

# PEOPLE WITH PROJECTS: WRITING THE LIVES OF INTERNATIONAL LAWYERS

*Andrew Lang and Susan Marks\**

In November 1938 Hersch Lauterpacht gave a lecture to the League of Nations Union at the University of Cambridge. Drawing on a collection of Lauterpacht's personal papers brought together by his son Eli, Martti Koskenniemi describes the scene.<sup>1</sup> Lauterpacht had recently moved to Cambridge to take up the Whewell Professorship. Before him was an audience of people he scarcely knew. They had gathered in the shadow of impending war to hear his views about this organization set up to maintain peace. As he began to speak, Lauterpacht confessed that his lecture's subject was one "about which he felt so strongly that he was unable to trust the 'freely spoken word'"; he would "read from a manuscript in order to maintain restraint and deliberation."<sup>2</sup>

But in fact, Lauterpacht did not always maintain his usual high standard of restraint and deliberation in this lecture. At a certain point, he allowed himself a moment of "informality and engagement," addressing his audience directly and with undisguised anxiety. "But what have we to do . . . ?" he rhetorically asked. "Ought we to abandon the League and start afresh . . . Ought we to maintain it and adapt it . . . ? Ought we to pursue the ideal of universality by reforming the League so as to make it acceptable to everyone?"<sup>3</sup> Though clear that the League had failed, Lauterpacht was not ready to give up on the idea it embodied. So, Martti recounts, what he did was to turn to the past. "In order to find a place for law in a dangerous time," Lauterpacht took his audience back to the mid-nineteenth century, with an historical excursus that evoked the "liberal rationalism," "ideal of the rule of law," "belief in progress," and "certainty about the sense and direction of history" of that long-gone time. It seemed reasonable to hope that the members of the Cambridge University League of Nations Union might be persuaded to join him in a project of renewing those values.

Sixty years later, Martti was himself standing before another audience of mainly strangers (but also some acquaintances and friends) in the same city. He was in Cambridge to deliver a series of lectures named in honour of the very same

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1. See MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960*, at 353-55 (2002) [hereinafter KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*]; see also Martti Koskenniemi, *Lauterpacht: The Victorian Tradition in International Law*, 8 EUR. J. INT'L L. 215, 215-17 (1997) [hereinafter Koskenniemi, *Lauterpacht*].

2. Koskenniemi, *Lauterpacht*, *supra* note 1, at 215.

3. *Id.*

Hersch Lauterpacht. His earlier work had been concerned with the structure of international legal argument, but it was plain from the outset that these lectures would be different. He wanted now, as he would declare in the celebrated book that followed, to “infuse the study of international law with a sense of historical motion and political, even personal, struggle.”<sup>4</sup> Specifically, his plan was to track the emergence and subsequent history of international law through an investigation of the ideas, attitudes, projects, and contexts of some of its most influential figures. Among these figures was Hersch Lauterpacht. Martti had already published one substantial paper on Lauterpacht, which included his description of the scene at the Cambridge University League of Nations Union.<sup>5</sup> If he now pressed further, this was because he had come to realize that there was a great deal more to be said, both about Lauterpacht and about the others who had played a defining role in what he had also come to realize was the “rise and fall” of international law.

In more recent work, Martti has developed his analysis of international law’s “fall” into a diagnosis of the pervasive hold of a form of “managerialism” in later twentieth and twenty-first century international affairs.<sup>6</sup> By managerialism, he means the idea that global problems may be overcome through technical expertise, rather than political struggle. For Martti, the managerial mindset sees international law as functionally responsive to the objectives, values, and interests of states, and assesses it by reference to its effectiveness in facilitating the achievement of those objectives, values, and interests.<sup>7</sup> Managerial international lawyers tend to lose sight of the gap between law as an instrument and law as a “surface over which we carry out our projects and . . . criticize those of others.”<sup>8</sup> At the same time, managerial international lawyers are disposed to treat the law’s purposes as given and ask only questions about how those purposes should be implemented, rather than “engaging the point of international law” as an object of contestation.<sup>9</sup> As they imagine and undertake it, the international lawyer’s role is to be “counsel for the functional power-holder;” there is no, or only very limited, space for acting as a “moral politician” who uses “critical reason [to] measure today’s state of affairs

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4. *Id.* at 2.

5. See generally Koskeniemi, *Lauterpacht*, *supra* note 1, at 215–17.

6. For various forms of his critique of managerialism, see generally Martti Koskeniemi, *Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization*, 8 THEORETICAL INQUIRIES L. 9 (2007) [hereinafter Koskeniemi, *Constitutionalism as Mindset*]; Martti Koskeniemi, *The Fate of Public International Law: Between Technique and Politics*, 70 MOD. L. REV. 1 (2007); Martti Koskeniemi, *Law, Teleology and International Relations: An Essay in Counterdisciplinarity*, 26 INT’L REL. 3 (2012); Martti Koskeniemi, *Miserable Comforters: International Relations as a New Natural Law*, 15 EUR. J. INT’L REL. 395 (2009) [hereinafter Koskeniemi, *Miserable Comforters*]; Martti Koskeniemi, *The Politics of International Law – 20 Years Later*, 20 EUR. J. INT’L L. 7 (2009) [hereinafter Koskeniemi, *The Politics of International Law – 20 Years Later*]; Martti Koskeniemi, *What Use for Sovereignty Today?*, 1 ASIAN J. INT’L L. 61 (2011) [hereinafter Koskeniemi, *What Use for Sovereignty Today?*].

