Marcus M. Payk and Kim Christian Priemel (eds). ***Crafting the International Order: Practitioners and Practices of International Law since c. 1800***. Oxford: Oxford University Press, 2021. Pp. 304. $99.00. ISBN: 9780198863830.

This anthology, according to the editors, is intended 'to shed light on how lawyers since the eighteenth century have made sense of and engaged in international politics; how politicians and administrators conceived of and considered their tasks in legal terms; and how the large, amorphous field often described as "international relations" was filled with life in the distinctly legal vernacular of laws and regulations, contracts and treaties, resolutions and conventions casework and judgment' (at 6). In other words, *Crafting the International Order* uses an actor-centred approach to once more discuss the interrelation between international law and politics. This interrelation is contextualized and sharpened by an introductory preface by the series editor, Benjamin Straumann, a Swiss historian working in both Zürich and New York. In a condensed, thoughtful essay of two-and-a-half pages, Straumann reflects on the relationship between politics and law in international relations – a relationship that, for the *Althistoriker* Straumann, naturally begins in Roman antiquity, for even Cicero wanted to place law (*jus*) above force (*vis*). However, Straumann rightly questions whether politics and law are really a dichotomy: history, he argues, can provide empirical answers and show 'that law could… at least under certain circumstances develop independent normative energy and shape politics' (at v). But the opposite also seems possible, and historical investigations might reveal that 'politics has always ended up forcing its shape onto the law in a kind of causal one-way street' (at vi).

These reflections provide the opening for the 10 thoughtful case studies on 'Practitioners and Practices of International Law since c. 1800' that, together with an introduction by the editors, comprise the book. The case studies are written by a relatively homogeneous group of contributors. The authors, all of them historians, teach at universities in the USA, the United Kingdom, Germany, Finland, Norway and Denmark and thus represent a 'Western' perspective on the relation between (international) law and politics. Unsurprisingly, but significantly, they repeatedly rely on a vague idea of the autonomy of law (at v, xxx). It is not quite clear where the theoretical background of this idea comes from (systems theory?), what its scope is and how it relates to the also prominently addressed idea that 'the recourse to juristic expertise and language … was an irresistible and politically powerful tool' (at 13). There is clearly a tension between both ideas (autonomy versus tool), and the reader might feel that it is neither discussed in depth nor finally resolved.

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Read on its own, each of the contributions to the book is of an exceptionally high level of historical craftsmanship. All the authors are experts in the fields they represent. The texts are written in a remarkable blend of primary sources and research

literature. They beautifully represent the current perspective and methodological state of the history of international law in the 19th and 20th centuries (the last decades of the 20th and the early 21st century are not covered). The order of the contributions is chronological, opening with the text by Andrew Cobbing, who provides a decidedly informative overview of 'Japanese Encounters with International Law, c. 1600–1900', focused (contrary to what its title might suggest) on the 19th century. This is followed by Fabian Klose, who devotes his chapter to 'Nineteenth Century International Jurisdiction and the Ambiguous Role of the Members of the Mixed Commissions'. Already, these two contributions clarify that international law in this volume is approached from the global North and admittedly 'disregard[s] voices and perspectives from the global south' (at 15). Chronologically, the volume ends with Morten Rasmussen's text on 'Agents of Constitutionalism: The Quest for a Constitutional Breakthrough in International Law, 1945–1964'. The chapters are mostly based on printed texts and archival sources, whereas oral history is missing where it could have been included as in the latter case.

The actual concern of the volume is expressed concisely in the subtitle, 'Practitioners and Practices of International Law since c. 1800', but even more so in the introduction, 'Thinking Law, Talking Law, Doing Law: How Lawyers Crafted the International Order'. This reflects an actor-centred approach to which all contributors adhere rather consistently and which gives the volume great coherence. The focus is always on the actions of practitioners in international relations and international law: a term used broadly to encompass legal officials, private lawyers, politicians, diplomats, legal advisors, arbitrators, military officers and intelligence agency officials (at 4–5). These practitioners are presented with their (interesting and rich) biographies, which allows readers to situate them as individuals with their own histories and – not infrequently – their own agendas. Some of them were motivated by a decidedly legalistic ethos – they believed that law should trump politics, not the other way around, and that politics should not determine the legal argumentation and its outcome in conflicts. And yet, while many have viewed international law as an autonomous science with its own methodology, distinct from politics, others have mobilized law in political battles for their own agendas (such as closer European cooperation and integration). How such mobilization would affect the autonomy of law is not clear and is scarcely addressed by the authors and editors.

