Editorial Note

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This symposium on interwar international law jurist Nicolas Politis is part of *EJIL*'s long-standing project to reappraise the European tradition of international law. This brief Editorial Note has two aims. First, it casts an inward – if furtive – glance at the enterprise of intellectual history[1] in international law at large. Secondly, it explains the choice of Nicolas Politis as the focus of this symposium as well as the part played by the five essays featured therein.

The desirability of revisiting the intellectual history of European international law appears self-explanatory. The allure of intellectual history often rests in the perception that there is an intrinsic value in turning to the history of ideas, doctrines and institutions of international law and to the work of scholars involved in their development. The study of the origin, evolution and achievements of the discipline is considered to enhance our knowledge which can be put to multiple constructive uses. Preventively, this knowledge can help us learn from our mistakes, by identifying instances when European international law 'took the wrong turn' or may have been part of the problem instead of the solution. More positively, this knowledge can also help to revive overlooked aspects of the tradition and discern the constants in the European intellectual toolkit that connect our distant disciplinary past to the present and, inevitably, the future.

The intrinsic value of doing intellectual history forms the backdrop to much of the recent 'turn to history' in international law over the past two decades.[2] Numerous symbolic gestures exemplify this turn. The European Society of International Law, for

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1 For classic surveys of the field of intellectual history see P. King (ed.), *The History of Ideas* (1983); and D. LaCapra and S.L. Caplan (eds), *Modern European Intellectual History: Reappraisals & New Perspectives* (1982).

2 For critical readings of the 'turn to history' see, among others, Hueck, 'The Discipline of the History of International Law – New Trends and Methods on the History of International Law', 3 *J History of Int'l L* (2001) 200; Koskenniemi, 'Why History of International Law Today', 4 *Rechtsgeschichte* (2004) 61; Kemmerer, 'The Turning Aside: On International Law and Its History', in R.A. Miller and R.M. Bratspies (eds), *Progress in International Law* (2008), at 71–94.

instance, identified the study of the European tradition as one of its primary institutional goals.[3] The turn to history, however, has not been accompanied by an equally animated scrutiny of the ways in which international law should engage with the past. While this brief Note does not allow a lengthy analysis, we will point to two recurring clusters of questions, the answers to which may produce radically different types (and uses) of intellectual history.

One cluster of questions addresses the relationship between intellectual history and 'truth' about the past. Can (intellectual) history truly recover the past, reconstruct or explain the past 'as it happened'? Or is intellectual history merely capable of interpreting traces of the past as an occasion for our own speculation on the present day and the future of the discipline? Historians of the 19th and 20th centuries, of the Comptean, Hegelian, Marxist or Empiricist kind, were mostly concerned with the application of correct historical method to provide explanations and reconstructions of the past. For them, 'proper' history is method-based scientific work, the purpose of which is ontological, i.e., to reveal how historical facts took place. For this approach, history is distinguishable from ideology or fiction on account of the former's ability to discover truth and the latter's tendency to distort it. Inferences from and interpretation of evidence need to be made 'correctly' by applying good method that removes distortions and subjectivism. The professional historian was the custodian of good history: a forensic expert who toils for the excavation of artefacts from the surrounding debris. Under such conditions, good history can become synonymous with the past. History can only be useful to law if it can lead to truth about law's content, normativity, social function or evolution; knowledge that, when accrued, can be converted to more accurate conclusions and, ultimately, scientific progress.

A second group of scholars took a decidedly different tack during the 20th century. Post-Saussurian linguistics, structuralist, post-structuralist, and post-modern histories posited that, while historical work may be method-based, intellectual history can never reflect the truth about the past in the sense of recounting what *really* happened in a decisive or final way. The distinctions between proper history and amateur/enlisted history and fiction are unstable: while differences can be found in their respective methods and styles, all are constructed and positioned literary modes of speaking or thinking about the past, albeit with different aims and objectives. This is because most critical work approaches history as a discourse, as one of many discourses that try to make sense of the world. It rests on the basic idea, which has become epistemologically commonplace among these movements, that the word and the world are two separate categories: knowledge and representations about how the world is 'out there' are not mere reflections of the world but products of certain ways of categorizing the world. Truth or, rather, the truth-claim, is a discursive construction. The past, the object of inquiry of intellectual history, has already occurred, it is gone, and it is brought to us not as historiography, i.e., the work of historians. History and the past are therefore two different things.