7. See Koskeniemi, *What Use for Sovereignty Today?*, *supra* note 6, at 66; see also Koskeniemi, *Miserable Comforters*, *supra* note 6, at 406.

8. Koskeniemi, *Miserable Comforters*, *supra* note 6, at 412.

9. Koskeniemi, *The Politics of International Law – 20 Years Later*, *supra* note 6, at 15.

from the perspective of an ideal of universality . . . .”<sup>10</sup> It follows that, for Martti, managerialism has “nothing at all to say that would be of normative and even less of emancipatory interest.”<sup>11</sup> At its worst, managerialism obscures “the way power works and make[s] particular intellectual or social hierarchies appear as natural aspects of our lives.”<sup>12</sup>

In the face of this prevalent managerialism, Martti has sought to locate resources for, and persuade others to join him in, a project of international legal renewal that involves the recovery of responsible moral agency in the practice and professional self-image of the contemporary international lawyer. Our interest here is in one aspect of that endeavor, which has to do with the way Martti deploys *life-writing* to advance—and, more than that, to perform—his critique of managerialism and appeal to moral responsibility. By life-writing, we mean simply writing about a life, whether another’s or one’s own. The literary scholar Hermione Lee explains that the term “life-writing” is used “when the distinction between biography and autobiography is being deliberately blurred, or when different ways of telling a life-story—memoir, autobiography, biography, diary, letters, autobiographical fiction—are being discussed together.”<sup>13</sup> In “discussing together” the life stories Martti tells, we begin with a look at some of the *autobiographical* elements of his work. We then consider the *biographical* writing on Lauterpacht and others that forms part of his historical scholarship. In the final part of this essay, we take stock with the aid of the historians E.P. Thompson and Perry Anderson and their famous debate over human agency and its relation to power and knowledge. Among the lessons of that debate is that agency can be envisioned in a variety of ways. What kind of vision—we ask—does Martti’s life-writing put before international lawyers? What kind of agency is involved in his image of responsible moral agency?

## I.

Martti has not written an autobiography (yet!) in the sense of that literary genre, just as he has not written any book-length biography. However, it is a striking feature of his work that his theorizing often seems connected to reflection on his own life. We mentioned at the beginning his description of Hersch Lauterpacht normally exercising restraint and deliberation, but also allowing himself moments of informality and engagement in which he addressed his audience directly and without hiding his anxieties. Perhaps one of the reasons Martti picks up on this is that those things apply to him too. At any rate, he observes that “[t]here is a strong autobiographical aspect” to much of his writing.<sup>14</sup> Of course, there is a strong autobiographical aspect to everyone’s writing. We are

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10. Koskenniemi, *Miserable Comforters*, *supra* note 6, at 411, 413, 415.

11. Koskenniemi, *The Politics of International Law – 20 Years Later*, *supra* note 6, at 16.

12. *Id.*

13. HERMIONE LEE, *BODY PARTS: ESSAYS ON LIFE-WRITING* at 100 (Pimlico 2008).

14. MARTTI KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW*, at ix (2011) [hereinafter KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW*].

all always, in some sense, writing about ourselves, and it may well be that we are most eloquent on the subject insofar as we keep silent about it. But that kind of eloquence is presumably best left for the psychoanalyst's couch; what we will be concerned with here is the self-conscious thematizing of a connection between published works and life events. As Martti glosses it, this thematizing is a matter of his work having been "inspired" by the diplomatic and academic settings in which he has been engaged.<sup>15</sup> "Inspired" is, though, a rather vague word that does scant justice to the variety of ways in which autobiographical discussion enters his scholarship.

One way in which it enters is that Martti *presents his studies of international law as an attempt to make sense of his personal experience*. That experience naturally arises in many different contexts, but one experience that assumes particular prominence in his writing is his professional practice as legal adviser in the Finnish Foreign Ministry, both in Helsinki and at the Finnish Mission to the United Nations in New York. While the first edition of his earliest English-language book, *From Apology to Utopia*, did not touch on this aspect, Martti explains in the epilogue written for the second edition that the book was conceived to "articulate and examine [the sense that] existing reflection on the field had failed to capture the experience I had gained from it through practice within Finland's Ministry of Foreign Affairs, especially in various United Nations contexts."<sup>16</sup> It is common for an author to allude or refer in prefatory—or, as in this case, supplementary—sections of a book to the practical contexts that prompted his or her inquiry. However, Martti has brought the issue into the main text and made it part of his argument in other work. In a contribution to a symposium on international legal method, he describes in more specific terms the link between his work as a practitioner and the theoretical account he presents in *From Apology to Utopia*.<sup>17</sup>

My starting point was an observation I had made in the course of having practiced international law with the Finnish Ministry for Foreign Affairs since 1977 that . . . competent lawyers routinely drew contradictory conclusions from the same norms, or found contradictory norms embedded in one and the same text or behavior.<sup>18</sup>

If competent lawyers routinely came to contradictory conclusions or read off contradictory norms, that pointed to the indeterminacy of international law—the phenomenon which the book goes on to postulate and illustrate.

Quite often, Martti evokes his professional experience to falsify his legal education. Whereas (for instance) he had been taught at university that natural law belonged to another age and was now dead, he learned from his professional work

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15. *See id.*

16. MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* 562 (Cambridge Univ. Press 2005) (1989) [hereinafter KOSKENNIEMI, *FROM APOLOGY TO UTOPIA*].

