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# Perspective and Scale in the Architecture of International Legal History

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## Abstract

*Recent trends such as the turn to the history of international law, the parallel turn to the international law of history and the resulting emergence of international legal history as a field of study have encouraged an unprecedented interest in methodological questions in international legal history. Should international legal historians focus on the specific or the general? Should their narration be accessible to the many or should it be academic and addressed to the few? This article contributes to these emerging debates by focusing on the perspective and scale of analysis and investigating whether micro-historical approaches can help international legal historians to bridge the gap between the academic realm and the public, unveil unknown or little known international legal histories and contribute to the development of the field. This article aims to start a discussion on perspective and scale in international legal history and argues for inclusive and pluralist approaches by drawing out the advantages and potential of micro-history in relation to, and in combination with, the prevalent doctrinal, institutional and diplomatic macro-histories of international law.*

God is in the details.  
– Aby Warburg

## 1 Introduction

The history of international law has come of age. Once the domain of elitist scholars and practitioners, it has attracted the growing attention of international lawyers, legal

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historians and other interested readers. This certainly constitutes a positive development; international law has a high pedagogical value, as it helps to ‘build peace in the minds of men’ and women.<sup>1</sup> In parallel, exploring the histories of international law can increase our understanding of its past, present and future trajectories. The recent success of certain international legal histories shows that interest in international law and its histories is not the reserve of international legal historians. Rather, international legal histories can attract the interest of the public at large.

The recent ‘turn to history’ of international law,<sup>2</sup> the parallel ‘international turn’ of legal history<sup>3</sup> and the resulting emergence of international legal history as a field of study have all contributed to today’s unprecedented interest in the methodological questions of international legal history.<sup>4</sup> Should international legal histories focus on the specific or the general? Should their narration be accessible to the many or elitist and addressed to the few? Depending on the selected perspective and scale of analysis, international legal history can be macro or micro. On the one hand, macro-history seeks out large, long-term trends in international legal history, looking at multiple events and concepts over the course of centuries.<sup>5</sup> It studies the past on large scales. Macro-history is about people as groups/collectives/states rather than as individuals. On the other hand, micro-history typically reduces the scale of analysis and focuses on specific events, legal items or individuals.<sup>6</sup> It explores interactions among peoples rather than states and pushes individual destinies to the forefront of international historical investigation. Micro-histories are more ambitious than they might appear at first glance. They ask big questions in small places. Despite their small scale, such stories can epitomize the behaviours, logics and motives that can be found in a given society.<sup>7</sup> Micro-histories can bridge the worlds of international law, literature and history.<sup>8</sup>

Most international legal historians have adopted the telescope rather than the microscope when investigating historical events and their legal consequences.<sup>9</sup> International legal histories have approached events on a grand scale and have

<sup>1</sup> United Nations Educational, Scientific and Cultural Organization Constitution 1945, 4 UNTS 275, preamble.

<sup>2</sup> Craven, ‘Theorizing the Turn to History in International Law’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the Theory of International Law* (2012) 35

<sup>3</sup> D. Armitage, *Foundations of Modern International Thought* (2013), at 17 (noting the ‘international turn in intellectual history’).

<sup>4</sup> See generally Vadi, ‘International Law and Its Histories: Methodological Risks and Opportunities’, 58 *Harvard International Law Journal (HILJ)* (2017) 311.

<sup>5</sup> See, e.g., W.G. Grewe, *The Epochs of International Law*, translated by Michael Byers (1984) 1 (dividing the history of international law into periods characterized by the hegemony of specific powers).

<sup>6</sup> On micro-history, see generally Ginzburg, ‘Microhistory: Two or Three Things That I Know about It’, 20 *Critical Inquiry* (1993) 10.

<sup>7</sup> Fisher III, ‘Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History’, 49 *Stanford Law Review (SLR)* (1996–1997) 1065, at 1071.

<sup>8</sup> *Ibid.* (noting that micro-histories ‘typically bridge the worlds of literature and history’).

<sup>9</sup> See Koskenniemi, ‘Histories of International Law: Significance and Problems for a Critical View’, 27 *Temple International and Comparative Law Journal* (2013) 215, at 235 (noting that ‘[h]istories of international law have tended to encompass large, even global, wholes that are supposed to determine the substance of the international laws of a period, such as the “Spanish”, “French”, or “British” “epochs” discussed by Grewe’).

investigated the evolution of legal doctrines across centuries, the development of international legal organizations and the ebbs and flows of international relations among states. In the doctrinal, institutional and diplomatic macro-histories of international law, the individual disappears and becomes irrelevant. Quintessentially, macro-history is a history without people (*histoire sans les hommes*).<sup>10</sup> However, the fact that macro-historical approaches have predominated in the field of international legal history does not mean that micro-histories are (or should be) irrelevant.

There are many factors contributing to the relative wealth of macro-histories and the parallel dearth of micro-histories in international legal history. First, micro-history is of a more recent vintage than macro-history, and this can help explain the relative absence of international legal micro-histories. Micro-history (*microstoria*) emerged only in the latter half of the 20th century in northern Italy.<sup>11</sup> In the past decades, it has become a worldwide phenomenon, having spread across North and Latin America,<sup>12</sup> Europe and Oceania to mention a few.<sup>13</sup> The interest in micro-history arose partly as a reaction to the macro-historical approach put forward by the French Annales School.<sup>14</sup> As is known, the French historian Fernand Braudel, one of the leading figures of the Annales School, emphasized the role of large-scale factors and patterns in history. For him, the history of individuals and events (*histoire événementielle*) only expressed the surface of history rather than its depth. Therefore, for Braudel, such history could have distorting effects. Micro-history reflected 'the political turmoil, social upheaval, and critical atmosphere' of the late 1960s and early

<sup>10</sup> E. le Roy Ladurie, *Le territoire de l'Historien* (1975) (the title of one part of this book is 'histoire sans les hommes').

<sup>11</sup> Muir, 'Introduction: Observing Trifles', in E. Muir and G. Ruggiero (eds), *Microhistory and the Lost Peoples of Europe* (1991) vii, at viii (noting that 'Italian scholars ... coined the term microhistory' and have creatively 'explor[ed] its potentialities'); S.G. Magnússon and I.M. Szijártó, *What Is Microhistory?* (2013), at 7 (cautioning that micro-history cannot be 'narrow[ed] down to the Italian *microstoria*') (at 5); C. Ginzburg, 'Microhistory: Two or Three Things That I Know about It', in C. Ginzburg, *Threads and Traces* (2012) 193, at 208 (examining the use of the terms 'microhistory', 'microhistoria', 'microhistoire' and 'microstoria' in various historiographical traditions and narrating the emergence of micro-history as 'a historiographical current' and 'intellectual convergence' among different fields of study); Trivellato, 'Microstoria/Microhistoire/Microhistory', 33 *French Politics, Culture and Society* (2015) 122 (persuasively illustrating the differences between the various national articulations of micro-history).

<sup>12</sup> On the American reception, see Aslanian *et al.*, 'How Size Matters: The Question of Scale in History', 118 *American Historical Review* (2013) 1431.

