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Legal Innovation through a Biographical Lens: Antonio Cassese and the European Tradition

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Abstract

This symposium introduction reflects on themes of tradition and innovation in the work of Antonio ('Nino') Cassese. These themes were central to Cassese's own thinking, in ways drawn out by the three symposium articles on aspects of his life and work, and they play important roles in international law more broadly. In exploring these themes in a loosely biographical inquiry, the introduction also poses questions about the nature of biographical writing in international law and its relation to memorialization and historicization of law's recent past.

1 A European Tradition 'Inside Out'

This instalment of *EJIL*'s 'European tradition' series breaks from many that precede it, featuring a jurist who is only nominally a figure from the past. Antonio ('Nino') Cassese (1937–2011) was working actively and prolifically at the time of his passing. The institutional and substantive innovations that he forged remain central to various areas of international law today. His presence still looms large through the relationships of supervisor to student and colleague, as his collaborators continue to edit and revise the textbooks he authored and play formative roles of their own in international

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law. This symposium, animated by a workshop associated with the 10-year anniversary of Cassese's passing and making use of his papers at the Historical Archives of the European Union, is thus exploring a 'European tradition' still in the making, seen at close range rather than across the passage of centuries.[1] Cassese himself was one of the early instigators of, and contributors to, the 'European tradition' rubric within the *EJIL*,[2] and the symposium authors take this opportunity to think with and through his work about two of his preoccupations: not only tradition but also its ostensible conceptual opposite, innovation. As the symposium appears in the wake of rich recollections and analyses of Cassese's life and contributions to international law,[3] it is not aiming to offer a comprehensive survey of the subject's work and influence. Rather, the authors take the twinned themes as prompts for further exploration – both of Cassese's own work and of the connections between biography, memorialization and historicization of law's recent past. Inhabiting the 'European tradition' rubric and turning it inside out in order to make some of its seams and construction visible, the symposium opens questions about the effects of positing a 'tradition' in primarily biographical terms, as a series of individual figures.

2 Parameters of the Symposium

A *'Innovation' and 'Tradition' as Themes*

Law is both shaped over time and open to radical change. Unsurprisingly, then, legal discourse grapples with change and continuity in complex ways. In international law,

[1] This introduction, and the papers in the symposium, have been enriched by exchanges between the symposium editors and other scholars who attended a workshop in October 2021 (Andrew Clapham, Andrea Bianchi, Lia Brazil, Paola Gaeta, Anna Leander and Edward Thomas) as well as by a public lecture by Hina Jilani on 21 October 2021 (see 'Public Lecture to Commemorate the Tenth Anniversary of the Passing of Antonio Cassese', available at www.youtube.com/watch?v=uAaq3JWm77c&t=237s). Participants are grateful to the European University Institute (EUI) and the Graduate Institute, Geneva, for funding this workshop. Participants in the workshop and symposium authors have also benefited greatly from the bibliographical work of Valentina Spiga and the assistance by Dieter Schlenker, Mary Carr, Andrea Becherucci and colleagues at the Historical Archives of the European Union at the EUI in guiding access to and partially digitizing the initial 2015 deposit of Cassese papers. A further deposit of papers, made in 2022, is now being processed and remains to be explored. Paola Gaeta has given invaluable support to the project underlying this symposium through her own reflections and reminiscences as well as support with access to relevant papers and arrangements for the 2022 archival deposit. An inventory of the papers is available at https://archives.eui.eu/isaar/635; papers are referred to with the prefix 'ACA-' and, where the folder has been digitized, page numbers of the digitized file.

[2] 'Editorial', 1 *European Journal of International Law* (*EJIL*) (1990) 1; Cassese, 'Remarks on Scelle's Theory of "Role Splitting" (Dédoublement Fonctionnel) in International Law', 1 *EJIL* (1990) 210. See also the publication of extracts of interviews in Arangio-Ruiz *et al.*, 'European Tradition', 9 *EJIL* (1998) 386.

[3] Including Gaeta, 'Antonio Cassese', 95 *Rivista di diritto internazionale* (2012) 120; 'Symposium on Realizing Utopia: Reflections on Antonio Cassese's Vision of International Law', 23 *EJIL* (2012) 1029 (diverse commentaries on Antonio Cassese's work, with a focus on aspects to the fore in *Realizing Utopia*); 'Antonio Cassese's International Criminal Justice', 10 *Journal of International Criminal Justice* (*JICJ*) (2012) 1029 (reflections and commentaries on Cassese's contributions and other topical issues in international criminal law in particular; includes the transcript of an evening of tribute and reminiscence at the Special Tribunal for Lebanon, with comments on a wide range of Cassese's activities and interests, at 1419ff).

this ranges from understandings of precedent, definitions of custom and descriptors such as *lex lata* and *lex ferenda* to rhetorical postures of reformism versus revolution. These terms are of course highly malleable. One jurist's radical embrace of the *lex ferenda* is another jurist's modest alignment with the trajectory of the *lex lata*; legal practice and reasoning often involve striving to portray a situation under one or another of these guises. At a higher level of abstraction, legal philosophies or orientations such as positivism, naturalism and cosmopolitanism tend to be aligned to some degree with either continuation of the *status quo* or radical innovation, even if these associations are profoundly unstable (positivism, typically associated with conservatism and preservation of the *status quo*, can also entail radical change when governments deliberately craft new obligations; naturalism and cosmopolitanism, typically associated today with far-reaching change in international law towards the greater preservation of individual human rights, enjoy an appeal and intellectual force rooted in part in much older ways of conceiving of the universal).

In many aspects of his work, Cassese was frustrated with, and consciously pushing against, established scholarship and inherited legal institutions. He was also deeply invested in shaping and characterizing legal approaches to projects of change (evident in framings such as 'critical positivism' and 'realistic utopianism'). 'Innovation' might seem a vague, somewhat colourless, way of capturing a mission that Cassese tended to express with greater vividness and specificity. However, taking a term such as 'innovation' to capture the aspiration or realization of change relative to a *status quo* gives us a vantage point at least partly beyond more familiar legal discourse or Cassese's own framings. This, in turn, offers greater perspective on the ways in which Cassese and others use particular descriptors for change as analytical rubrics and rhetorical interventions.

As evidenced by the longevity of the 'European tradition' rubric in the *EJIL*, 'tradition' as a term is perhaps more resonant for international lawyers than 'innovation', closer to lawyers' self-understanding and scholarly vocabulary. It is, however, highly ambiguous. Law itself has features of a tradition, but we might also associate 'traditions' with particular accounts of, or outlooks on, law, shaped by national legal cultures, faiths, ideological stances or other particularisms. Cassese's investment in projects of change sat alongside a sustained interest in tradition in this sense. He was intrigued by how knowledge and influence passed from one generation of jurists to another, an interest evident, *inter alia*, in his own efforts towards a history of Italian international law[4] and in his enthusiasm for interviewing other jurists and scholars and sharing these conversations (and his own autobiographical reflections) with a larger public.[5] These engagements open up questions about how traditions are

[4] Gradoni, 'Feet on the Clouds, Head against the Ground: Antonio Cassese's Militant Legal Idealism', 35 *EJIL* (2024) 297, at 327; P. Gaeta with A. Clapham, 'Antonio Cassese and the "Man in a Case"', 21 December 2023, at 1 (paper on file with P. Gaeta).