17. Martti Koskenniemi, *Letter to the Editors of the Symposium*, 93 AM. J. INT'L L. 351, 354 (1999).

18. *Id.*

that the structure of international legal argument is such that natural law lives as much as positivism: “every international legal institution [leans] back on [natural law] assumptions such as those articulated by Pufendorf.”<sup>19</sup> There is an implicit narrative here about stages in the writer’s life-course—his advancing worldliness, confidence, and knowledge. Linked to this, there is, in other writings, an implicit, or sometimes explicit, narrative of his career and its trajectory that takes us through the different jobs he has done and roles he has played, as adviser, advocate, and academic.<sup>20</sup> In one text, Martti frames a discussion of U.N. action in response to the 1990 Iraqi invasion of Kuwait with reference to personal recollections from his time as legal adviser to the Finnish delegation at the Security Council.<sup>21</sup> He was on holiday when the invasion occurred, and on returning to New York, was “struck by the enthusiasm with which my ‘political’ colleagues in the delegation had immersed themselves in [legal controversies].”<sup>22</sup> They clearly regarded law as not only relevant, but also “central to devising a national position.”<sup>23</sup> Martti writes that there is an “important truth” to be grasped here about international law’s character as a “cultural,” rather than a purely “instrumental” phenomenon—a “gentle civilizer,” in the resonant phrase he borrowed from George Kennan and made his own.<sup>24</sup> “[L]aw acts as a spirit or an attitude that involves recognizing the communal situatedness of the speaker”<sup>25</sup>—that is to say, in this case, the communal situatedness of himself.

A second way in which autobiographical discussion enters Martti’s scholarship is that he *deploys stylistic devices that reveal himself and his everyday life to his audience*. One example, which we have just seen in the previous paragraph, is the reference to his being on holiday on the day when Iraq invaded Kuwait. Conjured up in a small detail of that kind is the rhythm of a person’s year, with its periods of work and (sometimes interrupted) leisure. But self-revelation can also take many other forms. The simple use of the first person—something else that is exemplified in the passages quoted above—entails that one is speaking for and about oneself. One’s own thoughts and feelings are included within one’s subject-matter. First-person narrative has been widely deployed in legal and other scholarship in recent decades to contest the false universals of “traditional” theory and to assert the awkwardness and embarrassment that should be associated with representation. Personal stories highlight the specificity of standpoints, experiences, and histories. While in some hands this can teeter on the brink of solipsism, in Martti’s work the effect, as in the first mode of autobiographical

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19. Koskenniemi, *Miserable Comforters*, *supra* note 6, at 395, 403.

20. See MARTTI KOSKENNIEMI, *BETWEEN COMMITMENT AND CYNICISM: OUTLINE FOR A THEORY OF INTERNATIONAL LAW AS PRACTICE* (1999), *reprinted in* KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW*, *supra* note 14, at 271.

21. Martti Koskenniemi, *The Place of Law in Collective Security*, 17 MICH. J. INT’L L. 455, 472 (1996).

22. *Id.* at 473.

23. *Id.* at 474.

24. *Id.* at 489.

25. *Id.*

writing just discussed, is rather to situate the author as a social actor, and to prompt reflection on what might follow from that in ethical terms.

So too the use of anecdotes may expose to view an author's private world. The word "anecdote" comes from the Greek for "unpublished things." To tell an anecdote is to "publish" or communicate that which was previously "unpublished" or secret. One essay of Martti's recounts the story of how he was visiting Recife in 2006 and saw daubed on a pink concrete wall about five miles from the city centre the words, "No to the war of Bush."<sup>26</sup> Back home in Helsinki, he found himself passing every day something conspicuously similar. "[I]n my street on the lamp-post nearest to the door to my flat was a sticker that declared the war against Iraq 'illegal.'"<sup>27</sup> Then "in Geneva, where I was attending the U.N. International Law Commission the week after leaving Recife," he came across almost the same thing yet again.<sup>28</sup> There was "an enormous demonstration" that likewise condemned the war and the ensuing occupation as "illegal."<sup>29</sup> The story helps Martti to make an argument about the nature of "universal justice." It helps him to advance the claim that universal justice is best understood as "universal violation." But in the process it also conveys quite a bit of information about himself—his travels, his home, the kinds of things he notices, and other aspects of his life.

Consider now a third way in which autobiographical discussion enters Martti's scholarship. He *calls attention to, and seeks to elucidate, his own positionality*. In the contribution to the symposium on international legal method we mentioned earlier, he writes about the surprise he often encountered that his legal practice could coexist with his deconstructive critique of international law. How could he carry on advising the Foreign Minister with any assurance when he had argued that international law's most important feature was that it could lead to contradictory conclusions and support contradictory norms, and was hence to be understood as fundamentally indeterminate? "This was the problem of the relationship between academic theory/doctrine . . . and practice, or of the relations between my (external) description of the structure of legal argument and my (internal) participation in that argument."<sup>30</sup> As he characterizes it, the relationship between scholarship and advocacy is emphatically not one of "direct logical entailment."<sup>31</sup> "External description" may facilitate the elaboration of winning arguments, but it does not carry necessary implications for professional practice. Conversely, "internal participation" depends on professional competence, but it does not negate the possibility of subjecting international law to critical scrutiny.

In another paper Martti elaborates on that latter aspect. He tells the story of attending a dance performance in Helsinki some years earlier.<sup>32</sup> The performance

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26. Martti Koskenniemi, *What Should International Lawyers Learn from Karl Marx?*, 17 LEIDEN J. INT'L L. 229, 244 (2004).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 356.