<sup>13</sup> Classical examples of micro-history include: E. Rothschild, *The Inner Life of Empires: An Eighteenth-Century History* (2011) (looking at a Scottish family to explore issues of British imperialism); F. Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno and Cross-Cultural Trade in the Early Modern Period* (2009) (examining a trading network with a global outreach in the first half of the 18th century); N. Zemon Davis, *Women on the Margins: Three Seventeenth Century Lives* (1995) (collecting three biographies of a Catholic, a Protestant, and a Jewish woman in early modern Europe); N. Zemon Davis, *The Return of Martin Guerre* (1983) (examining the trial of a man accused of stealing the identity of another in the 16th century); R. Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (1984) (investigating the killing by French factory workers of their master's cats in 1730s Paris); C. Ginzburg, *The Cheese and the Worms* (1980); C. Ginzburg, *Il formaggio e i vermi* (1976) (studying the heresy trial of Menocchio, a Friulan miller, for his eclectic cosmography).

<sup>14</sup> A. Burgière, *The Annales School: an Intellectual History*, translated by J.M. Todd (2009), at 154ff.

1970s.<sup>15</sup> It rejected ‘totalizing and imperious theories’, and it viewed macro-history as being too deterministic, macroscopic and elitist, leaving little if no space to lived experience.<sup>16</sup>

Second, for a long time, international legal scholarship has assumed that states are the only subjects of international law. Non-state actors – including individuals, minorities, indigenous groups and local communities as well as non-governmental organizations and multinational corporations – used to be perceived as mere objects of international law. Only recently has their important role in the development of international law been appreciated.<sup>17</sup> Third, while international legal history is a well-established field of analysis, it remains under-explored compared to other fields.<sup>18</sup> Only recently have international lawyers and legal historians started to investigate the field.<sup>19</sup> Therefore, there has been limited investigation of the available methodologies for conducting such research.<sup>20</sup> If international legal historians have written micro-histories, such stories have not formed consistent patterns yet, nor have they been subjected to a theoretical investigation.

However, the fact that macro-historical approaches have predominated in the field of international legal history does not mean that the current situation must remain as it is. Nor do the historic explanations for the relative absence of micro-histories constitute reasons against expanding their use today. First, micro-history is an important field of historical investigation and has contributed to the ‘anthropological turn’ in historical writing in the mid-20th century.<sup>21</sup> Second, non-state actors have

<sup>15</sup> Port, ‘History from Below, the History of Everyday Life, and Microhistory’, in *International Encyclopedia of the Social and Behavioral Sciences* (2nd edn, 2015) 108, at 112.

<sup>16</sup> Trivellato, *supra* note 11, at 126.

<sup>17</sup> See, e.g., A. Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (2016); Hafner, ‘The Emancipation of the Individual from the State under International Law’, 358 *Recueil des Cours* (2011) 263.

<sup>18</sup> See Oppenheim, ‘The Science of International Law: Its Tasks and Method’, 2 *American Journal of International Law* (AJIL) (1908) 313 (noting that, ‘in spite of the vast importance of this task it has as yet hardly been undertaken; the history of international law is certainly the most neglected province of it’). A century later, the assessment has not changed. See Neff, ‘A Short History of International Law’, in M. Evans (ed.), *International Law* (2003) 1, at 3 (noting that ‘[n]o area of international law has been so little explored by scholars as the history of the subject’).

<sup>19</sup> See, e.g. (in anti-chronological order), P.M. Dupuy and V. Chetail (eds), *The Roots of International Law: Liber Amicorum Peter Haggemacher* (2014); D. Gaurier, *Histoire du droit international* (2014); Fassbender and Peters, *supra* note 2; C. Focarelli, *Introduzione storica al diritto internazionale* (2012); E. Jouannet, *Le droit international libéral – providence: Une histoire du droit international* (2011); A. Orakhelashvili (ed.), *Research Handbook on the Theory and History of International Law* (2011); M. Craven, M. Fitzmaurice and M. Vogiatzi (eds), *Time, History and International Law* (2007); L.F. Alvarez Londoño, *La historia del derecho internacional público* (2006); P. Kovács, *L’histoire en droit international/History in International Law* (2004); R.P. Anand, *Studies in International Law and History: An Asian Perspective* (2004); S. Laghmani, *Histoire du droit des gens, du jus gentium impérial au jus publicum europæum* (2004); W.G. Grewe, *The Epochs of International Law* (2000); A. Truyol y Serra, *Historia del Derecho Internacional Público* (1998); K.-H. Ziegler, *Völkerrechtsgeschichte* (1994). For a general bibliography, including earlier works, see Macalister-Smith and Schwietzke, ‘Literature and Documentary Sources Relating to the History of International Law’, 1 *Journal of the History of International Law* (1999) 136.

<sup>20</sup> For a seminal study, see Lesaffer, ‘International Law and Its History: A History of Unrequited Love’, in M. Craven, M. Fitzmaurice and M. Vogiatzi (eds), *Time, History and International Law* (2004) 27.

<sup>21</sup> Levi, ‘On Microhistory’, in P. Burke (ed.), *New Perspectives on Historical Writing* (1991) (connecting micro-history and works by the anthropologists Frederik Barth and Clifford Geertz).

increasingly expanded their role in public international law, and international legal history has started acknowledging their important role in the creation of the field.<sup>22</sup> According to some scholars, 'human beings are becoming the primary international legal persons'.<sup>23</sup> This process is evident in a range of international law fields, from international investment law and human rights law to international criminal law and international environmental law. Moreover, some scholars have argued that international law should adopt 'a humanist orientation', acknowledging the existence of an ethos of union at the very basis of international law.<sup>24</sup> They invite us to recognize our common humanity.<sup>25</sup> Third, international legal history is also gradually reflecting this shift of attention from states to non-state actors,<sup>26</sup> and 'individual destinies [are being pushed] to the forefront of historical investigation'.<sup>27</sup>

This article contributes to these emerging debates by focusing on the perspective and scale of analysis and investigating whether micro-historical approaches can help international legal historians to bridge the gap between the academic realm and the public, unveil unknown or little known international legal histories and contribute to the development of the field. The article proceeds as follows. First, it discusses the importance of scale and perspective in international legal history. Second, it examines the notions of macro- and micro-history in historiography, international legal history and beyond. Third, it aims to start a discussion on the power of scales in international legal scholarship. It then concludes by highlighting the complementarity and the dialectic nature of macro- and micro-history and the emergence of meso-history as a fruitful compromise between the two.

## 2 Perspective and Scale in the Architecture of International Legal History

Discussing perspective and scale in international legal history can seem a question of strict historiographical interest rather than a matter within the purview of

<sup>22</sup> Trimble, 'Globalization, International Institutions and the Erosion of National Sovereignty and Democracy', 95 *Michigan Law Review* (1997) 1944, at 1946 (noting that '[i]n the past, international law concerned itself mostly with states. ... Now it increasingly concerns itself with private person[s], including multinational corporations ... and it deals with subjects that traditionally were treated as purely domestic matters').

<sup>23</sup> See generally Peters, *supra* note 17.

<sup>24</sup> Delmas-Marty, 'Droit international et humanisme juridique: Quelles perspectives?', in H. Ruiz Fabri, E. Jouannet and V. Tomkiewicz (eds), *Select Proceedings of the European Society of International Law* (2008) 387, at 389.

<sup>25</sup> Abi-Saab, 'Droit international et humanisme juridique: Quelles perspectives?', in Ruiz Fabri, Jouannet and Tomkiewicz, *supra* note 24, 391, at 397. But see Kennedy, 'Perspectives on International Law and Legal Humanism', in Ruiz Fabri, Jouannet and Tomkiewicz, *supra* note 24, at 431, 435 (cautioning that 'international law's contribution has not always been laudable' and that 'international law tolerates, and legitimates, a great deal of suffering').

