁷⁶ In international law, critical legal scholars “have sought to move beyond what constitutes law . . . to focus on the contradictions, hypocrisies and failings of international legal discourse”¹⁷⁷ and “to create a more humane, egalitarian, and democratic society.”¹⁷⁸ In international legal history, critical legal scholars have created an

168. *Id.*

169. *Id.*

170. *Id.* at 1070 (stating that the textualists “ask of old texts frankly anachronistic questions”).

171. *Id.* at 1081.

172. See, e.g., Anne Orford, *International Law and the Limits of History*, THE LAW OF INTERNATIONAL LAWYERS: READING MARTI KOSKENNIEMI (Wouter Werner, Marieke de Hoon & Alexis Galán, eds), 1, 6–7 (2017) (arguing that “to mandate historical methods as the only means for engaging with past texts makes it impossible to undertake a study of how legal concepts, ideas, or principles are transformed in relation to changes in the social world over time, and thus to grasp the present function of legal concepts adequately”).

173. See Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 59 (1984); see also Jason Beckett, *Critical International Legal Theory*, OXFORD BIBLIOGRAPHIES (2012) (“Although most writings on public international law (PIL) possess an *esprit critique*, what distinguishes critical international legal theory (CILT) is a sense that the failings in the project are not marginal or exceptional, but endemic, consistent, and structural.”).

174. See Beckett, *supra* note 173, at 1.

175. David Kennedy, *Critical Theory, Structuralism and Contemporary Legal Scholarship*, 21 NEW ENGLAND L. REV. 209, 210 (1986).

176. Robert W. Gordon, *The Arrival of Critical Historicism*, 49 STAN. L. REV. 1023, 1024 (1997).

177. Ratner & Slaughter, *supra* note 150, at 294.

178. Duncan Kennedy & Karl E. Klare, *A Bibliography of Critical Legal Studies*, 94 YALE L. J. 461, 461 (1984).

empowering polyphony.¹⁷⁹ Koskenniemi's *FROM APOLOGY TO UTOPIA* is often considered an expression of "critical legal studies" in international legal history.¹⁸⁰

Third World Approaches to International Law (TWAIL),¹⁸¹ the academic movement that aims to put the colonial encounter at the center of (the history of) international law,¹⁸² is not a method in a classical sense, but it constitutes a distinctive approach that questions the foundations, operations, and methods of international law and its histories.¹⁸³ While TWAIL does not merely focus on the history of international law, its historical reading of the colonial encounter influences its approaches to a range of international law issues.¹⁸⁴ TWAIL scholars focus on the "history of the peoples of the Third World,"¹⁸⁵ suggesting "continuing complicity between international law and violence"¹⁸⁶ and "seek[ing] to transform international law from being a language of oppression to a language of emancipation."¹⁸⁷ In other words, they explore the colonial legacies of international law and engage in decolonizing efforts. TWAIL scholars have contributed several works to international legal history.¹⁸⁸

179. Skouteris, *supra* note 87, at 117–18.

180. Jean D'Aspremont, *Martti Koskenniemi, the Mainstream, and Self-Reflectivity*, 29 LEIDEN J. INT'L L. 625, 629 (2016) (noting that Koskenniemi's *From Apology to Utopia* "reject[s] reasoned narrative, [acknowledges] the instability of knowledge, [and] move[s] away from universal grand theories" but adding that it has also been associated with structuralism).

181. See James Thuo Gathii, *TWAIL: A Brief History of its Origins, its Decentralized Network and a Tentative Bibliography*, 3 TRADE L. & DEV. 26, 26 (2011) ("trac[ing] the contemporary origins of Third World Approaches to International Law (TWAIL) in the late 1990's" and "argu[ing] that since then, TWAIL-ers . . . have generated . . . debate around questions of colonial history, power, identity and difference, and what these mean for international law"); see also, Makau Mutua, *What is TWAIL?*, 94 ASIL PROCEEDINGS 31, 32 (2000) ("identif[y]ing the historical bases for the TWAIL movement and discussing the basic philosophical and political interests of the movement").

182. Michael Fakhri, *Introduction—Questioning TWAIL's Agenda*, 4 OREGON REV. INT'L L. 1, 6 (2012) (noting that "TWAIL literature has focused on how international law is driven and shaped by the encounter between colonizer and colonized").

183. Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflict*, 2 CHINESE J. INT'L L. 77, 77 (2003) (highlighting that TWAIL constitutes "a distinctive way of thinking about what international law is and should be").

184. *Id.* at 102 (arguing that "[a]pproaches to international law that fail to take into account its violent origins might preclude an understanding of the continuing complicity between international law and violence and in this way, simply perpetuate a violence that thinks of itself as kindness"); see also, B.S. Chimni, *The Past, Present and Future of International Law: A Critical Third World Approach*, 8 MELB. J. INT'L L. 499, 511 (2007) (arguing that "the future of international law will be determined by how its constantly expanding past is interpreted").

185. Anghie & Chimni, *supra* note 183, at 78; see also, Fakhri, *supra* note 182, at 11 (noting that TWAIL scholars "construct histories of international law that resonate with peoples of the Third World").

186. Anghie & Chimni, *supra* note 183, at 102.

187. *Id.* at 79.