31. *Id.*

32. Martti Koskenniemi, *A Response*, 7 GER. L. J. 1103, 1104 (2006) [hereinafter

was long, and involved throughout a single set of movements. But whilst the choreography was apparently monotonous and repetitive, subtle changes could be discerned both on the stage and in the audience.<sup>33</sup> Over time the dancers' exhaustion became visible, and their movements slightly unstable; a new kind of tension arose in their actions and interactions. At the same time, the very fact of repetition produced effects in the audience, from bafflement and restlessness to indifference, anguish, and, at least for some, admiration. For all that there appeared to be no development, nothing about the show was quite the same at the end as at the beginning. For Martti, this delivers a reminder that performers are "never in complete mastery of [their] performance," and that is in part because the experience of spectators is never predetermined, never settled.<sup>34</sup> Which is why, he remarks, in order to be a good dancer, one should occasionally sit in the audience; one should imagine oneself a spectator; one should examine one's show with the sharp eye of a reviewer. Martti uses the story to account for his own professional situation. In his telling, the dance performance symbolizes the notion that it is not only possible for a practitioner also to be a critic, but desirable for him or her to be so.

A fourth way in which autobiographical discussion enters Martti's scholarship, and the last we shall mention, takes us to the crux of what is at stake. Martti asserts that when we talk about international law, we are also talking about ourselves. This is perhaps clearest in an essay about the bombing of Serbia in 1999.<sup>35</sup> The title of the essay references the play scene in *Hamlet* and in particular, Gertrude's famous exclamation "The Lady doth protest too much, methinks." Just as Gertrude is giving expression in those words to her own guilt, which is the real subject of the play within the play, so Martti wants us to see that the real subject of the international legal debate about the "Kosovo crisis" was international lawyers' complicity in the violence, a complicity they wrapped up and concealed—both from others and from themselves—in the rhetoric of humanitarian intervention. "Kosovo has come to be a debate about ourselves," he writes, "about what we hold as normal and what exceptional, and through that fact, about what sort of international law we practice"—and, he further implies, how this affects the world.<sup>36</sup>

Part of the background to this contention is Martti's broader idea that international law has a politics, which is ultimately the politics of *international lawyers*. He explains this in the epilogue to the second edition of *From Apology to Utopia*. His starting-point there is the observation that, if international legal argument is structurally indeterminate, that should not be taken to mean that all

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Koskenniemi, *A Response*].

33. *Id.*

34. Koskenniemi, *A Response*, *supra* note 32, at 1106.

35. Martti Koskenniemi, *The Lady Doth Protest Too Much: Kosovo, and the Turn to Ethics in International Law*, 65 MOD. L. R. 159 (2002).

36. *Id.* at 162.

outcomes are equally possible.<sup>37</sup> International legal institutions manifest a “structural bias,” such that some preferences, outcomes, and distributive schemes are systematically preferred to others. That said—and this, for him, is the crucial bit—there is no automaticity about the reproduction of this bias.<sup>38</sup> “If the practice is not determined by an anterior structure or vocabulary, then it cannot be reduced to an automatic production of such a structure or vocabulary either.”<sup>39</sup> Those engaging with international law always have a choice whether to affirm the bias or to challenge it, and their choice will always be “just that;” it is not something “grounded in the law itself.”<sup>40</sup> It follows that the decisions we make as international lawyers, like the consequences of those decisions, are “attributable not to some impersonal logic but *to ourselves*.”<sup>41</sup>

The thrust of this train of thought is an appeal for responsible moral agency. Instead of sheltering behind weasel words like “humanitarian intervention” or consoling fictions like the idea of an impersonal logic, we should recognize the realities and responsibilities of choice. We should take on board the idea that the good international lawyer is not only a professionally competent international lawyer, but also an ethically engaged one. But the autobiographical aspects of Martti’s scholarship do not only lead him to *assert* this point. They also, in some sense, enact it. On the one hand, it is almost too obvious to note that self-writing is an act of reflexivity. If we imagine it as a performance, what is staged is the author thinking about himself or herself and about the conditions of his or her existence. Autobiography tells of, and at the same time shows, the mutual implication of individual lives and historical processes. On the other hand, those words, “act,” “perform,” “stage,” and “show,” serve as a reminder that self-knowledge is a creative process. If introspection produces truth, it is a truth intermingled with elements of fantasy.<sup>42</sup> What is most significant, as we have already noted, may remain hidden; what appears may in actuality have yet to come. Autobiography makes manifest our capacity to reimagine the world and ourselves within it.

## II.

We have reviewed some of the autobiographical elements of Martti’s work. What then of his important body of biographical writing? How does that contribute to his critique of managerialism and related project of moral regeneration? Let us consider first his embrace of the *biographical form* itself. For what purposes has Martti turned over the last decade or two to history and, as part of his historical scholarship, to biography? In his own account, his historical writing is a corrective or supplement to his earlier theoretical work. If in that work he had argued that “all legal practice was a ‘politics of law,’” there remained the question of “what the

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37. KOSKENNIEMI, FROM APOLOGY TO UTOPIA, *supra* note 16, at 563–64.

38. *See id.* at 604.

39. *Id.* at 615.

40. *Id.*

41. *Id.*

42. *See generally* ADAM PHILLIPS, ON FLIRTATION 65–75 (1994).



