International legal structuralism: a primer

JUSTIN DESAUTELS-STEIN

University of Colorado Law School, University of Colorado, Boulder CO, USA

E-mail: jjdstein@colorado.edu

International legal structuralism arrived on the shores of international thought in the 1980s. The arrival was not well received, perhaps in part, because it was not well understood. This essay aims to reintroduce legal structuralism and hopefully pave the way for new, and more positive, receptions and understandings. This reintroduction is organized around two claims regarding the broader encounter between international lawyers and critical theory in the 1980s. The first was a jurisprudential claim about how the critics sought to show how international law was nothing more than a continuation of international politics by other means. The second was a historical claim about how the critics wanted to show that international law had never been anything but politics, and that it always would be. In the view of this essay, both of these claims about international legal structuralism were wrong, and they are still wrong today. For despite the tendency to think of it as a cover for postmodern nihilism or relentless deconstruction or both, legal structuralism offers international theorists an enriching and edifying method for rethinking the relation between law and politics on the one hand, and law and history on the other. It is in the effort to carry a brief for a reawakened legal structuralism that the essay brings focus to some of the early works of Koskenniemi and Kennedy, identifies the semiotic foundations of that work, and ultimately suggests the possibility of a second generation of international legal structuralism.

Keywords: international law; legal theory; legal historiography; structuralism

It used to be that when international lawyers told the history of their origins, it was a history in search of a father figure, a careful paterfamilias tearing modernity from ancient, tattered remnants (Scott 2014). But today that story is often cut short. Shorn of its philosophical pedigree, the tale begins more recently, in the wake of the World War I. International lawyers, once the guardians of an almost-there *civitatis maximae* and a right-around-the-corner perpetual peace, were shaken.[1] It was their fault,

---

[1] For the basis of these ideas, respectively, see Wolff (1750) and Kant (1991).

201

the international lawyers, for the outbreak of war (Root 1915). And what had they done? In their efforts to think like lawyers, they realized too late that they had been thinking the wrong way. Nineteenth century international lawyers, sometimes called formalists or positivists or both, the postwar lawyers now understood, had been obsessed with philosophical abstraction. The new international lawyers, sometimes called realists or functionalists but not usually both, crafted a solution: make international law less philosophical, more realistic (Brierly 1958).

And so, in the ruins of the Great War, a new game was afoot. International lawyers such as Alejandro Alvarez and J.L. Brierly argued for the importance of interpreting the *lex lata* and forging the *lex ferenda* in the harsh and unyielding light of the real political world.[2] In the United States, two generations of savvy international lawyers would follow, head-quartered at Yale and Columbia, soon struggling to absorb the lessons of the realists and make the law of nations more effective (McDougal 1952). At the same time, even as international lawyers hoped for a more practical international law, they dared to rescue the law's autonomy from dissolution into its more powerful and less virtuous political twin (Schachter 1978). These international lawyers needed to be practical, to be sure. But they were still, as far as they could tell, guardians of the galaxy. Or guardians of the international rule of law, at any rate.

The abridged story jumps past decolonization and Vietnam and apartheid and the human rights movement and lands in the 1980s. The heroes of Yale and Columbia (and NYU)[3] were now tiring just as the Visigoths of Critical Legal Studies were storming the gates (Purvis 1991). Soon enough, the traces of an 'irresistible' (Lowe 1990, 386–89) conclusion were everywhere: postwar realism, meant to save international law from the 19th century's love affair with philosophical abstraction and push international law toward the realities of power politics, had opened up something like Pandora's Box. International law was not merely *dependent* on politics, as had been suggested after World War I. It was worse than that. International law *was* international politics (Scobbie 1991, 345; Alvarez 1998, 317). International lawyers had simply fooled themselves for thinking their discipline had been something else, something grander, something for guardians. International law, upon closer inspection, turned out to be so highly indeterminate that its rules could be twisted at will to justify virtually any reasonable conclusion (Scobbie 1991, 341; Alvarez 1996, 39; Becket 2006). And the revelations did not stop there. To experience international

---

[2] For discussion, see Lorca (2015).

[3] For discussion, see Kennedy (2003).

law as merely international politics was not merely the bummer of living in the postmodern condition. There was a historically transcendent bummer as well: international law had *always* been a sham, and would always *be* a sham (Purvis 1991, 104). As the critics seemed intent on demonstrating *ad nauseum*, the basic structures of international law had been hopelessly indeterminate since at least the discovery of the New World.[4] Whoever that paterfamilias might have been, well, he had been shooting blanks.

Even as the Wall fell, the Cold War fell, and the West rose in apparent triumph, this was nevertheless an anxious time for international lawyers. But rest assured, the comforting sounds of the Calvary could be heard, somewhere, off in the distance. For if the critics pushed the academy irresistibly toward a world in which international law was lost of meaning, redemptive scholars were circling their wagons. On one front, this was embodied in the United States with a new 'agenda' for international law scholarship and international relations (IR) theory (Byers 2008; Dunoff and Mark 2013). Not everyone was entirely happy with the affair (Kennedy 2000a), but leading figures like Slaughter made the case for bridging what had become a generational divide separating the camps, bringing the expertise enjoyed by IR theorists across campus and over to the law school. Slaughter explained, '[I]nternational relations theorists have a comparative advantage in formulating generalizable hypotheses about state behavior and in conceptualizing the basic architecture of the international system' (1995, 504). As Slaughter (1995) knew, she was not the first international lawyer sounding the call for an interdisciplinary front. But for Slaughter and many others that followed,[5] the problem was not that the old realists had flown too close to the political sun. The problem was that international lawyers had not flown close enough! Looking to IR theory as a way of mapping the topography of a world international law was meant to govern could only make the lawyer's invisible college bigger, stronger, and at long last, more effective (Dunoff and Trachtman 2009).

On a second front, European international lawyers were busily fortifying themselves against what seemed a different sort of adversary. For just as Politics had long remained a dangerous liaison, always threatening to undo law's autonomy, so too had History. Particularly in the register of international legal history, lawyers had regarded the field with unease at best, but more likely, as simply irrelevant to the real-time work of governing the globe (Bederman 2007; Koskenniemi 2013). The realists were typically uninterested in legal history, preoccupied as they were with the application

---

[4] Typical targets were Kennedy (1987) and Koskenniemi (2006).

[5] A helpful early example is Goldstein (2001).

of social science to the 'contemporary', leaving it to positivists like Oppenheim to search for the 'master-historian' who could tell everyone just where all of international law's presently enforceable doctrines had really come from (Oppenheim 1908, 316). But the master-historians never arrived, probably to the relief of all involved.[6] Until, that is, a new flock of historical scholarship emerged (Armitage 2013), promising to put international law in the good graces of the best History Departments, if not in their home Law Schools. Crucially, legal history came to be seen as a defensive measure against the critics, for with the tools of historiography one might better contextualize (and thereby neutralize) the unnerving claim that there was a timeless and universally present sickness at the very core of the discipline.

And so, there we are, a mightily abridged version of how international lawyers got to be where they are today, increasingly interdisciplinary in their domains of expertise. Of course, as any abridged version of a story goes, there is so much that has been left out. And while it would be useful to write an essay about the many things that have been left out, that is not what I will be doing here. Instead, I want to shine a light on a particular moment in the story, that moment where the Visigoths were storming the gates. For some, this moment really does signify the confluence of two transformative events in international legal thought. On the one hand, it is the time when the influence of Louis Henkin, Oscar Schachter, Thomas Franck, Wolfgang Friedman, Harold Laswell, Myres McDougal, Michael Reisman, Abram Chayes, and like-minded scholars begins to wane. On the other, it is the time when critical theory takes advantage of the waning, delivering an unwelcome punch in the face.[7]

But in this essay I will suggest another way in which we might imagine this storming of the gates, a more profitable and productive imagining. Instead of thinking about this moment as marking the arrival of a barbarous critical theory or a postmodern nihilism, which then turns out to be the fruitful cause of the interdisciplinary turn to Politics and History, I want to give that moment something like a reintroduction. So without further ado let me introduce you, assuming you are not already acquainted, to International Legal Structuralism. Perhaps, we might say, the guardians at New Haven and New York were not under attack so much as they were the accidental hosts of some unexpected guests, the structuralists. But if the structuralists had not arrived to deconstruct, to mercilessly uncover

---

[6] There were, of course, international legal histories that emerged in the decades that followed (Nussbaum 1947; Verzjil 1970; Grewe 2000).

[7] For an influential account of this moment, see Hongju Koh (1997).

indeterminacies and contradictions, to reveal international law as a sham, then what had they come to do?

We can say that legal structuralism was – and continues to be – a method for organizing law, understanding law, and at the edges, offering directions for law's transformation. It is a jurisprudence, and the essence of the method involved a rearticulation of some familiar set of legal materials, whereby the analyst demolished a previous coherence in the effort to construct a new image, a new structure, a simulacrum.[8] But in every case, this simulacrum was figured as a language-system, where the legal materials were analyzed through their own linguistic properties. The structuralist, as a consequence, was hardly the destroyer, chomping at the bit on the outskirts of town. The structuralists came as builders, offering new tools, new ways of seeing.

Among these new ways was an approach to the old question of law's relation to politics (Kennedy 1998). As I have mentioned already, since the realist project had gotten underway in the early years of the 20th century, international lawyers had sought to make international law more 'realistic' while at the same time managing to retain international law's autonomy from international politics. This retention struck many as central to the work of international lawyers, since international law was meant, after all, to pose obligations on sovereigns and not merely facilitate their self-interest. When the wave of critical theory arrived in the 1980s, many believed that the rule of law itself was under attack. It seemed little more than nihilism, if in fact these theorists were claiming that the rules of international law could be made to justify virtually any legal position. But this was not, in fact, what was claimed – at least, not by the structuralists. The structuralist claim was far more sophisticated, and certainly not nihilistic. Rather, structuralists argued that while international law was deeply political, international law was – at the same time – a structure of legal argument, a language-system governed by a syntactical grammar and spoken through a distinctively *legal* lexicon. Politics was there in the structure, of course, most notably in the systemic choices for certain grammars over others, and at the more surface-level choices to speak the language in one way rather than another. But the structure was also quite autonomous from politics, most notably in the operation of the grammar, and the modes in which the grammar governed the forms of lexical argument. The structuralists were ultimately defending the autonomy of law, albeit in a thoroughly unfamiliar way.[9]

So far, I have suggested that legal structuralism offered international lawyers a new mode of jurisprudence, a mode that was really attempting to

---

[8] I take the urtext to be Barthes (2006).

