Norms and Global History.

The Rise and Fall of Perceptions of Order in the History of International Relations

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I. Introduction: A Human Right Guaranteeing the Freedom of Emigration

Abstract

There is no shortage of demands that the history of international relations should receive its proper attention within the general spectre of historical research. The demand comes in response to the current perception, shared in many disciplines of historically oriented humanities and social sciences, that the intensity of global interactions has been increasing rapidly for about two decades. Yet, the history of international relations appears to be under the sway of two, mutually irreconcilable factors, on the one side, power, which renders the historical treatment of international relations a description and analysis of patterns of the use of force; and, on the other side, norms, which seem to be at the bottom of the history of international law. Most commonly, the history of international power relations finds shelter in history departments, sometimes in institutions focusing on Historical social Sciences, whereas the history of international law is normally taken care of in law schools. Focusing on the use of force in past international relations solicits a type of historiography, which seeks to uncover the impact or lack of impact of well attested international legal norms on the conduct of international relations. Drawing on Ranke's researches, it boosted the practice that has sought to downgrade the that impact or even to deny it altogether. By contrast, the historiography of international law has looked at the normativity underlying the conduct of international relations with a focus on the problem of how, in view of the equally well attested government acts of power politics, the validity of and respect for international legal norms has been explained and abidance by them has been secured.

These conflicting orientations have been scrutinized from the patterns of the conduct of international relations in Europe and North America dring the nineteenth and twentieth centuries. Hence, they are hardly applicable to the rest of the world and for earlier periods in Europe as well. Put differently, conflicts may arise when historiographical patterns and perceptions have been shaped by culturally and epochally specific perceptions of past international relations and are thus incompatible with these recent European and North American attitudes. The following study examines these conflicts on the basis of source material most gleaned from international public treaties, the law governing these treaties and the theory informing the law.

I. Introduction

A school teacher at Frankfurt on the Viadra already had a faible for playing with the plural of the German appellative *Geschichte*. In the preface to his *Geschichten der romanischen und germanischen Völker* of 1824, Franz Leopold Ranke claimed that he would write the "histories", not "the history" of the peoples so labelled. With this claim, Ranke operated within the realm of the nationalist historiography in that he articulated the demand for the recognition of the autonomy of the particular "history" of every nation and insisted that historiographers had to act in accordance with that demand.[1] On the one side, Ranke sought to oblige historiographers not merely to respect the collective identities of all nations in their narratives of past events, but also to strengthen these identities. On the other side, however, he invoked the conceptual distinction between "history" in the singular as some part of what, Ranke thought, had happened in the past and "histories" in the plural as the multitude of narratives about the past. Ranke's principled distinction has by no means been self-evident, neither in his own time nor since then. This has been so because, as is well known, the concept of history, and the various words used to give expression to that concept, are ambivalent, refer to both, a certain particular part of past events and what has been said and written about that part of the past.

This ambivalence has been part of the legacy of Antiquity and must not been taken as a given worlwide. In East Asia, for example, a sharp juxtaposition is common between some part of the past (Japanese shi 史) and reports about the past (Japanese ki 記,紀,kiroku 記録, reki 歴), that is, various types of historiography, whereby the concept and the narrative of history have come to be expressed by different words.[2] Likewise, Igbo differentiates sharply between the phrase referring to an occurrence of the past (ihe gara aga) and the historiography about that occurrence (akuko gara aga).[3] Hence, what part of the past gets conceptualised as history and which words are used to give

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[1] Leopold von Ranke, 'Vorrede der ersten Auflage. Oktober 1824', in: Ranke, *Geschichten der romanischen und germanischen Völker von 1494 bis 1514*, second edn (Ranke, Sämmtliche Werke, vol. 33) (Leipzig, 1874), pp. V-VIII, at p. VI.