‘politics’ of international lawyers had been.”<sup>43</sup> *From Apology to Utopia*, he tells us, was a “formal-structural analysis,” which produced an image of lawyers and the law which was overly static.<sup>44</sup> It failed to “situate the lawyers whose work it described within social and political contexts, to give a sense that they were advancing or opposing particular political projects from their positions at universities, foreign ministries, or other contexts of professional activity.”<sup>45</sup> Martti explains his historical scholarship as an attempt to rectify this omission: to recapture the dynamism of international law, and to show how it is shaped by the ambitions, fears, dispositions, and sensibilities of individual jurists, reacting to the historical and social problems which they confront in their time.<sup>46</sup>

*The Gentle Civilizer of Nations* traces the emergence of modern international law to the last decades of the nineteenth century. In this work, Martti portrays international law as a product of the activities of a group of European lawyers, diplomats, and politicians who met in Ghent in September 1873 to inaugurate the *Institut de droit international*. As he depicts them, these men were people with projects: not “philosopher-lawyers,” but men of action; practical, engaged men who were convinced that the lawyer’s role was to contribute to social progress, rather than observe it from a scholarly distance.<sup>47</sup> A number of them were, or subsequently became, politically active in the conventional sense: John Westlake was a founder of the Working Men’s College and a liberal-radical Member of Parliament; Johann Bluntschli was a member of the Baden Parliament; Gustave Rolin was Belgian Minister of the Interior.<sup>48</sup> Substantively, their politics were liberal and reformist. Domestically, their causes were characteristic of mid-century Victorian liberalism: penal reform, electoral reform and enfranchisement, child labor, universal education.<sup>49</sup> Internationally, their instincts were cosmopolitan. Despite the economic depression of the 1870s, these men were advocates for freedom of commerce and the protection of property rights, taking them to be integral to any strategy for assuring peace among nations. Disturbed by the conduct of the Franco-Prussian war in 1870-71, they looked to humanitarian law to make hostilities less savage. They urged arbitration as a means of international dispute settlement, and encouraged efforts to promote mutual understanding between nations, in the interests of securing peace and preventing unnecessary war.

Martti’s central claim is that international law is, in an important sense, a product of the collective project that these people chose to undertake. In making this claim, he uses the historical-biographical form to highlight the agency of

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43. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 1, at 1–2.

44. *Id.* at 1.

45. *Id.* at 2.

46. *Id.* at 7.

47. *Id.* at 57–58.

48. *Id.* at 64–65.

49. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 1, at 59.

individual international lawyers. Against the dominant strain of “epochal” history<sup>50</sup> which describes the evolution of international law in terms of the shifting balance of power, and also against accounts of international law which emphasize its emergence as a functional response to collective action problems, Martti presents a story that deliberately and explicitly foregrounds the conscious, goal-directed activity of individual international lawyers, acting together. Front and center in *The Gentle Civilizer of Nations* are the “men of 1873”—their agenda, their intellectual assumptions, their character and emotional make-up, their professional self-perception, their understanding of the nature of international law, and with all that, their role in laying the foundations of the modern discipline and continuing to shape it until the 1960s, and indeed beyond. For his readers—most of us professional international lawyers ourselves—this serves not only as an historical claim about how our discipline has evolved, but also as a personal reminder of our own agency in the field, and of the relationships which we—wittingly or unwittingly—form with our forerunners through our professional practice.

A second aspect of Martti’s biographical work on which we want to touch has to do with his *choice of biographical subjects*. The range of Martti’s historical scholarship is extraordinarily broad and deep, spanning more than five centuries of political and legal philosophy. But it is really only in the period 1870 to 1960—the period with which *The Gentle Civilizer of Nations* is concerned—that this historical work is biographical in any significant way. Why concentrate biographical efforts on that period? One reason appears to be that Martti sees the founders of the *Institut de droit international* and their twentieth century successors as exemplifying and enacting in their professional lives some version of the kind of responsible moral agency which he seeks to enliven in the practice of international lawyers today. Thus, he spends a good deal of time spelling out the content and intellectual foundations of the moralized professional self-image which the men of 1873 developed and projected. They adhered, he observes, to an organicist and historicist theory of law, which conceived it not as a sovereign command, but as the emanation of a “popular consciousness.” Instantiated in the legal principles, institutional configurations, and governmental practices common to European societies across history, this popular consciousness was, in effect, a conscience or set of “moral sentiments.”<sup>51</sup> The jurist’s task was to act as its mouthpiece, discerning its content through scientific reason, philosophical reflection, and historical inquiry.<sup>52</sup> Against this backdrop, Martti shows how the “men of 1873” came to understand their role in highly moralized terms and to represent their new profession—now notoriously—as the “legal conscience of the civilized world.”<sup>53</sup> These men placed great weight on the personal virtue of jurists themselves, for “[i]f the law lay in the *conscience* of enlightened jurists, was it not precisely the quality of that conscience-consciousness—virtuous or base—that

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50. *Id.*

51. *Id.* at 47–51.

52. *Id.* at 51–54.