188. See, e.g., ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* 3 (2005) (arguing that colonialism was central to the constitution of international law); Antony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations*, 34 NYU J. INT'L L. & POL. 513, 514 (2002) (examining the relationship between the transformation of former colonies into independent sovereign states and the Mandate System of the League of Nations); MICHAEL FAKHRI, *SUGAR AND THE MAKING OF INTERNATIONAL TRADE LAW* 5–8

Law and Society (L&S) approaches set the history of international law “in its proper social context,”¹⁸⁹ considering law as a social product¹⁹⁰ and society as a product of law.¹⁹¹ Law is “so tightly woven into the texture of social life, that it is hard to draw sharp lines between legal and extra-legal or ‘social reality’.”¹⁹² L&S scholars consider “law, society, culture and economy” to be “part of a larger common complex.”¹⁹³ However, a turn to social history, which “has sometimes been advocated for international relations,” has yet to enter into international law.¹⁹⁴ In fact, international legal history has traditionally adopted a state-centric lens,¹⁹⁵ focusing on diplomatic or doctrinal histories rather than micro-histories of individuals, societies, or sectors of the same. In other words, “international lawyers have been interested in the vicissitudes of sovereignty” rather than that of societies.¹⁹⁶ Few legal histories of international law have this wider focus and L&S approaches remain underused.¹⁹⁷

What are these methods’ contributions to the histories of international law? By focusing on concepts and texts, structuralism and textualism contribute to lawyers’ histories. Structuralism looks for historical transcendence and hypothesizes that legal concepts have metaphysical, transcendent and eternal qualities. Analogously, textualism emphasizes the transcendence of a given text. Contextualism and L&S approaches, on the other hand, mainly contribute to historians’ histories.

Can any methods bridge the gap between historians’ histories and lawyers’ histories? CLS can contribute to this endeavor. By advocating critical

(2014) (investigating the historical development of sugar regulation at the international trade level, and arguing that “[i]nternational law was one of the many new modes of governance forged out of empire”); Miles, *supra* note 19, at 2 (suggesting that “the origins of international investment law . . . are deeply embedded within the global expansion of European trading and investment activities that occurred during the seventeenth to early twentieth centuries”).

189. Desautels-Stein, *supra* note 151, at 32.

190. Fisk & Gordon, *supra* note 20, at 525.

191. Linda L. Berger, “Law &” Meets “Law as”, 13 *LEGAL COMM. & RHETORIC* 221, 223 (2016) (noting “the ways in which law and society construct one another”).

192. Wise, *supra* note 7, at 551.

193. David Sugarman, *Writing Law and Society Histories*, 55 *MODERN L. REV.* 292, 298 (1992) (arguing that “[l]aw, society, culture and economy are not external to each other; they are part of a larger common complex”).

194. Martti Koskenniemi, *Expanding Histories of International Law*, 56 *AM. J. LEGAL HIST.* 104, 107 (2016).

195. *Id.* at 109 (noting that “while international legal histories have meticulously traced the legal trajectories of the foreign policy of states, they have paid much less attention—virtually no attention—to the private law relations that undergird and support state action that become visible only once analysis penetrates beyond the official statements or formal acts of governments and diplomatic chancelleries”).

196. *Id.* at 110.

197. See, e.g., MARK MAZOWER, *GOVERNING THE WORLD: THE HISTORY OF AN IDEA* (2012) (capturing the complexity behind many international law projects, and taking stock of most internationalist activism); MARK MAZOWER, *NO ENCHANTED PALACE: THE END OF EMPIRE AND THE IDEOLOGICAL ORIGINS OF THE UNITED NATIONS* 18 (2009) (narrating the origins and early development of the United Nations through the clash of various personalities); *LEGAL PLURALISM AND EMPIRES, 1500–1850*, at 5–6 (Lauren Benton & Richard J. Ross eds., 2013) (focusing on societies in which two or more legal orders co-exist).

ways of thinking, CLS can dispel some of the myths surrounding international legal history, such as the narrative of progress, and the alleged historical neutrality of the field. TWAIL scholars have also contributed both to lawyers' histories and historians' histories of international law. While some have privileged an intra-disciplinary approach to the history of international law (mainly relying on legal sources rather than historical sources), others have conducted thorough historical investigations.

From this survey, a number of questions arise. First, which, if any, of the methods reviewed above is most promising? As mentioned earlier, there is no perfect method or one-size-fits-all methodology to write the history of international law. Rather, the international legal historian is free to choose the suitable method to address given research questions. The plurality and rigor of the available methods diversify research types, styles, and outcomes, making international legal history an interesting and fruitful field of study.

Second, is there any method by which the international legal historian can decide which of the seven (or more) methods to use? Can the international legal historian select from each method those elements that sound most appealing? None of the methods seems to predominate in the history of international law, nor is there an easy method for selecting an appropriate method for such investigation. Rather, methods need to be carefully selected on a case-by-case basis, namely on the basis of the given research questions, aims, and objectives. Rational choices among the methods are possible. Combining different methodological approaches is feasible too—for instance combining CLS with TWAIL or contextualism with L&S—as long as the selected approaches are closely related and/or compatible and intellectual eclecticism does not “ea[τ] away at the core premises of each method.”¹⁹⁸ In other words, the choice of given method(s) requires some commitment to the chosen method(s). Examples of successful eclecticism are not uncommon.¹⁹⁹

Third, how do the examined methods relate to each other? Are there convergences and/or divergences among them? Three sets of methods seem closely related: CLS, TWAIL, and L&S (with their emphasis on the need to adopt a critical stance to the evolution of international law, criticizing uneven distribution of power and injustice); contextualism and L&S (with their emphasis on law in context); and textualism and structuralism (with their emphasis on the diachronic dimension of international law). But other linkages can be found. For example, approaches that seem to be diametrically opposed, such as structuralism and contextualism, offer complementary accounts of the history of international law.

198. Ratner & Slaughter, *supra* note 150, at 300.

199. Galindo, *supra* note 21, at 545 (“The methodology adopted by Koskenniemi in [the fifth chapter of *The Gentle Civilizer of Nations*] is distinct from that adopted in the preceding chapters. Not only does the focus of the study shift towards the analysis of a single author, but the biographical tone becomes more relevant in the description of this author’s work.”).