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The chapters of the volume cover a lot of space and time. Spanning centuries and continents, they do not offer a comprehensive or systematic treatment. However, they highlight the merits of an inductive approach based on rich accounts of how international law was 'crafted' in particular settings and held together by a focus on the work of practitioners. While otherwise closely followed, this actor-centred approach (for understandable reasons) is least pronounced in the first contribution on 'Japanese Encounters with International Law'. Cobbing's chapter tells an informative, detailed

and productive story about the adaptation of international law, but the Japanese actors figure less prominently than in the other contributions to the volume, simply because there are fewer sources available about them. Only in the last third of the essay do Japanese scholars appear, and they are characterized biographically with a few brushstrokes. Nevertheless, Cobbing's summary remains convincing: 'Japan's first generation of international lawyers was thus raised and trained in a volatile intellectual climate. As government officials soon recognized, only familiarity with this new language could enable Japan to build a judicial system that could ever meet the treaty powers' vague criteria of a standard of civilization' (at 46). Their task of strengthening Japan's role in the new world order was characterized by the particular challenge of dealing with a normative system that comprised 'a system of ideas grafted from a distant social universe' (at 47).

Fabian Klose's chapter shifts perspective and focus, zooming in on a much more defined group of actors. It introduces the work of the members of the 'Mixed Commissions' for the abolition of the slave trade. Klose has done pioneering work from the sources here, as he did in his 'habilitation' thesis (published in 2019). He describes the actors as 'legal practitioners who, as diplomatic as well as judicial agents, were obliged to implement the stipulations of international treaties on the abolition of the slave trade' (at 51, 56). The mixed commissions turned out to be a 'contested place' where national interests were defended and enforced, and the members are labelled by Klose as 'lobbyists' (at 51) competing with other lobbyists.

Klose's inquiry into commissioners is followed by three chapters looking at government lawyers. Gabriela A. Frei focuses on the influential role of the men of the Foreign Office in the context of British neutrality policy between 1870 and 1914. With regard to decision-making, Frei notes that '[t]heir legal opinion provided the basis for the principal decisions which shaped the course of the British government's policy' (at 77). To illustrate, during the Sino-French war of 1884–1885, the British government struggled to define its approach as no formal declaration of war had been issued. The law officers insisted on enforcing a policy of neutrality and, after 10 days of deliberation, proposed to amend the Foreign Enlistment Act so that it could be enforced even without a declaration of neutrality, making them (in Frei's terms) 'the chief architects of Britain's neutrality policy' (at 85).

The experience of their US counterparts makes for an interesting comparison: Benjamin A. Coates writes on 'US Legal Advisers and the Right to Protect Citizens in the Early Twentieth Century Americas'. In his case, the tension between law and politics is particularly interesting because, as Coates argues, 'a legalist foreign policy was not necessarily a peaceful one' (at 90). One of his central figures is J. Reuben Clark, sketched as 'a firm believer in international law' (at 109) but one who, in 1912, defended US interventions on various grounds, among them the doctrine of self-preservation. Clark later confessed to his son that, even if a state did not pursue interventions, 'you just can't bind yourself legally' (111), as renouncing such a right would invite abuse. This remained the official US position even at the 1933 Seventh Pan-American Conference in Montevideo. In the face of fascist threats, it was revised as the USA sought to cultivate links with Latin American countries: while intervention

in practice did continue, Coates notes that 'the US did [no longer] claim the legal rights to intervene' (at 112).

The following beautiful essay by Michael Jonas on 'Hammarskjöld at The Hague' focuses entirely on one central figure. Hjalmar Hammarskjöld was the father of the better-known Dag Hammarskjöld and represented Sweden at the 1907 Hague Conference. Jonas provides an interesting narrative of a Nordic legal culture influenced by late 19th-century German legal scholarship. The state of Sweden faced difficult circumstances after Norway left the union in 1905, and Hammarskjöld had to assert the interests of a now relatively small country at the conference. In his plea for compulsory arbitration in cases of monetary claims and in his draft of a preamble to the regulations on the laying of automatic submarine mines, focusing on 'imperious military necessity' (at 131, 136), he saw himself in opposition to the clearly more conflict- and war-loving positions of the Great Powers on the eve of World War I. Some contemporaries did not share this benevolent self-assessment; in their view, Hammarskjöld was a typical pro-German Swede from the country's elites, who concealed 'their actual political outlook behind spurious legal arguments and a deeply hypocritical application of international law' (at 140). Then as now, in other words, the line between depoliticization/juridification and disguised politicization was thin and depended on political perspectives.