[5] See Hasan Khan, 'The Spiritual Exercises of Antonio Cassese and the Re-Forming of a "European Tradition" of International Law', 35 *EJIL* (2024) 331; Sellars, 'Revisiting Röling and Cassese's Appraisal of the Tokyo Tribunal', 35 *EJIL* (2024) 279.

constructed, broken open and remade through institutionalized relationships and personal affiliations.

As this symposium reveals, innovation and tradition are not polar opposites. Traditions are often held together by shared premises about the need for, or inevitability of, future change of some kind; and they are renewed by a process of interrogation and innovation within. Conversely, innovation is always relative to something characterized as a *status quo*, often a particular tradition. In a human and institutional endeavour like law (perhaps *contra* the natural sciences), 'innovation' is discernible only where an idea or norm or institution has some minimal traction or appeal to others and, thus, has at least the potential to be knitted into a tradition of its own, whether claimed by an extant tradition or by founding a new one.

B *Contributions to the Symposium*

The articles gathered here are thinking with Cassese on innovation and tradition, loosely understood, while also probing these categories and Cassese's relationship to them. The symposium authors, and interlocutors in the original workshop, have a range of relationships to Cassese as a person, to his areas of legal expertise and to an assumed 'European tradition'. The articles address the symposium themes from diverse starting points and at different stages of Cassese's life and career, though the stress often falls on periods prior to Cassese's extensively studied engagement with international criminal law.

Lorenzo Gradoni offers an intellectual biography situating Cassese initially within, and against, political and intellectual currents in Italian thought of the 1950s and then tracing the evolution and nuances of Cassese's international thought and practice before his rise to prominence as an architect of international criminal law in the 1990s. The article touches on Cassese's early defiance of the prevailing formalism of Italian international law scholarship, his brief attraction to Marxist currents and tentative engagement with 'Third-Worldist' circles as well as his embrace of a culture of (formalist) expertise in the service of a reformist or progressive tradition. The survey of Cassese's professional and institutional engagements brings to the fore diverse sites and pathways for innovation as well as their limits, some of which are then examined further by Kirsten Sellars and Adil Hasan Khan.

Kirsten Sellars takes as a focus Cassese's 1977 interview with the Dutch jurist B.V.A. Röling, published some 16 years later as *The Tokyo Trial and Beyond: Reflections of a Peacemonger*.[6] Sellars positions Röling and Cassese in what we might see as distinct frontiers of innovation: for Röling, centred on peace and conflict management, dominant in the 1950s, 1960s and early 1980s; for Cassese, centred on individual rights, dominant in the détente and post-Cold War eras. Cassese had been profoundly affected by Röling's 1960 book *International Law in an Expanded World* – the first in a series on 'Contributions to the Progressive Development of International Law', co-edited by Röling and Tokyo dissenter

[6] B.V.A. Röling, *The Tokyo Trial and Beyond: Reflections of a Peacemonger*, edited and with an introduction by Antonio Cassese (1994).

Radhabinod Pal, and the 1977 interview between Cassese and Röling was conceived by Cassese as elucidating a 'progressive' approach to international law and society. Some of what it transmits, though, is the instability of any particular view of a progressive tradition, particularly in the international criminal law context. Cassese is, by the time of the interview, much more convinced by the promise of criminal justice than Röling. Moreover, as Sellars shows, the apparent frankness of the interview form can be deceptive. Röling's prominence as a critic had masked some of the subtler ways in which even his opinion reflected the concerns of Western European states, and omissions in Röling's recollection illustrate how legal intricacies, including some of real significance, may be forgotten in the publicized recollection and transmission of totemic trials.

Adil Hasan Khan draws on the notion of 'living tradition' formulated by the anthropologist Talal Asad, which emphasizes the capacity of tradition to encompass transmission and innovation, continuity and discontinuity. Hasan Khan explores the centrality of techniques of training, on this account of tradition, what Hadot termed 'spiritual exercises', which seek to form specific ethical personae or 'ways of life' in the practitioner and others. Hasan Khan argues that such exercises have import beyond the 'spiritual' or the cultivation of a unitary being; they might have particular salience in situations of plural responsibility, where an individual is called to hold distinct offices and to tailor their ethical responsibilities to these offices. Through this lens, Hasan Khan examines Cassese's critical positivism as a training exercise, a 'synthesis of two streams of tradition – a formalist positivist training into official life and a natural law training into conscience' – and considers the approaches to law that this inculcates.[7] In closing, Hasan Khan reflects on the 'exercise in inheritance through … critical redescription' in which he has been engaged and suggests that this is a task for us all: 'Each express reception and repetition of a tradition is also what introduces innovation and difference into it.'[8]

C *Genres and Sources*

Lawyers' writings about individual peers or predecessors, especially those recently passed, are often – and understandably – closer to what we might term 'memorialization', as opposed to historicization. To sketch a crude binary, memorialization tends to involve gathering and holding a unitary sense of the person and their accomplishments unfolding over time; celebrating the individual themselves, albeit as an actor in larger communities and complex chains of events, as well as recovering and recording personal memories and affinities between speakers or authors and the figure mourned – even if posthumous reflections cannot transfer, to quote Cassese himself, 'the uniqueness of the personality, of which only a very faint trace remains, and which only those who have known a person in depth can preserve in their memory'.[9]

[7] Hasan Khan, *supra* note 5, at 344.

[8] *Ibid.*, at 352.

[9] Cassese, 'La lotta per un nuovo diritto internazionale. Ricordo di B.V.A. Röling', 18 *Politica del diritto* (1987) 275, at 289 (translation by Paola Gaeta). In a coincidental testament to the truth of this sentiment, articulated originally by Cassese with respect to Röling (on which see Hasan Khan, *supra* note 5, at 348), the formulation is also quoted by Gaeta with Clapham in their own reminiscence of Cassese. Gaeta, with Clapham, *supra* note 4, at 2.

This mode of memorialization is associated with certain forms: not only the letters of condolence, public tributes and obituaries that mark the passing of any person of prominence[10] but also scholarly *Festschrifts*, special editions of journals, dedications of prizes and courtrooms. Memorialization may be part of inculcating a culture or tradition within particular institutions as well as helping to develop a public sense of an institution or a discipline's 'legacy'.[11]

Historicization, by contrast, tends to involve a self-conscious taking of distance from the individual; placing the individual themselves back into a larger milieu and trying to bracket any interpersonal connection, even if the author remains within the intellectual and professional structures that they might be trying to historicize. It is a somewhat different exercise from memorialization, even if no objective ground or perspective is humanly attainable and even if adoption of a historical register does not preclude an argument from being itself an intervention in legal discourse.