Fourth, are there any trends in the development of methods for writing the history of international law? The ongoing trend to move away from a mere structuralist approach to adopt contextualist methods reflects a growing interest for a historical approach to international law as opposed to a purely internal, legal one. The emergence of L&S and TWAIL approaches to the history of international law reflects the growing awareness of the important role played by individuals and peoples in international legal history. While states remain the classical subjects of international law, individuals and peoples have started to play a significant role in international law. In parallel, legal historians have increasingly focused on micro-histories. While this section has described some significant methods, others exist and may well produce significant scholarship in the future. New methods may emerge as well, in response to new research questions. As a matter of fact, the scrutiny of the promises and pitfalls of the principal methods currently employed “may plant the seeds for new methodological projects that can invigorate [the] field.”²⁰⁰

Finally, what do the existing methods suggest about the future of the field? Each of these methods (with the exception of TWAIL) originated in an approach to national legal history and/or national law. Their conceptual move from the national sphere to the international domain reflects the expansion and pervasiveness of international law in human affairs, and its emergence as a subject worthy of historical investigation.²⁰¹ New discussions of domestic historiography can benefit the history of international law. In turn, not only can international legal history contribute to the development of legal history but it can also contribute to the evolution of international law, by providing it new perspectives, new topics, and new fields for study.

In conclusion, the history of international law is still alive and kicking.²⁰² New discussions of domestic historiography can benefit the history of international law, and international legal history can contribute to the development of legal history by providing new perspectives and new fields for study. The same synergy exists between international law and its history. One may wonder whether the history of international law should be considered a mere appendage of international law or history respectively, or a hybrid mixture of the two, or an emerging field of study. Regardless of this classification, though, international legal history can not only contribute to the development of legal history and international law, but can also gradually emerge as an autonomous discipline.

200. Ratner & Slaughter, *supra* note 150, at 301.

201. *Id.* (noting that “the movement from the domestic to the international has not followed one trajectory”).

202. Cf. Robert W. Gordon, *Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography*, 10 L. & SOC'Y REV. 9, 9 (1975–1976) (“In 1963 the Italian historiographer Arnaldo Momigliano told an assembly of legal historians that they were gathered to celebrate ‘a historical event of some importance, the end of history of law as an autonomous branch of historical research.’”).

VI. LEGAL BIOGRAPHIES: A ROAD WORTH TAKING?

*Stories are told and not lived; life is lived and not told.*²⁰³

Depending on the selected object of inquiry, three modes of writing history can be identified: the history of events, the history of concepts, and the history of individual people.²⁰⁴ Diplomatic history has traditionally focused on events relevant to international law. The history of international law has traditionally focused on concepts. Legal biographies narrating the history of the lives of persons relevant to international law do not constitute a special method of investigation; in fact, they constitute a literary genre, a way of approaching international legal history, and a type of micro-history. This section will focus on international legal biographies because international lawyers are gradually becoming more interested in their predecessors. It does not consider legal biographies as the best mode of writing international legal history but as one of the available tools to investigate the field.

Legal biography has not been a very popular literary genre in international law. The history of international law has often obscured individual stories in favor of an examination of trends, events, or concepts. Not only were international law scholars uninterested in the life of its makers,²⁰⁵ but there was an anti-biographical tradition in international law. In turn, historians consider biographies as a “borderline genre,” “a peripheral, blurry area” between history and literature.²⁰⁶ Historiography rarely focused on the individual contribution to the making of history.²⁰⁷

Legal biographies are a risky business for “a triple obstacle: the irrelevance of the topic . . . according to the traditional criteria; the scarcity of evidence; and the absence of stylistic models.”²⁰⁸ Let’s examine these three

203. Paul Ricoeur, *Life: A Story in Search of a Narrator*, in *FACTS AND VALUES: PHILOSOPHICAL REFLECTIONS FROM WESTERN AND NON-WESTERN PERSPECTIVES* 121, 121 (Marinus C. Doerer & John N. Kraay eds., 1986).

204. Fassbender & Peters, *supra* note 95, at 11.

205. Simpson, *supra* note 67, at 12.

206. Ginzburg, *supra* note 69, at 85, 87.

207. On the general tendency to neglect the individual contribution to history by historians, see, e.g., Giovanni Levi, *Les usages de la biographie*, 44 *ANNALES. ÉCONOMIES, SOCIÉTÉS, CIVILISATIONS* 1325–33 (1989) (identifying pros and cons of biographical research); Jean-Claude Passeron, *Biographies, flux, itinéraires, trajectoires*, 31 *REVUE FRANÇAISE DE SOCIOLOGIE* 3–22 (1990) (investigating the biographical methodology); SABINA LORIGA, *LE PETIT X: DE LA BIOGRAPHIE À L’HISTOIRE* (2010) (arguing that the X factor, meant as the individual contribution to history, gives the latter its own trajectory); Sabina Loriga, *The Plurality of the Past—Historical Time and the Rediscovery of Biography*, in *THE BIOGRAPHICAL TURN: LIVES IN HISTORY* 31, 31 (Hans Renders et al. eds., 2016) (noting that while in the past two centuries an impersonal history has prevailed, paying more attention to the “collective dimension of the historical experience,” microhistory, and the biographical genre has recently become influential); *THEORETICAL DISCUSSIONS OF BIOGRAPHY—APPROACHES FROM HISTORY, MICROHISTORY, AND LIFE WRITING* (Hans Renders & Binne de Haan eds., 2014) (illuminating key challenges and problems in studying individual lives and contributing to the emergence of biographical studies).