[9] For a fuller discussion, see Desautels-Stein (2014b).

solve an old problem, rather than just make for new, unsolvable ones. But structuralism was more than jurisprudence; it was historiography as well. Consider Koskenniemi's well-known work from 1989, *From Apology to Utopia: The Structure of Legal Argument*. That book, as I will discuss below, is a fantastic representative of structuralist jurisprudence. But it is also, and unavoidably, a history of legal thought. But what kind of history? For some readers, it was history of the worst kind. According to such observers, the jurisprudence may have been powerful, but as far as providing the political, cultural, social, and economic contexts for the legal personas canvassed throughout the book, *From Apology to Utopia* was an outright failure. This reaction was right, if we want to read *From Apology to Utopia*'s legal history as an intellectual history, a social history, or a cultural history. In those registers, the book surely does fail. But as I will discuss below, the tendency to mistake structuralism for nihilism was coupled with a tendency to mistake structuralist history for a history without context. But structuralist historiography is, on the contrary, obsessed with context – it's just not the context that interests most historians. For the structuralist, the key is to identify the *legal* context in which a legal argument is raised. That legal context, predictably, is a linguistic structure.

In the pages that follow, I offer a primer on international legal structuralism. The discussion is organized around the two misconceptions about 1980s critical theory I have just outlined: (1) first, there was the jurisprudential claim that international law's indeterminacy collapsed into raw politics, and (2) second, the historical claim that international law was damned by a timeless and totalizing state of contradiction. Seen from the structuralist point of view, I will suggest that both of these claims are mistaken. But before proceeding, two clarifications.

First, I will limit the scope of what otherwise would be a very lengthy discussion by situating the twinned problematics of 'law and politics' and 'law and history' squarely in the midst of the rise and fall of international legal structuralism, and not critical theory or critical legal studies. Critical theory is about much more than structuralism, of course, and there were many critical theorists then, just as there are many today, who do not subscribe to the tenets of legal structuralism. And so, while I have at a very broad level suggested that I will reintroduce the arrival of critical theory in the 1980s as the arrival of legal structuralism, the better and more precise formulation is to say that I will focus in on one set of those theorists: the structuralists. It is far beyond the scope of this essay to map out the full contours of critical theory in international thought, but suffice it to say that there certainly were (and are) critical theorists who were not structuralists, and while I am unaware of any legal structuralists who would reject the critical label, it is certainly possible to practice legal structuralism without at

the same time working under the banner of critical theory. Structuralism and critical theory have a long and interesting relationship, but for present purposes the point that ought to be emphasized is that a discussion of the one does not necessarily entail a discussion of the other.

Second, I do not want to be misunderstood to be suggesting a causal story in the pages that follow. That is, I do not mean to imply in any sense that structuralism was the cause of the double turn among millennial international lawyers toward IR theory or intellectual history. Rather, my intention is to argue that structuralism offers us a typically eclipsed but also edifying context in which to reflect upon those events, and with any luck, shift our received expectations about what those events are meant to signify. Such an unsettling might have unexpected consequences. Perhaps, most ambitiously, just consequences.

Law and politics

First, the jurisprudential claim. It is a commonplace today to cite works like Kennedy's *International Legal Structures* or Koskenniemi's *From Apology to Utopia*, or even Tony Carty's *The Decay of International Law*, to stand in for the 'deconstruction' of international law (Slaughter 2000; Smith 2013, 1065). When this happens, deconstruction is sometimes taken seriously (Landauer 1989; Carty 1991; Morgan 1995, 2–3), while at others the author seems to really be using it as a code for the idea that law has little meaning or virtue (Bederman 1990, 223). In either case, once international law has been 'deconstructed', well, there is not much left is there? (Brilmayer 1991). Nothing useful, anyway (Alvarez 1994, 782–83, 2004, 557). And so, at least in the United States, *after* deconstruction the international lawyer defends the discipline by heading for what she understands as the project of some corners of IR theory: the study of what – apparently – has always been *really* going on.[10] One might surmise that this is precisely what the critics would have wanted, and yet, scholars like Kennedy and Koskenniemi have consistently rejected the idea that international law be seen as mere window-dressing for the real world of international politics.

---

[10] I should emphasize here that I do not mean to reduce the whole of IR theory to a mono-lithic, disciplinary whole. The purpose in this essay is not to present an accurate mapping of IR theory's many cleavages. It is rather to present, from the perspective of the mainstream international lawyer working in the United States, the sense in which IR theory could function as a good defense against the deconstruction of international law. The fact that this presentation is simplified is largely beside the point, which is to introduce international legal structuralism. For discussion of the more complicated fragmentation that exists within the discipline of IR theory, see, for example, Kratochwil (2010, 2014) and Werner (2010).

But this is puzzling. If deconstruction does not lead the international lawyer to IR theory, why not? And where *does* it lead? The first point to emphasize here is that it is high time we deemphasized the deconstructive aspect of critical legal theory in the 1980s. For most of us, the notion of deconstruction is difficult to articulate as a jurisprudence; rather, it presents a mode of undermining or relocating some series of texts.[11] But what is worth seeing today is that international legal structuralism is about much more than relentless and repetitive critique. It also performs a theory of law, a style of legal analysis that *presents* far more than it deconstructs. It is this creatively programmatic aspect that has been mercilessly sidelined in the years since the barbarians first arrived.

To see how this is so, let us take a closer look at legal structuralism.[12] The jurisprudence of legal structuralism has its roots at Harvard Law School, where it was developed between 1975 and 1984 – an ironic timing given that by this time in France, structuralism was already in decline (Desautels-Stein 2015). In the hands of scholars like Duncan Kennedy, Roberto Unger, Gerald Frug, and David Kennedy, legal structuralism counseled a semiotic approach to legal history (Desautels-Stein 2015), just as others had taken a semiotic approach to anthropology and literature and fashion and so much else (Mackey and Donato 2007). The idea here was that law ought to be understood as a language-system, where the forms of lexical argument are governed by a deep syntax (Kennedy 1976, 1979). The legal structuralist scoured the 'office of the jurist', the legal materials (court decisions, the writings of legal professionals, etc.), in search of unifying patterns and forms. Was there something *beneath* the patterns, explaining, governing, and constituting them? Influenced by de Saussure's theory of language, the Harvard School structuralists often answered such questions by way of de Saussure's trio of distinctions: (1) signified/signifier, (2) *langue/parole*, and (3) synchronic/diachronic.

In contrast to earlier work in linguistics (de Saussure 2011, 1–5), de Saussure believed that a sign was composed of two elements (de Saussure 2011, 65–70), neither of which was necessarily tethered to an objective description of a world independent of linguistic experience (de Saussure 2011, 113). Take the word 'apple', for example. The relation between 'apple' and the fruit to which the word is attached is arbitrary (de Saussure 2011, 68). We might as well use *ping guo* or *clernz*, as either would do the trick. Thus, de Saussure (2011, 66) suggested that the utterance of 'apple' is merely a material signifier for the immaterial concept of an apple floating

---

[11] For typical examples, see Derrida (2007), Lewis (1982), Bloom (1979), and Miller (1976).

[12] For extended discussion, see Kennedy (2006).

around in your head – the signified.[13] When the signifier and signified unite in the course of a communication, a sign is formed (de Saussure 2011, 67). Because of this (usually) arbitrary relation between signified and signifier, the meaning of the communication only becomes available through the act of distinguishing one sign from another, of creating difference between signs (de Saussure 2011, 103). In other words, we only rarely encounter the meaning of an utterance because the sound of the word has some intrinsic connection with the concept the word is meant to designate. More often, we encounter the meaning in a relational way. Thus, in the English language, we get more of the meaning of 'apple' by distinguishing it from 'ape' or 'leap' or 'people' or 'orange', and less from some inherent or natural connection between 'apple' and the concept of apple.

But for de Saussure and the Harvard structuralists the arbitrary nature of the relation between signifier and signified was not only about the idea that word-forms and particular concepts had arbitrary connections. More interesting was the notion that the forms helped shape and generate the concepts in arbitrary ways. That is, while it is apparent how the names we use for particular concepts could have been other than they are, it is less customary to contemplate how the choice of 'apple' in English has assisted in the constitution of the concept of appleness for English speakers. This gets to a fundamental point in Saussurean semiotics: it is not merely that the form of a language shifts over time; the very concepts conveyed by language change as well. The signified notion is, in other words, just as arbitrary as the signifier's form.

de Saussure's second distinction was between *langue* and *parole* (Hawkes 2003, 9). *Langue* refers to the fundamental rules of syntax shaping the contours and boundaries of the linguistic structure. As de Saussure explained, the *langue* represents 'the whole set of linguistic habits which allow an individual to understand and be understood' (2011, 77). The *langue* is consequently determinate in scope. The *langue* is a system of constraints operating equally on each language speaker. Its contents are fixed and closed, and in the context of the system, universal (de Saussure 2011, 73). In contrast is *parole*, which refers to the open, arbitrary, and individually created speech-acts made in light of the deep structure of the

---

[13] The linguistic sign unites not a thing and a name, but a concept and a sound-image. Contrast this view with Thoreau's description of a 'leaf'. 'No wonder the earth expresses itself outwardly in leaves, it so labors with the idea inwardly … The overhanging leaf sees its prototype. Internally, whether in the globe or animal body, it is a moist thick lobe, a word especially applicable to the liver and lungs and the leaves of fat ('… globus, lobe, globe; also lap, flap, and many other words); externally, a dry thin leaf, even as the f and v are a pressed and dried b. The radicals of lobe are lb, the soft mass of the b (single-lobed or B, double-lobed), with the liquid l behind it pressing forward'. Quoted in Tallack (1995, 13).

langue (de Saussure 2011, 76). Thus, where *langue* is unconscious and out of sight, *parole* is intentional and visible. Where *langue* is syntax, *parole* is utterance. Where *langue* represents a field of coercion, *parole* is free. Where *parole* is apparent and everywhere, *langue* is only discoverable through an analysis of the common qualities demonstrable in *parole* (Coward and Ellis 1977, 12).