53. *Id.* at 41.

would be central to law?"<sup>54</sup>

Martti takes care to highlight this same moralized sensibility in his work on Hersch Lauterpacht, to which we referred at the beginning of this chapter. For Martti, Lauterpacht's view of the professional role of the international lawyer had much in common with his Victorian forebears. Like the men of 1873, Lauterpacht attached importance to the character and personal virtue of the international jurist as the ultimate guarantor of the international rule of law. However, as Martti makes clear, Lauterpacht reached this position not by way of the organicist jurisprudence of the previous century, but rather through a "sophisticated modern *interpretativism*."<sup>55</sup> Starting with a "non-essentialist epistemology" which emphasized the extent to which "[l]aw is how it is interpreted," Lauterpacht took as one of his central concerns the question of "who is invested with the interpreting, meaning-giving authority" in international law.<sup>56</sup> It is this concern which led him to highlight the role of jurists and "to examine their ability to interpret the law so that everybody's vital interests will be secured."<sup>57</sup> For Lauterpacht, everything depends ultimately on "the enlightened responsibility of judges and lawyers."<sup>58</sup> If "law is an effect of lawyers' imagination,"<sup>59</sup> what matters is the quality of the jurist's imagination in upholding and fulfilling the law's "moral purposes."<sup>60</sup> Lauterpacht's image of the lawyer and of lawyering, then, was highly morally charged, even if, as Martti notes, what was involved was a "morality of attitude"—of seriousness, "sweet reasonableness," tolerance and personal and professional virtue, rather than a morality of substance.<sup>61</sup>

All of this bears an obvious relation to Martti's critique of the managerial mindset of the contemporary international lawyer. The morally charged outlook which Lauterpacht shared with his Victorian predecessors makes a striking counterpoint to an approach that reduces lawyering to technique and puts aside fundamental questions. On the other hand, it is clear that Martti's idea is not simply to bring about a return to that earlier outlook. He is, of course, fully aware that imagining the international lawyer as the "legal conscience of the civilized world" laid the foundation for an international law which supported, extended, and apologized for, empire. He hardly needs to remind us that, for all their liberal tolerance, the men of 1873 were perfectly happy to resort to repression when it came to defending their version of liberalism from perceived threats. Likewise, he has no doubt about the naïveté of a vision that rests ultimately on the reasonableness and personal virtue of individual lawyers.<sup>62</sup> The project is not one

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54. *Id.* at 76–77.

55. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 1, at 227.

56. *Id.* at 218–19.

57. *Id.* at 227–28.

58. *Id.* at 257.

59. Koskenniemi, *Lauterpacht*, *supra* note 1, at 221.

60. *Id.* at 227–28.

61. *Id.* at 261.

62. See KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 1, at 373–76.

of revival, but of renewal and reimagination. Martti's historical account of the moralized professional sensibility of the Victorians and those who carried forward their legacy serves its purpose of providing a strong contrast with the managerialism of today, and of signaling through historical illustration that alternatives are also possible. Equally, his historical account of the excesses, mistakes, and cul-de-sacs into which that sensibility led the profession, serves *its* purpose of demonstrating the need to reimagine and reinvent a new moralized self-image for international lawyers, responsive to the conditions and concerns of the contemporary world.

We turn finally to the question of *how Martti deploys biographical detail in his historical writing*. Not surprisingly, he does not do so in any single manner. Sometimes the personal background, environment, or situation of an historical subject is described in order to explain why that subject came to hold particular views or espouse particular ideas.<sup>63</sup> More commonly, however, something different is involved. Judiciously leavened into a more traditional style of intellectual history which simply presents interpretations of the subject's work, the biographical mode often operates in Martti's writing as a way of evoking a particular *sensibility*. When we read his discussions of Lauterpacht, Bluntschli, Rolin, von Martens, Morgenthau, or Schmitt, for example, the focus is never solely on what these men thought and why, but on the broader, and in some sense prior, question of what kind of sensibility could produce the work that these writers produced. It is the emergence, transformation, and disintegration of such sensibilities which is the real subject matter of Martti's histories of the discipline, and it is that too which is ultimately the object of inquiry in his biographical research.

Martti's use of the term "sensibility" is not always easy to pin down. In an important passage in one of his works, he describes international law as "not a set of ideas . . . nor of practices, but a sensibility that connotes both ideas and practices but also involves broader aspects of the political faith, image of self and society, as well as the structural constraints within which international law professionals live and work."<sup>64</sup> What is important, at least for the purposes of our argument, is that this sensibility is not (just) a subjective characteristic of particular individuals. Rather, it evokes the practical consciousness of agents in dynamic interaction with others. Through his use of the term, Martti emphasizes the extent to which that practical consciousness both structures the work of international lawyers and is itself reproduced, contested, and reimagined by means of that work. He foregrounds, in other words, the complicated relationship between the projects of individuals and their simultaneous participation in the dynamic, multiple, and contested *collective* endeavor we know as the discipline of international law. And it is this aspect which, in our view, connects his focus on the professional sensibilities of international lawyers to his critique of managerialism.

Martti has expressed in a variety of ways what he sees as being lost when managerialism takes hold. One consistent concern, however, has been that international law is deprived of its capacity to serve as a platform for the

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63. See, e.g., Koskeniemi, *Lauterpacht*, *supra* note 1, at 228–30.

64. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 1, at 2.

elaboration and construction of alternative futures. At its best, he writes, “[i]nternational law invites everyone to participate in the imagining of humankind’s collective *telos*,”<sup>65</sup> it offers a “set of rules, institutions, and practices through which the forms of collective life are constantly imagined, debated, criticized, and reformed, over and again.”<sup>66</sup> What happens with the rise of the managerial mindset, in the story he tells, is that “[t]he wish to participate in such a project is defeated and lost.”<sup>67</sup> Martti’s style of historical scholarship can be understood as a way of counteracting precisely this loss. By rendering vivid the notion of international law as a collective endeavor, and even as a set of collective moral projects for which we bear collective and individual responsibility, we are implicitly invited to participate in a process of reimagination and renewal. Furthermore, by showing how our professional sensibilities are entrenched, transmitted, and propagated through disciplinary habits of thought, assumptions, and dispositions, we are brought face to face with the processes through which we are ourselves enrolled in, and shaped by, the collectively produced disciplinary structures we inhabit. This can encourage us to engage with these processes in a more reflexive and critical way.

