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## Book Reviews

Antonio Cassese, ***Five Masters of International Law: Conversations with R-J Dupuy, E Jimenez de Arechaga, R Jennings, L Henkin and O Schachter***. Oxford: Hart Publishing, 2011. Pp. 306. \$40. ISBN: 9781849461207.

The great British philosopher Michael Oakshott once observed that ideally teaching should be a personalized affair and take place one on one, as 'practical knowledge can be acquired only by continuous contact with one who is perpetually practising it'.<sup>1</sup> This way, someone of shown mastery in a subject could guide a pupil along, instruct on points of detail, correct him or her where he or she would threaten to make a mistake, and carefully track the pupil's progress and suggest bespoke improvements. The pupil would learn far more effectively than he or she ever would in a classroom setting and, in particular, be able to reach beyond purely technical knowledge. After all, as Oakshott explained elsewhere, education 'is the transaction between the generations in which newcomers to the scene are initiated to the world which they are to inhabit. This is a world of understandings, imaginings, meanings, moral and religious beliefs, relationships [and] practices'.<sup>2</sup>

If all this sounds a bit wistful, it is perfectly in keeping with the spirit of Antonio Cassese's nostalgic but wonderful latest book, *Five Masters of International Law*, containing interviews with a handful of great international lawyers from the past, now all deceased. While it is not a textbook by any stretch of the imagination, the reader comes out of the book with the feeling of actually having learned something, not so much on the level of technical detail (there is little technical knowledge to be acquired here), but rather on the level of inspiration: what it means to be an international lawyer and to work, in one way or another, for the common good.<sup>3</sup>

Cassese's interviews follow roughly identical patterns but, fortunately, he has been wise enough to let his conversation partners expand a bit whenever they were so inclined; it is the combination of Cassese's astute questioning with his liberal handling of the interviews which makes for lively, engaged reading. The interviews were conducted between 1993 and 1995: since then, all five interviewees have passed away and, as Cassese sweetly notes in his foreword, setting out on 'that eternal voyage' may soon also be his fate, hence the impetus to complete the book. The interviewees are René-Jean Dupuy, Eduardo Jiménez de Aréchaga, Sir Robert Jennings, Louis Henkin, and Oscar Schachter. A sixth, Gaetano Arangio-Ruiz, was interviewed but more or less dropped out, while Roberto Ago declined to be interviewed.

The interviews all focus on the scholarly life of the interviewees: private matters are largely left out. They typically start with a discussion of the intellectual influences of the interviewees (Kelsen, Lauterpacht, and Scelle, mostly), followed by in particular reflections on the role of the jurist and a discussion of the international community. All are asked whether they have created a 'school', and all decline, seeming to be happy with just having had some bright students – and rightly so: a 'school' serves only to aggrandize the teacher. Interestingly, the interviewees come

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<sup>1</sup> See Oakshott, 'Rationalism in Politics', in M. Oakshott, *Rationalism in Politics and Other Essays* (1962), at 1, 11.

<sup>2</sup> See Oakshott, 'Education: The Engagement and its Frustration', in M. Oakshott, *The Voice of Liberal Learning* (2001 [1989]), at 62, 103.

<sup>3</sup> Much the same applies to E. Lauterpacht, *The Life of Hersch Lauterpacht* (2010).

out as totally different characters. Dupuy turns out to be a man of culture: interested in music and known for the rhetorical flourishes of his speeches. Jiménez de Aréchaga appears as the consummate dry technician, even though he alone amongst the five has been something of a politician. Henkin is the noble idealist who refuses to work for big bureaucracies while upholding the slogan that if people ‘want my views, they get them; I give them freely’ (at 203). Oscar Schachter is pictured as a more complex man, aiming to combine his working life in a bureaucracy with his academic and philosophical interests. And Jennings comes out as, well, Jennings, boyishly enthusiastic and just a little grumpy at the same time.

Not surprisingly, all interviewees confess themselves to be positivists of one sort or another. This is not surprising, partly because positivism is a rather broad school, and partly because it would be difficult to build a big career on non-positivist premises: in that sense, the interviewees selected themselves. The more interesting question then is how they see their positivism, and here they all answer, to a degree, that they accept the distinction between law as it is and as it should be, while simultaneously trying to infuse elements of what it should be into their legal analyses. All of them are sceptical of the work of Lasswell and McDougal as being overly biased (even Schachter, who taught at Yale for a decade and a half, admits to scepticism) and those who were asked also displayed some scepticism towards the critical work which, when the interviews were conducted, had just risen to prominence: the work of Martti Koskenniemi, Philip Allott, David Kennedy, and others. This applies to Jennings and Schachter who, interestingly, were quite open-minded, yet felt that this sort of work was not yet taking the role of law very seriously (Schachter), and might manifest an escape from some of the more concrete troubling political issues (Jennings).

