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

Harald Kleinschmidt

2017
Table of Contents

Abstract

I. Introduction

II. Might and Right
   1. International Law: the Concept and the Word
   2. The Concept of International Relations
   3. Perceptions of the Relationship between Might and Right

III. Methodological Problems of the Historiography of the International System as the Historiography of Expansion
   1. The Foundations of General Systems Theory and the Change of Systems Models
   2. World Systems Theory
   3. Theories of the International System
   4. Theories of World Society and of World History

IV. The Rejection of the Natural Law Tradition and Its Effects on the Culture of Diplomacy
   1. The Conflict about the Recognition of Natural Law Theories
      a) Introduction
      b) Definitions
      c) The Relevance of the Question about the Sources of International Law
      d) Defenders of Natural Law under the Dominant Influence of Positivism
      e) The Overestimation of the League of Nations in Terms of Legal Theory and Its Consequences for the Present
   2. Culture(s) of Diplomacy
      a) What is Culture of Diplomacy?
      b) The Time Factor in Its Relevance on the Concept of the State
      c) The Culturality of European Diplomacy
      d) Comparison between European and East Asian Cultures of Diplomacy
      e) From the Pluralism of Cultures of Diplomacy to the Globality of the European Culture of “New” Diplomacy
V. The Legal Basis of International as Inter-Systemic Relations according to International Legal Theory and in the Perception of Historiography

1. The Problematique of the Derivation of Legal Norms according to Positivist International Legal Theory
2. Natural Law Theories, Long-Distance Trading Companies as International Legal Subjects and the Application of International Law in America
3. Contractualist Theory and the Conception of Rule Governed by the Law
4. The European Public Law of Treaties among States during the Nineteenth Century
5. Perspectives of the Historiography of International Law on the Nexus between Might and Right

VI. Intersystemic Relations within the Perception of the Historiography of International Relations (Seventeenth to Nineteenth Centuries)

1. Introduction: Historiography of International Relations and World Historiography
2. Sources and methodological Foundations of the Historiography of international relations during the Seventeenth and Eighteenth Centuries
3. Sources and Methodological Conditions of the Historiography of International Relations during the Nineteenth Century
   a) Consequences of the Abandonment of the Belief in the Authority of the Chronology of the Old Testament
   b) Competition between the Universal Historiography of International Relations and National Historiographies
   c) Nineteenth-Century Historiography of Expansion
   d) The Restitution of Universal Historiography Towards the End of the Nineteenth Century
   e) Summary

VII. Natural Law, International Law, Law of Hospitality. Why Migration Turned into a Problem for Politics

I. Introduction: A Human Right Guaranteeing the Freedom of Emigration
II. Natural Law, International Law and Law of Hospitality
   1. Natural Law, International Law and Mechanicism
   2. International Law and Biologism
   3. The Law of Hospitality

III. The Downgrading of Natural Law and the Privileging of Positive International Law during the Nineteenth century
   1. The Theory of Legal Sources, the „Basic Norm“ *pacta sunt servanda*, the Principle of Literacy in European Public Law of Treaties among States and the Principle of the Legal Equality of Sovereigns
   2. European Public Law of treaties among States
   3. The „Family of Nations“

IV. Legal Practice: the Ascertainability of the Validity of International Legal Norms
   1. The Search for an Empirical Proof of either the Willingness or the Refusal to Accept International Legal Norms
   2. Urban Law as a Regulative for Immigration and the Law of Hospitality
   3. The Law of Hospitality and the Law of Settlement
   4. The Law Relating to Diplomacy
   5. The Law Relating to Trade
   6. The Law Relating to the Rescue of Shipwrecks
   7. From Unset Law of Hospitality to Positive International Law

V. The Transformation of the Perception of Migration
   1. Internal Attitudes of Migrating Persons vis-à-vis External Perspectives of Legislative and Administrative Institutions toward Migration
   2. Changes of Types of Conflict about Migration
   3. Emigration Orders and Immigration Promotion
   5. Postulates about Migration Motives
   6. Empirical Research in Migration Motives

VI. Migration, Positive International Law and Unset Law of Hospitality

VIII. Outlook
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 during 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 worldwide. 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, 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


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”. 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. Admittedly, the discrepancies enshrined in the culturally specific ramifications of the semantic triangle of word, concept and referent remain ineffective for the handing of the past, as long as historiography remains focused on its own culture and epoch. 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

---

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 intermediary 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 Koselleck’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.zil-berlin.org/publikationen-detail/items/forum-interdisiplinaere-begriffsgeschichte.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 law⁸ outside Europe and the European overseas settler colonies in the
Americas and the South Pacific⁹ 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
nineteenth¹² and twentieth centuries,¹³ jointly with proponents of world or global history have, in

---

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 Kle inschmidt, 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,
1888), pp. 29-30 [Habilationschrift (University of Königsberg, 1941); first, unpublished printing (Leipzig,
1945); first book-trade edn (Baden-Baden, 1984); English version (Ber lin, 2000)]. Tomoko T. Okagaki, The Logic
of Conformity. Japan’s Entrance into International Society (Toronto and Buffalo, 2013), p. 35 [first published s. t.:
(A nn Arbor: University of Michigan, 2005)].

Zeitschrift für die gesammte Staatswissenschaft 6 (1850), pp. 151-242. Arthur Nussbaum, A Concise History of the
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

¹¹ Georg Jellinek, Die rechtliche Natur der Staatsverträge. Ein Beitrag zur juristischen Konstruktion des
298, 307, 308. Heinrich Tripel, 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,
Völkerrecht, third edn (Berlin, 2004), pp. 1-77, at p. 52. David Armstrong, Theo Farrell and Hélène Lambert,
3-31. Georg Dahm, Jost Delbrück and Rüdiger Wolffram, Völkerrecht, § 1, nr 2, vol. 1, part 1, second edn (Berlin
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

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

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 Zeiktontinuums stellte sich in manchen
nicht-westlichen Zivilisationen das Problem einer genau datierter 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 professional 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.
insisting 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 appeared 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 Problem der Geschichtsphilosophie, edited by Friedrich Wilhelm Graf
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)].

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 European 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 consequence 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 prior 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 Ranker. See: Christoph Meiners, ‘Über die Fruchtbarkeit oder Unfruchtbarkeit, den vormählichen
und gegenwärtigen Zustand von Japan’, in: Meiners, Betrachtungen über die Fruchtbarkeit oder Unfruchtbarkeit,
über den vormählichen und gegenwärtigen Zustand der vornehmsten Länder in Asien, vol. 2 (Lübeck and Leipzig,
Papers, Berlin: Staatsbibliothek zu Berlin, 38ID]’, printed in: Ranke, Vorlesungseinleitungen, nr 5 (Ranke, Aus
of history as such. These populations, thereby turned into “peoples without history” have often
been deprived of their own productive cultural heritage under European colonial rule through the
removal or the abuse and complete destruction of their identity-conveying artefacts, with resistance
against such acts becoming brutally crashed. 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 mechanicism 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


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).
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.