This symposium makes no claim to have shifted wholly from memorialization to historicization. Authors (and participants at the original workshop) have drawn to different degrees on Cassese's archive, personal knowledge of Cassese as an individual and a jurist and broader scholarly literatures. To centre an inquiry on one individual, and, by extension, to invest in biography as the touchstone, is already to constrain the sorts of historicization that are possible – all the more so given that we have encouraged authors to make use of Cassese's personal papers. Nevertheless, the range of authors, the timing and the thematic orientation of this symposium allow the contributors to reflect in different ways on the stakes of moving from one register to another.

3 Modes and Limits of Legal Innovation

Cassese himself described his orientation to innovation in a rich array of terms. 'Positivism' was for him a touchstone but one that had both positive and negative valences. He often spoke in the language of 'reform' (as in his adoption, in *Realizing Utopia*, of Aldous Huxley's distinctions between 'Technicians', 'Utopians' and 'Judicious Reformers') and described himself as using a technique of 'critical positivism', an idea that encompasses both a particular stance on the foundations of law's authority and an impulse to make law do particular things.[12] Yet his love of literature also offered more colourful and idiosyncratic ways of capturing his outlook: the lawyer should not be Byelinkoff, Anton Chekhov's 'man in a case', shut up in his own

[10] See work on mapping the 'invisible college' through obituaries, which also tend to offer glimpses into intersections between personal and professional affiliation. Leão Soares Pereira and Ridi, 'Mapping the "Invisible College of International Lawyers" through Obituaries', 34 *Leiden Journal of International Law* (2021) 67.

[11] On the importance of 'legacy' talk, see Kendall and Nouwen, 'Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda', 110 *American Journal of International Law* (*AJIL*) (2016) 212.

[12] Gaeta, with Clapham, *supra* note 4, at 4; Gradoni, *supra* note 4, at 326–328; A. Cassese, ed., *Realizing Utopia: The Future of International Law* (2012). For a discussion of 'critical positivism' and its limits, see Feichtner, 'Realizing Utopia through the Practice of International Law', 23 *EJIL* (2012) 1143.

theoretical preoccupations; nor Antoine de Saint-Exupéry's theoretical 'geographer', a man who studies the land from the comfort of his room, reliant on the second-hand accounts of 'explorers' who actually roam over mountains and plains.[13]

Although all these orientations share a broad sensibility, there are differences of emphasis, and attention to these suggests the margin for choice left open by Cassese's more programmatic statements. 'Positivism' is a notoriously tricky word, which might be shorthand for overlapping but distinct concerns: a conceptual prioritization of state consent, manifested through particular forms of state practice; a more general attentiveness to the rigours of legal science over political or instrumental tendencies; a professional posture and style of writing. Cassese's concern that international lawyers risked finishing like Chekhov's Byelinkoff – shielded from, and unresponsive to, the demands of the real world – similarly expressed overlapping yet distinct concerns about the priority of state consent as a legitimating device; about working on abstruse points with limited practical import; and about remaining in a purely academic space rather than engaging in a world of legal practice. Even positivism in the sense of a prioritization of state consent might produce quite different approaches to concrete problems (a matter discussed further below). 'Politics' and the 'political' seem also to have had shades of meaning for Cassese, depending on context, ranging from factional or party-political manoeuvring far removed from law to a more substantive normative programme that law might serve (the 'political' dimension of the latter being somewhat in the eye of the beholder).

Cassese was quite open in his writings about the twin 'sides' of positivism, both its importance for the relative autonomy of law and its perceived negative effects, *inter alia*, as a 'shield of state sovereignty'.[14] In his late characterization of his own position, he situated himself as holding 'two contradictory mindsets' and fluctuating 'between two poles'.[15] His judgement of the orientation of other jurists and scholars, though seemingly categorical, was often more ambiguous than it appeared.[16] Nor was the 'outside' of positivism always clear; Cassese characterized this as engagement with a constellation of other concerns, from different disciplines, to an understanding of values underlying law or, more expansively, the 'reality' of the world. At times, he did accept that this might entail the jurist making an irreducibly political choice between competing values, but, as Gradoni suggests, the more explicit acknowledgements in

[13] We are indebted to Paola Gaeta for drawing attention to the importance of these figures in Cassese's self-description. Gaeta, with Clapham, *supra* note 4, at 4, 9.

[14] Cassese, 'Soliloquy', in A. Cassese, *The Human Dimension of International Law: Selected Papers* (2008) lix, at lxii.

[15] *Ibid.*, at lxiv, lxv.

[16] As Gradoni notes, Cassese's academic 'grandfather', Tomaso Perassi, was a frequent case study for Cassese, who marvelled at Perassi's ability to keep serving the foreign ministry under Benito Mussolini, while holding to his own and quite different political views, yet not allowing this political difference to trouble the surface of international legal scholarship. Gradoni, *supra* note 4, at 302–303. Cassese noted that Perassi was seen with some contempt by the then foreign minister, Galleazzo Ciano, who wrote of him as a 'professional pettifogger'; Cassese alludes here to the danger of the positivist being reduced to a mere servant of the prince, but it is not clear that Cassese was critical necessarily of the putative separation of law and politics or believed Perassi should have conducted himself differently. In this respect, the treatment in A. Cassese, *L'esperienza del male: guerra, tortura, terrorismo alla sbarra. Conversazione con Giorgio Acquaviva* (2011), at 227–230, because it is longer, is slightly more nuanced than in 'Soliloquy'.

the latter vein were a development of the 1980s and not necessarily maintained in their strong form in later years.[17]

Cassese's thinking about the nature of law and the potential avenues for transformation of both law and the world thus remained in flux: the terminology and general sensibility was relatively consistent but there was mobility in the categories. The strong emphasis on contact with the real, with actual institutions, suggests the importance of a situated analysis; programmatic agendas like 'critical positivism' might not capture the reach or intricacy of Cassese's engagements in concrete contexts. To this end, then, it is essential to look more closely at the diverse avenues through which he pursued innovation, including their impasses and limits.

Cassese had long been optimistic about structural means of checking or circumventing the privileged role enjoyed by governments (and, more specifically, executives) in the shaping of international law. One manifestation of this was Cassese's research projects in the late 1970s on parliamentary control of foreign policy[18] and legislative foreign affairs committees.[19] A lecture series at the Hague Academy of International Law in the early 1980s was dedicated to 'Modern Constitutions and International Law'.[20] This was very much of its time, part of a resurgence of scholarly attention to these themes in the 1970s and 1980s in the context of contemporary military engagements and foreign policy controversies,[21] but animated in Cassese's case by a close interest in the actual working of the institutions involved.[22]

This went hand in hand with his sense that civil society and larger publics would be crucial in the process of transforming international law, *inter alia*, using the levers of democratic politics in their own states. Particularly in the latter stages of his career, Cassese authored and edited a number of books intended for a general public audience,[23] wrote extensively for the press[24] and, on occasion, kept the press informed of states' efforts to evade scrutiny.[25] Cassese's archives contain a 1991 letter from the international lawyer Robert Jennings, praising Cassese's book on human rights (probably the 1990 *Human Rights in a Changing World*) and affirming the importance of

17 Gradoni, *supra* note 4, at 327.

18 A. Cassese, *Parliamentary Control over Foreign Policy: Legal Essays* (1980).

19 A. Cassese and J.H.H. Weiler (eds), *Control of Foreign Policy in Western Democracies: A Comparative Study of Parliamentary Foreign Affairs Committees*, 3 vols (1983).