[2] Margaret Dorothea Mehl, *Eine Vergangenheit für die japanische Nation. Die Entstehung des historischen Forschungsinstituts Tōkyō daigaku Shiryō hensanjo (1869 – 1895)* (Europäische Hochschulschriften. Series III, vol. 428) (Frankfurt, 1992), pp. 17-21 [English version s. t.: *History and the State in Nineteenth-Century Japan* (New York, 1998)]. Jiichi Nakayama 中山治一, *Shigaku gairon 史学概論* (Tokyo, 1974), pp. 3-6. Torajirō Naitō 内藤虎次郎, *Shina shigakushi シナ史学史*(Tokyo, 1949). Fabio Rambelli, 'The Discourse on Japan's Sacredness (*shinkoku shisō*), as Religious Marketing', in: *Rikkyō Daigaku Nihongaku kenkyūjo nenpō* 2 (2003), pp. 28-55. Tarō Sakamoto 坂本太郎, *Nihon no shūshi to shigaku 日本の儒資と史学*(Tokyo, 1966), pp. 28-32 [reprint (Tokyo, 1983)].

[3] Mamadou Diawara, 'Remembering the Past, Reading for the Future. Aspects of African Historical Memory in an International Context', in: Diawara, Bernard Lategean and Jörn Rüsen, eds, *Historical Memory in Africa* (Making Sense of History, 12) (Oxford and New York, 2010), pp. 88-103. Ute Ritz-Müller, 'Afrikanisches Geschichtsdenken. Zur rituellen Nachstellung höfischer Geschichte', in: Jörn Rüsen, Michael Gottlob and Achim Mittag, eds, *Die Vielfalt der Kulturen* (Erinnerung, Geschichte, Identität, 4) (Frankfurt, 1998), pp. 217-246.

expression to that concept, is subject to culturally specific perceptions. Therefore, it is inappropriate to claim universal validity for the view that some "historical consciousness" should principally keep "the alienated past ready for appropriation as its own past".[4] On the contrary, the separation, within the theory of historiography, of an "alienated" from an "appropriatable" past is specifically European in conceptual terms and has, even within Europe, only become current since the end of the eighteenth century.[5] Admittedly, the discrepancies enshrined in the culturally specific ramifications of the semantic triangle of word, concept and referent[6] remain ineffective for the handing of the past, as long as historiography remains focused on its own culture and epoch.[7] Yet, when historiography transgresses boundaries of space and time, by focusing on "histories" of the others, conflicts may arise between perceptions of researchers and narrators on the one side and the perceptions of those whose past is being scrutinised.

These conflicts may be serious, specifically when they come about unnoticed and remain implicit. The dangers, emanating from the unreflected handling of the semiotic triangle with respect to the perceptions of histories and their historiographical narration, are imminent to the historiography of international law and international relations. Unlike hardly any other segment of historiography, culturally specific perceptions impact upon causation and judgments contained in historiographical narratives and entail potentially deadly consequences. The equation of alterity with non-existence features prominently among these consequences of culturally specific perceptions, as if perceived deviations from some cultural standard of definitions of concepts of the past, together with the

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[4] Hermann Lübbe, 'Der Fortschritt und das Museum', in: *Dilthey-Jahrbuch für Philosophie und Geschichte der Geisteswissenschaften* 1 (1983), pp. 39-56, at p. 56.

[5] See: Charles Hambrick, 'The Gukanshō. A Religious View of Japanese History', in: *Journal of Japanese Studies* 5 (1978), pp. 37-58. Harald Kleinschmidt, 'Die Präteritalisierung des Naturzustands', in: Michael Gehler, Peter Müller und Peter Nitschke, eds, *Europa-Räume. Von der Antike bis zur Gegenwart* (Historische Europa-Studien, 26) (Hildesheim, Zurich and New York, 2016), pp. 197-219.

[6] Charles Kay Ogburn and Ivor Armstrong Richards, *The Meaning of Meaning* (London and New York, 1923), pp. 1-23.

