

Valentina Vadi

# The Power of Scale

International Law and  
Microhistories

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# The Power of Scale: International Law and its Microhistories

Valentina Vadi\*

God is in the details.  
Aby Warburg

## Abstract

The history of international law has come of age. Once the domain of elitist historians and international lawyers it has become a field of study. Investigating the histories of international law can help understanding the past, present, and future trajectories of international law. The recent success of certain international legal histories shows that interest in international legal history is not the reserve of international lawyers or legal historians only. Rather, the history of international law attracts the interest of the broader public and can have societal relevance.

Recent trends such as the turn to history of international law, the parallel turn to international law of history, and the resulting emergence of international legal history as a field of study have all determined an unprecedented interest in methodological questions in international legal history. Should international legal historians focus on the specific or the general? Should international legal historians focus on the details or should they investigate big issues? Can their narration be accessible to the many or should it be elitist and addressed to the few?

This article addresses these questions, contributing to the existing literature on international legal history, showing that 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. After discussing the meaning of microhistory, this article investigates and critically assesses the promises and pitfalls of micro-historical approaches to international law and aims to start a discussion on the power of scales in international legal scholarship.

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\* Professor of International Economic Law, Lancaster University, United Kingdom. Emile Noël Fellow, New York University (2013–2014), Marie Curie Fellow, Maastricht University (2011–2013), PhD, European University Institute, M. Jur, Oxford University, M. Pol. Sc. and J.D., University of Siena. This paper was presented at the Annual Workshop of the European Society of International Law Interest Group ‘History of International Law’ on *Evaluating the Turn to History of International Law*, held at the University of Naples Federico II, in Naples, on 6 September 2017. The author wishes to thank José Enrique Alvarez, Evelyn Bouwers, Judy Carter, Fiona Edmonds, Benedict Kingsbury, Sophia Kopela, Meera Nayak, Rachel Ronca, Gerry Simpson, Thomas Skouteris and David Sugarman for their comments, suggestions and remarks on a previous draft. The usual disclaimer applies. The research leading to these results has received funding from the European Research Council under the European Union’s ERC Starting Grant Agreement n. 639564. The chapter reflects the author’s views only and not necessarily those of the Union.

## Introduction

The history of international law has come of age. Once the domain of elitist historians and international lawyers, it has become a fertile field of study. Investigating the histories of international law can help understanding the past, present, and future trajectories of international law. The recent success of certain international legal histories shows that interest in international law and its histories is not the reserve of international lawyers or legal historians only. Rather, the history of international law attracts the interest of the broader public and can have societal relevance.<sup>1</sup> Fostering education about international law contributes to “build peace in the minds of men”,<sup>2</sup> “strengthe[n] international peace and security[,] and promot[e] friendly relations and co-operation among States.”<sup>3</sup> In parallel, knowledge of international legal history is a condition of the respect, critical assessment or reform of international law.

The recent ‘turn to history’ of international law,<sup>4</sup> the parallel ‘international turn’ of legal history,<sup>5</sup> and the resulting emergence of international legal history as a field of study have all determined an unprecedented interest in methodological questions in international legal history.<sup>6</sup> While international lawyers have increasingly explored the origins of their field to understand its current trajectories and address future challenges, legal historians have increasingly explored international rather than national phenomena. These parallel trends have converged and determined the emergence of international legal history as a promising field of study at the crossroads between international law and legal history.

Because of its interdisciplinarity and relative novelty, the field of international legal history has raised a number of methodological questions. Should international legal histories focus on the specific or the general? Should international legal historians focus on the details or should they investigate big issues? Can the narration of international legal histories be accessible to the many or should it be elitist and addressed to the few?

This article contributes to the emerging debates on the methodology of international legal history focusing on the power of scale. Historical research can be conducted using different scales of analysis. Depending on the selected scale of analysis, international legal history can be macro or micro.