<sup>26</sup> Yackee, 'Politicized Dispute Settlement in the Pre-Investment Treaty Era: A Micro-Historical Approach', University of Wisconsin Legal Studies Research Paper no. 1412 (2017).

<sup>27</sup> Loriga, 'The Role of Individual in History: Biographical and Historical Writing in the Nineteenth and the Twentieth Century', in H. Renders and B. de Haan (eds), *Theoretical Discussions of Biography* (2013) 113, at 133.

international law. It may seem like a purely theoretical activity with little or no practical impact. Yet, the way we write international legal history also entails assumptions about its subject matter – that is, international law. The selected conceptualization of international law shapes our historiographical approach and vice versa. If one understands international law in a conservative fashion as law governing interstate relations, then micro-historical approaches are of limited or no relevance. If we understand international law in a more progressive fashion, as law governing interstate relations, promoting peace, prosperity and the respect of fundamental values and as having an impact upon a range of actors, including non-state actors, then micro-histories become a useful frame of analysis.<sup>28</sup> Moreover, perspective and scale can affect the way we perceive both international law and its histories.

The issue about perspectives has highlighted some important dilemmas. Who the author is can influence her output. Admittedly, pure objectivity does not exist in history; no international legal historian can remain completely external to, or detached from, the world she seeks to understand. There are no perfectly objective narratives in international legal history. While ‘most historians ... yearn to be ... objective and ... true to the past’,<sup>29</sup> ‘every author writes from an individual perspective’.<sup>30</sup> Inevitably, ‘our own personal experiences or the questions raised by our current historical moment’ will inform ‘the questions that we raise about the past’.<sup>31</sup> If a subjective perspective is unavoidable, awareness of the authorial role in all narratives becomes crucial. Some transparency is needed upfront about the expertise of the author, the selected perspective and approach as well as the type of sources utilized. International legal historians should ‘consciously reflect about the choices they make’ and be ‘explicit and transparent about them’.<sup>32</sup> In this way, the ‘inevitable distortions are themselves a source of richness for ... argumentation and thinking rather than an invalidating flaw’.<sup>33</sup>

Another important facet of perspective concerns the use of sources. International legal historians agree that irrespective of the method chosen, international legal histories should not glorify or alter the past; rather, they should include rigorous research based on verifiable sources.<sup>34</sup> Yet, source critique also matters; in fact, ‘reliance on documents left by the rich and powerful to get at the lives of the poor and oppressed has ... been a source of hefty criticism’.<sup>35</sup> History has been ‘written by the literate’,

<sup>28</sup> Obregón Tarazona, ‘Writing International Legal History: An Overview’, 1 *Monde(s)* (2015) 95, at 99 (considering history writing ‘as an important tool that allows for new insights and an imaginative space in addition to ... classical narratives’).

<sup>29</sup> Wood, ‘In Defense of Academic History Writing’, 48 *Perspectives on History* (2010) 19.

<sup>30</sup> Fassbender and Peters, ‘Introduction: Towards a Global History of International Law’, in Fassbender and Peters, *supra* note 2, at 15.

<sup>31</sup> Hoyos, ‘Legal History as Political Thought’, 56 *American Journal of Legal History* (2016) 78.

<sup>32</sup> Fassbender and Peters, *supra* note 30, at 15.

<sup>33</sup> D’Aspremont, ‘M. Koskeniemi, the Mainstream, and Self-Reflectivity’, 29 *Leiden Journal of International Law* (2016) 626 (arguing, however, that ‘[i]t is not possible to unveil such biases’).

<sup>34</sup> Renders and de Haan, ‘Introduction: The Challenges of Biography Studies’, in Renders and de Haan, *supra* note 27, at 1, 6.

<sup>35</sup> Port, *supra* note 15, at 110.

and it has been biased against societies without a written culture.<sup>36</sup> For instance, historians of the early modern period ‘often have contact with present-day native groups ... to consult them’.<sup>37</sup> Yet problems have arisen when ‘Indian oral tradition ... contradicted the documentary evidence’.<sup>38</sup> Historians have tended to favour written over oral evidence. This is a sort of ‘culture blindness’ as ‘there is a world that is ultimately beyond the text and its discourse’.<sup>39</sup> The adoption of a rule excluding oral evidence can (and has) silence(d) particular voices.<sup>40</sup> Moreover, history used to pay no attention to indigenous peoples, the poor and people from the global South as historical agents.<sup>41</sup> Finally, international legal history has become a battleground between different interpretive communities.

In recent decades, things have started to change, and there have been attempts to broaden the range of perspectives in international legal history. International legal historians have started focusing on states, people and ideas from Asia, Africa and Latin America.<sup>42</sup> For instance, although ‘women’s practices and experiences have been historically dismissed as local’,<sup>43</sup> important studies have focused on distinct episodes of international legal history that have particularly affected women.<sup>44</sup> Since its establishment in the 1990s, the Third World Approaches to International Law movement has explored the political, economic and cultural implications of colonialism in international law.<sup>45</sup> Historians have also explored interdisciplinary tools of analysis to complement written sources<sup>46</sup> as well as intentionally integrated their research processes and source analysis into the narrative itself.<sup>47</sup> Gaps in the sources, hypothesis, doubts and uncertainties thus all become part of the narrative. Finally, if ‘global history is intertwined with the histories of the nation’, we need international legal histories ‘more than ever to fight against myths of imperial and national pasts, which often underpin nationalist populisms’.<sup>48</sup>

<sup>36</sup> D. Olusoga, ‘Books about Our Hidden Past’, *Guardian* (20 January 2018).

<sup>37</sup> Lepore, ‘Historians Who Love Too Much: Reflections on Microhistory and Biography’, 88 *Journal of American History* (2001) 129, at 136

<sup>38</sup> *Ibid.*

<sup>39</sup> Boyd White, ‘The Judicial Opinion and the Poem: Ways of Reading, Ways of Life’, 82 *Michigan Law Review* (1984) 1669, at 1683.

<sup>40</sup> *Ibid.*

<sup>41</sup> Drayton and Motadel, ‘Discussion: the Futures of Global History’, 13 *Journal of Global History* (2018) 1, at 5.

<sup>42</sup> See, e.g., Anghie, ‘The Heart of My Home: Colonialism, Environmental Damage and the Nauru Case’, 34 *HILJ* (1993) 445.

<sup>43</sup> Riles, ‘The View from the International Plane: Perspective and Scale in the Architecture of Colonial International Law’, 6 *Law and Critique* (1995) 39, at 40.

<sup>44</sup> Knop and Riles, ‘Space, Time and Historical Injustice: A Feminist Conflict-of-Laws Approach to the “Comfort Women” Agreement’, 102 *Cornell Law Review* (2017) 852, at 853.

<sup>45</sup> Anghie, ‘The Evolution of International Law: Colonial and Postcolonial Realities’, 27 *Third World Quarterly* (2005) 739.

<sup>46</sup> Drayton and Motadel, *supra* note 41, at 5.

<sup>47</sup> Port, *supra* note 15, at 110.

<sup>48</sup> Drayton and Motadel, *supra* note 41, at 1.