If *langue* is only discoverable through a study of *parole*, how is the study to be conducted? Is it done historically, looking at the development of English, or fashion, or whatever, over some period of time? If so, how much time? How do we fix the limits of study? It is here that the issue of structuralist historiography enters through de Saussure' (2011, 79–100) third distinction, the distinction between synchronic and diachronic analysis. For some, this was the only way to understand how languages formed, through historical, functionalist, and evolutionary treatments of the way in which language changed over time (de Saussure 2011). This kind of effort is notable for a search for the origin, where it all started, and what happened from there. This is diachronic analysis, the study of a system in chronological form, shifting over time (de Saussure 2011).

In contrast was his preferred synchronic approach. In this mode, the linguistic structure is historicized, studied at a moment, through a snapshot in time. We do not bother with how the structure came to appear, or with the role of an 'agent' in the elaboration of language. To be sure, de Saussure recognized that the agent's use of *parole* necessarily changes the *langue* over time. But the structuralist method, in its search for an understanding of the system, bracketed out the agent and the influence of *parole* in favor a static and relational analysis of that system. Thus, language was to be explained neither by the 'real' world to which language seemed to be related, nor by the agent's operation of the language over time. Explanation followed through reference to relations between the relevant terms.

de Saussure's brand of linguistics provided a platform for a host of new approaches to the 'human sciences'. Along with Claude Levi-Strauss, the typical list includes the likes of Roman Jacobson, Roland Barthes, Jacque Lacan, Jean Piaget, Louis Althusser, Paul Ricoeur, and many others. These figures applied de Saussure's semiotics to such disciplines as anthropology, history, classics, religion, literature, philosophy, psychology, and sociology, among other things. But it was not until the advent of the Harvard School that structuralism took an interest in law. An example from the Harvard School includes Kennedy's 'Theses About International Law Discourse', published in 1980 (Kennedy 1980).

A brutal summary of the article might look like this. At the surface level of legal argumentation, Kennedy (1980, 355) presented the entirety of international law as an apparently chaotic discourse of constantly repeating claims.

On the one hand, these claims repeated the view that sovereign states were only ever bound by international rules when sovereigns consented to be bound. This apologetic argument, Kennedy (1980, 359) suggested, always dissolved into a claim about the supremacy of national interest. On the other side, international legal arguments held that in order to be a distinctively *legal* argument at all, international law required normativity. Such normative content needed to be distinguished from the pure political interests of sovereign states. International law, in other words, had to be constraining precisely at the moment states did not want to be constrained (Kennedy 1980). But, so the first claimant would respond, how could a sovereign be bound by a law to which it had not consented? Where could such normativity come from, if not from the national interest? (Kennedy 1980, 383).

Kennedy (1980) suggested that this interminable back-and-forth animated every doctrine of international law. The apparently random aspects of international law talk, Kennedy (1980, 356) believed, were actually aspects of a heavily structured way of talking. What appeared on the surface to be a whole mess of fragmented fields and arbitrary arguments could also be viewed in the light of a deep-seated tension between sovereign interest and international norm (Kennedy 1980). This was the grammar at the heart of liberal political theory, only here in the context of international law, the grammar was articulated through an analogy between individual human subjects and sovereign states (Kennedy 1980, 361–62). For Kennedy (1980, 364), the resulting body of international law could helpfully be reconstructed as a language-system, where the language was composed of a deeply legal grammar and a deeply political discourse in which that grammar was used to craft a platoon of often conflicting legal arguments.

The formal effect of international law's deep structure on the more surface levels of doctrine was powerful: because the entire structure of legal argument was shaped out of a very basic and Janus-faced *langue*, the transformations of the *langue* into surface-level *parole* persistently resisted substantive consistency. That is, while argumentative form was restricted to certain patterns, shaped as they were out of the structure's *langue*, the *content* of argument was always open (Kennedy 1980). When looking at questions ranging from the law of the sea to the use of force to foreign direct investment, legal conclusions never actually followed from the arguments in a logical way (Kennedy 1980, 368). But they did follow, Kennedy argued, in a grammatical way. This was not to say that the *langue* was spoken in precisely the same contradictory way in every legal field. The choices may very well be, and often are, quite different (Kennedy 1980, 368–69). But Kennedy's (1980) point was that in any given sub-field of international law, legal arguments were indeterminate due to the openness of *parole*, while the *langue* was fixed.

And thus we begin our encounter with the point that is so often missed in the abridged version of the story I rehearsed at the outset. For in suggesting that international legal thought was thoroughly political, Kennedy also wanted to reinforce the point that structuralist indeterminacy did not mean that law was just an 'anarchistic anything-goes morass' (1980, 357). To be sure, the making of international legal arguments were deeply political, at the level of parole. But at the more fundamental level of the *langue*, international law was still *law*. International law remained autonomous from international politics, from this structuralist point of view. It was just that autonomy had now been reframed as an artifact of our language.

Published 9 years later in 1989, Koskenniemi's *From Apology to Utopia* was arguably the last legal structuralist work of the period, and while Koskenniemi did not write it in the United States, the book is surely a high-light in the Harvard School's already formidable catalogue of structuralist works. Following Kennedy's lead, the structuralist approach in *From Apology to Utopia* elaborated its target in semiotic terms. Specific instances of legal argument were likened to a lexicon or working vocabulary of law, while the broader field of legal production was likened to the constitutive grammar that controlled the forms a lexicon would take when put to work (Kennedy 2001). This distinction tracked, once again, the pairing of syntactical foundations and lexical performance (de Saussure 2011, 73).

As with so many works emanating out from the Harvard School, including Kennedy's *Theses*, Koskenniemi (2006, 71–94) targeted the language of liberal legalism. But not the whole of the language. From within the differentiated terrain of liberal legalism, the book zooms its focus onto a solitary legal concept: sovereignty.[14] So to put the point another way: structuralist work was often concerned with only one sort of legal language (i.e. liberal legalism), and within that language, only one legal concept (i.e. sovereignty). In this sense, structuralist analysis could be far more humble than it was often thought to be by its opponents, who believed the structuralists were social scientists trying to account for the known universe. Liberal Legalism is merely one language in which international legal thought may be expressed, and sovereignty is only one concept among many in that particular language.

Rather than thinking about the result of structuralist analysis as a nihilistic deconstruction of international law, the better reading is to see this as the careful production of a legal concept, structured by a very peculiar grammar. As Kennedy had already suggested, the grammar laid the formal baseline for arguments about sovereignty: the binary relation between what

---

[14] The whole book is dedicated to thinking through the consequences of crafting legal arguments around this liberal legal point of departure.

Koskenniemi would call descending and ascending patterns of argument (Koskenniemi 2006, 59–68). As Koskenniemi (2006, 11) explained, the patterns led the arguer toward a number of disparate and unwarranted conclusions (i.e. *parole*), while the grammar and its formal responsibility for the shape of the arguments was tightly constrained (i.e. *langue*).

As we seek concrete manifestations of the grammar, we immediately move closer to the surface world of legal argument itself, closer to *parole*. In moving 'up' in the structure of liberal legalism, we confront *legal concepts*.[15] A legal concept refers to a distinct cluster of legal arguments, drawn with greater and lesser specificity (Desautels-Stein 2012a, b). 'Sovereignty' is just such a legal concept, and the *langue* of that concept is outlined with reference to the double demands of objective normativity and subjective consent or concreteness. These two patterns comprise the grammar with which any sovereignty argument must be made, so long as the arguer intends to speak in the language of liberal legalism. Moving further still in the direction of *parole*, the jurist encounters sovereignty's 'tropics of discourse',[16] the prefigured and routinized interpretive orientations into which a legal speaker will find her explanations and justifications 'making sense'. The orientations help construct the choice of fact, which will in turn provide compulsion in the direction of a given conclusion.

In a recent article I have spent some time discussing these interpretive orientations, occupying an intermediate terrain between *langue* and *parole* (Desautels-Stein 2014c). It is here, I suggested, that some uses of IR theory could be very helpful in the work of making legal arguments. Say that we take Koskenniemi's image of the liberal legal grammar as a starting point. We know that, as we try to make an argument regarding the enforceability of a norm on a sovereign that has refused consent, we will find ourselves in the ascending-descending dynamic. But how does one jurist deploy the concept, as opposed to another? How do we account for the obviously different ways in which lawyers work the arguments? One way to think about it is to posit the existence of certain dominant interpretive orientations that will prefigure the dynamic in one or another way. So, for example, we could articulate 'realist', 'communitarian', 'individualist', and 'statist' orientations that prefigure the directions of legal work (Desautels-Stein 2014c, 159–66). These orientations, very familiar to IR theory, are hardly unitary in their meaning, but that is not the point. The point is rather that, in the various literatures of IR theory we can find useful

---

[15] Just as 'tort', 'contract', and 'property' are legal concepts, so too is 'sovereignty'. For a classic example of this style of legal analysis, see Frug (1980).

[16] For discussion, see White (1986).

directives for thinking about the cacophony that ensues in the wild terrain between *langue* and *parole* (Beer and Robert 1996).

But what must be emphasized is that the use of one or another brand of IR theory to illuminate argumentative pathways in the structure of a legal concept is hardly the same thing as finding that international law is nothing but politics. It is also a very different thing than using a piece of IR theory to give the international lawyer more direction in the effort to make international law more 'effective', whatever that might mean. That is, the structuralist turn to IR theory helps us understand the tropes constituting the 'stuff' between *langue* and *parole* in a purposefully artifactual 'pre-political' legal structure. The structure does not collapse into politics (Hoffman 2006, 1098). On the contrary, legal structuralism points toward a 'relative autonomy' of legal argument, and the critical importance of understanding the language-system in which international legal arguments are made. To be sure, legal structuralism owns up to a good deal of legal indeterminacy; at the level of *parole*, after the orientations have done their work, the judge can conclude in as many ways as the grammar and the tropes will concede. (And depending on the legal concept we are looking at, these ways will be far less than at others. It just is not true, as both Kennedy and Koskenniemi explained, that the rules could be twisted to conclude in virtually any way imaginable – they can only be twisted so long as they conform to grammatical form.) But much more important to the legal structuralist is her construction of the grammar. That is, the legal structuralist presents a jurisprudence, a style of legal workmanship, a constructive approach to the perennial question of law's relation to politics (Koskenniemi 2006, 573).[17] Law is certainly political, but the structuralist has her ear attuned to a different register: the legal concepts and their argumentative structures that *construct* the political world.[18] IR theory, in contrast, is ill-equipped for constructing *legal* concepts.