At some points, Cassese’s own idiosyncracies (or pet projects?) make an appearance. The most obvious example is that all interviewees bar Jennings and Schachter were asked whether they knew Bert Röling, the Dutch polemologist who had been a judge at the Tokyo Tribunal and the subject of Cassese’s earlier experience with interviewing: Cassese produced an impressive book with Röling on the Tokyo trial, based on lengthy interviews.<sup>4</sup> Given the circumstance that Röling was probably never as big a name as Cassese makes him out to be, the interviewees clearly had trouble containing themselves, with Henkin politely remarking that he sympathized with Röling’s views (as explained by Cassese) but could not exactly say that he was influenced by him.

Arguably the most hilarious moment (in a Monty Python sort of way) arises when Cassese aims to provoke Jiménez de Aréchaga into conceding that actually, he may be a dry technician but, still, he too sympathizes with the plight of the third world. Jiménez de Aréchaga is, at first, simply not interested, and maintains that although he stems from the third world (Uruguay), his outlook has always been more European. Cassese does not take no for an answer, and wants to know whether any Latin Americans are *tiers-mondiste* and whether Jiménez de Aréchaga considers himself more or less *tiers-mondiste* than Gros Espiell (the obvious answer is: less). Finally, in despair, Cassese refers to Jiménez de Aréchaga’s arbitral work, where he sometimes decided in favour of the investor. Here then, finally, he confesses to an unexpected variety of *tiers-mondisme*: ‘it is not in the interest of the developing countries to take a position against foreign investment’ (at 78).

Also worthy of note is that all five (as well as Cassese) were members of the *Institut de Droit International*, and highly critical of it. Henkin, while appreciative of the individual members of the *Institut*, dismisses much of the *Institut*’s debates as being ‘of marginal interest’ (at 217), and Jennings scathingly observes that not only should the *Institut* be far more open

<sup>4</sup> See B.V.A. Röling and A. Cassese, *The Tokyo Trial and Beyond* (1993). Note also that Cassese dedicated his *International Law in a Divided World* (1986) to Röling.

to representatives from other disciplines (groomed as he was in Cambridge's college system), but that it should try to overcome its 'preoccupation with who gets in and who does not' (at 165)

Blissfully, the book contains some little-known facts or rumours, the type that will enliven any basic international law class. Thus, the *Nottebohm* decision of the ICJ becomes a lot more plausible on the realization that Nottebohm, when he applied for Liechtensteinian nationality, signed off with an enthusiastic 'Heil Hitler'. On reflection, it should be no surprise that the famous *erga omnes dictum* from the *Barcelona Traction* case was the brainchild of Manfred Lachs, whose considerable political talent would later also help the Court to avoid the painfully hot potato of the *Nuclear Tests* cases. Perhaps most intriguingly, Jiménez de Aréchaga reveals how Roberto Ago, as President of the Vienna Conference on the Law of Treaties, managed to have all key positions (chair of the committee of the whole, chair of the drafting committee, etc) occupied by fellow ILC members: this way, the influence of states could be kept to a bare minimum.

All things considered, this is a lovely book, and it might well be a good idea to repeat the effort with other international lawyers reaching the end of long and distinguished careers. Surely, a book with similar interviews with, for example, Mohammed Bedjaoui, Michael Reisman, Rosalyn Higgins, and Hugh Thirlway may make fascinating reading, as may a volume with Elihu Lauterpacht, Stephen Schwebel, Richard Falk, Pieter Kooijmans, or Jochen Frowein.

The point of doing so would be, most of all, to get back to the essence of teaching. To the extent that teaching involves the conveyance of techniques and skills, books such as the one under review cannot be expected to be of great assistance. But to the extent that teaching also involves the acquisition of practical knowledge and a professional ethos (not to mention a civic ethos, but that's another story), such books can have a great added value. In an academic world dominated by project applications, where all that matters is the number of publications and where it pays to develop clever but possibly highly irresponsible arguments, it is no luxury to be reminded sometimes why there is international law to begin with.

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