Macro-history seeks out large, long-term trends in international legal history, looking at multiple events and concepts over the course of centuries.<sup>7</sup> It studies the

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<sup>1</sup> Pierre D’Argent, *Teachers of International Law*, in Jean d’Aspremont, Tarcisio Gazzini, André Nollkaemper and Wouter Werner (eds.) *INTERNATIONAL LAW AS A PROFESSION* (2017) 412–427, 412 and 417 (considering teachers of international law as “entrusted with a social mission that transcends them.”)

<sup>2</sup> Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO Constitution), signed on 16 November 1945, in force on 4 November 1946, 4 UNTS 275, preamble (affirming that “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.”)

<sup>3</sup> D’Argent, *Teachers of International Law*, 417.

<sup>4</sup> Matthew Craven, *Theorizing the Turn to History in International Law*, 35 in *THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW* (BARDO FASSBENDER & ANNE PETERS EDs., 2012).

<sup>5</sup> DAVID ARMITAGE, *FOUNDATIONS OF MODERN INTERNATIONAL THOUGHT* (2013) 17 (noting the “international turn in intellectual history.”)

<sup>6</sup> See generally V. Vadi, *International Law and its Histories: Methodological Risks and Opportunities*, 58(2) *HARVARD INTERNATIONAL LAW JOURNAL* (2017) 311–352.

<sup>7</sup> See e.g. WILHELM G. GREWE, *THE EPOCHS OF INTERNATIONAL LAW* (2000) 1 (Michael Byers trans, 1984) (dividing the history of international law into periods characterized by the hegemony of specific

past on large scales and relies on quantitative analysis.<sup>8</sup> Macro-history is about people as collectives, nations, or states rather than as individuals. As noted by a historian, “macrohistory takes a long view of history, looking at multiple societies and nations over the course of centuries to reach broad-ranging conclusions about the march of history.”<sup>9</sup>

Microhistory typically reduces the scale of analysis and focuses on given events, legal items, or individuals.<sup>10</sup> It explores interactions among peoples rather than states.<sup>11</sup> It pushes individual destinies to the forefront of international historical investigation. Microhistories are more ambitious than they might look at first glance.<sup>12</sup> They ask big questions in small places.<sup>13</sup> Despite their small scale, such stories can epitomize the behaviors, logics, and motives characterizing a given society.<sup>14</sup> Microhistories can bridge the worlds of international law, literature, and history.<sup>15</sup>

Most international legal historians have adopted a telescope rather than a microscope in investigating historical events and their legal outputs.<sup>16</sup> International legal histories have approached events on a grand scale and investigated international relations among states.<sup>17</sup> In this macro conceptualization of international legal history, the individual disappears and becomes irrelevant. Quintessentially macro-history is a history without people (*histoire sans les hommes*).<sup>18</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.

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powers); Leif Littrup, *Macrohistory and Macrohistorians: Perspectives on Individual, Social, and Civilizational Change*, JOURNAL OF WORLD HISTORY 11 (2000) 118, 118 (noting that “Macrohistorians search for patterns or ‘laws’ and the causes of change through time.”)

<sup>8</sup> Helen Steele, *Microhistory and Macrohistory: Different Approaches to the Analysis of History*, available at <http://www.guernicus.com/academics/pdf/macromicro.pdf> (last visited on 24 March 2018) 2 (noting that “the emphasis is upon verifiable figures, often collected previously in secondary sources. These, the macrohistorian collect together into one place for analysis.”)

<sup>9</sup> *Id.* 1.

<sup>10</sup> On microhistory, see generally Carlo Ginzburg, *Microhistory: Two or Three Things that I Know about it*, CRITICAL INQUIRY 20 (1993), 10–35.

<sup>11</sup> Steele, *Microhistory and Macrohistory*, 1 (noting that “When writing microhistory, the author concentrates upon a single individual or community and through study and analysis, attempts to reach understanding of wider issues at play.”)

<sup>12</sup> *Id.* 1 (highlighting that “a microhistory might appear of rather limited importance to a reader whose interests lie beyond that particular point in time and space but in fact, the approach does have certain advantages.”)

