Book Review

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Martii Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*

The last two decades have seen a revival of academic interest in the history of international law. However, as a discipline, the history of international law is still in its infancy and the historiography of international law remains relatively undeveloped. Historians of international law have traditionally assumed that the problem for the historian is to explain the State-system both in terms of the events that established it and the development of international law as legal system for and by States. History is therefore seen as a preparation for the present, and it focuses on historical events in relation to the evolution of treaty and customary law. The ideas of international legal theorists are considered in terms of their perceived contribution to this evolution. More recently, scholars writing in this area have begun to challenge some of these traditional assumptions and to utilise new methodologies for exploring the events and ideas that, and the individual thinkers who, have influenced developments in international law.

Martii Koskenniemi’s book, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960 is an impressive and significant contribution to this new thinking about the history of international law.

The book is a collection of essays that aims to examine the “intellectual assumptions and emotional dispositions” explored in his earlier work, From Apology to Utopia: The Structure of International Legal Argument, from an historical perspective. To this end, Koskenniemi critically analyses the conceptions held by late 19th and early to mid-20th century European and American international lawyers of international law and the role of the international legal profession. Acknowledging the underdevelopment of the historiography of international law, Koskenniemi explicitly rejects an epochal or a biographical methodology. Instead he adopts a postmodernist approach to the examination of international legal history. He describes his methodology as “a kind of experimentation in the writing about the disciplinary past in which the constraints of any rigorous ‘method’ have been set aside in an effort to create intuitively plausible and politically engaged narratives about the emergence and gradual transformation of a profession that plays with the reader’s empathy”.

The book covers a great expanse of ideas and information. It is divided into six chapters and an epilogue which together provide a particular perspective of the “twists and turns” in the story of international law and the international legal profession between the 1870s and the 1960s. A common theme that runs through the book is the idea that

the conceptions of the international legal system and the international legal profession of the jurists Koskenniemi examines were shaped by, and cannot be separated from, their life experiences, academic influences, and above all from their politics.

Chapter 1 discusses the establishment of the Institut de droit international and examines the self-perception and ideas of its founding members, whom Koskenniemi refers to as the men of 1873. For Koskenniemi, they were men of their time who viewed international law as grounded in “the existence of a common European consciousness” (p. 51). For these jurists law emerged from “the cultural process of the nation”. International law therefore emerged from European culture, a collective European moral conscience that reflected Victorian values of noble character, personal virtue and responsibility (pp. 73-80). According to Koskenniemi, the men of 1873 saw themselves as the voices of this collective conscience and thus “turned inwards to look for a law that they believed existed in their moral conscience, cultivated by a humanitarian sensibility whose outward expression was their alignment with the political liberalism of the day” (p. 53). Koskenniemi argues that the ideas put forward by the men of 1873 were not grounded in a sound philosophical perspective and thus were not jurisprudentially sustainable. However, they provided a “flexible basis for legal argument” and allowed the men of 1873 to move forward with their agendas for reform.

In chapter two Koskenniemi traces the story of colonization in Africa by European States from the shift from government-supported private colonization of Africa by chartered companies to formal colonization, to the establishment of spheres of influence, decolonization and the development of the mandates system under the League of Nations. He explores the attempts of jurists to use international legal argument to justify or explain European colonization. Thus, he writes, “law became part of the moral and political controversy about the justice of colonialism” (p. 121). These arguments were shaped by the assumption of European cultural superiority. Koskenniemi refers to these justificatory arguments as “a discourse of exclusion-inclusion”: exclusion in terms of the cultural “otherness” of non-European peoples that precluded the extension to them of European rights; and inclusion whereby their “otherness” was overcome through the civilizing process of colonization, the imposition of European governance. Koskenniemi concludes the chapter with a critique of the liberal project of international lawyers of the day who associated progress and “civilization” with the Western concept of the State. Their assumptions that the notion of the European State carried with it the good life underlay their justifications for colonization and the “civilizing” of non-European cultures (pp. 176-178).

Chapter 3 examines the theories of German jurists including, among others, Jellinek, Schücking, Kelsen and Kaufmann and their efforts to find a credible philosophical grounding for the idea and reality of the State and the international legal system. Koskenniemi argues that these jurists in attempting to “defend the State as the representative of the general interest” turned to Hegel’s theory of the State as they could no longer credibly rely on Enlightenment ideas of social contract or historicism. For Koskenniemi, the struggle of both liberal and conservative German jurists to find a philosophical underpinning for the State and international law which could “give expression to human freedom while also being respectful of the nature of societies in which freedom could become a reality” reflected an opposition or dialectic of the ideas of Kant and Hegel. This was typified for the author in the opposition of Kelsen’s neo-Kantianism formal