[7] The epistemology of the semantic triangle has a substantial advantage over Reinhart Koselleck's methodology of the combination of social and conceptual historiography, in that it observes the same distance between word, concept and referent matter. By contrast, in Koselleck's methodology, a word immediately turns into a concept, once some socio-political meaning enters into it, thereby raising to an "indicator" for a referent matter. See: Reinhart Koselleck, 'Einleitung', in: Koselleck, Otto Brunner and Werner Conze, eds, *Geschichtliche Grundbegriffe*, vol. 1 (Stuttgart, 1972), p. XXII. Koselleck, 'Begriffsgeschichte und Sozialgeschichte', in: Koselleck and Karlheinz Stierle, eds, *Historische Semantik und Begriffsgeschichte* (Stuttgart, 1978), pp. 19-36, at p. 29. The juxtaposition of word and concept on the one side and, on the other, of referent matter may be supportive for heuristics, provided research remains confined to concepts and referent matters in Europe during the "modern age". However, when longer spans of time and larger spaces are being taken into consideration, the concept can no longer perform just as the intermediator between the word and the referent matter but becomes an epistemological category of its own. This is so, because processes of the transfer among cultures and epochs affect words, concepts and referent matters in different and often incompatible ways. For a criticism of Koslleck's approach see: Reinhard Blänkner, 'Begriffsgeschichte in der Geschichtswissenschaft. Otto Brunner und die Geschichtlichen Grundbegriffe', in: *Forum Interdisziplinäre Begriffsgeschichte*, vol. 1, issue 2 (2012) [www.zfl-berlin.org/publikationen-detail/items/forum-interdispiplinaere- beriffsgeschichte.238.html].

presence or absence of words linkable to these concepts serve as the justification for the contention that what appears to be lacking in conceptual and semantic terms is in fact non-existent in the past. Along these lines of argument, generations of historians of international law have either denied the existence of international law[8] outside Europe and the European overseas settler colonies in the Americas and the South Pacific[9] or admitted solely in purportedly "primitive" fragments.[10] In doing so, these historians of international law, drawing on seemingly empirical records from the past, have fallen victim to the nineteenth- and twentieth-century positions of international legal theorists, who were prone to postulate some process of the globalisation of European international law, allegedly taking place during that period.[11] And historians working on international relations during the nineteenth[12] and twentieth centuries,[13] jointly with proponents of world or global history have, in

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[8] In what follows, I shall use the word "international law" for all forms of the law among states, no matter which specific terminologies have been applied. On the terminology see: Harald Kleinschmidt, *Geschichte des Völkerrechts in Krieg und Frieden* (Tübingen, 2013), pp. 6-8.

[9] Robert Plumer Ward, *An Enquiry into the Foundation and History of the Law of Nations in Europe since the Time of the Greeks and Romans to the Age of Grotius*, 2 vols (London, 1793) [reprint (New York, 1973)]. Henry Wheaton, *History of the Law of Nations in Europe and America* (New York, 1845) [reprints (New York, 1973); (Buffalo, 1982)]. Wilhelm Georg Carl Grewe, *Epochen der Völkerrechtsgeschichte*, second edn (Baden-Baden, 1988), pp. 29-30 [*Habilitationsschrift* (University of Königsberg, 1941); first, unpublished printing (Leipzig, 1945); first book-trade edn (Baden-Baden, 1984); English version (Berlin, 2000)]. Tomoko T. Okagaki, *The Logic of Conformity. Japan's Entry into International Society* (Toronto and Buffalo, 2013), p. 35 [first published s. t.: *The Sovereign State and Its Conformists. Japan's Entrance into International Society*. Ph. D. thesis, typescript (Ann Arbor: University of Michigan, 2005)].

[10] Johann Baptist [Giovanni Battista] Fallati, 'Keime des Völkerrechts bei wilden und halbwilden Stämmen', in: *Zeitschrift für die gesammte Staatswissenschaft* 6 (1850), pp. 151-242. Arthur Nussbaum, *A Concise History of the Law of Nations*, second edn (New York, 1954), pp. 7-11 [first published (New York, 1947); newly edited (New York, 1950); German version (Munich, 1960)]. Alexander Orakhelashvili, ed., *Research Handbook on the Theory and History of International* Law (Cheltenham, 2011). Heinhard Steiger, 'Zwischen-Mächte-Recht im Frühmittelalter', in: Michael Jucker and Martin Kintzinger, eds, *Rechtsformen internationaler Politik* (Zeitschrift für Historische Forschung, Beiheft 45) (Berlin, 2011), pp. 47-74, at pp. 68-69.