Scale or dimension has always been a ‘fundamental, if unremarked, aspect’ of international law.<sup>49</sup> While historians often assume that ‘a difference of scale ... separates global and local’, as Annelise Riles points out, ‘the international lawyer’s task is not simply to view the world in global or local terms but also to contribute to the architecture of this global space’.<sup>50</sup> International lawyers conceptualize local events ‘as events occurring also on an international plane’.<sup>51</sup> They acknowledge that certain phenomena matter and belong to both the global and local legal sphere.<sup>52</sup> This is what Gunther Teubner calls the ‘glocalization’ of international law.<sup>53</sup>

The scale or dimension of analysis also matters to international legal historians. At first sight, there seems to be a contradiction between the apparent modesty of micro-history<sup>54</sup> and the perceived arrogance of international law.<sup>55</sup> There appears to be an implicit rejection of the smaller scales of historical experience in international legal history. However, this is a false paradox because micro-histories are ambitious projects; by intensifying the scale of analysis, they think big.<sup>56</sup> Paradoxically, narrowing the focus of investigation is a good way to broaden and deepen the knowledge of international law as well as to address big challenges.<sup>57</sup> In parallel, ‘much innovative recent work has operated at the level of micro-history, following the experience of the global in particular small places or through clusters of individuals’.<sup>58</sup>

In conclusion, international law scholarship is gradually adopting a reflexive stance.<sup>59</sup> Reflection on the perspective and scale of analysis has been implicit rather than explicit in the existing scholarship. Nonetheless, acknowledging that different perspectives can co-exist is crucial to ensure that international legal history is a pluralist endeavour. A greater reliance on micro-history would be beneficial for the development of international legal history by strengthening its comprehensiveness, intensifying its depth and fostering multi-polar, multi-faceted and critical analyses.

<sup>49</sup> Riles, *supra* note 43, at 40.

<sup>50</sup> *Ibid.*, at 46, 49.

<sup>51</sup> *Ibid.*

<sup>52</sup> Neuwirth, ‘Governing Glocalisation: “Mind the Change” or “Change the Mind”?’, 12 *Hokkaido Journal of New Global Law and Policy* (2011) 215.

<sup>53</sup> See Teubner, ‘“Global Bukowina”: Legal Pluralism in the World Society’, in G. Teubner (ed.), *Global Law without a State* (1994) 3 (defining ‘glocalisation’ as the parallel coexistence of the local and the global level of governance in the globalization dynamics).

<sup>54</sup> Cohen, ‘The Macrohistory of Microhistory’, 47 *Journal of Medieval and Early Modern Studies* (2017) 53, at 67.

<sup>55</sup> Acheson, ‘The Arrogance of International Lawyers’, 2 *International Lawyer* (1968) 591.

<sup>56</sup> De Vivo, ‘Prospect or Refuge? Microhistory, History on the Large Scale’, 7 *Cultural and Social History* (2010) 387, at 387 (noting that ‘to identify microhistory with the size of its object is a common misconception’).

<sup>57</sup> See, e.g., Riles, ‘Aspiration and Control: International Legal Rhetoric and the Essentialization of Culture’, 106 *Harvard Law Review* (1993) 723, at 725 (analysing and critically assessing the work of a 19th-century international law scholar to address the linkage between international law, culture, aspiration and control in the same century).

<sup>58</sup> Drayton and Motadel, *supra* note 41, at 3.

<sup>59</sup> See, e.g., A. Roberts, *Is International Law International?* (2017).



### 3 The Power of Scale

International legal history 'does not belong to a single theoretical approach'.<sup>60</sup> Rather, different methods co-exist to investigate international legal histories. This section contributes to the state of the art focusing on the power of scale. Rather than discussing micro and macro-historical approaches as binary, such as 'microhistory v. macro-history', this section acknowledges that both micro and macro approaches are legitimate modes of international legal history and that they 'need to be consciously brought into dialogue.'<sup>61</sup> To do so, this section briefly discusses the concepts, main features and complementarity of micro- and macro-histories.

The concepts of micro- and macro-histories diverge to a certain extent. Historians define micro-history as 'the intensive historical investigation of a relatively well defined ... object, most often a single event, or ... a community, a group ... even an individual person'.<sup>62</sup> They compare it to 'a cinematographic close-up'<sup>63</sup> that can enable the scientist to view unseen and unexpected things.<sup>64</sup> Micro-history typically reduces the scale of historical research, adopting the microscope rather than the telescope.<sup>65</sup> It breaks history into small parts, and those parts, in turn, into smaller parts, to study these units at close range.<sup>66</sup> The assumption is that a detailed analysis of a small number of texts, institutions, episodes or individuals 'can be more rewarding than the massive accumulation of repetitive evidence'.<sup>67</sup>

In turn, macro-history has a big comprehensive vision; it studies legal systems, concepts and theories in order to identify patterns of legal evolution through centuries. Macro-historians often rely on secondary sources, 'us[ing] the detailed data of historians for their grand theories of ... change'.<sup>68</sup> They look for 'the causes and mechanisms of historical change', investigate 'what changes and what stays stable' and analyse stages or 'units of history'.<sup>69</sup> As mentioned earlier, macro-history adopts the telescope rather than the microscope. Macro-historians are not interested in the minutiae; rather, they focus on 'the grand stages, the laws of history'.<sup>70</sup>

<sup>60</sup> Lawson and Hobson, 'What Is History in International Relations?', 37 *Millennium—Journal of International Studies* (2008) 415.

<sup>61</sup> Drayton and Motadel, 'A Response to Adelman and Bell', 13 *Journal of Global History* (2018) 21.

<sup>62</sup> Magnússon and Szijártó, *supra* note 11, at 4.

<sup>63</sup> Ginzburg, 'Microhistory', *supra* note 11, at 207.

<sup>64</sup> Revel, 'Un exercice de désorientation: Blow Up', in A. de Baecque (ed.), *De l'Histoire au cinéma* (1998) 101 (comparing the process of micro-history to the investigation of the main character in Antonioni's *Blow-up* (1966) in which a photographer who has taken photos in a London park discovers upon making enlargements of the film that a man may have been murdered).

<sup>65</sup> Magnússon and Szijártó, *supra* note 11, at 4.

<sup>66</sup> *Ibid.*

<sup>67</sup> Muir, *supra* note 11, at viii (internal reference omitted).

<sup>68</sup> Inayatullah, 'Macrohistory and Future Studies', 30 *Futures* (1998) 381, at 381.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

Because micro- and macro-histories adopt different methodologies, they offer a completely different picture of the past. Both micro- and macro-histories designate a multitude of processes that ask different questions, apply different methods and approach the field from a variety of perspectives.<sup>71</sup> Micro-history adopts an inductive method for evaluating historical evidence, ‘focusing on obscure clues that have traditionally been ignored or devalued as insignificant’.<sup>72</sup> Micro-history narrates a story in an attempt to complete an historical jigsaw.<sup>73</sup> The pieces are all there; they just need to be put in the right order. It relies on qualitative analysis.<sup>74</sup> It lacks ‘a mode of established orthodoxy’;<sup>75</sup> rather, it is a ‘place for experimentation’ and a relatively ‘new type of research’.<sup>76</sup> By focusing on certain cases, circumstances and persons, micro-history studies the past on a small scale.<sup>77</sup> Micro-histories can study events, episodes, institutions or individuals or groups. They can investigate a given event to generalize certain findings or to demonstrate the anomaly of its object of study, constituting a sort of incident analysis. The narrative form can vary from an academic article to a short story, from a monograph to a novel. Micro-histories have often transcended their academic boundaries, absorbing influences from different fields, and they can even appeal to both academics and the public at large.