This is why scholars like Kennedy and Koskenniemi in large part rejected the American turn to Politics in international thought (Kennedy 2000b; Koskenniemi 2002). If the structuralist is looking for legal concepts that are constitutive of the political, and not merely derived from it, the turn to IR theory seemed to miss the whole point of structuralist jurisprudence. The idea was hardly that international law was intrinsically political, which would therefore necessitate a turn to those with a 'comparative advantage' in political science. The idea was rather that liberal legalism was a language

---

[17] For a recent analysis of Koskenniemi's 'style', see Dunoff (2013).

[18] For discussion of social constructivism more generally, see Wendt (1999), Onuf (1989), and Berger and Luckman (1967).

based on a handful of essential premises, and that once these premises were properly structured, the jurist was emancipated from a sense that law merely tracked political interests. Mastering the structure of legal argument enabled the jurist to speak ever more eloquently, ever more strategically, and at the margins, with ever more subversion. For if we came to understand the structure of our legal concepts – concepts that constituted the political world – we might gain advantage over them, and perhaps, transform them (Unger 1975).

The caricatured belief in the United States that IR theory could provide international lawyers with a more effective understanding of their trade threatened to undo this emancipatory potential. For rather than push deeper into the structure of legal argument itself, the reaction to turn away from critique and toward IR theory suggested that – once again – international politics was the *real*, the sidekick international law keeping up as best it could (Unger 1975; Abbot 1989). In situating international law and international relations in such a way, liberal legalism slips into the background as the controlling 'social force' out there in the natural world – just as the structuralist had attempted to denaturalize it through the study of its legal concepts. Looking to IR theory, and particularly some corners of IR theory, may leave the structure of *those* backgrounded systems unexplored, and as a consequence, in power.[19]

But as I have said, this is not to say that legal structuralism is naturally hostile to IR theory at any generic level. Not at all. Legal structuralism picks its battles. It chooses a target, and then it goes about constructing the language of the target through a sustained evaluation of legal argument. If all goes well, the structuralist presents patterns shaping the arguments, and deep grammatical forms shaping the patterns. The grammar, the patterns, the arguments, are all distinctively legal, where 'legal' is defined as simply a way of speaking. But it is here that theories of politics are also valuable, since they are so well equipped to shed light on the recurring tropes that forge those contingent connections between baseline and conclusion. Theories of politics, that is, help us stylize the patterns of argument themselves, without robbing the patterns of their distinctly legal character. But we have to be careful, for as Kennedy and Koskenniemi warned at the time, if we let extralegal disciplines set the agenda for international law scholarship, the language of international law – its concepts, patterns, styles – will very likely be muted, shoved into an interdisciplinary blindspot, and at the

---

[19] Pollack (2013) has recently provided a very helpful discussion of these issues, and I wonder if Pollack, Dunoff, and Koskenniemi might actually agree more than Pollack's analysis lets on, as Pollack's critique of legal formalism among IR theorists seems very close to Koskenniemi's real complaint.

same time, the forces of international politics, of whatever sort they might be, are reified. In such an instance, theories of the political world, such as realism and institutionalism, are empowered, while constructivist theories of law – like international legal structuralism – are sidelined.

Law and history

At first blush it might seem that international legal structuralism's jurisprudential and historiographic dimensions are easily separated. And of course, in a superficial sense they are. I could end the essay here, emphasizing the manner in which structuralism offers international scholars a different approach to the law-politics question, an approach that simultaneously accounts for the deeply political nature of international law and accounts for the distinctively legal nature of international legal argument. But the discussion would necessarily leave us wondering, 'But which legal arguments? The legal arguments of a Grotius just as well as a Lauterpacht? The legal arguments of Europe, just as well as Africa?'.

In other words, we need to know something of the context in which the structure of legal argument will be placed, and this context is unavoidably historical. Legal thought, after all, happens in time and space. And de Saussure, while uninterested in law, was keenly aware of the historical dimensions of semiotics, as the distinction between the synchronic and diachronic was meant to demonstrate. That distinction, you will recall from above, instructed the analyst to take the language-system as a spatial snapshot in time – synchronically – rather than looking to the ways in which the language-system had evolved over time in some place, diachronically. This freezing in time may strike some observers as 'ahistorical', but at least in the context of international legal structuralism, it is anything but.

And yet, works like 'Theses About International Law Discourse' and *From Apology to Utopia* do seem utterly oblivious to the relevant contexts in which the discussions of past events ought to have been situated. Kennedy's (1986) *Theses*, not to mention his work on international legal thought in the 16th century, was undeniably about structures operating in the past. And Koskenniemi's analysis in *From Apology to Utopia* went back in time several centuries, yielding the apparent conclusion that international law was caught up in a universal, timeless contradiction between its simultaneous needs for normativity and concreteness, for ethical legitimacy and sovereign consent (Carty 1991, 168; Mollers 2006, 1013; Howse and Ruti 2013, 383).

To be sure, the seemingly ahistorical nature of such works could be jarring. Was it really true that international law was fundamentally indistinguishable from international politics, and more, that it had *always*

been so political? Had there never been an international rule of law? As the 21st century rolled in, the discipline of international law in Europe turned to such questions with fresh intensity.[20] A new journal was anointed in 1999, *The Journal of the History of International Law*, which was followed by a steady flow of monographs on international legal history (Simpson 2004; Craven 2007; Kemmerer 2008). Of course, it was hardly the case that the new rush of material was directed explicitly at the apparent nihilism of international critical theory; but what does seem apparent is that in this new generation of legal scholarship, the watchword was *context* (Armitage 2013).[21] The idea is helpfully captured more generally in an essay from Gordon in 1997, announcing the arrival of something called 'critical historicism' (Gordon 1997). In short, what Gordon was seeing, and what seems relevant in the story I am telling here, was a new fascination among legal thinkers with contextual history, the purpose of which was to undermine sweeping generalizations and totalizing accounts of law – whether from the left or the right (Douzinas 1991).

So here is the question: Did Harvard School structuralism reflect just the sort of generalizing and totalizing account of legal history that the new critical historicism was pitched against? As Orford (2006) has asked, wasn't Koskenniemi's *From Apology to Utopia* after a truly universal grammar that might categorize not merely the special language of liberal legalism, and a particular legal concept within that language, but *all* of international law? Orford writes: 'The descriptive aspect of Koskenniemi's project resembles one kind of knowledge produced during voyages of exploration-"the gathering of data" about countries, people, flora and fauna, as the material basis for the universalizing abstractions of eighteenth century philosophy, botany, and jurisprudence' (2006, 1002). The analogy here is powerful. If right, Koskenniemi, and by implication so many of the Harvard structuralists, were hardly the social constructivists I was setting them out to be in the previous section; they are more like scientists, positivists even, raking the known world of legal argument in order to lay plain its basic laws. Though Orford only tentatively endorsed this painting of Koskenniemi as a 'New Langdell' (Williams 1987), she nevertheless reinforced the analogy with a bit of vintage poststructuralism. Citing Paul de Man, Orford concluded, 'By concentrating on the grammar of international law, Koskenniemi ignores the capacity of international law to mean more or other than its author intended it to mean, to misfire, or to be deflected' (2006, 1005).

---

[20]   Galindo (2005) referred to this as the 'historiographical turn'.

[21]   Not everything was overtly contextualist, of course (Bobbitt 2003; Johnston 2009).

Complementing the critique that Koskenniemi's scope was as broad as the natural scientist's is the sense that Koskenniemi was not only looking across space, but back in time as well. Which, of course, he was. The trouble here, as it is defined by historians, is known as 'presentism' (Harootunian 2007, 484). A structuralist work like *From Apology to Utopia* is, one could argue, anachronistic in the sense that its purpose in addressing the arguments of past philosophers is to appropriate past philosophy in the service of Koskenniemi's own interest in showing lawyers how they argue right now – an approach that is so enamored with the present and that so badly fails to take account of historical circumstances, that it is not, as one commentator has suggested in a different context, 'worthy of the name of "history" of philosophy. What is offered in that name is in fact a species of textual exegesis or critical commentary, with no more connection to history than the fact that the authors are dead' (Hutton 2014, 926). But even if a theorist tries to escape presentism with the excuse of doing nothing more than ahistorical critical commentary, the excuse will not appease for long, since 'the reading of philosophy of the past cannot ignore the historical circumstances of their production without risk of serious distortion' (Hutton 2014).

The demand that we avoid presentism through the placing of history in its proper context – that it be properly *historicized* – is the baseline from which a historiographical critique of legal structuralism begins.[22] It is in this sense that, when viewed as a legal history, *From Apology to Utopia* emerges as one of two things: nonhistory (which seems implausible), or really bad history (much more likely). As Hunter has suggested, a properly empirically oriented intellectual history

> treats what counts as philosophy and what it means to be a philosopher as something varying with the deployment of arts of thinking valorized as philosophical within a particular historical context or cultural region … Needless to say, this approach to philosophy via its regional self-understandings and styles of cultivation is radically opposed to and by those approaches that view philosophy as the form in which a universal human reason becomes conscious of its own structure and operation (2008).

On the one hand, for contextualists like Hunter, this is the right kind of history: that which takes philosophy and treats it as one would treat any object – situationally, contingently, in context. The historian searches out

---

[22] The classic is Skinner (1969). For Koskenniemi's most recent challenge to the demand of historicism, see Koskenniemi (2013). For an embrace of presentism of a very different sort, see Ghosh and Kleinberg (2013).

for 'philosophical persona': 'activities undertaken using definite intellectual instruments in specifiable historical settings' (Hunter 2007). The philosophical persona is 'approached via historical investigation of the manner and degree to which the acquisition of an ensemble of intellectual arts, through the formation of a special philosophical self, determines what counts as philosophical understanding in some historical milieu' (Hunter 2007, 584). In order to study a history of philosophy, as a result, one must bypass the compulsion to look for a chronology of human understandings of the self. Instead, one must focus on the historical contexts that have induced human beings to desire 'philosophical' identities. The history of philosophy is not a history of ideas, arguments, speech-acts, or discourses; it is a history that empirically discloses the much particularized reasons why human beings would want to talk about such ideas in the first place (Hunter 2007, 587).