[11] Georg Jellinek, *Die rechtliche Natur der Staatsverträge. Ein Beitrag zur juristischen Konstruktion des Völkerrechts* (Vienna, 1880), pp. 47-49. Jellinek, *System der subjektiven öffentlichen Rechte* (Freiburg, 1892), pp. 298, 307, 308. Heinrich Triepel, *Völkerrecht und Landesrecht* (Leipzig, 1899), pp. 80-81 [new edn (Tübingen, 1907); reprint (Aalen, 1958); French version (Paris, 1920)]. Rolf Knubben, 'Entwicklung vom Westfälischen Frieden bis zum Ausbruche des Weltkrieges', in: Knubben and Rudolf Franz Singer, 'Völkerrechtsgeschichte', in: Julius Hatschek and Karl Strupp, eds, *Wörterbuch des Völkerrechts und der Diplomatie*, vol. 3 (Berlin and Leipzig, 1929), pp. 194-204, at pp. 198, 201. Hans-Ulrich Scupin, 'Erweiterung des Europäischen Völkerrechts', in: Karl Strupp and Hans-Jürgen Schlochauer, eds, *Wörterbuch des Völkerrechts*, second edn, vol. 3 (Berlin, 1962), pp. 721-744. Wolfgang Graf Vitzthum, 'Begriff, Geschichte und Quellen des Völkerrechts', Rz 108, in: Vitzthum, ed., *Völkerrecht*, third edn (Berlin, 2004), pp. 1-77, at p. 52. David Armstrong, Theo Farrell and Hélène Lambert, *International Law and International Relations* (Cambridge, 2007), pp. 34-68, esp. pp. 57-61. Stephen C. Neff, 'A Short History of International Law', in: Malcolm D. Evans, ed., *International Law*, third edn (Oxford, 2010), pp. 3-31. Georg Dahm, Jost Delbrück and Rüdiger Wolfrum, *Völkerrecht*, § 1, nr 2, vol. 1, part 1, second edn (Berlin and New York, 2002), p. 4. Knut Ipsen, 'Regelungsbereich, Geschichte und Funktion des Völkerrechts', Rz 33, in: Ipsen, ed., *Völkerrecht*, sixth edn (Munich, 2014), pp. 1-45, at p. 25 [first published (Munich, 1979); third edn (Munich, 1990); fourth edn (Munich, 1999); fifth edn (Munich, 2004)]. Hedley Bull, 'The Emergence of a Universal International Society', in: Bull and Adam Watson, eds, *The Expansion of International Society* (Oxford, 1984), pp. 117-126 [another edn (Oxford, 1985].

[12] Leopold von Ranke, *Über die Epochen der Neueren Geschichte. Vorträge dem König Maximilian II. von Bayern gehalten* [Berchtesgaden, 25 September – 13 October 1854], edited by Hans Herzfeld (Laupheim, 1955) [first published by Alfred Dove (Berlin, 1888); critical edn, edited by Theodor Schieder and Helmut Berding (Ranke, Aus Werk und Nachlaß, vol. 2) (Munich, 1971)].

against countervening theoretical settings,[14] denied to population groups in Africa, the precolonial

Americas, Asia and the South Pacific the capability of dating past occurrences,[15] if not the existence