Macro-histories tend to rely on deductive and quantitative types of analysis. They ‘remove choice and contingency’ and ‘privilege structure over human agency’.<sup>78</sup> They tackle major issues, seek out large, long-term trends in international legal history, and ask wide-ranging questions analysing multiple events and concepts over the course of centuries. They prioritize size, structure and relations over individual choices, hopes and destinies.<sup>79</sup> There are three fundamental forms of macro-history: linear, cyclic and spiral. Linear models of macro-history ‘depict ... evolution as progressive. There is a distinct starting point, and an undeviating path forward. Cyclical models assert that history follows a rise and fall ... pattern. ... Spiral models suggest that ... there is progress in some areas and cycles in others.’<sup>80</sup>

<sup>71</sup> See Robisheaux, ‘Microhistory and the Historical Imagination: New Frontiers’, 47 *Journal of Medieval and Early Modern Studies* (2017) 1, at 2 (noting that ‘while having some theoretical foundations, [microhistory] has evolved into a flexible bundle of methodological practices’); Daffara, ‘Macrohistory and City Futures’, *Journal of Future Studies* 9 (2004) 13, at 22 (noting that ‘macrohistories by nature are grand and diverse in their scope, time frame and ... units of analysis’).

<sup>72</sup> Muir, *supra* note 11, at viii, x.

<sup>73</sup> Murray, ‘Literary History as Microhistory’, in C. Sugars (ed.), *Postcolonialism, Pedagogy, and Canadian Literature* (2004) 405, at 411.

<sup>74</sup> Ginzburg, ‘Microhistory’, *supra* note 11, at 196.

<sup>75</sup> Murray, *supra* note 73, at 409.

<sup>76</sup> Muir, *supra* note 11, at viii–ix.

<sup>77</sup> Zalc and Bruttman, ‘Introduction: Microhistories and the Holocaust’, in C. Zalc and T. Bruttman (eds), *Microhistories and the Holocaust* (2017) 1, at 2 (noting that ‘this historiographical movement calls into question the certainties of earlier historiographies, notably the grand explanations based on economic or cultural determinations, by granting renewed importance to individual practices and experiences’).

<sup>78</sup> Inayatullah, *supra* note 68, at 383.

<sup>79</sup> *Ibid.*, at 384; see also J. Guldi and D. Armitage, *The History Manifesto* (2014).

<sup>80</sup> Daffara, *supra* note 71, at 13.

Both micro- and macro-histories have some revolutionary and/or evolutionary potential. None is *a priori* progressive or conservative. Micro-histories can help international legal history to overcome its traditional state-centrism. They devote themselves to ‘interactions among historical persons’,<sup>81</sup> which can ‘reveal greater complexity’ and ‘challenge bigger stories’.<sup>82</sup> In parallel, if macro-history has traditionally focused on international relations and diplomatic history, thus appearing more conservative than micro-history, it also has a revolutionary potential, as Marxist approaches to international legal history have demonstrated.

Micro- and macro-histories can adopt diverging or converging approaches to the issue of time. On the one hand, one of the principal assumptions of micro-history is that ‘the past is a foreign country’.<sup>83</sup> Micro-historians do not explore the past for its current relevance; they explore it for its own sake.<sup>84</sup> Therefore, they prefer to contextualize their stories. In turn, macro-histories frequently engage in current problems, projecting them into the past and often indulging in anachronism. However, while historians generally despise anachronism, international lawyers appreciate that the language of international law is itself somewhat anachronistic.<sup>85</sup> On the other hand, micro-histories can also be used in a presentist fashion; by illuminating past trajectories, they can also illuminate current and future trends. In turn, macro-histories can also adopt some contextualism when investigating the development of given concepts through centuries. The flexibility of micro- and macro-histories means that their interaction becomes more complex than it may appear at first sight, and encourages a fruitful dialogue.

With regard to their geographical scope, micro- and macro-histories can both diverge and converge to a significant extent. While micro-history focuses on the ‘small spaces of the past’,<sup>86</sup> macro-histories survey the past on a continental or global scale.<sup>87</sup> They have a global/universal vocation and/or a focus on big spaces.<sup>88</sup> Yet, when these perspectives apply to international legal history, they converge to a significant extent. ‘Small spaces’ do not merely ‘feel the impact of global forces’; rather, ‘in some cases, they serve as ... dynamic laboratories of change in their own right, and the processes of change that occur in them are much more than simple reactions to the global forces that impinge on them’.<sup>89</sup> Moreover, international legal historians know that even small aspects of the past can have large consequences for international law and its history. Typically, facts of international relevance take place simultaneously in the national and international sphere. Therefore, what would seem merely local becomes internationally relevant. The difference of scale that separates the local and the global fades

<sup>81</sup> Muir, *supra* note 11, at ix.

<sup>82</sup> Cole and Giordano, ‘Microhistories, Micro-geographies: Budapest, 1944, and Scales of Analysis’, in Zalc and Bruttman, *Microhistories*, *supra* note 77, at 113, 114.

<sup>83</sup> D. Lowenthal, *The Past Is a Foreign Country* (1985).

<sup>84</sup> Muir, *supra* note 11, at xii.

<sup>85</sup> Orford, ‘On International Legal Method’, 1 *London Review of International Law* (2013) 166.

<sup>86</sup> Drayton and Motadel, *supra* note 61, at 1.

<sup>87</sup> Christian, ‘Macrohistory: The Play of Scales’, 4 *Social Evolution and History* (2005) 22, at 24.

<sup>88</sup> F. Braudel, *La Méditerranée et le monde méditerranéen à l’époque de Philippe II* (1949).

<sup>89</sup> Bell, ‘Replies to Richard Drayton and David Motadel’, 13 *Journal of Global History* (2018) 16, at 17.

away in international legal history. International legal historians build the architecture of international legal history by conceptualizing local events ‘as events occurring also on an international plane’.<sup>90</sup>

Finally, both micro- and macro-histories can be impactful. Micro-histories are more ambitious than they might appear at first glance. They ask big questions in small places.<sup>91</sup> Despite their small scale, such stories can epitomize the behaviours, logic and motives operating in a given society.<sup>92</sup> Several case studies ‘can be the starting point for a generalization’ and lead to macro-level statements.<sup>93</sup> However, if broad generalizations are not possible, micro-historians can also limit themselves to the so-called ‘incident analysis’, which focuses on intensive analysis of small phenomena.<sup>94</sup> The fact that micro-histories adopt a microscope to investigate given objects of enquiry does not mean that their scope or relevance is limited. Micro-histories are ‘micro’ because of the scale of their selected lens. Depending on the available sources, micro-histories can constitute lengthy monographs. In certain circumstances, micro-histories can be even more significant than macro-histories because they reveal patterns that can be generalized. In turn, macro-history can be particularly appropriate for teaching international legal history by placing doctrines and events ‘in the larger scheme of things’ and by ‘enrich[ing] students’ sense of their own identity’.<sup>95</sup>

## 4 International Law and Its Histories

Are there visible trends in international legal history across these various dimensions? The predominant approach to international legal history has been that of macro-history. International legal historians have traditionally adopted macro-historical approaches, focusing on diplomatic or doctrinal histories rather than micro-histories of individuals, societies or sectors of the same.<sup>96</sup> International legal historians ‘have been interested in the vicissitudes of sovereignty’ rather than that of societies.<sup>97</sup> This is understandable. International legal history, by definition, is the history of international law. For centuries, public international law has consisted of the law governing states.<sup>98</sup> As international

<sup>90</sup> Riles, *supra* note 43, at 49.