### III.

So far we have sought to demonstrate the way Martti uses techniques of life-writing to emphasize the *agency* of international legal professionals. This emphasis, we have suggested, has both an analytical and a normative thrust. On the one hand, it helps him to bring out the dynamism of international law, its character as a product of the activity of individuals operating collectively and often conflictually. On the other hand, it also belongs with an effort to recover moral responsibility in the practice and professional self-image of contemporary international lawyers. Thus, we have seen that Martti’s biographical writing captures very vividly the sense of international lawyers as people with projects. If his subjects have a generic quality, as carriers of a tradition, they are also purposeful agents.

The same applies to Martti’s autobiographical writing. He too is a person with a project, and, as we have also seen, his project—or, at any rate, a notable current project of his—is to promote the “moral and political regeneration” of international law<sup>68</sup> in the face of an amoral, immoral, or indeed moralistic managerialism that serves to obscure power relations and naturalize social hierarchies. Note, by the way, the moralistic variant of managerialism. In one of the essays we mentioned earlier, Martti highlights this as a defining feature of the “Kosovo crisis” of 1999. International lawyers scrambled to “throw away dry professionalism and imagine themselves as moral agents in a *mission civilisatrice*.”<sup>69</sup> As he characterizes the

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65. *Id.* at 25.

66. Koskeniemi, *What Use for Sovereignty Today?*, *supra* note 6, at 69.

67. *Id.*

68. Koskeniemi, *Constitutionalism as Mindset*, *supra* note 6, at 18.

69. *Id.* at 162.

situation, what was involved was a “particularly shallow and dangerous moralisation that foreclose[d] political energies needed for transformation elsewhere.”<sup>70</sup> Martti implicitly distinguishes here between the fraudulent practices of self-righteous moralism and the honorable tradition of moral judgment. It is plainly the latter that he seeks to regenerate.

What are we to make of this project? In the 1970s, the historian E.P. Thompson became similarly dismayed by certain trends in the work of his professional contemporaries. Reminding his colleagues of an earlier period in which the language of scholarship had been a discourse of “agency, choice, individual initiative, resistance, heroism and sacrifice,”<sup>71</sup> he called for a renewed appreciation of the link between moral agency and human emancipation in the field of historical inquiry. “The human potential to act as rational and moral agents,” he writes, is “a concept coincident with that of the passage from the kingdom of necessity to the realm of human freedom.”<sup>72</sup> Men and women, he goes on, are the “ever-baffled and ever-resurgent agents of an unmastered history.”<sup>73</sup> (Rational and moral or ever-baffled and ever-resurgent) agents in what sense? In a bracing response, Perry Anderson observed that Thompson appeared to have had in mind some idea of agency as “conscious, goal-directed activity,” but to put the matter in those terms was to put it at an extremely high level of generality.<sup>74</sup> In order for the concept of agency to be analytically useful, Anderson proposed that it was necessary to consider the different kinds of goals to which activity is directed. He invited us to think of these as different kinds of projects, and highlighted three in particular.

In the first place, there are “personal projects,” that is to say, projects oriented to private goals.<sup>75</sup> Among the examples he gives are cultivating a plot, choosing a life partner, and exercising a skill. He is surely right that these have “consumed the greater part of human energy and persistence throughout recorded time.”<sup>76</sup> Secondly, there are projects directed at public goals, whether pursued individually or collectively. Examples include religious activities, military conflicts, diplomatic transactions, and commercial undertakings. While these have attributes that set them apart from purely personal projects, Anderson remarks that they share with those latter the feature that they are, as he puts it, “inscribed within existing social relations, and typically reproduce them.”<sup>77</sup> In contrast, a third category consists of projects which aim at the transformation of existing social relations. These may take the form of political movements, grassroots organizing, or—an historical rarity—revolutionary campaigns. Anderson identifies projects of this third sort as

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70. *Id.*

71. E.P. THOMPSON, *The Poverty of Theory or An Orrery of Errors*, in *THE POVERTY OF THEORY AND OTHER ESSAYS* 1, 72 (1978).

72. *Id.* at 166–67.

73. *Id.* at 88.

74. See PERRY ANDERSON, *ARGUMENTS WITHIN ENGLISH MARXISM* 19 (1980).

75. *Id.*

76. *Id.*

77. *See id.*

“collective projects which [seek] to render their initiators authors of their collective mode of existence as a whole.”<sup>78</sup> The essential characteristic of this third kind of project is that it seeks to subject to democratic control the fundamental framework within which social life unfolds.

For Anderson, there is a crucial gap here which one should be careful not to elide. This is the gap between acts of willing, choosing, and aspiring, on the one hand, and the effects (in his phrase, the “social incidence”) of those acts, on the other. Personal and public projects—his first two categories—are “conscious volitions at a personal or local level, but [their] social incidence is profoundly involuntary.”<sup>79</sup> That is to say, the projects themselves are chosen and willed, but the conditions in which they are undertaken, and hence the extent to which, and the ways in which, they are capable of being realized, are not. In contrast, radical democratic projects—his third category—aim at “actions which are conscious volitions at the level of their own social incidence.”<sup>80</sup> That is to say, they aim at creating a situation in which it is not only the projects themselves that are chosen and willed, but also the conditions that determine their realization. In Anderson’s assessment, Thompson’s over-generalized use of the concept of agency obscures the limitations of agency in the first and second senses. It also obscures the nature and scale of the task involved in establishing agency in the third sense; in particular, a call for moral responsibility on its own may do little to bring forth projects that challenge the taken-for-granted context of our social relationships.