20 Cassese, 'Modern Constitutions and International Law', 192 *Collected Courses of the Hague Academy of International Law* (1985) 336.

21 See also, e.g., L. Wildhaber, *Treaty-Making Power and Constitution. An International and Comparative Study* (1971).

22 Gaeta, with Clapham, *supra* note 4, at 9–10.

23 Including A. Cassese, *International Law in a Divided World* (1986); A. Cassese, *Violence and Law in the Modern Age* (1988); A. Cassese, *Terrorism, Politics, and the Law: The Achille Lauro Affair* (1989); A. Cassese, *Human Rights in a Changing World* (1990); A. Cassese, *Voci contro la barbarie: La battaglia per i diritti umani attraverso i suoi protagonisti* (2008); A. Cassese, *I diritti umani oggi* (2009); Cassese, *supra* note 16.

24 Articles in ACA-28 and ACA-29, some of which are reproduced in P. Gaeta (ed.), *Il sogno dei diritti umani* (2008).

25 The investigative journalist Iain Guest, for example, recalls Cassese seeking to meet him late at night in Geneva to update him on Argentinian manoeuvres to evade scrutiny for forced disappearances. I. Guest, *Behind the Disappearances: Argentina's Dirty War against Human Rghts and the United Nations* (1990), at 483, n. 14.

explaining human rights to a mass audience.[26] It seems likely that this was part of Cassese's thinking in his 1994 work on *Umano disumano: Commissariati e prigioni nell'Europea di oggi* (translated as *Inhuman States*), which recounted (with deliberate blurring of detail) his work on the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). In this context, writing for a larger public seems to have served dual purposes: a need to record sights and experiences that would be difficult to bear alone and a deliberate grappling with the constraints of secrecy applicable to the ECPT's work, in parallel to the way he had manoeuvred many states into publishing the ECPT's reports even though they were not required to do so.[27]

At moments, Cassese also seemed optimistic that popular and public engagement might not only uphold internationalist positions in developed democratic polities but also push for broader transformations in the international legal system, ones with redistributive impacts that might even advance the interests of the developing world against the developed world. Gradoni notes that, at the height of Cassese's engagement with Third-Worldist movements in international law, in the late 1970s, 'Cassese believed that oppressed peoples could act as the agents of change with the help of international legal experts working outside formal diplomatic channels' but in parallel with the United Nations (UN) General Assembly, creating what Cassese referred to as an '*unofficial law*'.[28]

As one of a small number of scholar practitioners with the expertise and stature to 'move' law and scholarship in decisive or at least influential ways, Cassese both translated scholarly preoccupations into monitoring and judicial work (as with the ECPT, the International Criminal Tribunal for the former Yugoslavia (ICTY) and later the Special Tribunal for Lebanon), and wove work as a jurist back into scholarly production with an aspiration to shape developing fields (for example, drawing on his work on the 1976 Algiers Charter / Universal Declaration of the Rights of Peoples, an initiative of civil society and liberation movements rather than states that was intended to form the basis of a new Permanent Peoples' Tribunal, for his scholarly treatment of self-determination; editing a two-volume work on the negotiation of the 1977 Additional Protocols to the Geneva Conventions; and advocating for a generalized system of expert monitoring like that used for torture as the path forward for human rights protection).[29] Both of these, in different ways, complicated the boundaries of lawyers' professional roles. In the scholarly realm, too, Cassese was an institution builder, not only on the *EJIL* but also on the *Journal of International Criminal Justice*, which he cofounded in 2003 and on which he maintained a highly 'artisanal'

[26] ACA-6, p. 65.

[27] A. Cassese, *Inhuman States: Imprisonment, Detention and Torture in Europe Today* (1996), at vii–viii, 92ff. On the manoeuvre regarding publication of reports, see 'Editorial Featuring "Nino in His Own Words"', 22 *EJIL* (2011) 931, at 938.

[28] Gradoni, *supra* note 4, at 312, citing Cassese and Jouve, 'Préface', in A. Cassese and E. Jouve (eds), *Pour un droit des peuples: essais sur la Déclaration d'Alger* (1978), at 22 (emphasis in original).

[29] Algiers Charter: Universal Declaration of the Rights of Peoples (4 July 1976), available at https://permanentpeoplestribunal.org/algiers-charter/?lang=en.

approach to editing.[30] He also embraced new modes of scholarly engagement, particularly through the genre of interviews discussed further below and in gestures like his solicitation, for *Realizing Utopia*, of imaginative contributions from others.

Although lawyers' analyses of Cassese's innovations often centre on his judicial contributions, these judicial contributions have to be seen in the larger matrix of his practice. The conclusion of the ICTY Appeals Chamber, on which both Cassese (then president) and Georges Abi-Saab both sat, that customary international law had evolved to include as war crimes serious violations of international humanitarian law applicable to non-international armed conflicts[31] 'achieved through jurisprudence what the work of the Geneva Diplomatic Conference had failed to do twenty years earlier', when both Cassese and Abi-Saab had been frustrated with the limitations of what came to be Additional Protocol II.[32] An innovation from the bench of the Special Tribunal for Lebanon, purporting to find a definition of a crime of terrorism in customary international law, drew on national law but must also be seen in the context of Cassese's prior scholarship.[33] Both decisions prompted critiques of impermissible innovation and activism from the bench, but, in both cases, the rubric of positivism was sufficiently capacious that the bench as well as critics could claim to have been taking an orthodox approach. As Gradoni observes, Cassese's self-identified positivist orientation to the '"is" between inverted commas enfold[s] a complicated legal ontology'; the law was 'always on a line of flight'. Cassese's reading of international law 'often presupposed a complex temporality, where an intuited future flows into an indeterminate present'.[34] Indeed, in connection with a further matter, the appropriate test for attribution of the conduct of non-state actors, Cassese criticized the International Court of Justice (ICJ) for judgments shorn of actual evidence of state practice.[35] He also argued publicly that the Court had made an error in not recognizing the existence at customary international law of an exception to immunity *ratione materiae* of former heads of state and foreign ministers, where proceedings concerned international crimes – a conclusion firmly resisted in private by ICJ judges.[36]

Although the judgments have tended to garner the most attention, Cassese as judge was also highly active behind the scenes within tribunals and other institutions. Cassese's noted gift for institution building might be understood as a pathway for innovation in its own right, a sort of para-juridical craft. The ability to organize

[30] Recollection of Paola Gaeta.