<sup>91</sup> Magnússon and Sziártó, *supra* note 11, at 5 (noting that ‘microhistorians always look for the answers for great historical questions ... when studying small objects’).

<sup>92</sup> Fisher, ‘Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History’, 49 *SLR* (1996–1997) 1065, at 1071.

<sup>93</sup> Ginzburg, ‘Some Queries Addressed to Myself’, 18 *Cyber Review of Modern Historiography* (2013) 90, at 93.

<sup>94</sup> Magnússon and Sziártó, *supra* note 11, at 8.

<sup>95</sup> Christian, *supra* note 87, at 22.

<sup>96</sup> See Ginzburg, *supra* note 93, at 109 (noting that ‘while international legal histories have meticulously traced the legal trajectories of the foreign policy of states, they have paid much less attention – virtually none at all – to the private law relations that undergird and support state action that become visible only once analysis penetrates beyond the official statements or formal acts of governments and diplomatic chancelleries’).

<sup>97</sup> *Ibid.*, at 110.

<sup>98</sup> See W. Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (2008), at 362.

law steadily adopted a state-centric approach, the history of international law followed a similar path. In fact, in the traditional Westphalian understanding of international law, as the law governing interstate relations, individuals are mere objects of international law, and, thus, international legal history should remain focused on interstate relations, concepts and institutions – micro-histories are irrelevant. According to this view, by dealing with the local, the particular and the individual, micro-histories cannot meaningfully engage with a field that is global, general or international.

However, in the past decades, international law has expanded exponentially in response to the changing needs of the international community.<sup>99</sup> It now governs areas that had been the exclusive domain of states. While international law remains focused on states, it has increasingly engaged with non-state actors and concerned individuals, communities, minorities and peoples. Several international law regimes – ranging from international intellectual property rights law, human rights law and international investment law to international criminal law and international refugee law – are characterized by the growing emergence of individuals as active participants to given international regimes. The rise of preemptory norms and *erga omnes* obligations also underlines the paradigm shift from a state-centric vision of international law to a more cosmopolitan conceptualization that takes individuals, communities, minorities and peoples into account in addition to and beyond states.<sup>100</sup> In parallel, the argument that micro-histories are incompatible with the breadth and scope of international law is not persuasive. Far from being irrelevant to international legal history, micro-history can present a useful approach. As Carlo Ginzburg points out, ‘a close analysis of a single case study may pave the way to much larger (indeed global) hypotheses’.<sup>101</sup> Micro-histories therefore enable international legal historians to adopt new perspectives and scales of analysis and contribute to the humanization of international law.

Albeit to a limited extent, international legal historians have increasingly mined small episodes, often discovered serendipitously, while seeking insights into major themes of international legal history.<sup>102</sup> They have investigated individual cases,<sup>103</sup>

<sup>99</sup> Pellet, ‘L’adaptation du droit international aux besoins changeants de la société internationale’, 329 *Recueil des Cours* (2007) 9.

<sup>100</sup> Tomuschat, ‘Obligations Arising for States without or against Their Will’, 241 *Recueil des Cours* (1993) 195.

<sup>101</sup> Ginzburg, ‘Microhistory and World History’, in J.H. Bentley, S. Subrahmanyam and M.E. Wiesner-Hanks (eds), *The Construction of a Global World, 1400–1800 CE* (2015) 446, at 462.

<sup>102</sup> See, e.g., J. Paulsson, *Denial of Justice in International Law* (2005), at 10 (discussing some historical background); Veeder, ‘From Florence to London via Moscow and New Delhi: How and Why Arbitral Ideas Migrate’, 4 *Journal of International Dispute Settlement* (2013) 139, at 156 (narrating the story of Maxim the Greek to discuss the migration of ideas across domestic and international jurisdictions).

<sup>103</sup> For an early example, see Jennings, ‘The Caroline and McLeod Cases’, 32 *AJIL* (1938) 82; see also J. Zollmann, *Naulila 1914: World War I in Angola and International Law* (2016); Yackee, ‘The First Investor-State Arbitration? The Suez Canal Dispute of 1864 and Some Reflections on the Historiography of International Investment Law’, in S.W. Schill, C.J. Tams and R. Hofmann (eds), *International Investment Law and History* (2018) 70.

material objects,<sup>104</sup> the life and work of individuals,<sup>105</sup> institutional developments,<sup>106</sup> events of military history and hidden materials buried in archives.<sup>107</sup> The biographies of some international legal scholars and practitioners have been the subjects of great micro-histories.<sup>108</sup> While the turn to micro-histories is only recent,<sup>109</sup> and its potential is only gradually unfolding,<sup>110</sup> micro-history is certainly on the rise.<sup>111</sup>

## 5 Playing with Scales

Like music theory, international legal theory can be a bit abstract. And just as practising scales is not the most exciting part of learning an instrument, reflecting on the different scales of historical analysis might seem dull.<sup>112</sup> Yet, once one has become fluent at practising scales, one will understand and play music with great freedom.

<sup>104</sup> M. Fakhri, *Sugar and the Making of International Trade Law* (2014) (exploring the role of three international treaties in the expansion of sugar-related industrial interests); Hohmann, 'Opium as an Object of International Law: Doctrines of Sovereignty and Intervention', in C. Binder, M.E. Footer and A. Reinisch (eds), *International Law and ...: Select Proceedings of the European Society of International Law* (2014) 277.

<sup>105</sup> See, e.g., Armitage and Pitts, 'This Modern Grotius: An Introduction to the Life and Thought of C.H. Alexandrowicz', in C.H. Alexandrowicz, D. Armitage and J. Pitts (eds), *The Law of Nations in Global History* (2017) 1.

<sup>106</sup> J.P. Scarfi, *The Hidden History of International Law in the Americas* (2017) (studying the rise and evolution of the American Institute of International Law); G. Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (2017) (examining the action of the International Labour Organization, the United Nations, and the World Bank in the international arena).

<sup>107</sup> See, e.g., F.L. Borch III, *War Crimes Trials in the Netherlands East Indies* (2017) (examining the records of the Dutch war crimes tribunals from 1946 to 1969, which prosecuted more than 1,000 Japanese soldiers and civilians for war crimes committed during the occupation of the Dutch East Indies during World War II); M. Bazylar, *Holocaust, Genocide and the Law* (2017) (setting out legal stories of the most significant criminal trials relating to the Holocaust); Cheah, 'The Curious Case of Singapore's BIA Desertion Trials: War Crimes, Projects of Empire, and the Rule of Law', 28 *European Journal of International Law (EJIL)* (2017) 1217ff (studying a set of war crimes trials conducted by the British colonial authorities in post-World War II Singapore.)

<sup>108</sup> See, e.g., P. Sands, *East West Street* (2016), at xxviii–xxix (connecting the Nuremberg trials to the histories of Hersch Lauterpacht, Rafael Lemkin and the history of Sand's own family); T. Buergenthal, *A Lucky Child* (2007) (a former judge in the International Court of Justice in The Hague, telling his experiences during World War II).

<sup>109</sup> But see C.L.R. James, *The Black Jacobins* (1938) (relating the story of the Haitian revolution, 1791–1804, the slave revolt that succeeded and defeated the British and Napoleon).