Of what kinds of projects does Martti write when he writes of the lives of people with projects? What are the “political, even personal struggles”<sup>81</sup> he relates to illustrate the possibilities of an international law beyond managerialism? If he refers occasionally to Anderson’s first category, he is plainly mostly concerned with the second. The focus is on individual or collective projects directed at public goals—the men of 1873 setting up the *Institut de droit international*, Lauterpacht reasserting the values of liberal internationalism in the run-up to World War II, Martti’s own interactions with the other staff at the Finnish delegation to the U.N. Security Council after the Iraqi invasion of Kuwait. If these are the struggles that fill his life-writing, there remains Anderson’s third category. How have international legal professionals stood with respect to political struggles of that potentially transformative kind? Have they contributed to such projects? Have they opposed or undermined such projects? Would the reinvigoration of responsible moral agency dispose them differently with regard to such projects? Anderson reminds us that to infuse international law with a sense of historical motion, it is valuable to consider these questions too.

There is one further aspect that we wish to take from Anderson in this context, and it has to do with what he terms the “cognitive dimensions of

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78. *Id.* at 20.

79. *Id.* (emphasis omitted).

80. ANDERSON, *supra* note 74, at 20 (emphasis omitted).

81. KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, *supra* note 1, at 2.

agency.”<sup>82</sup> Anderson observes that Thompson “implicitly identifie[s] historical agency with the expression of *will* or *aspiration*.”<sup>83</sup> Of course, agency is an expression of will or aspiration, but Anderson wants us to remember that it is “equally and indivisibly [an expression] of *knowledge*.”<sup>84</sup> The exercise of human freedom requires, in his phrase, “common aspiration fused with real cognition.”<sup>85</sup> In part, Anderson is drawing attention here to the reality that effective human agency depends not just on a sensibility or set of mental attitudes, beliefs, and images, but also on a cognitive infrastructure that is capable of providing insight into the historical conditions within which any collective project will fall to be realized. He refers, in this vein, to knowledge of a social formation’s “deepest laws of motion,”<sup>86</sup> without which collective projects may remain nothing more than “political will without social sight.”<sup>87</sup> In part too, however, Anderson is making the simple, but crucial, point that the exercise of human freedom is inseparable from the frameworks of knowledge that make it possible. Conscious, volitional action is enabled by knowledge, and the kinds of projects we undertake in the world hinge on what we know about it. It follows that, to open the way for alternative and transformative forms of agency, a parallel cognitive work is required of producing correspondingly emancipatory frameworks of knowledge. For international lawyers, this does not—indeed, it cannot—merely involve freeing ourselves from the constraints of the technicism associated with managerialism. It must also involve remaking the frameworks of knowledge which structure our engagement with the world.

#### IV.

We began with a vignette which put into relation two memorable performances in the history of international law. The first was that of Hersch Lauterpacht, standing before a Cambridge audience in the tense years just prior to World War II and expressing his anxiety for the future of the international legal order. The second was a speech by Martti Koskenniemi, also in Cambridge but sixty years later, giving voice to a new set of fears about the prospects of international law in an era of technocratic governance. Both men spoke in personal terms. At the same time, both invoked their professional forebears, including, in Martti’s case, Lauterpacht himself. From the perspective of a later reader, there was autobiography and biography in the texts of both. One of us attended Martti’s speech, so in our account too, autobiography and biography are mixed together.

Exploring Martti’s work from the angle of its engagement with life-writing, we have highlighted the way he not only describes, but also performs lives. This performative dimension can, of course, be interpreted in a variety of ways. No

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82. ANDERSON, *supra* note 74, at 23.

83. *Id.*

84. *Id.* at 24.

85. *Id.* at 25.

86. *Id.*

87. *Id.* at 24.



doubt some of it trades on the rhetorical power of self-disclosure or on the postmodern valorization of play. Equally, some of it may be understood as a form of “self-rupture”—a deliberate enactment of multiple and contradictory selves through professional practice. In this paper, however, we have chosen to emphasize a different aspect. We have suggested that Martti’s interest in the complex intersection between the personal and professional stems from a sense of international law as a fundamentally moral endeavor, with correspondingly moral demands on those who work within its disciplinary domain.

This line of thought, we have proposed, is connected to Martti’s “turn to history.” For him, the dominant contemporary version of international legal professionalism represents a retreat into amoral, immoral, or moralistic managerialism, and he has sought to recapture what he takes to have been an earlier commitment to responsible moral agency. We have noted that in a different time and place and in a different disciplinary context, E.P. Thompson likewise evoked the moralized sensibility of an earlier epoch. In doing so, Thompson was frank about his own nostalgia for the veneration of heroic agency and self-creation. “Even now,” he memorably confessed, “I must hold myself steady as I feel myself revert to the poetry of voluntarism.”<sup>88</sup> The poetry of voluntarism is certainly an inspiring art. What is less certain is how well it equips us to pursue the kinds of projects that might one day make us authors of our collective mode of existence as a whole.

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88. THOMPSON, *supra* note 71, at 72.