Marcus M. Payk's fine essay 'International Lawyers and the Crafting of the Paris Peace Treaties, 1919–1920' probes another perception of the legal task – namely, the myth that lawyers practising international law are engaged in a 'purely formal and technical' task. Payk takes issue with this idea, and US secretary of state and delegate Robert Lansing is his crown witness: while Lansing was deeply critical of the Paris Conference, the 'systematic composition and rationality of the treaty structure [agreed at Paris] nonetheless met with his approval as a professional lawyer', and it did so because 'much had been saved by the drafting committee' (at 142). Payk concludes that 'the drafting committee is best understood as a pragmatic tool to maintain a distinction between the political and the legal side of treaty making' (at 153). One can only agree that the lawyers 'were workhorses, gatekeepers and craftsmen at the same time, indispensable for transforming political decisions into legal form yet hardly champions of a legalistic stance.... The work of the drafting committee at the Paris Peace Conference shows us how blurred the boundary between law and politics really was and, at the same time, how important it was to pretend that this boundary actually existed and mattered' (at 161). But the analysis leaves the precise role of law somewhat fuzzy: law is viewed as a 'tool' (at 153), which coexists with the highly political side of the conference as well as the institutions of treaty making at Paris, and it seems to have some form of autonomy, which is however not clarified.

A different angle is offered by Julia Eichenberg's essay, which shifts perspective from lawyers as creative officers pretending to offer independent legal counsel to their own national governments to the exiled jurists who negotiated recognition and legitimacy of governments in exile in wartime London between 1939 and 1945. For Eichenberg, too, there is no dichotomy but a 'dual role as experts and political lobbyists', in which legal advisers and academics worked as '"legal entrepreneurs" or "legal diplomats"

or "double agents"' (at 163). These jurists used academic legal discourse to advance national interests. They depended on public support but (unlike the lawyers active at the Paris Peace Conference of 1919) did not have to pretend to be independent from statesmen. Oscar Schachter's 1977 famous 'invisible college' dictum is referred to several times in the volume and summed up by Eichenberg in the following way: '[T]he legal advisors formed a "college" of international lawyers interacting in London at the intersection of their national interests and international legal discourse. Legal experts in the London microcosm fit Oscar Schachter's definition of an "invisible college" well, in that in their biographies as well as in their professional actions academic and official sides intertwine, leading to a "dedoublement fonctionnel"' (at 169). But the historian Eichenberg goes beyond characterizing the lawyer-actors and addresses in elegant sentences the function of law itself: 'Law produces more than law; it also produces agency, a feeling of at least temporary security, and the basis for further political opportunities' (at 170).

Two further essays pursue the 'Schachter dictum', illustrating how much it has become part of the discourse about international law, including in debates among historians. Kim Christian Priemel modifies Schachter's expression and writes about 'Nuremberg's *Visible* College and the Politics of Internationalism, 1941–1949'. He identifies three main groups of actors – namely, institution builders, courtroom lawyers and 'peer reviewers' (at 193) – among whom he differentiates internally. He argues that 'sharing a legal language did not always bridge gaps between different protagonists precisely because their vernaculars were deeply imbued with different traditions and beliefs' (at 219), and he identifies a change of communicative codes 'if one ventured from politics to science to courts of law and back again' (at 220). The 'security' offered by law had its limits.

Katharina Rietzler's contribution points in the same direction. She analyses 'The International Law Association and the Indus Waters Dispute in the 1950s', and she prefaces this with another take on Schachter: 'Fluid Boundaries and the *Divisible* College'. According to Rietzler, 'the term [invisible college] implies a unity of purpose among legal scholars but also recognizes the multiple allegiances of international lawyers, as representatives of governments, jurisconsultes, bearers of a specific national identity, or purportedly objective scholars' (at 221). The geopolitical background of the partition of South Asia in 1947 plays a role in the Indo-Pakistan dispute over water as a resource essential for survival, which Rietzler addresses. The four lawyers who are the main actors in this study had very different national and political backgrounds: Friedrich Berber, John Laylin, S.M. Sikri and Manzur Qadir. Although the dispute was between two post-colonial nations, not only lawyers from the Indian subcontinent but also 'Western' legal advisors were involved in resolving the conflict. Interestingly, this was the secret for success: 'It was precisely because the ILA was a "divisible" college that claims for the limits of international law's universality could be articulated and resolved' (at 225). Similar to many of the other contributors, Rietzler is unable to identify a boundary between the juridical and the non-juridical: 'Instrumentalization went hand in hand with attempts to "improve" international law.… Even among the four jurists, the boundaries between the juridic and non-juridic were fluid' (at 247).

The International Law Association (ILA), according to the beautifully paradoxical conclusion, 'became a forum for the debate on the impact of decolonization on the legitimacy of international law, making visible fractures not just within the global South but also within the West.… Because it was both an "invisible" and a "divisible college", the ILA could endure' (at 248).