208. SUSAN TRIDGELL, *UNDERSTANDING OURSELVES: THE DANGEROUS ART OF BIOGRAPHY* 25 (2004).

obstacles. First, the life of international lawyers has been perceived to be historically irrelevant. There is a general perception that lawyers are not necessarily interesting and/or historically relevant individuals, and that few international law scholars and practitioners are worthy of a biography. In general terms, lawyers are perceived as “agents, rather than principals,” “engag[ing] in specialized and highly repetitive work that is typically dull in its quotidian routines and difficult to represent in an engaging manner.”²⁰⁹ Moreover, it may be difficult to satisfy different audiences. International law scholars may want an in-depth treatment of the work of a given scholar, legal historians may expect the use of appropriate historical methods, and the general public may want an in-depth treatment of the person behind the work.

Second, the scarcity of evidence can make the collection of raw materials of a lawyer’s life challenging. This criticism is often overrated: as a matter of fact, international lawyers’ correspondence, personal papers and network can help the researcher delineate the person in addition to her work. The study of both written and visual evidence can generate significant data.²¹⁰

Third, the absence of stylistic models is due to scarcity of legal biographies in the first place. Legal biographies are perceived to be an “epistemological minefield.”²¹¹ While legal scholars question whether legal biography is really legal scholarship,²¹² contending that legal biographies suffer from “methodological individualism,”²¹³ historians question whether biographies belong to historiography or rather constitute a literary genre (*Bildungsroman*),²¹⁴ or a type of “hagiography.”²¹⁵

209. Mark Fenster, *The Folklore of Legal Biography*, 105 MICH. L. REV. 1265, 1265 (2007).

210. Leslie J. Moran, *Judicial Pictures as Legal Life-Writing Data and a Research Method*, 42 J.L. & SOC’Y 74, 96 (2015) (proposing the use of judicial pictures as sources of data and a tool of research).

211. Linda Mulcahy & David Sugarman, *Introduction: Legal Life Writing and Marginalized Subjects and Sources*, 42 J.L. & SOC’Y 1, 4 (2015).

212. R. Gwynedd Parry, *Is Legal Biography Really Legal Scholarship?* 30 LEGAL STUD. 208, 208 (2010) (arguing that “the legal biography has traditionally been treated with suspicion within the English law school due to ideological and methodological concerns about the intellectual validity and robustness of the form, and because of reservations about its true disciplinary province More recent biographies, however, have succeeded in . . . demonstrating the potential value of legal biography in deepening our understanding of the human context of legal phenomena”); Richard A. Posner, *Judicial Biography*, 70 N.Y.U. L. REV. 502, 507 n.16 (1995) (referencing a maxim of Aldous Huxley that “[t]o like a writer and want to meet him is the equivalent of liking pâté de foie gras and wanting to meet the goose”); *id.* at 516 (stating that “nothing in a lawyer’s or legal scholar’s training and experience equips him to write biography. He is not trained to write narratives or to depict human beings empathetically”). However, Posner also acknowledges that some biographies can set the standard for future works. *Id.* at 518 (stressing that “[Gerald] Gunther[’s LEARNED HAND: THE MAN AND THE JUDGE] has set a standard against which all subsequent judicial biographies will be judged”).

213. William Craig Rice, *Who Killed History? An Academic Autopsy*, 71 VA. Q. REV. 601, 610 (1995) (reporting that while Ralph Waldo Emerson contended that “[t]here is properly no history: only biography,” for social historians Emerson would be guilty of “methodological individualism”).

214. Ginzburg, *supra* note 69, 85 (referring to Momigliano’s emphasis on “the lasting difference between history and biography as literary genres”).

215. Patricia Hagler Minter, *Law, Culture, and History: The State of the Field at the Intersections*, 56 AM. J. LEGAL HIST. 139, 148 (2016) (criticizing legal biographies for being “places where hagiography overtakes history”).

What can legal biographies offer to the study of international legal history? If international law is understood as a purely technical subject, then its operators are of little interest. However, if international law is conceived as an art and a science, then investigating the role its artists and scientists played in its making acquires great relevance. Not only can the biographies of international law scholars constitute an important source of information about the international legal system,²¹⁶ but they can also contribute to the knowledge of history and constitute a legacy for future generations. They can inspire and teach.²¹⁷ Studying the life of predecessors can “provid[e] inspiration and encouragement” especially in times of adversity.²¹⁸

As a matter of fact, some international law scholars and practitioners make great biographical subjects, offering appealing narrative arcs, “compelling passages[,] and dramatic moments.”²¹⁹ For example, Alberico Gentili (1552–1608), one of the founders of the discipline, became a professor of law at the University of Oxford after narrowly escaping the Inquisition and becoming a religious refugee.²²⁰ Hugo Grotius (1583–1645), another founder of the discipline, was imprisoned for his involvement in religious disputes of the Dutch Republic, but escaped hidden in a chest of books.²²¹ But international lawyers have not faced extraordinary challenges only in early modern history. Rather, even more recently they have overcome wars and exiles, persecution and loss.²²² These histories show the resilience of international lawyers in the face of adversity, how they became masters of their own destiny, and their contributions to the making of the field.

International lawyers are gradually becoming interested in their predecessors. The publication of *The Gentle Civilizer of Nations* by Martti Koskeniemi has been a watershed in the writing of international legal history. The book adopts the biographical method for studying key figures including Hans Kelsen, Hersch Lauterpacht, Carl Schmitt, and Hans Morgenthau. By turning international lawyers into main protagonists, Koskeniemi’s history

216. *Id.* (explaining that legal biographies can “offer new insights,” and “frame . . . well-known subjects in broader contexts”).

217. See Fenster, *supra* note 209, at 1281.

218. David Sugarman, *From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-legal Scholarship*, 42 J. L. & Soc’y 7, 8 (2015); see also Susan Bartie, *Histories of Legal Scholars: the Power of Possibility*, 34 LEGAL STUD. 305, 317 (2014) (noting that studying the life of legal scholars “can be empowering”).