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[13] For example see: Jürgen Osterhammel, *Die Verwandlung der Welt* (Bonn, 2010), p. 86 [first published (Munich, 2009)]: "Eine lineare Chronologie ist eine Abstraktion, die selten der Zeitwahrnehmung entspricht. Erst mit der universalen Anerkennung eines nach Jahren sequenzierten Zeitkontinuums stellte sich in manchen nicht-westlichen Zivilisationen das Problem einer genauen Datierung von Begebenheiten der Vergangenheit. Nur Linearität staffelt das historische Wissen in Vorher und Nachher und macht Geschichte nach den Maßstäben des Historismus erzählbar. Die 'moderne' Geschichtsforschung und die Archäologie waren überall zunächst mit Datierungsfragen beschäftigt. In Japan, auch hier ein Vorreiter im außereuropäischen Raum, war erst nach der Jahrhundertwende eine zufriedenstellende nationale Chronologie erstellt, die in zeitliche Tiefen vordrang. In zahlreichen anderen Gesellschaften, etwa in Afrika und in der Südsee, belegen archäologische Funde zwar vielfältige menschliche Aktivitäten, erlauben aber selbst für die Neuzeit keine exakten Datierungen." It is surprising that a profeesional historian, early in the twenty-first century, should commit himself to these statements, as it should be uncontested that there is no "universal" chronology, even when the AD chronology, recently transformed into some "Common Era" (CE), has been raised to that level artificially. The political background for the elevation of the AD chronology to postulated global validity remains outside Osterhammel's focus. Moreover, there is no recognisable reason, why the AD chronology alone should be able to date precisely by the year. The exact opposite is the case, as there are several chronologies coexisting to the present day achieving the same. Moreover, dating according to years of rule is no less precise in associating occurrences with years than any long-term chronology. Also, the AD chronology is not alone in allowing comparisons among local chronologies, as the current local chronologies in effect in East Asia are demonstrating.

[14] In view of St Augustine's definition of time as the ordering of the before and the after, it makes no sense to claim that only the alleged "linearity" of a chronology can provide "historical knowledge" [Augustine, *Confessiones*, lib. XI, cap. 14-15, edited by James J. O'Donnell (Oxford, 1992), pp. 154-155]. Therefore, there is no justification for insisiting that only "historicism" whatever that may have been) should have demanded a narrative of the past arranged according to the before and the after. Thus, already Arthur Coleman Danto [*Analytical Philosophy of History* (Cambridge, 1965), p. 111, 142] added the point that ordering in time is an essential element of all narratives, neither solely those about the past nor in accordance with some dictates of "historicism". Osterhammel narrows his concept of "historicism" to the methodology advocated by Johann Gustav Droysen and simply overlooks that, during the nineteenth century, there were several concepts of "historicism" concurring, some of which did not demand narrations about past occurrences but demanding explanations for what appeardd to be causal relationships between the past and the present. For the latter see: Ernst Troeltsch, *Der Historismus und seine Probleme*, Erstes Buch: Das logische Probem der Geschichtsphilosopie, edited by Friedrich Wilhelm Graf and Matthias Schlossberger (Troeltsch, Kritische Gesamtausgabe, vol. 16, part 1) (Berlin and New York, 2008), pp. 175-178 [first published (Troeltsch, Gesammelte Schriften, vol. 3) (Tübingen, 1922)]. On the debate about the meanings of "historicism" see: Annette Wittkau, *Historismus* (Göttingen, 1992) [second edn (Göttingen, 1994)].

[15] It is equally difficult to accept Osterhammel's, *Verwandlung* (note 13), loc. cit., claim that questions concerning dating relevant to Japanese history should have come up only at the beginning of the twentieth century and then even solely under Europeean influence. For his claim, Osterhammel went to the well founded study by philosopher Stefan Tanaka, who argued convincingly that the genesis of the conception of history as the "dead past" took place in Japan at the turn towards the twentieth century and described this genesis as the concseuqnece of European influence. However, Tanaka was far away from contending that there had not been any reliable chronology in Japan prior to the end of the nineteenth century [Stefan Tanaka, *New Times in Modern Japan* (Princeton and Oxford, 2004), pp. 112, 114]. Likewise, Osterhammel's further examples demonstrate that he accepted the "peoples-without-history" theory with regard to cultures in Africa and the South Pacific and equated the current lack of datable evidence, according to AD chronological dictates, with some purported lack of sense and knowledge of the past in these cultures; as if archaeology, drawing on dendrochronology, could only for Europe date by the year. The large quantity of non-archaeological sources available for Africa and the South Pacific, including written sources, do not seem to exist in Osterhammel's historical world picture Last but not least: Osterhammel's postulate that there was no reliable chronology in East Asia prioir to the nineteenth century, is not only unfounded but also unoriginal, as it is on record already in work by the Göttingen philosopher Christoph Meiners and by Ranke. See: Christoph Meiners, 'Ueber die Fruchtbarkeit oder Unfruchtbarkeit, den vormahligen und gegenwärtigen Zustand von Japan', in: Meiners, *Betrachtungen über die Fruchtbarkeit oder Unfruchtbarkeit, über den vormahligen und gegenwärtigen Zustand der vornehmsten Länder in Asien*, vol. 2 (Lübeck and Leipzig, 1796), pp. 398-425, at pp. 417-418. Leopold von Ranke, 'Idee der Universalhistorie [Hs., ca 1831/1832; Ranke Papers, Berlin: Staatsbibliothek zu Berlin, 38ID]', printed in: Ranke, *Vorlesungseinleitungen*, nr 5 (Ranke, Aus