[3] www.esil-sedi.eu/english/constitution.html (last visited 6 Nov. 2011).

This brings us to the second cluster of questions, which concerns the relationship between the 'texts' that intellectual history reads and the 'context' of such texts. Is a scholarly text the product of (or a response to) a wider context that may be legal, political, diplomatic, cultural, historical or economic? If that is the case, how is legal history to figure out the precise causal relationship between the two? Problematizing the text–context relationship in this way leads to another question, namely the distinction between paradigmatic or archetypal texts of an era and less representative or documentary texts. Why does the work of Hudson, Lapradelle, Lauterpacht or Politis enjoy a privileged status among the artefacts coming down to us from an earlier time? Is the study of such paradigmatic texts more likely to give us a 'better' sense of the intellectual tradition of the interwar period as opposed to the work of lesser known authors? Again, three different responses to this cluster of questions could be furnished.[4] First, there is the social-deterministic (Marxist and other) variant, according to which language (and by inference, texts) is a manifestation of causal relationships governing the world (e.g., in the social relations of production) – causal relationships that can be discerned and recorded in a determinate manner. Then there is the Hegelian mode, according to which language is a symbol of a world, a natural or cultural analogy of the world, which presupposes the existence of a '*Zeitgeist*' manifested in all aspects of the culture. Thus, proper analysis of traces of the past, especially 'texts', would reveal the essence of the whole. Finally, there is the structuralist/post-structuralist approach, according to which language is a sign system, a code that bears no necessary relationship to that which it signifies. Along these lines, recent critical approaches to intellectual history have claimed that the relationship between a legal text and its context is in fact underdetermined: even if all possible facts surrounding a legal text were listed (e.g., by means of a biography of an author), one would still not be able to determine cause-and-effect relationships between them in a final way. In order to ascertain such relationships one needs a method for the identification of relevant factors to be used for privileging some relationships over others. There is, however, no way of choosing decisively between multiple methods. If there are processes that control the production of texts at all, these processes are complex, multi-layered and influenced by numerous factors, critical histories write. In trying to assess such relationships the jurist cannot avoid the methodological problems of contemporary history. The fact that the object of study is 'law' does not mean that legal technique alone can provide the answer, avoiding the methodological dilemmas of historical analysis.

Five authors were invited to reflect on the lifework of Nicolas Politis for this symposium. A Greek-naturalized French scholar of the interwar period, Politis deserves his place in the pantheon of iconic figures of interwar international law for mainly two reasons. Politis exemplifies in contemporary consciousness the qualities that make an archetypal international lawyer. In his dual role as academic and diplomat–international civil servant, Politis left his mark on some of the most important

[4] For a general survey of theories of the (linguistic) sign see R. Barthes, *Elements of Semiology* (trans. A. Lavers and C. Smith, 1968), especially ch. 3. See also White, 'Method and Ideology in Intellectual History', in LaCapra and Caplan, *supra* note 3, at 280, 284–285.

institutional developments of the interwar period.[5] His scholarship is a combination of intellectual brilliance, meticulousness and vision, displaying impeccable credentials of liberal internationalism. In the work of Politis, as these essays explain, moral idealism finds its place alongside practical reasoning and institutional pragmatism. His achievements would take several pages to begin to describe. Together with Stelios Seferiades,[6] he may be credited with the birth of the discipline of international law in Greece. Aside from (or perhaps because of) the above, there is a second reason that renders Politis a fascinating topic of study. To borrow from dependency theory vocabulary, Politis may also be described as a 'semi-peripheral' scholar, seamlessly mediating the 'core' (e.g., Paris, League of Nations) and the 'periphery' (e.g., Greece), simultaneously engaged in a universal internationalist project and the pursuance of lateral policy objectives.