219. Fenster, *supra* note 209, at 1266.

220. Valentina Vadi, *At the Dawn of International Law: Alberico Gentili*, 40 N. C. J. INT’L L. & COM. REG. 131, 139–40 (2014); see also GEZINA VAN DER MOLEN, ALBERICO GENTILI AND THE DEVELOPMENT OF INTERNATIONAL LAW: HIS LIFE, WORK AND TIMES (1968); DIEGO PANIZZA, ALBERICO GENTILI GIURISTA IDEOLOGO NELL’INGHILTERRA ELISABETTIANA (1981).

221. For a lively account, see the classical Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS 65, 68 (Hedley Bull et al. eds., 1992). See also MARTINE JULIA VAN ITTERSUM, PROFIT AND PRINCIPLE: HUGO GROTIUS, NATURAL RIGHTS THEORIES AND THE RISE OF DUTCH POWER IN THE EAST INDIES 1595–1615 (2006).

222. See Giorgio Sacerdoti, *NEL CASO NON CI RIVEDDESSIMO: UNA FAMIGLIA TRA DEPORTAZIONE E SALVEZZA 1938–1945* (2013) (narrating how he escaped persecution during World War II, but lost several members of his family).

of international law overcomes the “constraints of the structural method” and “infuses the study of international law with a sense of historical motion and political, even personal, struggle”²²³ Other monographs and edited collections have focused on international law scholars and practitioners.²²⁴ International law journals have launched a series of legal biographies.²²⁵ Other articles have appeared in journals of legal history or international law.²²⁶

While writing legal biographies of international law scholars seems a road worth taking, are there methodological issues characterizing this specific genre? Some guidelines can help biographers to find their voice in narrating the life of others. First, legal biographers should explain why a legal scholar—unlike the vast majority of scholars—deserves biographical treatment. This is not to say that only the great masters should be studied.²²⁷ On the one hand, “supposedly *lesser* international lawyers” can be even more interesting precisely because they are not well-known.²²⁸ On the other hand, focusing only on the great masters can transform legal biographies into hagiographies. Yet, international law is not being made by a handful of individuals, rather it is a truly cosmopolitan and collective endeavor. Explaining why one scholar deserves a biography can help the reader decide whether the study can be useful and/or interesting.

223. KOSKENNIEMI, *supra* note 13, at 2.

224. See, e.g., GEOFFREY LEWIS, F.A. MANN (2013); ELIHU LAUTERPACHT, *THE LIFE OF HERSCH LAUTERPACHT* (2012); REUT YAEL PAZ, *A GATEWAY BETWEEN A DISTANT GOD AND A CRUEL WORLD: THE CONTRIBUTION OF JEWISH GERMAN SCHOLARS TO INTERNATIONAL LAW* (2012); *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* (Bardo Fassbender & Anne Peters eds., 2012) (including short biographies of Muhammad al-Shaybani, Francisco de Vitoria, Francisco Suárez, Alberico Gentili, Hugo Grotius, Emer de Vattel, Friedrich Fromhold von Martens, Lassa Oppenheim, Max Huber, Georges Scelle, and Hersch Lauterpacht, among others); *JURISTS UPROOTED. GERMAN-SPEAKING ÉMIGRÉ LAWYERS IN TWENTIETH-CENTURY BRITAIN* (Jack Beatson & Reinhard Zimmermann eds., 2004) (featuring several international law scholars, including Ernst J. Cohn, Francis A. Mann, Wolfgang Friedmann, Lassa Oppenheim, Hersch Lauterpacht, and Georg Schwarzenberger). For earlier studies, see, e.g., MARY ANN GLENDON, *A WORLD MADE NEW—ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001); EMMANUELLE JOUANNET, *EMER DE VATTEL ET L'ÉMERGENCE DOCTRINAIRE DU DROIT INTERNATIONAL CLASSIQUE* (1998); H. VREELAND, *HUGO GROTIUS* (1986); PETER HAGGENMACHER, *GROTIUS ET LA DOCTRINE DE LA GUERRE JUSTE* (1983); C. GELLINEK, *HUGO GROTIUS* (1983).

225. For instance, the *EUROPEAN JOURNAL OF INTERNATIONAL LAW* launched the series “The European Tradition in International Law,” featuring Georges Scelle, Dionisio Anzilotti, Alfred Verdross, Hersch Lauterpacht, Hans Kelsen, Charles De Visscher, Alf Ross, Max Huber, Walther Schücking, and Lassa Oppenheim. The *LEIDEN JOURNAL OF INTERNATIONAL LAW* launched a series on non-European international law scholars, featuring Alejandro Alvarez and Taslim Olawale Elias.

226. See, e.g., Nico Schrijver, *A Portrait of Judge P. H. Kooijmans—A Passionate Advocate of the Rule of Law in International Affairs*, 27 *LEIDEN J. INT'L L.* 839 (2014); Yolanda Gamarra, *Rafael Altamira y Crevea (1866–1951). The International Judge as “Gentle Civilizer,”* 14 *J. HIST. OF INT'L L.* 1 (2012); C. Landauer, *J.L. Brierly and the Modernization of International Law*, 25 *VAND. J. TRANSNAT'L L.* 881 (1992–1993).

227. Galindo, *supra* note 21, at 554 (“One of the problems in studying the history of international law from a biographical point of view is that, in doing so, attention is paid only to what the great masters of the discipline thought and did.”).

228. *Id.*

Second, it is not sufficient to highlight the public achievements of a brilliant career, “as this will miss significant aspects of [an individual’s] life.”²²⁹ A legal biographer should provide a sense of the subject as a person and of her place within the broader historical context in which she lived.²³⁰ A biographer has to “shape and unify . . . materials within a coherent narrative, and to craft an argument that persuades us as to the . . . meaning of the subject’s life” within a given historical context.²³¹ A mere description of the principal events of public and private lives without an analysis of their historical context would not contribute to the history of international law.