Morten Rasmussen's final contribution takes its cue, not from Schachter, but from another prominent trope of the literature: it is devoted to the 'agents of constitutionalism'. The years between 1945 and 1964, which are covered by Rasmussen, marked a breakthrough for constitutionalism in European law, and Rasmussen finds the key to this in the role of two newly appointed lawyers at the European Court of Justice: '[T]he French politician and lawyer, Robert Lecourt, and the Italian law professor, Alberto Trabucchi, were decisive in swaying the Court in favour of the position of the European Commission' (at 250). Like other contributors, Rasmussen highlights the self-empowerment of jurists in their role and attributes agency to international lawyers, and, like other contributors, he views this outcome in highly positive terms: '[T]he combined careers and experiences of these two figures enabled a carefully calibrated judgment which did not hasten to establish a "full federal form"' (at 273). Thus, the optimistic conclusion of the volume is that law and lawyers played a facilitating role in the integration process of the 1950s and 1960s and promoted the European Union's constitutionalization. But is this an expression of the lawyers' legalistic ethos or would it not rather suggest that they had mobilized law in political battles, weakening claims of law's autonomy?

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A number of general points emerge very clearly from the book's chapters. Two seem straightforward: first, the carefully sketched international lawyers were each shaped by domestic experiences and had their own agendas, and, second, these international lawyers were almost inevitably male: women as protagonists are almost completely missing. The three exceptions – let us mention them all the more – are the Swedish journalist Ida Bäckman (126), the French international lawyer Suzanne Bastid-Basdevant (205–206, 214) and the only French female jurist at Nuremberg, Aline Chalufour (207). However, they only play a marginal role, and we would need to know more to assess their role as practitioners.

In regard to the interrelationship evoked by Straumann, the volume shows that it can be clumsy to assign the labels of politics and law dichotomously; in the 'crafting of the international order', the two have rarely been separated. Neither critical scholars nor mainstream international lawyers will be surprised by this finding. With a warm feeling of self-confidence, lawyers can reread Straumann's initial assumption 'that law could… at least under certain circumstances develop independent normative energy and shape politics' (at vi), and it might make them feel comfortable that law can play an autonomous role if the right characters/personalities with the right legalistic training and consciousness get into the right position. The different contributions

offer many examples of such autonomy and illustrate that such 'shaping of policies' takes on diverse forms: some of the actors studied in the book had their own political agenda when acting as lawyer-diplomats, judges or law officers, and their legal work always took place in different social, political and economic contexts.

Beyond illustrating this particular diversity, it is not easy to distil more specific lessons: the contributions to the book, while selective, address interactions between politics and law from very different angles. Furthermore, some chapters span centuries, others focus on prominent episodes and still others on an individual's lifetime/life work. Readers are left with a rich presentation of case studies, but a relatively diffuse sense of international law's agency and autonomy. Perhaps even this diffuse feeling reflects the selection of case studies. The 'legal order' whose 'crafting' is studied in the book is a particular one. Not only does it remain focused on the global North, but it also chooses not to address international law in the context of the violent and authoritarian 20th century. Could the darker roles of law in this century be productively studied from the perspective of law's autonomy, or would a different theoretical approach be required? It is telling that none of the contributions is devoted to international lawyers working for an authoritarian regime or dictatorship. Soviet or national socialist international lawyers are absent, as are lawyers working for other European and global dictatorships in the 1930s and 1940s and beyond. Some coverage of practitioners from those authoritarian or semi-authoritarian backgrounds would have been helpful to test whether issues and challenges addressed in *Crafting the International Order* are of general relevance, or whether the case studies assembled in the book illustrate ways of 'Thinking Law, Talking Law, Doing Law' under privileged circumstances.

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https://doi.org/10.1093/ejil/chad023

Liv Feijen. ***The Evolution of Humanitarian Protection in European Law and Practice.*** Cambridge: Cambridge University Press, 2021. Pp. 227. £85.00. ISBN: 9781108692243.

The notion of 'the humanitarian' in international refugee protection is contested in its meaning and its significance. What does 'humanitarian' refer to? Is it an inherent characteristic of refugee protection, a desirable quality or a problematic tendency? The book *The Evolution of Humanitarian Protection in European Law and Practice* by Liv Feijen is centred on this notion of 'the humanitarian' in international refugee protection. It explores the notion in various contexts and meanings by looking at the legal interpretation and role of humanitarian protection and the concept of humanitarian (as opposed to legal) structures as well as by assessing humanitarian considerations