On the other hand, again for historians like Hunter, is the wrong kind of history: that which *a priori* assumes a philosophically determined way of understanding ideas in time. Hunter (2010, 2012) has suggested that Tony Anghie's history of international legal thought is of this latter, presentist kind. I mention this here since Hunter's criticisms of Anghie could easily be deployed at more recognizably structuralist works like *From Apology to Utopia*. Historiographical problems arise, as Hunter sees it, when the author looks back to the arguments of early modern natural law and Enlightenment writers in order to condemn contemporary writers on the basis of their intellectual ancestors' errors. While busily accusing these early writers of a false universalism, Hunter (2012, 2–3) suggests, Anghie and others smuggle in their own contemporary forms of universalism, erecting a vision of history intended to stand outside of history. To be sure, this is precisely what is going on when, in the 1980s, structuralists like Kennedy and Koskenniemi offered their lengthy discussions of Vitoria, Grotius, Wolf, Vattell, and so many others. A structure of argument was laid out, exemplified in the thought of a particular philosopher, only to be laid out again and again over time, moving steadily to the present. But, the intellectual historian asks, who were these people? What caused them to 'think' this way, to participate in a particular kind of 'philosophical' reflection? (Brett 2004; Sewell 2005). What were their projects, what problems were they trying to solve? Legal structuralists left these questions unasked and unanswered.[23] As a result, the structure comes off as anachronistic, timeless, and universal, spoken by the ancients only to be repeated in the here and now.

---

[23] Koskenniemi asked and answered in his *Gentle Civilizer*, which is more recognizably 'history' precisely because of its focus on these contexts (Mullerson 2002, 732).

We find ourselves in a familiar position. Faced with a barbarous history of international law that suggested a nearly impossible job description for practicing international lawyers, a redemptive interdisciplinarity soon emerged, and complementing the turn to Politics was now a second turn, the turn to History. Just as *From Apology to Utopia* was stereotyped as a nihilistic deconstruction of law, was it also 'dogged by debilitating anachronism and presentism'? (Hunter 2012, 1). If we take these terms to mean what Hunter means by them, Hunter must be right in his condemnation of Anghie (and by implication, international legal structuralism). Either in the vein of Skinner and Pocock's school of contextual history,[24] or Hunter's 'philosophical persona', Anghie and Koskenniemi's two books are damned as insufficiently contextualized.

But here comes the rub. Which contexts are necessary for a 'history' to be appropriately historicized, and therefore, excused of presentism? (Gordon 2014). In a direct response to Hunter, Orford (2013, 171) suggests that contextualism means something very different when in the world of *legal* history. For Orford, it is all well and good to remain alive to law's context. But she then checks contextualist historians, claiming that the very nature of legal analysis requires a very peculiar construction of meaning through time. Legal analysis, Orford suggests, is unavoidably anachronistic since its traditions demand the commandeering of past judicial decisions and putting them into the service of present claims on behalf of clients. This is, after all, what lawyers do: 'The need to think about context beyond that which is contemporaneous with the lifetime of the author … is even more pressing for legal scholarship, given that law relies upon precedent, customs and patterns of argument stretching back, at least in the common law tradition, from as recently as yesterday to "time immemorial"' (Orford 2013, 174).

I agree with much of Orford's response, but I would like to offer instead a picture of structuralist historiography, a picture that – to my mind – conforms with Orford's rejection of Hunter's contextualism, but suggests a very different image of legal analysis than the one suggested by her depiction of the natural scientist. This will involve four brief points: (i) structuralist legal history does not reject the search for context, but directs the historian to contexts other than those searched out by the intellectual historian; (ii) the object of historical analysis is the legal concept; (iii) the structure of legal argument is constructed within the concept, and not taken from some context without; (iv) the legal concept is always ever a linguistic artifact, and not a mirrored reflection of the natural world;

---

[24] There is a substantial literature here (Tully and Skinner 1988; DeLuna 2006; Brett and Tully 2007).

hopefully, with luck, the artifact edifies the jurist's image of law's reality, even as it remains a simulacrum.

The legal context

The first issue to foreground is that structuralist legal history is not ahistorical, is actually legal history, just not *intellectual* legal history.[25] Let me explain. A familiar move in legal analysis is to place a legal rule in its proper social context. As the realists claimed, in order to properly understand the life of international law, we need to see international law in its political, economic, and cultural contexts. Unless and until we were alive to these social contexts, the realists instructed, we only get partial glimpses of what law is really all about. And so, legal histories that took this realist perspective as their point of departure sought to understand international law in some extralegal context, a social context that might explain why international law looked as it did. Perhaps, this might look like a thoroughly political history of international law, paying attention to the history of international diplomacy, the partisan beliefs of prominent politicians, and so on. In another vein, such legal histories might take war or economics or religion as the best explanation for international law's particularities. Perhaps, a history of international law is best explained at a more microlevel, through a history of salt or soccer. Clearly, there are any number of contexts we could choose from in giving our historical account, and to be sure, many will be fruitful.

International legal structuralists also place international law in a contextualist history. But that context will neither be politico-economic nor cultural; it will instead be a history that seeks to place international law in a distinctively *legal* context. At first blush, this has a concededly strange ring to it. We will put law in a legal context? Isn't law, by definition, already in a legal context? No, it is not.

Now, the idea of legal context might seem to implicate one of two possibilities, but neither is what the structuralist has in mind. The first wrong turn is toward so-called 'doctrinal history', or more pejoratively, 'law office history'. This is a history in search of the evolution of legal rules, paying attention to how those rules have changed over time. A second unintended possibility for 'legal context' would look for something like Arthur Lovejoy's 'history of ideas', wherein the historian seeks out basic questions

---

[25] This distinction has led Dunoff to state: 'It remains to be seen whether this call will lead Koskenniemi to move "beyond history"' (2013, 319). Helpful background is available in Surkis (2012), Toews (1987, 2009), Kleinberg (2007), Rorty (1967), and LaCapra and Kaplan (1982).

about the nature of law, and how that nature has been conceived differently at various moments in time.

But if in the search for 'legal context' the legal structuralist will avoid the traditional modes of intellectual contextualism, doctrinal history, and the history of ideas, what could be left? In giving a structuralist history of international law, she places patterns of argumentative disagreement in the context of 'legal thought'. Legal thought refers to mechanics of legal argument – the moves, techniques, and styles jurists use in the process of putting legal rules into action, giving the rules momentum, and when done successfully, giving the rules a gloss of necessity. To put the point another way, legal thought is about law's *langue*, its grammar, what is going on under the hood, so to speak. A structuralist history of legal thought is about legal doctrine, to be sure, but rather than focus solely on the content of rules, attention to legal thought directs us to a legal context, namely, the ways in which jurists put the rules into *arguments*. Thus, while legal structuralism is very interested in putting rules in context, it is not about putting them in a political or philosophical context, but rather in putting them in the context of legal thought. As a consequence, while legal thought is about more than mere doctrine, it is simultaneously not about the extralegal contexts in which we often want to situate those rules.

At the risk of belaboring the point, consider the following. Imagine that we decide to take an immersion program in a foreign language, let us say Spanish. Not knowing a lick of it, we enroll in an introductory course. On the 1st day, the instructor tells us that over the course of the semester we will learn a list of a 100 Spanish vocabulary terms. By the end of our study, we are told, we will enjoy a degree of mastery over these terms – we will know their etymologies, their various meanings, their different pronunciations, etc. And, at the end of the semester, the prediction holds true. Impressed with ourselves, we go looking to celebrate only to bump into bona fide speakers of the Spanish language. We happily inform them of our successes, and quite pleasantly, they ask us to exercise our new powers. Perplexed, we look at each other, back at the native speaker, back at each other. We explain that we know a 100 vocabulary terms, but we do not know yet how to actually use the terms in sentences. That kind of learning, we imagine, is not for the classroom; we will get that once we are out in the world, 'practicing'. Our native speakers look confused, and respond by suggesting that when someone learns Spanish, they need to learn more than the vocabulary. They need to learn the grammar as well, the received understandings for what properly counts as having made a successful sentence, and what does not. The grammar, they patiently explain, is just as much 'Spanish' as the vocabulary is 'Spanish'. And in order to actually know how to motivate the vocabulary into phrases and sentences and paragraphs, one

should know something about the patterned moves we have come to accept as regulating the forms into which the vocabulary travels. We shrug, and dismiss the complaint with the proviso that perhaps, in some upper level theory course, we will encounter this so-called 'grammar'.

If this analogy has any traction, we could say that the intellectual historian wants to take the vocabulary and place it in some socio-political context. The structuralist, in contrast, wants to put the legal vocabulary in its distinctively *legal* context, the context of legal thought. Or, in other words, the rules of law – like the Spanish vocabulary – do not come along announcing their legal context. You have to work for it.

The legal concept

For my money, the best nonlegal sources for understanding this approach are Roland Barthes, Michel Foucault, Hayden White, Walter Benjamin, and Reinhart Koselleck. Of course, none of these people were legal historians. They were scholars of different traditions themselves, with different legacies, supporters, and opponents.[26] And further, no one of these historians provides a platform onto which a work like *From Apology to Utopia* might stand on all fours. But rather than make a claim here for why it is useful to read them together as a common wellspring for a kind of structuralist legal history that is something other than intellectual history, I will focus here – with a brutal quickness – on Koselleck's concept of the concept.

For Koselleck (1985, 1988, 2002), the basic unit of historical analysis is the concept. A concept, unlike an 'idea',[27] is for Koselleck an entity that aspires toward a rich semantic diversity.[28] This suggests that a given word only becomes a concept once 'the entirety of meaning and experience within a sociopolitical context within which and for which a word is used can be condensed into one word' (Koselleck 1985, 85). Concepts, on this view, necessarily hold within them a plurality of styles out of which the concept takes its contingent form.[29]

---

[26] For discussion, see Desautels-Stein (2014a).

[27] For discussions of the difference between conceptual history and contextualist history, see Richter (1986, 620–21), Pocock (1996), Kelley (1996), Skinner (1999), Palonen (1999), and Fernandez Sebastian (2011).

[28] For discussion, see Zammito (2004), Jordheim (2012), and Palti (2010, 196).