[31] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Tadić* (IT-94-1-AR72), Appeals Chamber, 2 October 1995, paras 79–137 (see also Separate Opinion of Abi-Saab).

[32] Gaeta, with Clapham, *supra* note 4, at 15.

[33] *Ibid.*, at 18. Cassese occasionally spoke publicly of this germinating role for scholarship – for example, reflecting that work on general principles, often dismissed by others, 'can be regarded as the six characters in search of an author [to borrow from Pirandello, the Italian playwright]. I think these principles are looking for a court, And one day a court may jump in and say "oh look this is a wonderful principle"'. 'Editorial Featuring Nino in His Own Words', *supra* note 27, at 936.

[34] Gradoni, *supra* note 4, at 322.

[35] See, e.g., Cassese, 'The *Nicaragua* and *Tadić* Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia', 18 *EJIL* (2007) 649; Gradoni, *supra* note 4, at 326.

[36] Gradoni, *supra* note 4, at 325.

institutions internally (establish procedures, develop training opportunities) is not typically thought of as a purely legal skill. However, such 'backstage practices' of international law[37] are vital for the working of legal regimes and institutions. The same might be said, beyond the purely judicial context, for the capacity to execute investigative roles in ways that made an impression on colleagues and governments. Cassese took into his work on the ECPT an insight from the International Committee for the Red Cross: '[T]he key to effective inspections is not so much surprise as meticulous attention to detail, tenacity, flair and experience.'[38] Both the archives and his published writings reflect a powerful impetus to question accounts and probe physical spaces and locked cupboards,[39] which he carried over into later investigative roles, including on the Darfur Commission of Inquiry.[40]

Cassese's career, however, does suggest a limit to some of these modes of innovation. Cassese's more official contributions involved cooperation and sometimes tension with the Italian government and brought to the fore constraints on individual jurists' action within a statist system. Recollections of colleagues, and his own archives, record Cassese's outspokenness on, for instance, Argentine disappearances (contributing to his not being re-elected to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities);[41] the workings behind nominations and elections to bodies like the ECPT;[42] as well as Cassese's intense disappointment and anger at non-election to the European Commission of Human Rights and the European Court of Human Rights.[43] Cassese's arguments for extension of the grave breaches regime to prohibited means of warfare (prohibited weapons) had angered the USA, and Italy had blocked his further participation in the delegation to the last session of the 1977 Geneva Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.[44] Constraints could also emerge from international bodies themselves in anticipation or apprehension of states' reactions. The publication of *Umano disumano* occasioned a sharp, and apparently unexpected, conflict with the succeeding president of the ECPT when the president charged that passages of the book violated principles in the Convention on the

[37] To take the evocative phrase of L.J.M. Boer and S. Stolk, *Backstage Practices of Transnational Law* (2019); see also A. Bianchi and M. Hirsch (eds), *International Law's Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (2021).

[38] Cassese, *supra* note 27, at 10.

[39] See notes of his experiences, for example, at ACA-6, pp 37ff.

[40] As in John Jones' recollection of him investigating an allegation of prisoner abuse at the International Criminal Tribunal for the former Yugoslavia. 'Antonio Cassese's International Criminal Justice', 10(5) *JICJ* (2012) 1029, at 1445–1446; Hina Jilani's recollection of work on the Darfur Commission of Inquiry at the memorial event at the EUI, 21 October 2021, available at www.youtube.com/watch?v=uAaq3JWm77c&t=237s.

[41] Frulli, 'Nino Cassese and the Early Stages in the Fight against Enforced Disappearances', 12 *JICJ* (2014) 805; Guest, *supra* note 25, at 116, 119, 483, n. 14; and Yusuf's recollections in 'Antonio Cassese's International Criminal Justice', 10(5) *JICJ* (2012) 1029, at 1422–1423.

[42] Papers in ACA-6.

[43] Papers in ACA-7.

[44] Gradoni, *supra* note 4, at 318; Gaeta, with Clapham, *supra* note 4, at 10–12. The matter is also treated in Cassese, *supra* note 16, at 41.

Prohibition of Torture concerning confidentiality and obligations not to publish personal data and contained 'a number of other comments and assertions with which the Committee would not wish to be associated'.[45] Cassese resisted these allegations and was angered by the refusal to publicize his reply alongside the initial complaint.[46]

Cassese's effort to mobilize international legal expertise as an amplification of peoples' campaigns for the transformation of international law also reached an impasse. Cassese was reluctant to embrace all aspects of the Third World programme (a point explored below in the delineation of traditions). Along with his near-contemporary Georges Abi-Saab, Cassese participated in the elaboration of the Algiers Charter / Universal Declaration of the Rights of Peoples.[47] However, tensions emerged in the effort to, as one organizer of the Algiers Charter put it, 'transcend[] state boundaries, reaching directly to the concept of the rights of peoples, and … transcend[] the abstract bourgeois concept of the individual citizen with abstract rights, reaching to the concrete concept of the individual as a social and historical being, as well as a worker'.[48] As Gradoni indicates, the 'dialectic between official and unofficial law' set in motion by the attempt to channel a law of individuals and groups proved very difficult to manage, and Cassese grew frustrated and, to some extent, disillusioned with the institutional iteration of this 'unofficial law', the Permanent Peoples' Tribunal.[49] Tellingly, perhaps, he wanted to see something much more procedurally rigorous, involving real representation of both sides: there was limited middle ground between a 'peoples' tribunal' and a formal court, with all the costs and constraints the latter involved.

This impasse also found some echo in Cassese's sense of disillusionment with broader democratic and public mobilization for internationalist positions and for international and human rights law in particular. As mentioned above, Cassese's decision to write a popular book on his work at the ECPT occasioned professional conflict and personal anxiety. The book itself seems not to have had the intended effect, with Cassese writing later in life that 'to my regret [it] had a weaker impact than I had hoped'. He felt similarly that other works intended for a general public had failed, being criticized by legal experts for being too popular and yet not truly reaching a wider readership either.[50] This does not, however, seem to have dissuaded him from continuing to undertake

[45] ACA-6, pp. 67ff; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85.

[46] ACA-6, pp. 67ff.

[47] On which, see, e.g., Tognoni, 'The History of the Permanent Peoples' Tribunal', in A. Byrnes and G. Simm (eds), *Peoples' Tribunals and International Law* (2018) 42; Basso, 'Perspectives of the International League for the Rights and Liberation of Peoples', 16 *Social Justice* (1989) 127.

[48] 'Universal Declaration of the Rights of Peoples', 16 *Social Justice* (1989) 155. On the anxieties of Cassese, B.V.A. Röling and Jean Salmon in weighing the expanded rights of oppressed peoples to use force against the advances they saw in a strong account of internal and external self-determination, see, e.g., the essays in A. Cassese and E. Jouve (eds), *Pour un droit des peoples* (1978). Aspects of the Charter were taken up in A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995).