Third, all biographies are “intersubjective” as “one person’s story is always the story of others.”²³² Personal relationships with colleagues, mentors, and family members can provide a fuller picture of the subject. Network analysis can provide additional insights as to the cultural, political, and social context in which the author lived and worked and his or her contribution to the field.²³³

Fourth, in writing legal biographies, international legal historians should not glorify the past; they should conduct rigorous historical legal research. Ideally, legal biographies should be relevant to lawyers and historians as well as to a broader audience.

Fifth—the objectivity question—can international legal historians remain external to the world they aim to know? Are there objective narratives? While international legal historians aim to be objective,²³⁴ “every author writes from an individual perspective.”²³⁵ Unavoidably, the personal experiences of the biographers inform their research questions.²³⁶ In particular, biographies are often “the product of the biographies of the subject and the biographer.”²³⁷ If a subjective perspective is inevitable,²³⁸ greater aware-

229. Mulcahy & Sugarman, *supra* note 211, at 5.

230. Fenster, *supra* note 209, at 1267.

231. *Id.* at 1269.

232. David McCoey, *Understanding Ourselves: The Dangerous Art of Biography (Review)*, 28 BIOGRAPHY 667, 680 (2005).

233. Pierre Bourdieu, *L'illusion biographique*, 62–63 ACTES DE LA RECHERCHE EN SCIENCES SOCIALES 69, 72 (1986) (“On ne peut pas comprendre une trajectoire . . . qu’à condition d’avoir préalablement construit . . . l’ensemble de relations objectives qui ont uni l’agent considéré . . . à l’ensemble des autres agents engagés dans le même champ”; “We cannot understand a trajectory . . . unless we previously construct . . . the set of objective relations that united the person in question . . . with all the other people involved in the same field” [translation of the author]).

234. Gordon Wood, *In Defense of Academic History Writing*, 48 PERSPECTIVES ON HISTORY (2010) 19, 19–20 n.4 (“[M]ost historians . . . yearn to be . . . objective and . . . true to the past.”).

235. Fassbender & Peters, *supra* note 95, at 15.

236. Hoyos, *supra* note 86, at 78–79 (pointing out that “the questions that we raise about the past are informed, explicitly or implicitly, by our own personal experiences or the questions raised by our current historical moment.”).

237. Sugarman, *supra* note 218, at 15 (“debate rages as to how much of the relationship between biographer and subject should be in the background”).

238. See Doug Munro, *The “Intrusion” of Personal Feelings: Biographical Dilemmas*, 30 FLINDERS J. HIST. & POL. 3, 3 (2014) (considering that it would be “unrealistic” “to expect biographers . . . to divest themselves of feelings and values when dealing with the crooked timber of humanity”).

ness of the authorial role in all narratives becomes crucial. Some transparency is needed upfront about the expertise of the author, the selected perspective and approach, and the type of sources utilized. Authors should “consciously reflect about the choices they make,” and be “explicit and transparent about them.”²³⁹ In this manner, the “inevitable distortions are themselves a source of richness for . . . argumentation and thinking rather than an invalidating flaw.”²⁴⁰

Sixth, to whom should legal historians and international lawyers address their work? There is a fine line between academic and popular literature. So far, international legal historians have maintained an essentially academic approach, avoiding too much narrative, and prioritizing evaluation and historical insight. Their writings are hardly aimed towards the general public. Yet, one may wonder whether international legal scholars “should consider how best to persuade [a] wider audience of the value of [international] legal history.”²⁴¹

Finally, should textual research be coupled with visual and ethnographical research? The question as to whether international legal history should be ethnographically informed remains open.²⁴² International legal ethnography is an almost unmapped terrain, despite some recent efforts to fill this gap.²⁴³ Ethnography is a type of research relying on data acquired via slow-paced participant observation. Fieldwork for international legal historians can include: talking with colleagues off the records, watching films or listening to recordings, walking through relevant city streets or visiting other relevant places, or conducting interviews with relevant stakeholders.²⁴⁴ Certainly, there is a new interest in the material and visual culture of international law.²⁴⁵

239. Fassbender & Peters, *supra* note 95, at 15.

240. D’Aspremont, *supra* note 180, at 626–27 (arguing, however, that “[i]t is not possible to unveil such biases”).

241. Dyson, *supra* note 39, at 48 (making this argument for legal history).

242. See, e.g., Merry, *supra* note 33, at 99 (highlighting “the value of ethnographic studies of specific sites within the complex array of norms, principles, and institutions that constitute international law and legal regulation.”); Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT’L L. & POL’Y 791, 791–92 (1995) (engaging in “the practice of ethnography to cast light upon . . . the local life of global forces” and arguing that “the representation of law in contexts shaped by global flows of people, capital, information, imagery, and goods demands new forms of scholarly representation”).

243. See, e.g., LUIS ESLAVA, LOCAL SPACE, GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT 28 (2015) (describing himself as an “international legal ethnographer”); Miia Halme-Tuomisaari, *Toward a Lasting Anthropology of International Law/Governance*, 27 EUR. J. INT’L L. 235, 235 (2016) (conceptualizing international legal anthropology as a dialogue between “(critical) international lawyers and anthropologists”).

244. See Orford, *supra* note 44, at 169 (mentioning some of these activities as “fieldwork”).

245. Alexandra Kemmerer, *On International Law and Its History*, in PROGRESS IN INTERNATIONAL LAW 71, 86–87 (Russell A. Miller & Rebecca M. Bratspies eds., 2008) (noting “a new interest in places . . . in the history of international law” and adding that “there is an inquiry in . . . pictures as media of communication”).