[29] Take the concept of marriage, for instance. If we want to conduct a conceptual history of marriage, we will have to investigate the linguistic conditions of possibility for the social experience of marriage. But this is not Skinner or Hunter, since for Koselleck the search for any given concept of magnitude in social history never moves toward the contexts in which the concept has been used, but rather moves to contexts *internal* to the concept. This may at first sound essentialist, but it is not. As Koselleck asks, '[What] are the kinds of texts, of various social

To see what this means in the context of structuralist legal history, consider again Koskenniemi's target in *From Apology to Utopia*: the legal concept of sovereignty, articulated in the language of liberal legalism. In elaborating the concept, Koskenniemi grounds it in a *langue*. This is the basic and constitutive grammar identifiable in the ascending/descending dynamic. This *langue*, as discussed above, offers a tightly constraining set of rules for the forms of argument that are available within the concept. However, when it comes down to substantive conclusions, as well as the tropological patterns that ferry the arguments on to their arbitrary destinations, the rich semantic diversity of the concept's form comes into view.

For example, and as Koskenniemi outlines, within the concept of sovereignty itself are 'classic' and 'modern' sub-structures of argument. Within each sub-structure there are any number of styles a jurist might use for operating the structure's semiotic terrain. In the 'classic' mode, for instance, the Swiss 18th century writer, Emerich Vattel, demonstrates a style of argument in which the device of 'voluntary law' attempts to mediate the conflict between the conflicting demands of normativity and concreteness. There is nothing in the classical grammar that requires the use of voluntary law, but as Koskenniemi explores, jurists need *something* to assist in the work of making their conclusions appear legally necessitated, and the voluntary law is just one way of doing it. Similarly, in the 'modern' sub-structure Koskenniemi outlines four dominant styles in which jurists speak the classical grammar: the rule-approach, associated with Georg Schwazenberger, the skeptical-approach, associated with Hans Morgenthau, the policy-approach, associated with Myers McDougal, and the idealism-approach, associated with Alejandro Alvarez. The sovereignty concept is consequently united by an underlying grammar cross-cutting across different sub-structures in the 'classic' and the 'modern'. All of this goes to the semantic diversity immanent in this contingent construction of the concept of sovereignty itself.

classifications, in which particular marriages have been conceptualized?'. Of whatever sort of text we might examine, whether they are diary entries, letters, newspaper articles, theological treaties, judicial decisions, or statutes, 'language-bound traditions diachronically establish the life sphere of a possible marriage. And when the changes become apparent, they do so only when the notion of a marriage has been conceptualized anew' (Koselleck 1985, 34). Thus, for example, Koselleck constructs marriage as a concept the linguistic pregivens of which were, in the 18th century, primarily focused on the propagation of the human race. By the beginning of the 19th century, however, the modes of language shift in order to constitute marriage more in terms of the will of individuals to realize their self-interest. In working though the semiotics of the marriage concept in its pre-18th century mode, an Enlightenment mode, and a later 19th century mode, Koselleck writes a history of concepts divorced from context.

Legal concepts in legal contexts

But now comes the synchronic question: How do we delimit the time in which the semiotics of a particular concept are to be explored? Or we might ask, how do we establish the proper legal context, how do we get going in the first place? If we borrow Koselleck's imagery, how does our history get in the 'saddle', as he puts it? For Koselleck, the whole idea of using something like Hunter's empirically oriented intellectual history in order to produce a thick description of context is a nonstarter. To get going, conceptual history begins with the production of an *a priori* theory of time. Only with such a theory can the historian then go about the business of locating the semiotics of concepts in particularized periods (Koselleck 2002, 4–5). So, unlike for Hunter who wants to get at contexts in order to historicize theory, Koselleck sees Hunter as having it backwards: 'It is, rather, a question of theoretically formulating in advance the temporal specifics of our political and social concepts so as to order the source materials. Only thus can we advance from philological recording to conceptual history' (Koselleck 2002). For Koskenniemi, and like for Koselleck, it is the (arbitrary) legal context of liberal political theory – and in *From Apology to Utopia*, Hobbesian theory – that gets us moving.

In *From Apology to Utopia*, Koskenniemi's history of the sovereignty concept also begins with an *a priori* theory of time, or periodization. It is a periodization that turns entirely on the stylized language of liberal legalism. Just as Koselleck has argued with respect to the differences between natural time and historical times, the periodization of liberal legalism in *From Apology to Utopia* is artifactual, a temporality other than 'natural time'. That is, there are any number of historical temporalities that coexist with the time measured by the revolutions of the earth around the sun, and the narrativized time of liberal legalism is only one (Jordheim 2012, 155).

As for how the 'time' of liberal legalism is periodized, Koskenniemi's saddle period has much in common with Koselleck's idea of *Neuzeit* (modernity).[30] There is the theorization of a 'break', marking off a time in which the Aristotelian content of the sovereignty concept slowly declines, followed by a period of classical liberalism exemplified in Hobbes' *Leviathan*. But the break is not of the normal 'contextualist' sort we find in intellectual history. It is rather a break separating structures of legal argument.

Take, for example, Koskenniemi's presentation of the 'pre-liberal' thinker Francisco Vitoria, writing in the early 16th century. For a legal structuralist like Koskenniemi, Vitoria illustrates a pre-liberal legal context and therefore an example of legal *thought*, and a very specific mode of legal thought.

---

[30] For discussion, see Koselleck (2002, 154), Davis (2008), and Hunt (2008).

Vitoria is not, in contrast, analyzed as an expositor of *law*. This means that we read Vitoria for the structure of argument in a particular context, but not a religious, political, cultural context – it is instead the context of the sovereignty concept itself, in its *legal* register. What this inverted contextualism reveals is a concept of legal authority that has a number of discrete elements: (i) the reliance on eclectic sources, such as Aristotelian moral theory, the Bible, Roman law, the humanities; (ii) a single source of authority for natural, moral, and legal types of discourse; (iii) a universal normativity binding on emperors and peasants alike.

Thus, in the course of structuring an argument about the legality of the Spanish conquest in the New World, Vitoria exemplifies a mode of reasoning about sovereignty completely at odds with what would come with the classic liberalism of the 'saddle period' – it is a structure that begins with the identification of universal norms and then, in the course of anchoring legal authority over and above the 'rights' of peoples, justifies conclusions about the legality of certain acts. The 'context' that provides the periodizing break comes entirely from within the structure of legal argument; not from without. The historical context that the structuralist is after, in other words, is the *legal* context in which a legal argument ought to be situated.

In contrast to this search for legal contexts, consider Brett's (2011, 12) work on Vitoria. Much more in the mode of intellectual history, Brett (2011) studies Vitoria in his theological, political, and cultural contexts. She asks why Vitoria engaged the questions he did (such as the 'renewal and systematization of Catholic theology, especially moral theology, as part of the Counter-Reformation Church's effort to restore Catholicism both intellectually and politically in the wake of the Reformation') (Brett 2013). And, after stressing that Vitoria was no lawyer and inconceivably a source of 'law', Brett explains Vitoria's 'jurisprudence' in a very different light. For whereas Koskenniemi stressed the naturalism and universalism of Vitoria's Thomistic *thought*, Brett suggests that Vitoria 'moved away from the Thomist position to make the ius gentium a kind of positive law, based on inter-human agreement' (2013, 1087).

So what is going on here? Is the structuralist search for legal context (i.e. the structures of legal argument animating the legal concept of sovereignty in a particular mode of legal thought) misguided, and Brett's intellectual history of Vitoria more indicative of the better path? I think the answer is that structuralist historians and intellectual historians are looking at two very different but ultimately complementary objects of analysis: the structure of Vitoria's legal thought (in the *context* of a particular legal concept) on the one hand, and the politico-theological *context* of Vitoria's jurisprudence on the other.

What makes the structuralist attendance to legal structure intelligible is the use of something like a Koselleckian 'saddle', which in the case for many structuralists is liberal legalism. Liberal legalism provides the *a priori* theorization necessary to bring Vitoria's concept into the present, and more particularly, it highlights the ways in which sovereignty *was not* spoken. In contrast, Brett is not telling the history of a legal concept or a structure of legal argument, which is what structuralists try to do. She is rather telling a different narrative with a different purpose, one that is almost entirely oblivious to the structure of legal argument in Vitoria's legal thought. And this obliviousness is by no means a bad thing; it is just a different thing, a different kind of narrativizing history. And in my mind there is no reason whatsoever why intellectual histories of Vitoria might not sit side-by-side with structuralist histories of legal argument. The two methods are both contextualist, just looking for very different historical contexts. But to accuse structuralist legal history of being bad history because it is not intellectual history is to make the mistake of assuming all legal history to be intellectual history. Which it is not. And which is good.

Structure as simulacrum

Finally, I want to emphasize again that legal structuralists demand the use of a theory of history in order to render conceivable their historical analysis. As Koselleck states, 'Only theory transforms our work into historical research' (2002, 6). The idea that the present necessarily inflects the historian's task is not merely a touch of the perspectivism we have come everywhere to expect. It is deeper: the historical work embraces presentism and the specter of anachronism precisely because the meaning of historical event is here understood, now nodding more in the direction of Walter Benjamin, as a constellation sparked between audience, the audience's image of reality, and the historian's rendering of reality. With this perspective, 'anachronism' drains away, as does the necessity for hunting the right context. What the structuralist historian produces is the language within which a concept is articulated, frozen in time as a simulacrum. Needless to say, this is not the *modus operandi* of an intellectual historian, seeking out explanations for why a language has changed over time.

Moreover, and as the idea of a simulacrum suggests, legal structuralists should not be likened to natural scientists striving to master the laws of the known world. Neither in Koselleck's dictionary of concepts, nor in Koskenniemi's catalogue of legal arguments, are we meant to find anything like an analogue to a neutral and experimentally derived description of the natural world. The history of a legal concept in this sense, for instance, is the history of argumentative structure – and not the history of the actual thing,

if such an actual thing exists. With any luck, the structure of legal arguments concerning sovereignty outlined in *From Apology to Utopia* 'zaps' the reader in such a way that they find the experience edifying.[31] But the history of the structure cannot be the history of 'sovereignty', whatever that might mean.[32] As Koselleck has said of marriage, 'One cannot derive from the conceptual-historical procedure any history of the actual wedding ceremonies and marriages that may have occurred alongside this linguistic self-interpretation' (2002, 35). The structure of arguments immanent in the sovereignty concept might be the same thing as sovereignty, *in actu*. But the structuralist historian makes no attempt to find out.

