Book Review

America and the Law of Nations 1776–1939, Mark W. Janis*

The war against Iraq, the prisoner abuse scandals in Guantanamo and elsewhere, and a refusal to join the International Criminal Court have left an impression with many that the United States of America is a country that places itself beyond the reach of international law. If the past decade is any measure, an observer might be forgiven for thinking that the United States of America’s approach to international law has always been incorrigibly sceptical. Readers of Mark Weston Janis’ book, America and the Law of Nations 1776–1939 will come away with a very different impression, having learned about the reverence demonstrated by the Founding Fathers for international law, and how many distinguished U.S. American lawyers and activists promoted international law as a means for preserving peace over the course of the 19th century.

Mark Janis is a professor of international law at the University of Connecticut, Hartford. He is one of the few scholars in recent years to have engaged in-depth with the history of international law in the United States. The present volume is, in the author’s words, a “successor” to his 2004 book entitled The American Tradition in International Law. Hence, despite the change in title, the reader should not expect to be picking up a completely different book from the 2004 edition. Like its predecessor, it consists of a


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series of essays which, rather than presenting a coherent narrative, provide a fascinating pastiche of pivotal persons and episodes in American legal history.

The main difference between the two books is that the more recent volume takes the story up to 1939, and does so with a series of new chapters focusing respectively on Woodrow Wilson, Oliver Wendell Holmes Jr. and the debate in the United States of America about the League of Nations. The preceding chapters are mostly based on those published in the 2004 volume, whereby some of the material has been re-organised and new material has been added. In The American Tradition, the author expressed a hope to publish a second volume that would bring the story up to date. With the publication of a successor volume, we will have to wait and see whether Janis still plans to publish a sequel, or whether a subsequent edition of America and the Law of Nations will eventually carry the reader along into the 21st century.

As in 2004, Janis opens the book with a discussion centred around the contributions of William Blackstone and Jeremy Bentham to American thinking on international law. The merits for discussing Blackstone are evident. With his Commentaries on the Laws of England (1765), Blackstone published the first modern and systematic treatment of the English common law, becoming the most important legal scholar in England. In spite of his claim that the common law “has no allowance or authority” in the American colonies, Blackstone’s views on the relationship between the common law, natural law and the law of nations became very influential on the other side of the Atlantic – most notably through a famous edition by St. George Tucker in 1803. With respect to Bentham, it is less clear from the author’s exposition what his influence was on American international law. Among other things, Janis mentions the well-known fact of Bentham as the inventor of the term ‘international law’ as well as his influence on John Austin and the fact that he was most likely “the unacknowledged co-author” (p. 29) of a pamphlet that dismissed the complaints raised against the King in the Declaration of Independence. However, while Janis rightly regards Bentham as a key legal thinker and mentions him on many occasions throughout the book, no concrete examples are given that show how Bentham’s thinking influenced American legal thought, whether directly or indirectly.

In the second chapter, Janis looks at how international law was incorporated into American law at the time of the early Republic. He does so by focusing on the contributions of key Democratic-Republicans such as Thomas Jefferson, James Madison and John Marshall. By doing so the au-