The essays showcased in the present symposium offer rich accounts of Nicolas Politis' contributions to the moulding of what is widely understood today as the European tradition of international law, thus adopting a range of responses to the methodological questions identified in the first part of this editorial. These intellectual portraits situate the 'texts' of Politis in the 'context' of interwar international law and, by extension, of the European tradition.

The first contribution by Marilena Papadakis sketches a general intellectual portrait of Nicolas Politis by reference to his function as an intellectual during the interwar period. Papadakis presents an analytical framework for the role of intellectuals in public affairs and, more specifically, for French jurists in the intellectual configuration of the time. Based on this framework, she describes Politis as a 'government intellectual'. Papadakis places Politis' work in the context of government intellectuals of that period, such as Renault, Duguit, and others in France, as well as Politis' parallel life as a legal adviser to the Greek governments of Eleftherios Venizelos during the nation-building era of 'bourgeois modernization' – the most ambitious political project in Greek history. Papadakis explains how interwar French government intellectuals sought a reconciliation of individual liberty with social justice in an effort to create a system of collective security that could prevent one national group from dominating another through warfare.

Robert Kolb outlines the organic relationship that binds the writings of Politis to interwar sociological jurisprudence. Kolb begins by outlining the reasons for the emergence of sociological thought during the interwar period in order to describe its main tenets. The essay points specifically to the transposition of Duguit's sociological thought in France (notably the ideas of solidarity and interdependence) into international legal argument and to the pivotal role of authors such as Scelle and Politis in their dissemination. Kolb ends by identifying two essential pitfalls of sociological jurisprudence, namely its 'radical monism' between the 'is' and the 'ought' and, secondly, the way in which the social regularities invoked by sociological jurisprudes for the production of the law ultimately weakens its formality.

[5] See, e.g., Holsti, 'Nicolas Politis (1871–1942)', 36 *AJIL* (1942) 475.

[6] Skouteris, 'The Vocabulary of Progress in Interwar International Law: An Intellectual Portrait of Stelios Seferiades', 16 *EJIL* (2005) 823.

The essay by Umut Özsu reads closely three of Politis' texts as a device for enhancing contemporary perceptions of interwar anti-formalism – the signature move from 19th-century obsession with the stability of the state system to a gradual commitment to constraining sovereignty. For Özsu, studying Politis can cast light on the crucial argumentative strategy of commitment to 'extra-legal' considerations deployed by interwar scholars. While such extra-legal considerations transgressed traditional conceptions of international law, they served as the necessary normative anchor for its fortification from legal formalism. Politis' incremental move away from state-centric and toward 'social' and 'moral' conceptions of international law may be said to exemplify one route by which this change was effected.

Nicholas Tsagourias takes issue with Politis' contribution to the outlawry of war and the definition of aggression. He discusses Politis' involvement in the drafting of the 1924 Geneva Protocol for the Pacific Settlement of Disputes, which purported to fill the gaps in the Covenant of the League of Nations in the prohibition of the use of aggressive force, as well as his proposal for a definition of aggression presented in his function as Rapporteur of the Committee for Security Questions of the League. Tsagourias traces the strong correlations between Politis' contributions and subsequent developments in the UN Charter and the post-War era, leading to the present day. He places Politis' contributions in a wider narrative about progress in international law by highlighting the situational and intellectual ambivalence of progressive international lawyers of that era.

Last but not least, the essay by Maria Gavounelli turns to another primary preoccupation of Politis, namely his polemic against what he described as the 'anachronism' of the law of neutrality. Gavounelli discusses the doctrinal history of neutrality and its various transformations and permutations during the interwar and post-war eras. Gavounelli argues that, although Politis' prediction that the concept of neutrality was 'doomed to disappear' has not been entirely confirmed by later practice, the foresight of his early critique finds adequate resonance today in the fact that only fragments of the law of neutrality remain in existence, performing a decidedly auxiliary role. Moreover, the centralized manner in which the UN Charter deals with the prohibition of the use of force seems to a large extent to have fulfilled the system of collective security that Politis so fervently advocated for much of his life.

In closing, we express our sincere thanks to the contributors and the *EJIL* Board for committing so enthusiastically to the project.