[49] Gradoni, *supra* note 4, at 314–315.

[50] Cassese, 'Soliloquy', *supra* note 14, at lxvii, lxv; Gradoni, *supra* note 4, at 328.

significant press commentary and public outreach for the remainder of his life, perhaps more as an article of faith than a deliberate tactic for effecting particular ends.

The juridical innovations for which he is perhaps most known illustrate both the power and the limits of international courts and tribunals. The advance articulated in *Tadić* with respect to the existence of individual criminal responsibility for violations of international humanitarian law in non-international armed conflict had an enduring impact (contra perhaps the definition of terrorism by the Special Tribunal for Lebanon), even if, as others have pointed out, it did so less as a result of the decision itself than because the decision was accepted, taken up and built upon by others – principally, states.[51] (One might take up a mid-point between these stances and agree that the decision had the importance it came to have because it was accepted by states but, nevertheless, think that even a rejection might have changed the terrain for debate and that even this acceptance might have been difficult or impossible to attain in a negotiation or International Committee of the Red Cross study – in other words, the ICTY did unlock a pathway to change that was not readily available by other means). Other jurisprudential developments to which Cassese contributed, like the elaborate ICTY approach to joint criminal enterprise, and Cassese's dissent in the *Erdemović* case, asserting the availability of a defence of duress even against crimes against humanity and war crimes involving the killing of innocents,[52] fed into a vibrant and (at least for the former) ongoing debate in international criminal law.

4 Traditions in the Making

As Hasan Khan argues, there is no necessarily binary relation between the forging of innovation and deference to a tradition.[53] Indeed, much of the scholarly and institutional labour traced as terrain for innovation above showcases the intimate relationship between pursuing innovation and fostering a tradition, the latter being essential to secure the former. However, to raise the question of tradition invites some more specificity as to which traditions are at issue and how they might relate to each other and to larger structural and geopolitical conditions. The first tradition (or the first legal tradition) glimpsed is a specifically Italian one or, at least, an Italian variant of a broader European tradition that Cassese experienced in the Faculty of Law at the University of Pisa. This was a tradition shaped by a high degree of formalism and positivism (the formalism perhaps making possible, though this is not something Cassese underlines explicitly, the continuity in the legal academic

[51] Milanovic, 'On Realistic Utopias and Other Oxymorons: An Essay on Antonio Cassese's Last Book', 23 *EJIL* (2012) 1033, at 1047.

[52] Separate and Dissenting Opinion of Judge Cassese, *Prosecutor v Erdemović* (IT–96–22–A), Appeals Chamber, 7 October 1997. Judge Stephen also dissented on this point. The Rome Statute has largely adopted the dissentient view in *Erdemović*. Rome Statute of the International Criminal Court 1998, 2187 UNTS 90, Art. 31(1)(d) (though again, the causal relation between the *Erdemović* decision and the approach of the Rome Statute drafters is likely complex).

[53] Hasan Khan, *supra* note 5, at 338.

establishment between the fascist and post-war periods).[54] This tradition was reproduced in a sharp academic and professional hierarchy in the form of familial lineage, 'schools' around 'disciples' or 'fathers' – in Cassese's case, Giuseppe Sperduti and Sperduti's own 'father', Tomaso Perassi – complete with discipline that shaped the terms on which one might publish, for example, in the *Rivista di diritto internazionale*.[55] Cassese clearly made concessions to what he understood as the prevailing norms where 'situational orthodoxy' rendered this indispensable, as in his first writings for the *Rivista* and the style (if not always the content) of the 1971 monograph that he seems to have considered a necessary display of technical prowess.[56] Yet he was attracted too by the distinctive approach of Alfred Verdross, himself perhaps something of an outlier in his own national tradition,[57] and there was, even at this early stage, a sense of a broader European post-war intellectual milieu, whether in the sociology of Theodor Adorno and Max Horkheimer or in Marxist legal circles in Italy and abroad, even if neither of these had any compelling influence on Cassese in the longer term.

As Sellars and Gradoni illustrate, the major development in Cassese's intellectual orientation in law was a connection through B.V.A. Röling's work to a leftist, but not Marxist, reformist orientation, one that Cassese tended to describe as 'progressive'. Early stages of this involved an uneasy collaboration with the socialist Lelio Basso and other Third-Worldist international lawyers around the 1976 Declaration on the Rights of Peoples and one of Cassese's sharpest and most sustained engagements with economic structures, his report as rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the human rights impact of foreign assistance to Chile under Augusto Pinochet.[58] Cassese was still seeking to organize scholarship around a 'progressive' orientation when he made overtures to Röling in 1977 for the interview that would later be published as *The Tokyo Trial and Beyond*[59] and efforts in the early 1980s to establish a new 'progressive' international law journal.[60] However, this was a period of disillusionment and growing separation from some Third World international lawyers with whom he was friendly, as he distanced himself from the Permanent Peoples' Tribunal. By the mid-1980s, Cassese

[54] As mentioned in note 16 above, Cassese saw Perassi as something of a foreboding figure and a cautionary tale about the limited perspective of positivism. On legal academia, including the work of Giuseppe Sperduti in the fascist period, see Bartolini, 'Italy between the Two World Wars', in G. Bartolini (ed.), *A History of International Law in Italy* (2020) 359.

[55] Gradoni, *supra* note 4, at 302.

[56] *Ibid.*, at 307. The monograph in question is A. Cassese, *Il controllo internazionale: contributo alla teoria delle funzioni di organizzazione dell'ordinamento internazionale* (1971).

[57] See, *inter alia*, the articles in a 'European Tradition' reflection on Verdross in 6 *EJIL* (1995) 32.

[58] Sellars, *supra* note 5, at 284–286; Gradoni, *supra* note 4, at 311–317. That said, Cassese could be a pointed critic of particular corporations at times, as in his writings on Nestlé and the promotion of baby formula, like the 1988 chapter that concerned a Swiss case dealing with allegations that activists had defamed Nestlé: '[T]he machinery of the law has been used to make strength prevail over justice. … The multinationals are omnipotent, we know, and they often have judges, governments, newspapers and television channels on their side.' Reproduced in A. Cassese, *The Human Dimension of International Law* (2008) at 387, 396, 399.

[59] Sellars, *supra* note 5, at 281; Röling, *supra* note 6.

