CHAPTER 5

British Influences on the ‘Ideals’ of International Lawyers

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I Introduction

This chapter explores British influences on the conceiving of ideals amongst international lawyers. As a feature of world history, the significance of the professional actor is well documented. The very fact that the British Institute of International and Comparative Law (BIICL) is commemorating the centenary of one of its parent institutions, the Grotius Society, is testimony to this point. At the same time, there has been a difficulty in rationalising the ideals that should underlie the professional project of international lawyering. There are technical reasons for having reservations about any ideals that one might wish to attach to the practice of international law. International history is replete with political unions and devolutions, as is the case of England, Scotland and the end of the British Empire. Additionally, there are more culturally defined reasons. As was the case in 1954, when the then Attorney-General, Sir Lionel Heald, remarked in respect of Hersch Lauterpacht’s nomination for election to the International Court of Justice (ICJ), ‘our representative at The Hague should both be and be seen to be thoroughly British, whereas Lauterpacht cannot help the fact that he does not qualify in this way either by birth, by name or by education’. One might recognise that this anecdote is suggestive

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of inherent limitations that cultural perceptions might bring, such as those pertaining to questions of loyalty, and upon professional conceptions of universal ideals. However, such anecdotes do not explicate the questions one may wish to pose, particularly when attempting to conceive ideals amongst international lawyers. In this regard, there have been significant British contributions in both theory and practice.

This chapter provides a narrative of some of these contributions. It should be of little surprise that what it means to be ‘British’, ‘international’ and a ‘lawyer’ have all evolved substantially over time. The ambition here is to suggest that there is a benefit, with certain cautions, in carrying a view that British international lawyers do orientate themselves towards certain ideals. The first section outlines a historical synopsis of the emergence and professionalisation of the British international lawyer, which preceded the founding of BIICL. The second section explores the reactions of British legal advisers during the Suez and Iraq War crises to develop a critical discussion on the influence ideals may have in legal practice. The third section draws upon British approaches to legal theory that have drawn inspiration from the question of ideals, as to the manner in which international lawyers should conceive their professional task. One must bear in mind that the sections should not be uncritically synthesised into a holistic image. British international lawyers are not a homogenous group. Linking histories and practices, and, criticisms and theories, should not be understood as being self-evident.

The intention is to engage some of the elements of what one might refer to as professional ideals, and to reflect upon British influences and approaches. The story of professional ideals contains various mantras and clichés about how ideals could be represented within international and domestic affairs. The hope is for British international lawyers to take a personal interest, in considering what exactly these mantras and clichés are meant to address, and how they could be affirmed or resisted in their daily routines. The manner in which one chooses to affirm or resist, depends significantly on the position one takes with regards to the extent one believes legal practice produces a definitive image of ‘justice’. The author’s own view, regarding the prospects of such a position, involves a contradiction. On the one hand, it is of the utmost importance for the British international lawyer to maintain an interest in the pursuit of ideals. On the other, the author recognises that professionals must remain cautious,

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