<sup>110</sup> Bandeira Galindo, 'Force Field: On History and Theory of International Law', 20 *Rechtsgeschichte – Legal History* (2012) 86, at 98 (noting that '[i]nternational lawyers have rarely if ever embarked upon full-length, small-scale histories. Some commendable efforts excavated the doctrine of forgotten authors, but they are generally unconcerned with a movement that, starting in the 1970s, shook the field of historical studies under the label of micro-history').

<sup>111</sup> Magnússon and Szijártó, *supra* note 11, at 69.

<sup>112</sup> One may wonder whether the theory of scales can be skipped altogether in order only to focus on international legal history. The famous violinist Yehudi Menuhin narrates in his autobiography, *Unfinished Journey*, that as a child he considered playing scales a waste of time, wishing only to make music. Yet, as he got older, he learned to play scales. Menuhin writes: 'There is an advantage in establishing the top story of one's constructions first: One has seen the heights; one knows what one is building for and what must be sustained,' but '[u]ndoubtedly I had lost time in balking at scales.' Y. Menuhin, *Unfinished Journey* (1977), at 250.

Analogously, playing with scales can be a great way to improve the international legal craft and to take it to a new level. Scales are not strict rules; rather, they constitute useful theoretical frames. This section discusses experimenting or ‘playing with scales’ in order to determine whether international legal history and theory may benefit from the use of different scales of analysis.<sup>113</sup> Exactly which scale international legal historians should focus upon will depend on the research topic that interests them. In fact, the advantages or disadvantages of each method depend upon the question that is being answered. As noted by a micro-historian, ‘[t]he desire to turn from the “macro” to the “micro”, ... from “above” to “below” and “outside” to “inside”, from the better known to the overlooked and largely forgotten – derives in large part from the topic’.<sup>114</sup> Let us examine three key aspects.

First, micro-histories can enable bottom-up approaches, illuminating specific and individual contributions to international legal history. Not only can they shed light on the life and work of international law scholars and practitioners, but they can also elucidate historical episodes, institutions or even material objects that are of relevance to international law. Micro-histories can reveal historical events such as colonization, war crimes or the slave trade through the eyes of the witnesses and victims, by investigating specific court proceedings, legal instruments and institutions.<sup>115</sup> Especially where given regimes ‘turned peoples into numbers ... it is for us as scholars ... to turn the numbers back into people’.<sup>116</sup> Therefore, micro-history is ‘history with a human face’ and that face is that of the victim, the witness, the persecuted, the subaltern, the marginalized and the neglected.<sup>117</sup> Micro-histories thus have a ‘more human scale’ than macro-histories.<sup>118</sup> They can empower individuals and communities, by making their voices audible. By narrating individual fates, micro-histories contribute to the humanization of the history of international law. However, this does not make macro-histories redundant. *Longue durée* approaches are a necessary part of understanding broader trends and processes in international legal history. Certain macro-histories have not finished saying what they have to say. This is not a plea to take them off the shelf.

Second, the small-scale enables researchers to open new horizons of interpretation, examining given topics from new under-researched angles – for example, exploring the historical smaller details (*minutiae*) of known events – or uncovering hidden histories.<sup>119</sup> Micro-histories promote the analysis of material that macro-historians have

<sup>113</sup> I borrow this term from J. Revel (ed.), *Jeux d'échelles: La micro-analyse à l'expérience* (1996).

<sup>114</sup> Wallen, ‘The Witness against the Archive: Toward a Microhistory of Christianstadt’, in Zalc and Bruttmann, *Microhistories*, *supra* note 77, 300, at 301 (referring to the Holocaust).

<sup>115</sup> Hébié, ‘The Role of the Agreements Concluded with Local Political Entities in the Course of French Colonial Expansion in West Africa’, 85 *British Yearbook of International Law* (2016) 21.

<sup>116</sup> Wallen, *supra* note 114, at 302 (internal reference omitted).

<sup>117</sup> Murray, *supra* note 73, at 411 (noting ‘microhistory undermines the model of historical “centres” and “margins” in the first place’).

<sup>118</sup> Wallen, *supra* note 114, at 302.

<sup>119</sup> See, e.g., Singh, ‘Thailand, Semicolonialism, and the Universalization of International Law’, 97 *New Left Review* (2016) 6 (studying the *Temple of Preah Vihear* and *Cheek v. Siam* cases ‘to unpack the relationship between semicolonialism, Thailand, and the universalization of international law’).

traditionally marginalized or neglected. As Francesca Trivellato points out, ‘micro-history relies on an intensive use of primary sources ... while macrohistory draws abundantly, if not exclusively, on secondary sources’.<sup>120</sup> Yet this does not negate the relevance of macro-history. On the contrary, the adoption of multiple perspectives and different scales of analysis is particularly appropriate when mapping the history of international law because it allows international legal history to overcome its traditional Eurocentrism.<sup>121</sup> There is no single international legal history; rather, a plurality of international legal histories can be narrated depending on the selected research questions, perspectives and scales of analysis.

Third, micro-history is appealing to international lawyers, international legal historians and the general public.<sup>122</sup> Micro-histories ‘convey lived experience to the reader’.<sup>123</sup> They ‘seiz[e] on the power of the narrative, and plac[e] emphasis on telling an interesting ... story, thus grabbing the reader’s attention’.<sup>124</sup> Moreover, micro-histories can also engage the reader in a sort of dialogue by ‘incorporating into the main body of the narrative the procedures of research itself, the documentary limitations ... and interpretive constructions’.<sup>125</sup> In fact, certain micro-histories present two narrative threads: the principal thread of historical investigation and a second story detailing the journey of the historian through the archives, her hypotheses, doubts and uncertainties.<sup>126</sup> By setting great importance on the literary quality of the text, micro-history appeals both to academics and the public.<sup>127</sup>

However, a larger-scale perspective can be more accessible for those not familiar with international legal history. Macro-histories can defragment the fragmentation of micro-histories. As is known, the whole is more than the sum of its parts. Considering some of the segments of international legal history in isolation risks missing the point. It provides only a partial, provisional and incomplete picture of the story. It risks fragmenting international legal histories into a myriad of stories and losing sight of what really matters. Macro-histories can help the reader to see the broad picture, build up a history of the whole and even influence public affairs.

Finally, how do micro- and macro-histories interact? Is there any tension between a panoramic perspective and a narrow focus? Both micro- and macro-histories provide incomplete pictures of international legal history. While micro-histories ignore the big picture; macro-histories neglect the details. Therefore, ‘[a]ny one approach is only ever

<sup>120</sup> Trivellato, ‘Is There a Future for Italian Microhistory in the Age of Global History?’, 2 *California Italian Studies* (2011) 5.

<sup>121</sup> Benton, ‘Law and World History’, in K.R. Curtis and J.H. Bentley (eds), *Architects of World History: Researching the Global Past* (2014) 134, at 134 (noting that ‘until recently [the history of international law] centered resolutely on Europe’).

<sup>122</sup> Magnússon and Szijártó, *supra* note 11, at 75.

<sup>123</sup> *Ibid.*, at 76.

<sup>124</sup> *Ibid.*, at 113 (referring to the writings of Carlo Ginzburg).

<sup>125</sup> Levi, ‘On Microhistory’, in P. Burke (ed.), *New Perspectives on Historical Writing* (2nd edn, 2001) 97, at 106.

<sup>126</sup> Ginzburg, *supra* note 6, at 24.