[60] Gradoni, *supra* note 4, at 324.

demonstrated a sense of disappointment in the notion of Third World states as potential allies for the transformation of the international legal order; instead, it was suffering humanity which was the true 'universal class'.[61]

This juncture is of interest because it presents both intrinsic intellectual hesitations and more instrumental and structural reasons for a shift in emphasis. There is no doubt that Cassese's positivist commitments limited the extent to which he could be drawn entirely into a movement of 'peoples' rights'; he had reservations as to the expansive justifications for use of force by anti-colonial movements, and he had not been particularly engaged, with the notable exception of work on Chile, with economic rights in a way that would have led to sustained interest in the priorities of the New International Economic Order. But geopolitical shifts were also making it more promising to place greater emphasis on 'official law'. By the mid-1980s, Gradoni suggests, Cassese may have felt that 'his struggle for a different, less state-centric international law was alienating him from the places where international law was being made, bringing his left-wing allegiances into conflict with his deepest concern: contributing to the advancement of international law'.[62]

It is at this point that 'Europe' and a 'European tradition' seem to have offered a natural way of articulating what might previously have had a nominally global identity. By 1990, the founding editors of the *EJIL*, Cassese among them, could open volume 1 by recalling a May 1988 statement of intent that mentioned 'an inchoate notion of European identity' and asserted that 'there certainly is a European tradition in international legal scholarship … characterized by a strength in, and sensitivity to, doctrine and theory, by a strong awareness of history and its role in the development of international law and, in recent decades, by an inbuilt respect for pluralism of approaches and the value of diversity'.[63] As 'confrontational cleavages between East and West and North and South' were breaking down, 'a new opportunity for dialogue seems to be emerging, not only in the world of power politics but also within the scholarly community. Europe is located almost as a natural bridge for this new dialogue'.[64] This sense of Europe as a theatre for reconciliation and integration of global import was anchored in a view of Europe's distinctive legal heritage. There was some wariness about, and a disclaimer of any intention to launch, a 'new "Eurocentric" tradition in international law'. The aspiration was framed more loosely: '[S]pecific items … may articulate a European way of reflecting on international law', the 'European tradition' rubric foremost among these.[65]

From the early 1990s, Cassese appears to have retained a sense of the need for fundamental reform of international law but one anchored in individual human rights, liberal democracy and the role of legal expertise and courts and tribunals in reining in states rather than the economic redistribution that is more central to Third-Worldism

[61] *Ibid.*, at 324.
[62] *Ibid.*, at 300.
[63] 'Editorial', *supra* note 2, at 1 (quoting the 1988 statement of intent).
[64] *Ibid.* (still quoting the 1988 statement of intent).
[65] *Ibid.*, at 2–3.

in the 1970s.[66] In turning away from 'unofficial' law, he nonetheless retained a strong faith in international civil society and, in particular, non-governmental organizations (NGOs) as potential partners in the development of innovative regimes of oversight and the reform of international law itself. The centrality of civil society and the role of, in particular, major humanitarian NGOs to Cassese's vision was, if anything, even stronger at the end of his life than at the outset. Although questions of the representativeness, governance and legitimacy of these organizations were quite prominent by this time, they do not seem to have undermined Cassese's sense of their importance or role.[67]

Cassese's focus on torture, international humanitarian law and, particularly from the mid-1990s, international criminal law mirrored a broader shift sometimes identified in international law, in which human rights came to stand in place of broader redistributive transformations and human rights became increasingly orientated towards remedies, including criminal prosecution.[68] More concretely, it meant that his engagement with rights was often bound up with atrocities: acts that might readily be condemned by a broad swathe of actors. This went hand in hand for Cassese with a sort of moral universalism, often given expression through literature.[69] This understanding was not a naïve one. For Cassese, evil was an intrinsic part of the human condition and something that law and legal institutions could only meliorate and contain, not expunge. Nevertheless, he had a strong faith – if not a sectarian belief and a rather more generalized optimism – that law could act through universally shared concepts of 'human' and 'humanity'. Cassese was confident that standards of what constituted torture, and 'inhuman or degrading' treatment, could be universal, even if facts needed to be appreciated differently in different national and social contexts and even if his reference points for the universal tended to be European. He wrote, for example, of the ECPT that 'we were able to discern and condemn any negation of humane behaviour precisely because each one of us carried within a clear idea of "man" and "humanity". Many of us had never read Pascal, Rousseau, Beccaria or Kant. Yet, we were all moved by the same concepts and applied the same criteria'.[70]

Involvement in the ICTY and, thereafter, with other international criminal law mechanisms was of course premised on the particular contribution of criminal law in controlling human evil in a largely amoral interstate order. Questions about the role and limits of criminal prosecution are at the heart of Cassese's 1977 interview with Bert Röling and the belated publication of an amended version of the interview

66 This shift is reflected in the relatively limited role of economic redistributive projects and the predominance of North American and European authors, in *Realizing Utopia*, noted in Dugard, 'Book reviews: Realizing Utopia: The Future of International Law', 107 *AJIL* (2013) 478, at 482; Cassese, *supra* note 12.

67 Observation from Lia Brazil in the course of the workshop detailed in note 2 and subsequent discussions.

68 For different facets of this shift, see, e.g., U. Özsu, *Completing Humanity. The International Law of Decolonization, 1960–82* (2024); S. Moyn, *The Last Utopia: Human Rights in History* (2012); and the debates that followed; K. Engle, Z. Miller and D.M. Davis (eds), *Anti-Impunity and the Human Rights Agenda* (2017).

69 See, e.g., resonances between Cassese, *supra* note 27, at 123; A. Cassese, *Kafka è stato con me tutta la vita* (2014), at 57.

70 Cassese, *supra* note 27, at 27–28; M.D. Evans and R. Morgan, *Preventing Torture: A Study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1998), at 350.

in 1993, shortly before Cassese would begin serving on the Appeals Chamber of the ICTY. Sellars' account of this interview brings out the complexities – ideological, generational and interpersonal – of knitting what Cassese thought of as the 'progressive' tradition into the international criminal law that would become one of Cassese's major areas of endeavour. To Cassese's dismay, Röling proved sceptical in 1977 about criminal trials: what had been for Cassese a key moment of innovation was minimized by Röling in retrospect.[71] Moreover, leaving aside Röling's own views, there was, by 1993 when the interview was published, something curious in even identifying the turn to international criminal law with a 'progressive' position. The development of human rights law had fairly significantly altered the landscape such that Cassese was, if sometimes at odds with peers over precise approaches to the discernment of customary international law, much in the 'mainstream' of an increasingly internationalized discipline in which ideological divides had faded.

Hasan Khan's emphasis on tradition as the active cultivation of particular ethical dispositions, helping to navigate between conscience and office, seems peculiarly apt to describe the tenor of Cassese's life from the 1970s on: no longer the product of a tradition as engaged in the making and remaking of traditions. Cassese was not only adept in the usual mechanisms of academic and institutional reproduction (through doctoral supervision, academic editing and the like) and a warm and charismatic figure at the centre of webs of personal and professional connections, but he was also energetically exploring the genres of interview and autobiography as a means of educating and interpellating others. There is something distinctive in the way in which Cassese made use of dialogic genres (interview, soliloquy) that work between oral and written forms. In this sense, as in many others, the contrast that Cassese draws between himself and his academic 'grandfather' Perassi is telling. Perassi was notoriously silent; his engagement with others' work might involve them reading it to him before he uttered a brief judgement.[72] Cassese was quite the opposite; he modelled professional interactions with peers in which questioning the other was the norm and one's own doubts were on display. However, Sellars' attentiveness to what is probed and left unspoken, clarified and glossed over, in Cassese's interview with Röling, directs attention to the way in which even apparently frank exchanges transmit selectively to future generations.[73] The Cassese archive may also function in this way, involving both revelation and concealment, not only preserving a particular place in a tradition but also inviting others to grapple with it.