However, while recent international law can be studied through oral exchange, and certain aspects of international law, such as boundary delimitation, can require the study of objects and sites, the classic method of researching international law history is to read texts.²⁴⁶ In most cases, it is no longer possible to interview the lawyers, judges and academics who contributed to the making of international law. In certain cases, it is no longer possible to see the places where these people lived due to the redevelopment of given zones. These difficulties however, do not affect the potential added value of ethnographical research to the history of international law.

This section identified three modes of writing history—the history of events, the history of concepts, and the history of individual people, and examined legal biographies as a literary genre, a way of approaching international legal history and a type of micro-history. If international law is conceived as an art and a science, then investigating the role its artists and scientists played in its making acquires great relevance. The biographies of international law scholars can constitute an important source of information about the international legal system. They can inspire and teach. International lawyers are gradually becoming interested in their predecessors, and a new biographical direction for the field has emerged. The section highlighted the promises and pitfalls of such genre, discussing some methodological issues characterizing it.

VII. WHAT ARE THE PROMISES AND PERILS OF THIS TURN TO HISTORY?

There is no single legal method in the historiography of international law. International lawyers and legal historians have approached the history of international law from different perspectives, adopting different historiographical methods. International lawyers are not writing like historians and legal historians are not writing like international lawyers, nor should we expect otherwise.

On the one hand, international law scholars have defended a dogmatic way of doing international law history based on the genealogy of ideas and an alleged “continuity between past and present.”²⁴⁷ They claim that the history of international law “is inherently genealogical, depending as it does upon the transmission of concepts, languages and norms across time and space.”²⁴⁸ While offering rich conceptual motives, their narrative risks remaining detached from history.²⁴⁹

246. Fisk and Gordon, *supra* note 20, at 527 (making an analogous argument with regards to legal history more generally).

247. Kalman, *supra* note 40, at 103.

248. Orford, *supra* note 44, at 175.

249. See Skinner, *supra* note 47 at 22–24 (criticising “any teleological form of explanation” according to which “the action has to await the future to await its meaning”).

Historians, on the other hand, contextualize law “specifying its temporal, spatial, and social context” and challenge its pretended eternity, autonomy, and separateness.²⁵⁰ According to the historiographical tradition, every historical account is provisional.²⁵¹ In fact, “[h]istory is always being rewritten, not only because what interests one age does not necessarily appeal to its successor, but also because a wealth of new material is continually coming to light, or being made much more accessible.”²⁵² Legal historians look for historical truth, relying on empirical methods and gathering information from the archives.²⁵³ The search for historical truth can be somewhat idealistic—it is impossible to reconstruct, for even if we had all the historical sources in the world, we still would not know entirely what happened and how people understood what happened. Yet, today no authoritative historical work can be published without reference to verifiable historical sources. Engagement with primary sources and archives has become *de rigueur*.²⁵⁴ This “archive fever,”²⁵⁵ or “*mal de texte*,”²⁵⁶ can greatly contribute to unveiling new data and promoting new interpretations of the past.²⁵⁷ Archival research can provide a real feel for the ways in which given institutions functioned and individual people lived.²⁵⁸ Investigating “the available sources first and see[ing] what kind of questions they raise or might answer”

250. See Kunal M. Parker, *Law “In” and “As” History: The Common Law in the American Polity, 1790–1900*, 1 UC IRVINE L. REV. 587, 590 (2011) (stating that contextualism disproves “law’s pretended atemporal foundations, its pretended claim to autonomy, its insistence on its imperviousness to its outside”).

251. See Alston, *supra* note 18, at 2077–78 (noting that “we should be very wary of any single account that purports to have found the answer to the puzzle and to have invalidated alternative interpretations”).

252. F. J. WEAVER, *THE MATERIAL OF ENGLISH HISTORY* 35 (1938).

253. See generally *LAW IN THEORY AND HISTORY—NEW ESSAYS ON A NEGLECTED DIALOGUE* (Maksymilian Del Mar & Michael Lobban eds., 2016).

254. Ginzburg, *supra* note 141, at 108–09 (pointing out that “the greater our distance from the primary evidence is, the greater the risk of being caught out by hypothesis put forward either by intermediaries or by ourselves actually becomes. In other words, we risk finding what we are looking for—and nothing else” and noting further that “clues require first-hand reading: the person responsible for the final synthesis cannot delegate this task to others”).

255. JACQUES DERRIDA, *ARCHIVE FEVER: A FREUDIAN IMPRESSION* 91 (Eric Prenowitz trans., 1996) (saying to have “archive fever” “is to burn with a passion. It is never to rest, interminably, from searching for the archive right where it slips away. It is to run after the archive, even if there’s too much of it, right where something in it anarchives itself. It is to have compulsive, repetitive, and nostalgic desire for the archive, an irrepressible desire to return to the origin, homesickness, nostalgia for the return to the most archaic place of absolute commencement.”).

256. Wilf, *supra* note 44, at 549.

257. Ginzburg, *supra* note 254, at 109 (noting that “a close, analytic reading is compatible with an enormous amount of evidence. Those familiar with archival research know that one can go on leafing through innumerable files and quickly inspecting the contents of countless boxes before coming to a sudden halt, arrested by a document which could be scrutinized for years.”).

258. See Alston, *supra* note 18, at 2047 (praising Martinez for “do[ing] an excellent job of bringing alive the story of the mixed commissions, primarily through archival research that provides a real feel for the ways in which the commissions functioned. She offers fascinating vignettes of the lives of those involved, including the slaves themselves, the ships’ captains and crews, the judicial officers, the slave owners and plantation managers, and the imperial bureaucrats.”).

can be a fruitful approach.²⁵⁹ While full access often was impaired by inadequate cataloging, today the indexing and cataloging of archives, as well as the ongoing digitization of data sources, have opened up archives previously thought inaccessible on account of poor cataloging. The cross-fertilization of archival data with that from other sources—including law, literature, and the fine arts—has re-positioned archives as just one among many tools of the scholar's trade.