of history as such.[16] These populations, thereby turned into "peoples without history"[17] have often been deprived of their own productive cultural heritage under European colonial rule[18] through the removal or the abuse and complete destruction of their identity-conveying artefacts,[19] with resistance against such acts becoming brutally crashed.[20] Thus, there is a need of distinguishing carefully between history and historiography in terms both of words and of concepts.

The following seven main sections shall trace the effects, which the semiotic triangle of words, concepts and referent of histories can have on the historiographies of international law and international relations. The section following this introduction features general observations on the bundle of global effects of the prioritisation of law over power in the histories and the historiography of international law as well as on the prioritisation of power over law in the histories and the historiography of international relations. The third section shall document the change of models informing the intellectuals necessary for the perception and description of the world as a whole. This transformation took place in Europe at the turn towards the nineteenth century and, in this part of the world, was part and parcel of the wider paradigm change from mechanism to biologism. The fourth section shall specify this paradigm change on the cases of the questioning of the validity and relevance of theory of natural law since the beginning of the nineteenth century and of the process of reforming the practice of diplomacy taking place at the same time. The fifth section shall reveal the consequences of the questioning of the theory of natural law and of the reform of diplomacy with a focus on the analysis of the changes of the theory and practice of the conclusion of treaties under international, in the perspective of the history of international law. The sixth section shall supplement this analysis with a focus on the history of international relations under the question, which changes of historiographical judgment took place about the the possibilities of provoking transformations of the world through the force of human action in international relations. The

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Werk und Nachlass, vol. 4, edited by Volker Dotterweich and Walter Peter Fuchs) (Munich, 1975), pp. 72-89, at p. 85. For the discussion on knowledge about the past in Japan in Western languages see: Thomas Keirstead, 'Inventing Medieval Japan. The History and Politics of National Identity', in: *Medieval History Journal* 1 (1998), pp. 47-71. Mehl, *Vergangenheit* (note 2). Mehl, 'The Mid-Meiji "History Boom". Professionalization of Historical Scholarship and Growing Pains of an Emerging Academic Discipline', in: *Japan Forum* 10 (1998), pp. 67-83. George Macklin Wilson, 'Time and History in Japan', in: *American Historical Review* 85 (1980), pp. 447-471, esp. p. 470. Mehl has shown the limtations of Western influence on the evolution of historical scholarship in late nineteenth- and early twentieth-century.

[16] Gustav Georg Zerffi [Gusztáv György Cerf or Hirsch], *The Science of History* (London, 1879), pp. 53-56.

[17] For fundamental criticism of this view see: Christoph Marx, *"Völker ohne Schrift und Geschichte". Zur historischen Erfassung des vorkolonialen Schwarzafrika in der deutschen Forschung des 19. und frühen 20. Jahrhunderts* (Beiträge zur Kolonial- und Überseegeschichte, 43) (Stuttgart, 1988).

[18] This is a term current in GDR historiography. See: Helmut Meier and Walter Schmidt, eds, *Erbe und Tradition in der DDR* (Berlin [GDR], 1988).

[19] For example, see: Armand Duchateau, *Benin. Kunst einer Königskultur. Die Benin-Sammlung des Museums für Völkerkunde Wien* (Paris, 1989), pp. 11-19.

[20] Confirmed and even justified, among others, by: Mary Alice Hodgson, *The Siege of Kumasi*, second edn (London, 1901), esp. pp. 80-81 [first published (London, 1901)].

seventh section shall discuss the effects of these transformations on perceptions of global order at the turn towards the twenty-first century. The final section shall tie these analyses and observations together.