<sup>13</sup> C.W. JOYNER, SHARED TRADITIONS: SOUTHERN HISTORY AND FOLK CULTURE (1999) 1 (arguing that microhistorians need to ask “large questions in small places.”)

<sup>14</sup> William W. Fisher III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, STANFORD L. REV. 49 (1996–1997) 1065, 1071.

<sup>15</sup> *Id.* (noting that microhistories “typically bridge the worlds of literature and history.”)

<sup>16</sup> Martti Koskenniemi, *Histories of International Law: Significance and Problems for a Critical View*, 27 TEMPLE INT’L & COMP. L. J. (2013) 215, 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.”)

<sup>17</sup> Martti Koskenniemi, *Expanding Histories of International Law*, AMERICAN J. LEGAL HISTORY 56 (2016) 104, 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 no attention—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>18</sup> EMMANUEL LE ROY LADURIE, LE TERRITOIRE DE L’HISTORIEN (1975) (entitling part of the book as *‘histoire sans les hommes.’*)

There are many factors contributing to the relative wealth of macro-histories and parallel dearth of microhistories in international legal history. First, as a historiographical current, microhistory is of more recent vintage than macro-history and this can help explain the relative absence of international legal microhistories. In fact, in historiography, the interest in microhistory arose partly as a reaction to the macro-historical approach put forward by the French *Annales* School (and especially Fernand Braudel).<sup>19</sup> Established by Lucien Febvre (1878–1956) and Marc Bloch (1886–1944), the School was extremely influential in the twentieth century, published its own journal, the *Annales*, and promoted an ambitious conception of history as “total history”, that is, a form of history that “dominated and embraced all other studies of the human condition”.<sup>20</sup> An eminent historian and a prisoner during World War II, Braudel examined big issues, such as the history of the Mediterranean Sea in the course of centuries.<sup>21</sup> For Braudel, it is impossible to understand given events without placing them in the perspective of the long-term.<sup>22</sup> *La longue durée*, as he calls it, indicates a perspective of centuries, or even, millennia.<sup>23</sup> Yet, the *Annales* School was seen as too deterministic, macroscopic, and elitist. It left little, if no space to lived experience.<sup>24</sup>

Microhistory began in the late 60s early 70s as a reaction to the *Annales* School.<sup>25</sup> Reflecting “the political turmoil, social upheaval, and critical atmosphere” of that period,<sup>26</sup> it rejected a “totalizing and imperious” history without people.<sup>27</sup> Rather, it focused on individuals, groups, and communities, often considering those people who had been at the margins, because of their lower social status, their “heretical” beliefs, or gender and ethnicity.<sup>28</sup> By focusing on “the lives, beliefs and practices of those who had previously been ‘hidden’ from history”,<sup>29</sup> microhistory

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<sup>19</sup> ANDRÉ BURGIÈRE, *THE ANNALES SCHOOL: AN INTELLECTUAL HISTORY*, trans J.M. Todd (2009), 154 ff.; H.R. Trevor-Roper, *Fernand Braudel, The Annales and the Mediterranean*, *JOURNAL OF MODERN HISTORY* 44 (1972) 468, 468 (highlighting that “no group of scholars has had greater impact ... on the study of history in the [twentieth] century than the French historians of the Annales School.”)

<sup>20</sup> Michael Harsgor, *Total History: The Annales School*, *JOURNAL OF CONTEMPORARY HISTORY* 13 (1978) 1–13, 2.

<sup>21</sup> FERNAND BRAUDEL, *LA MEDITERRANEE ET LE MONDE MEDITERRANEEN A L'EPOQUE DE PHILIPPE II* (1949) (*THE MEDITERRANEAN AND THE MEDITERRANEAN WORLD IN THE AGE OF PHILIP II*).

<sup>22</sup> Peter Burke, *Braudel's Long Term*, *LONDON REVIEW OF BOOKS* (1983) 17, 17 (noting that Braudel “argued that it is impossible to understand the events of the reign of Philip II without placing them in the perspective of the long term – ‘la longue durée’, as he calls it: a perspective of centuries, or even ... millennia.”)