5 The Biographical Lens

One key feature of Hasan Khan's reading of tradition is that tradition runs through individuals and the practices they adopt. There is a resonance between this understanding and the premise of the 'European tradition' rubric of the *EJIL*. The latter, too,

[71] Sellars, *supra* note 5, at 286.
[72] Cassese, 'Soliloquy', *supra* note 14, at lxi.
[73] Sellars, *supra* note 5, at 291–293.

understands tradition as running through, or at least accessible through, particular figures. This sense of tradition complicates the crude binary between memorialization and historicization posited at the outset of this article, insofar as we are all positioned in relation to a tradition rather than occupying some notional objective plane outside it. More contingently, scholarship today is manifesting a renewed interest in loosely biographical approaches as a means of approaching histories of law, jurisprudence and the international.[74] It seems apposite, then, to think about the stakes of understanding innovation or tradition – or international law more generally – through individual figures.

This is, on the one hand, a very old technique, which can consolidate understandings of intellectual and institutional life as the product of a few 'great (almost always) men'.[75] As a technique, though, it is also open to many of the concerns that animate the search for more reflexive, critical and inclusive histories. Looking through the lens of individual lives grounds analysis in particular places and times, classes and institutions. It is open to differences in national legal cultures and the sociological dimensions of legal training and professional networks. Of course, the choice of figures on which to focus is often shaped by existing understandings of the field: the most prominent figures are those who are then taken as particularly exemplary or revealing (and, often, are the individuals who have left substantial papers or archives). Yet even work on these figures does offer a sense of the relationships that shape the discipline and profession: the letters of application, reference and recommendation; the sharing of scholarship; the arguments over reviews. This is a window into the '(not so) invisible college' in formation: the networks of relations (albeit not without conflict on some points) and of collaboration and mentorship of younger scholars, which constitute the legal community. Read carefully, it might also show the 'outside' of particular traditions: who is included and excluded and on what terms.

That said, a biographical lens does not escape the dilemmas of structure and agency, or causality, that affect the writing of any history. The centrality of the individual comes into question: where did this individual fit exactly, to the extent that we can grasp this in any history of the recent past? What does their life and work show us of larger developments beyond them? How should we judge relations of cause and effect governing developments in which they were involved or to which they were committed? Here, are we to understand Cassese's trajectory in primarily individual terms, as an effort to articulate his relation to an international law tradition(s), or is it more

[74] To give a few examples from a rich array of inquiries, see M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001); J. Beatson and R. Zimmermann, *Jurists Uprooted: German-Speaking Émigré Lawyers in Twentieth-Century Britain* (2004); Genovese, McVeigh and Rush, 'Lives Lived with Law: An Introduction', 20 *Law, Text, Culture* (2016) 1; F. Mégret and I. Tallgren (eds), *Dawn of a Discipline: International Criminal Justice and Its Early Exponents* (2020); L. Almagor, H. Ikonomou and G. Simonsen, *Global Biographies: Lived History as Method* (2022); I. Milford, *African Activists in a Decolonising World: The Making of an Anticolonial Culture, 1952–1966* (2023); 'Historicising Jurisprudence: Person, Community, Form', WG Hart Workshop, 2024, available at https://ials.sas.ac.uk/events/2024-wg-hart-workshop-historicising-jurisprudence.

[75] *Cf.* I. Tallgren (ed.), *Portraits of Women in International Law: New Names and Forgotten Faces?* (2023).

an artefact of the way in which international law itself evolved (towards a greater centrality for individual rights and criminal justice) or, indeed, of the geopolitical shifts that made this sort of humanistic universalism the lingua franca of international law, at least for the period of the 1990s–2010s in which Cassese was operating at the most senior levels?

A further question is what, exactly, the parameters of biography are in a legal context. Cassese is an exceptionally challenging and thought-provoking subject in this regard because he interrogated other lawyers about what inspired and sustained them, intellectually and psychologically, and he wrote repeatedly of his own management of the relation between inner life (the *arrière-boutique* or back shop, after Michel de Montaigne) and the public realm. Questions about the role one's childhood and familial life, religion or irreligion, aesthetic and literary tastes play in an account of why one does what one does were live challenges for this symposium, navigated with patience and creativity by Gradoni and settled only by the artificial bounds of word limits.

On another frontier of biography, especially in the legal context, what is the proper divide between the individual and the institution, and how does that shape our exploration of law's recent past? One of the most moving dossiers in the archive contains Cassese's identity papers – from baptismal certificate through to membership cards in Communist and Socialist youth organizations, various UN passes, a card announcing his status as a member of the ECPT, ICTY security badges (one, temporary, just a piece of paper laminated and then, later, more permanent plastic versions) and an array of university library cards.[76] However, it is precisely these institutional affiliations that pose questions about the limits of a personal and professional archive and any attempt to move into a broader historicization.

To the extent that a career is captured in records, these records are split between personal papers of key office-holders and institutional holdings. For the most part, the articles in this symposium are drawing on Cassese's papers or on published writings: these are not systemic comparisons of what is available in other collections. Nevertheless, it is worth underlining that these comparisons may not be simple, even if undertaken. Maintaining personal papers may offer a way of resisting – consciously or not – strictures of secrecy applicable in one's institutional life: there are in the Cassese papers, for example, notes taken during his work on the ECPT that give a vivid sense of what it was like to try and extract evidence from taciturn prison officials. But these will be fragmentary only. Legal institutions relate to their own records in particular ways, which might well limit the discretion of individuals and archival repositories regarding access to papers.[77] The integrity of adjudication, in particular, rests on a particular bifurcation of what is published (the judgment) and what is not (the hinterland of research, reasoning and argumentation from which judgments or rules emerge). The latter might well be known to some lawyers and assistants, and knowledge of it might circulate informally, but it cannot usually become part of the formal

[76] Papers in ACA-6.

[77] A point under active consideration in relation to material in the 2022 deposit to the Historical Archives of the European Union.

legal discourse or be cited as an argument; there is no doctrine of judicial *travaux préparatoires*. Boundaries of institutional archives are an indirect recognition that intellectual and institutional contributions made decades earlier may still express, or form part of the interpretive context for, existing legal norms.[78] Disparate practices of memorialization and of historical research may thus interact with the maintenance of law's authority. The archive left by Cassese, as a thinker of both innovation and tradition, opens windows into both dimensions of international law. It also lays a challenge to those who come after to interrogate their own relation to the tradition and the ways in which they ground this inquiry.

[78] A. Orford, *International Law and the Politics of History* (2021).