To restate, in the work of the intellectual historian political discourse must be understood in its particular 'historical' context. 'Historical' is a reference to time and space. She begins with a text, and then moves 'outward', looking for contexts that render the text intelligible. The choosing of a 'right' context is, of course, unavoidably messy, but it is still necessary and important. The structuralist historian also seeks context. But in doing so she does not look 'outward', leaving such explorations to intellectual and social historians. She, in contrast, looks in time and space for the 'legal context', which is understood as itself a language. But this language is not to be situated in a broader political or theological context. It is rendered intelligible in the legal context of other legal arguments in the lexicon, in a mode of legal thought (Kennedy 1991).

Thus, the two methods operate in opposite directions: the intellectual historian puts a language or discourse in some broader context; the structuralist historian uncovers the structure of argument immanent *in* the concept. Of course, the structure is not essential or totalizing in any predetermined way; it is, as the contextualists demand, a matter of understanding how the concept has been structured in conventional terms. But when it comes to asking, say, how Vitoria argued about sovereignty, the only context required by the structuralist historian is one: the *a priori* theory of the target, which in Koskenniemi's case was liberal legalism. In *From Apology to Utopia*, liberal legalism is the singular 'saddle' context for understanding the structural history of sovereignty as a legal concept.

This radical distinction between (i) the structure of legal argument and (ii) the reality of sovereignty ought to foreclose the worry that international legal structuralists saw the past as a timeless state of contradiction, as well as the need to relentlessly stress the contingency and complexity of legal history in order to inoculate us from such worries. Legal structuralists,

---

[31] An early mention of the zap was made in Gabel and Duncan (1984, 32).

[32] For an example of attempt to say what it could mean, see Benton (2010).

unlike intellectual historians, were not trying to say anything about the 'origins of international law', or the reality of anything other than the way jurists argued about legal concepts. As Koselleck wrote, 'Historical statements can reproduce past states of affairs only in a reductive or rejuvenated way, for it is impossible to restore the totality of the past, which is irrevocably gone' (2002, 15). But this is not the same thing, as is sometimes believed, as saying that history is nothing but fiction. 'Political and social concepts become the navigational instruments of the changing movement of history. They do not only indicate or record given facts. They themselves become factors in the formation of consciousness and the control of behavior. This brings us to the point where linguistic analysis of experiences of time merges into social history' (Koselleck 2002, 129).

In concluding let me restate what I have tried to say in this synoptic account of international legal structuralism. I began with a caricatured piece of legal history, a story that began with international law's fall from grace in the early years of the 20th century. As the story went, international lawyers were saved, twice, first by the realist attack on philosophy and second by an interdisciplinary push toward IR theory on the one side and intellectual history on the other. The pivot point in the story was that moment in the 1980s when postrealist international lawyers seemed out of steam, and a new wave of critical theory seemed ready to drown the international rule of law.

In revisiting that moment, I have suggested that the critics were something other than what was so often thought. Rather than viewing them as postmodern nihilists, I offered instead a reintroduction to international legal structuralism. In doing so, the essay sought to establish two sorts of worries international theorists have had about the critical works of the 1980s and beyond, and then allay some of them by showing how these worries, much of the time, were misconceived. The first worry turned on a jurisprudential claim about the inevitability of international law's collapse into politics. The second worry turned on a historical claim about the timeless state of contradiction to which the discipline of international law has been condemned. Both of these worries, I offered, were exaggerated. Exaggerated, anyway, from a structuralist point of view.

As for what that point of view entailed, in short form it was this. First, to think of the Harvard School as a signifier for relentless indeterminacy and the tired claim that 'law is politics' is really to miss its methodological innovations. That innovation was the production of a new style of jurisprudence, international legal structuralism. Based on the semiotic theory of de Saussure, international legal structuralism offered students of international theory a new way of conceptualizing the international system, where international law retained a hefty degree of disciplinary autonomy at

the level of its *langue*, but was undeniably political at the level of *parole*. Thinking of international law as a structured language was anything but thinking of it as an 'anarchistic anything-goes morass'.

Second, to think of the structuralists as naturalists or positivists working up transcendent, totalizing histories about the indeterminacy of law was, again, a mistake. Of course, like the first mistake about the relation between law and politics, this mistake about law and history was easy to make. After all, the structuralists were going back in time, sometimes very far back in time, in order to produce an account without any apparent context and that surely had the feel of presentism. But in fact international legal structuralism rejected apodictic accounts of law, in which the 'structure of legal argument' might be likened to a vast catalogue of natural science. Structuralist history is actually contextualist history, only the context that matters for the legal structuralist is the mode of legal thought in which a given legal argument will be situated. That mode of legal thought is assessed synchronically, like a vertical slice of time, rather than as a diachronic, causal narrative of origins.

In sum, international legal structuralism neither held a view of law reaching across space and time, nor a view of law as nothing but politics. A better view, I think, is to see that the structuralists invited us to work on classic problems of international theory in new and challenging ways. But why accept the invitation, one might wonder. There are many reasons, but one to conclude with concerns the high stakes that we sometimes forget are always involved in our methodological choices. Some might counter that they avoid methodology altogether in their approaches to jurisprudence and historiography, but not only do I find such avoidance unconvincing as a matter of fact; I find the position somewhat careless. One's choice of method, of whatever sort it is, influences both what it is they choose to be their object of study as well as their diagnosis of that object. And these choices, whether we like it or not, have a great deal to do with the way in which law, politics, and history determine the world's winners and losers. It is in this light, it is in this approach to method, that I suggest we put our old prejudices to bed, and freshly considered the invitation of the structuralists, perhaps for the first time.

Acknowledgements

References

Abbot, Kenneth. 1989. "Modern International Relations Theory: A Prospectus for International Lawyers." *Yale Journal of International Law* 14:335.

Alvarez, Jose. 1994. "Positivism Regained, Nihilism Postponed." *Michigan Journal of International Law* 15:747.

Alvarez, Jose E. 1996. "Judging the Security Council." *American Journal of International Law* 90:1.

—— 1998. "Why Nations Behave." *Michigan Journal of International Law* 19:303.

Alvarez, Jose. 2004. "Commemorating Oscar Schachter, the Teacher." *Columbia Law Review* 104:556.

Armitage, David. 2013. *Foundations of Modern International Thought*.

Barthes, Roland. 2006. "The Structuralist Activity." In *Structuralism: Critical Concepts in Literary and Cultural Studies*, edited by Jonathan Culler.

Becket, Jason. 2006. "Rebel Without a Cause: Martti Koskenniemi and the Critical Legal Project'." *German Law Journal* 7:1045.

Bederman, David. 1990. "Book Review." *New York Journal of International Law & Politics* 23:217.

—— 2007. "Foreign Office International Legal History." In *Time, History, and International Law*, edited by Matthew Craven, *et al.*

Beer, Francis A., and Hariman Robert, eds. 1996. *Post-Realism: The Rhetorical Turn in International Relations*.

Berger, Peter, and Thomas Luckman. 1967. *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*.

Benton, Lauren. 2010. *A Search for Sovereignty*.

Bloom, Harold, *et al.* 1979. *Deconstruction and Criticism*.

Bobbitt, Philip. 2003. *The Shield of Achilles: War, Peace, and the Course of History*.

Brett, Annabel. 2004. "What is Intellectual History?." In *What is History Now?*, edited by David Cannadine.

—— 2011. *Changes of State*.

—— 2013. "Francisco de Vitoria and Francisco Suarez." In *The Oxford Handbook of the History of International Law*, edited by Bardo Fassbender, and Anne Peters, 1086.

Brett, Annabel, and James Tully, eds. 2007. *Rethinking the Foundations of Modern Political Thought*.

Brierly, J.L. 1958. *The Basis of Obligation in International Law*.

Brilmayer, Lea. 1991. "Book Review." *American Political Science Review* 85:688.

Byers, Michael. 2008. "International Law." In *The Oxford Handbook of International Relations*, edited by Christian Reus-Smit, and Duncan Snidal, 612–31.

Carty, Anthony. 1991. "Liberalism's Dangerous Supplements: Medieval Ghosts of International Law'." *Michigan Journal of International Law* 13:161.

Coward, Rosalind, and John Ellis. 1977. *Language and Materialism: Developments in Semiology and the Theory of the Subject*.

Craven, Matthew. 2007. "Introduction: International Law and its Histories." In *Time, History, and International Law*, edited by Matthew Craven, *et al.*

Davis, Kathleen. 2008. *Periodization and Sovereignty*.

DeLuna, D.N., ed. 2006. *The Political Imagination in History: Essays Concerning J.G.A. Pocock*.

Derrida, Jacques. 2007. "Structure, Sign, and Play in the Discourse of the Human Sciences." In *The Structuralist Controversy: The Languages of Criticism and the Sciences of Man*, edited by Richard Mackey, and Eugenio Donato.

de Saussure, Ferdinand. 2011. *Course in General Linguistics*.

Desautels-Stein, Justin. 2012a. Race as a Legal Concept." *Columbia Journal of Race & Law* 2:1.

—— 2012b. The Market as a Legal Concept." *Buffalo Law Review* 60:565.

—— 2014a. Back in Style." *Law & Critique* 25:141.

—— 2014b. Pragmatic Liberalism: The Outlook of the Dead'." *Boston College Law Review* 55:1041.

—— 2014c. The Judge and the Drone." *Arizona Law Review* 56:117.

—— 2015. "Structuralist Legal Histories." *Law & Contemporary Problems* 78:37.

Douzinas, Costas, *et al.* 1991. *Postmodern Jurisprudence: The Law of Texts in the Texts of Law*.

Dunoff, Jeffrey. 2013. "From Interdisciplinarity to Counterdisciplinarity: Is there Madness in Martti's Method?" *Temple Journal of International & Comparative Law* 27:309.

Dunoff, Jeffrey, and Joel Trachtman, eds. 2009. *Ruling the World? Constitutionalism, International Law, and Global Governance*.

Dunoff, Jeffrey, and Mark Pollack. 2013. "International Law and International Relations: Introducing an Interdisciplinary Dialogue'." In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff, and Mark A. Pollock.

Fernandez Sebastian, Javier, ed. 2011. *Political Concepts and Time: New Approaches to Conceptual History*.

Frug, Gerald. 1980. "The City as a Legal Concept." *Harvard Law Review* 93:1057.

Gabel, Peter, and Duncan Kennedy. 1984. "Roll Over Beethoven." *Stanford Law Review* 36:1.