Each of the available approaches has pros and cons. Both international lawyers' history and historians' history are valuable.²⁶⁰ The disciplinary background of scientists influences how they perceive the objects of their investigation. However, while an excessive emphasis on the international law component risks obscuring the historical component of international legal history, at the same time, an excessive emphasis on the historical component risks obscuring the international law component of the same. Should international lawyers and legal historians cross disciplinary boundaries, and adopt an interdisciplinary approach? Some scholars contend that international law scholars and legal historians should not become "too interdisciplinary," as "they risk becoming the captive of another discipline."²⁶¹ However, as Lauterpacht once put it, once a lawyer, always a lawyer.²⁶² Arguably the same is valid for legal historians. Therefore, "there is room for association with other disciplines."²⁶³

In the words of one early international legal historian, "history may be compared to a vast and diversified country, which gives very different sort of pleasures [and difficulties] to different travellers, or to the same traveller if he visits it at different times."²⁶⁴ There is no single history, but "many histories of international law."²⁶⁵ There is no single way to address the law/history divide. Rather, multiple approaches and methods have been devised to write international legal histories. The origins of international law "are to be found in different and multiple sites, and they cannot usefully be traced back to any single source, or through examining the evolution of a single theme, process, or institution."²⁶⁶ While international legal histories differ, the various types of international legal history are equally valid,²⁶⁷ and "each

259. See John Baker, *Reflections on "Doing" Legal History*, in MAKING LEGAL HISTORY: APPROACHES AND METHODOLOGIES 7 (Anthony Musson and Chantal Stebbings eds., 2012).

260. See Kalman, *supra* note 40, at 124.

261. See *id.* at 123.

262. Elihu Lauterpacht, *The Place of Policy in International Law*, 2 GA. J. INT'L & COMP. L. 23, 27–28 (1972) (arguing that "if one is a lawyer . . . one is a lawyer first and foremost").

263. *Id.* (cautioning that "in [conducting interdisciplinary work] . . . we should at any rate identify . . . what the elements are with which we are concerned").

264. Matt Craven, *Theorising the Turn to History in International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 21, 25 (Bardo Fassbender & Anne Peters eds., 2012) (referring to ROBERT WARD, AN ENQUIRY INTO THE FOUNDATION AND HISTORY OF THE LAW OF NATIONS IN EUROPE, FROM THE TIME OF THE GREEKS AND ROMANS TO THE AGE OF GROTIUS xx (1795)).

265. See Fassbender and Peters, *supra* note 13, at 3.

266. Alston, *supra* note 18, at 2078.

267. See Kalman, *supra* note 40, at 89.

of the different historiographical approaches has something important to offer.”²⁶⁸

At the same time, “we should be more self-conscious about methodology”: “we must be careful with sources, pursue facts diligently, recognize the contributions of others . . . [and make] sense of the political and social culture of a period.”²⁶⁹ Awareness of the various legal historical approaches can enrich the texture of international legal history.

VIII. CONCLUSION

International legal history as a field of study is coming of age. International legal history does not seem to constitute an autonomous discipline yet; rather, it remains a hybrid field of study at the crossroads between legal history and international law. The history of international law has become a “source of tension” between legal historians and international lawyers.²⁷⁰ These epistemic communities have different aims, objectives, and approaches. While historians aim to discover “historical truth,”²⁷¹ international lawyers aim to investigate the genealogy of given legal concepts. While historians consider law as a historical product and examine its historical context, international lawyers consider law as a timeless, ahistorical, and autonomous object.

But there is no single “one-size-fits-all methodology.”²⁷² Rather, methods abound. No particular technique is better than another.²⁷³ Instead, different methods and approaches can co-exist: it is up to the researcher to identify the suitable methods for addressing his or her research questions. The identification and calibration of the research method is not a completely subjective endeavor; rather, there are a number of consolidated methods that researchers can use. Analogously, there is no ideal form of research, as histories of concepts, legal biographies, and institutional histories all contribute to the complex kaleidoscope composed by the histories of international law.

This Article contends that the battle of ideas regarding the proper methodology of the history of international law can and has been gradually overcome by a growing awareness of the complementarity of expertise and know-how of the two groups of scholars. Rather than suggesting a consolidated, but obsolete, intra-disciplinary approach to the history of international law (that is, approaching the history of international law from a purely internal perspective), interdisciplinary approaches can be preferred,

268. Alston, *supra* note 18, 2077–78.

269. Wilf, *supra* note 44, at 563.

270. See Anthony Musson and Chantal Stebbings, *Introduction*, in *MAKING LEGAL HISTORY: APPROACHES AND METHODOLOGIES* 4 (Anthony Musson and Chantal Stebbings eds., 2012).

271. *Id.*

272. See *id.* at 6.

273. See *id.*

given that both legal history and international law are necessary components of the emerging field of the history of international law. This Article suggests that the acknowledgment of a given cultural background and methodological awareness can promote better narrations of the history of international law. International lawyers and legal historians can overcome each other's weaknesses, reinforce each other's strengths, and engage in fruitful dialogue. Such engagement can encourage new ways to think about the history of international law. Only through methodological awareness can the history of international law evolve from its status as a 'sub-discipline' of both international law and history to an independent mode of analysis. In this manner, "law becomes history, [and] history becomes law."²⁷⁴ International legal history has the potential to break down the boundaries between international law and history. It does not aim to explain "history for the sake of history" or international law for the sake of international law; rather, it aims to "understand[] law as history [and] history as law."²⁷⁵

274. See Hoyos, *supra* note 86, at 80.

275. See *id.*