<sup>127</sup> Magnússon and Szijártó, *supra* note 11, at 24.



partial'.<sup>128</sup> If there is tension between big and small, such tension, this article argues, is not only useful but also fruitful as micro-histories can provide 'a finer and more complex understanding' of known events and uncover discarded, hidden or forgotten histories.<sup>129</sup> In parallel, macro-histories can provide a synthesis.<sup>130</sup> Therefore, different scales and perspectives can be 'a source of creativity, innovation, and hope'.<sup>131</sup> They can unveil 'the violence of our visualising practices', multiply the ways we see the world and perhaps offer a more complete vision of the same.<sup>132</sup>

Thus, to understand the complex architecture of international legal history and its multi-faceted structure, international legal historians can go back and forth between micro- and macro-scales of analysis. The micro-scale of analysis enables international legal historians to spot the unusual, the 'normal exception', irregular patterns that confirm a given rule. The macro-scale of analysis enables them to step back far enough to gain a wider view of international legal history and to provide a synthesis. In some cases, micro-history has a 'fractal-like character', reflecting patterns that are also present at the macro-level. This leads to a certain symmetry in the different scales of analysis.<sup>133</sup> In other cases, the different scales of analysis are complementary. Micro-history emerged in response to macro-history, and, in some ways, it reflects upon the hypotheses posited by macro-history from a different angle. In fact, a new paradigm of historical enquiry – so-called meso-history – has emerged that allows for a middle way between grand theories and particularistic narratives.

Therefore, macro-histories and micro-histories are complementary.<sup>134</sup> The so-called 'issue of framing' explains their complementarity: 'In writing, as in an art gallery, frames determine what we see and how we see it. By telling us what is inside, and what is outside, they suggest what is, and what is not, important. So frames can hide at least as much as they reveal.'<sup>135</sup> Therefore, investigating international legal history through both micro- and macro-historical frames 'offer[s] a richer, fuller and more coherent understanding of the past in general'.<sup>136</sup> Both international legal scholars and historians advocate 'a constant back-and-forth between micro- and macro-history, between

<sup>128</sup> Riles, *supra* note 43, at 50.

<sup>129</sup> Wallen, *supra* note 114, at 302.

<sup>130</sup> See, e.g., Focarelli, *supra* note 19.

<sup>131</sup> Riles, *supra* note 43, at 51.

<sup>132</sup> Peevers, 'Liberal Internationalism, Radical Transformation and the Making of World Orders', 29 *EJIL* (2018) 322.

<sup>133</sup> Magnússon and Szijártó, *supra* note 11, at 63, 74 (noting that micro-historians can 'recognize the whole in a single case' because of their previous 'contextual knowledge') (at 75).

<sup>134</sup> Christian, *supra* note 87, at 28; see also J. Schlumbohm (ed.), *Mikrogeschichte, Makrogeschichte: komplementär oder inkommensurabel?* (1998); Peltonen, 'Clues, Margins, and Monads: The Micro-Macro Link in Historical Research', 40 *History and Theory* (2001) 348.

<sup>135</sup> Christian, *supra* note 87, at 26 (referring to the traditional neglect of Aboriginal perspectives into historical narratives of domestic history).

<sup>136</sup> *Ibid.*, at 27–28 (noting that '[b]y looking at the very small you can sometimes glimpse the very large. But the opposite is also true: by trying to grasp very large themes, you can sometimes find to your surprise that you are closing in on the intimate and the personal').

close-ups and extreme long shots',<sup>137</sup> 'between a wider and a narrower scale[,] in order to gradually come to a clearer view of [their] object'.<sup>138</sup>

## 6 Conclusions

This article invites international lawyers to reflect on perspective and scale in international legal history. In particular, it illuminates the different perspectives and the play of scales (*jeux d'échelles*) – that is, the interdependence between different scales of analysis through which we explore the histories of international law.<sup>139</sup> Perspective and scale matter because 'the change of scale entails a change of paradigm in the way of writing history'.<sup>140</sup> It requires a range of different intellectual, methodological and stylistic choices. Micro-histories can broaden and/or deepen knowledge about international legal history. They can help to identify less worn paths of analysis, thus contributing to the comprehensiveness of international legal history. Therefore, micro-histories can enrich the history of international law by opening new horizons of knowledge and/or unveiling hidden aspects of known stories. They can also bridge the gap between international law, history and literature and be accessible to a larger audience.<sup>141</sup>

Micro-histories can contribute to the inclusiveness of international legal history, bringing it closer to the international community and the public at large. On the one hand, micro-histories can give a voice to the disempowered non-elites, the losers of history and the outliers, those who did not have access to hegemonic power.<sup>142</sup> Micro-history is thus a type of history from below.<sup>143</sup> Micro-histories can unveil discarded histories of international law, moving away from sovereignty and centring on the human dimension. They 'bring front and center the relationship between structure and agency, between free will and determinism'<sup>144</sup> and explore agency – that is, 'the capacity to make a difference amidst constraints'.<sup>145</sup> On the other hand, they can make international law accessible to a broad audience, bringing the readers to a jigsaw and engaging them in its resolution. Micro-histories 'intrigu[e] writers, beguil[e] readers and char[m] ... students'.<sup>146</sup>

<sup>137</sup> Ginzburg, 'Microhistory', *supra* note 11, at 207 (noting that 'the reconciliation between macro- and microhistory [should not] be taken for granted ... [a]nd yet it needs to be pursued' and cautioning that 'no conclusion attained apropos a determinate sphere can be transferred automatically to a more general sphere'); Renders and de Haan, *supra* note 34, at 8 (arguing that 'to understand the whole, we have to understand the parts, but to understand them, we have to understand the whole').

<sup>138</sup> Koskenniemi, *supra* note 9, at 236.

<sup>139</sup> Revel, *supra* note 113.

<sup>140</sup> Zalc and Bruttman, 'Introduction', *supra* note 77, at 2.

<sup>141</sup> Trivellato, *supra* note 11, at 127.

<sup>142</sup> Ginzburg, *supra* note 93, at 91 (highlighting that micro-histories focus on 'oppressed and/or minority groups' including women, children, slaves and heretics).

<sup>143</sup> Cohen, *supra* note 54, at 57.

<sup>144</sup> Port, *supra* note 15, at 111 (noting that 'one of the greatest challenges of the genre is navigating between the Scylla of blind historical forces that determine individual behaviours, and the Charybdis of a romanticized self-determination by radically free historical actors').

<sup>145</sup> Cohen, *supra* note 54, at 59.

<sup>146</sup> *Ibid.*, at 53.

In parallel, macro-histories have a big comprehensive objective; they study legal systems, concepts and theories in search of patterns of legal evolution over centuries. Often relying on secondary sources, macro-historians look for the causes and mechanisms of historical change and analyse epochs of international legal history. Macro-history adopts the telescope rather than the microscope. Macro-historians are not interested in small details; rather, they focus on the big histories of international law. They can offer the bigger picture.

This article concludes that micro- and macro-histories are complementary approaches and that both contribute to answer important historical questions. A positive appreciation of micro-histories as a tool of enquiry in international legal history does not imply that micro-historical approaches are normatively superior to macro-historical approaches. There is no single perspective or scale in international legal history; rather, 'each scale offers new insights and new answers'.<sup>147</sup> International legal historians should select the appropriate perspective and scale to address the questions posed by a particular given object of enquiry. Micro-histories provide a critical platform from which to narrate international legal history. However, they should complement, rather than supplant, other forms of investigation. Combining the careful observation of the micro-historian with a capacity to see the larger international law implications seems to be among the best ways forward.

<sup>147</sup> Christian, *supra* note 87, at 27.