Galindo, George Rodrigo Bandeira. 2005. "Martti Koskenniemi and the Historiographical Turn in International Law." *European Journal of International Law* 16:539.

Ghosh, Ranjan, and Ethan Kleinberg, eds. 2013. *Presence: Philosophy, History, and Cultural Theory for the Twenty First Century*.

Grewe, Wilhelm. 2000. *The Epochs of International Law*.

Goldstein, Judith, *et al.*, eds. 2001. *Legalization and World Politics*.

Gordon, Peter. 2014. "Contextualism and Criticism in the History of Ideas." In *Rethinking Modern European Intellectual History*, edited by Darrin Mcmahon, and Samuel Moyn.

Gordon, Robert. 1997. "The Arrival of Critical Historicism'." *Stanford Law Review* 49:1023.

Harootunian, Harry. 2007. "Remembering the Historical Present." *Critical Inquiry* 33:471.

Hawkes, Terrence. 2003. *Structuralism*, 2nd ed.

Hoffman, Florian. 2006. "An Epilogue on an Epilogue." *German Law Journal* 7:1095.

Hongju Koh, Harold. 1997. "Why Do Nations Obey International Law?" *Yale Law Journal* 106:2599.

Howse, Robert, and Ruti Teitel. 2013. "Does Humanity-Law Require (or Imply) a Progressive Theory of History? (And Other Questions for Martti Koskenniemi)." *Temple Journal of International & Comparative Law* 27:377.

Hunt, Lynn. 2008. *Measuring Time, Making History*.

Hunter, Ian. 2007. "The History of Philosophy and the Persona of the Philosopher." *Modern Intellectual History* 4:583.

—— 2008. "Talking About My Generation." *Critical Inquiry* 34:589.

—— 2010. "Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations." In *Law and Politics in British Colonial Thought*, edited by Shaunnagh Dorsett, and Ian Hunter.

—— 2012. "The Figure of Man and the Territorialisation of Justice in Enlightenment Natural Law: Pufendorf and Vattel." *Intellectual History Review* 1.

Hutton, Sarah. 2014. "Intellectual History and the History of Philosophy." *History of European Ideas* 40:925.

Johnston, Douglas. 2009. *The Historical Foundations of World Order: The Tower and the Arena*.

Jordheim, Helge. 2012. "Against Periodization: Koselleck's Theory of Multiple Temporalities." *History & Theory* 51:151.

Kant, Immanuel. 1991. *Political Writings*, 2nd ed.

Kelley, Donald. 1996. "On The Margins of Begriffsgeschichte." In *The Meaning of Historical Terms and Concepts*, edited by Hartmut Lehman, and Melvin Richter.

Kemmerer, Alexandra. 2008. "The Turning Aside: On International Law and its History." In *Progress in International Law*, edited by Russell Miller, and Rebecca Bratspies, 75.

Kennedy, David. 1980. "Theses About International Law Discourse." *German Yearbook of International Law* 23:353.

—— 1986. "Primitive Legal Scholarship." *Harvard International Law Journal* 27:1.

—— 1987. *International Legal Structures*.

—— 2000a. Putting the Politics Back in International Politics." *Finnish Yearbook of International Law* 9:17.

—— 2000b. The Disciplines of International Law and Policy." *Leiden Journal of International Law* 12:9.

—— 2003. "Tom Franck and the Manhattan School." *New York University Journal of International Law & Politics* 35:397.

Kennedy, Duncan. 1976. "Form and Substance in Private Law Adjudication." *Harvard Law Review* 89:1685.

—— 1979. The Structure of Blackstone's Commentaries." *Buffalo Law Review* 28:205.

—— 1991. "A Semiotics of Legal Argument." *Syracuse Law Review* 42:75.

—— 1998. *A Critique of Adjudication*.

—— 2001. "A Semiotics of Critique." *Cardozo Law Review* 22:1148.

—— 2006. *The Rise and Fall of Classical Legal Thought*.

Kleinberg, Ethan. 2007. "Haunting History: Deconstruction and the Spirit of Revision." *History and Theory* 46:113.

Koselleck, Reinhart. 1985. *Futures Past: On the Semantics of Historical Time*.

—— 1988. *Critique and Crisis*.

—— 2002. *The Practice of Conceptual History: Timing History, Spacing Concepts*.

Koskenniemi, Martti. 2002. *The Gentle Civilizer of Nations*.

—— 2006. *From Apology to Utopia: The Structure of International Legal Argument*, 2nd ed.

—— 2013. "Histories of International Law: Significance and Problems for a Critical View." *Temple Journal of International & Comparative Law* 27:215.

Kratochwil, Friedrich. 2010. "International Law and International Sociology." *International Political Sociology* 4:311–14.

—— 2014. "Inter-Disciplinarity, the Epistemological Ideal of Incontrovertible Foundations, and the Problem of Praxis'." In *The Status of Law in World Society: Meditations on the Role and Rule of Law*, edited by Friedrich Kratochwil, 26–49.

LaCapra, Dominick, and Steven Kaplan, eds. 1982. *Modern European Intellectual History*.

Landauer, Carl. 1989. "Book Review." *Harvard International Law Journal* 30:287.

Lang, Andrew, and Susan Marks. 2013. "People with Projects: Writing the Lives of International Lawyers." *Temple Journal of International & Comparative Law* 27:437.

Lewis, Philip. 1982. "The Post-Structuralist Condition." *Diacritics* 12:2.

Lorca, Arnulf Becker. 2015. *Mestizo International Law: A Global Intellectual History 1842–1933*.

Lowe, Vaughn. 1990. "Book Review." *Journal of Law & Society* 17:384.

Mackey, Richard, and Eugenio Donato, eds. 2007. *The Structuralist Controversy: The Languages of Criticism and the Sciences of Man*.

McDougal, Myres. 1952. "Law and Power'." *American Journal of International Law* 46:102.

Miller, J. Hillis. 1976. "Stevens' Rock and Criticism as Cure, II." *Georgia Review* 30:330.

Mollers, Christoph. 2006. "It's About Legal Practice, Stupid." *German Law Journal* 7:1011.

Morgan, Edward M. 1995. "Act of Blindness, State of Insight'." *Boston University International Law Journal* 13:1.

Mullerson, Rein. 2002. "Review." *European Journal of International Law* 13:725.

Nussbaum, Arthur. 1947. *A Concise History of the Law of Nations*.

Onuf, Nicholas. 1989. *World of Our Making*.

Oppenheim, Lassa. 1908. "The Science of International Law: Its Task and Method." *American Journal of International Law* 2:313.

Orford, Anne. 2006. "A Journal of the Voyage from Apology to Utopia." *German Law Journal* 7:993.

—— 2013. "On International Legal Method." *London Review of International Law* 1:166.

Palonen, Kari. 1999. "Rhetorical and Temporal Perspectives on Conceptual Change." *Finnish Yearbook of Political Thought* 3:41.

Palti, Elias Jose. 2010. "From Ideas to Concepts to Metaphors: The German Tradition of Intellectual History and the Complex Fabric of Language." *History & Theory* 49:194.

Pocock, J.G.A. 1996. "Concepts and Discourses: A Difference in Culture? Comment on a Paper by Melvin Richter." In *The Meaning of Historical Terms and Concepts*, edited by Hartmut Lehman, and Melvin Richter.

Pollack, Mark. 2013. "Is International Relations Corrosive of International Law? A Reply to Martti Koskenniemi." *Temple Journal of International & Comparative Law* 27:339.

Purvis, Nigel. 1991. "Critical Legal Studies in Public International Law'." *Harvard Journal of International Law* 32:81.

Richter, Melvin. 1986. "Conceptual History (Begriffsgeschichte) and Political Theory." *Political Theory* 14:604.

Root, Elihu. 1915. "The Outlook for International Law." *Proceedings of the American Society of International Law* 9:2.

Rorty, Richard, ed. 1967. *The Linguistic Turn: Recent Essays in Philosophical Method*.

Schachter, Oscar. 1978. "The Invisible College of International Lawyers." *Northwestern University Law Review* 72:217.

Scobbie, Ian. 1991. "Towards the Elimination of International Law: Some Radical Skepticism about Skeptical Radicalism." *British Yearbook of International Law* 61:339.

Scott, James Brown. 2014. *The Catholic Conception of International Law*.

Sewell, William. 2005. *Logics of History: Social Theory and Social Transformation*.

Simpson, Gerry. 2004. *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*.

Skinner, Quentin. 1969. "Meaning and Understanding in the History of Ideas." *History and Theory* 8:3.

—— 1999. "Rhetoric and Conceptual Change." *Finnish Yearbook of Political Thought* 3:60.

Slaughter, Anne-Marie. 1995. "International Law in a World of Liberal States." *European Journal of International Law* 6:503.

Slaughter, Anne Marie. 2000. "A Liberal Theory of International Law." *Proceedings of the 94th Meeting of the American Society of International Law*.

Smith, Fiona. 2013. "Power, Rules, and the WTO." *Boston College Law Review* 54:1063.

Surkis, Judith. 2012. "When was the Linguistic Turn? A Genealogy." *American Historical Review* 117:700.

Tallack, Douglas. 1995. "Introduction." In *Critical Theory: A Reader*, edited by Douglas Tallack, 11.

Toews, John. 1987. "Intellectual History After the Linguistic Turn: The Autonomy of Meaning and the Irreducibility of Experience'." *American Historical Review* 92:879.

—— 2009. "Manifesting, Producing, and Mobilizing Historical Consciousness in the Postmodern Condition." *History and Theory* 48:257.

Tully, James, and Quentin Skinner, eds. 1988. *Meaning and Context: Quentin Skinner and his Critics*.

Unger, Roberto. 1975. *Knowledge and Politics*.

Verzjil, J.H.W. 1970. *International Law in Historical Perspective*.

Wendt, Alexander. 1999. *Social Theory of International Politics*.

Werner, Wouter G. 2010. "The Use of Law in International Political Sociology." *International Political Sociology* 4:304–07.

White, Hayden. 1986. *The Tropics of Discourse: Essays in Cultural Criticism*.

Williams, Joan. 1987. "Critical Legal Studies: The Death of Transcendence and the Rise of the New Langdells." *New York University Law Review* 62:429.

Wolff, Christian. 1750. *Jus Gentium Methodo Scientifica Pertractatum*.

Zammito, John. 2004. "Koselleck's Philosophy of Historical Time(s) and the Practice of History." *History & Theory* 43:126.