<sup>23</sup> Id. See also Dale Tomich, *The Order of Historical Time: The Longue Durée and Micro-History*, *ALMANACK* 2 (2011) 52, 53 (defining the *longue durée* “as a concept of historical social science”, namely “the longest conceivable historical temporality and most comprehensive ground for historical interpretation.”)

<sup>24</sup> Harsgor, *Total History: The Annales School*, 8 (reporting H.R. Trevor-Roper’s criticism that “the kind of ‘great history’ th[e] [Annales School is] attempting “sometimes seems beyond human powers”

<sup>25</sup> John Brewer, *Microhistory and the Histories of Everyday Life*, *CULTURAL AND SOCIAL HISTORY* 7 (2010) 87, 100 (noting that the emergence of microhistory “was in part a self-conscious opposition to the long-term ... history of the Annales school that relegated the subordinate classes to ... anonymity.”).

<sup>26</sup> Andrew Port, *History from Below, the History of Everyday Life, and Microhistory*, *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES*, 2<sup>nd</sup> ed. 11 (2015) 108, 112.

<sup>27</sup> Francesca Trivellato, *Microstoria/Microhistoire/Microhistory*, *FRENCH POLITICS, CULTURE AND SOCIETY* 33 (2015) 122–134, 126.

<sup>28</sup> Edward Muir, *Introduction: Observing Trifles*, in Edward Muir and Guido Ruggiero (eds) *MICROHISTORY AND THE LOST PEOPLES OF EUROPE* (1991) xiv (noting that “heretics, and criminals are the most likely candidates from the lower or nonliterate classes to leave sufficient traces to become the subjects of microhistories.”)

<sup>29</sup> Brewer, *Microhistory and the Histories of Everyday Life*, 90.

greatly contributed to the evolution of historiography, treating such people as the subjects rather than the objects of history. Moreover, far from being irrelevant, microhistories could epitomize broader trends.

Second, for a long time, international legal scholarship has assumed that states are the only subjects of international law.<sup>30</sup> Non-state actors—including individuals, minorities, indigenous groups, and local communities, as well as non-governmental organizations (NGOs) and multinational corporations—used to be perceived as mere objects of international law.<sup>31</sup> Only recently has their important role in the development of international law emerged.<sup>32</sup> This paradigm shift in international law requires an analogous shift in international legal history. International legal history could well focus on states only when international law was conceived as a mere law among states.<sup>33</sup> Nowadays, this is no longer possible, as individuals, communities, and nations matter in international law.<sup>34</sup> Therefore, international legal history can no longer neglect these.

Third, international legal history itself is a relatively young field of analysis. Only recently have international lawyers and legal historians started to investigate the field.<sup>35</sup> Therefore, there has only been limited investigation on the available

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<sup>30</sup> ANTONIO CASSESE, *INTERNATIONAL LAW*, II ed. (2004) ch. 4 (noting that “States ... are ‘traditional’ subjects of the international community, in the sense that they have been the dramatis personae (the characters of the play) on the international scene since its inception.”); M.W. Janis, *Individuals as Subjects of International Law*, *CORNELL INTERNATIONAL LAW JOURNAL* 17 (1984) 61, 62 (discussing and contesting the theory that “international law had only states as its subjects.”)

<sup>31</sup> Janne E. Nijman, *Non-state Actors and the International Rule of Law: Revisiting the ‘Realist Theory’ of International Legal Personality*, in M. Noortmann, & C. Ryngaert (eds.), *NON-STATE ACTOR DYNAMICS IN INTERNATIONAL LAW: FROM LAW-TAKERS TO LAW-MAKERS* (2010) 91–124 (noting that “Traditionally, [non-state actors] are not ‘subjects’ or ‘persons’ of international law.”)

<sup>32</sup> See CASSESE, *INTERNATIONAL LAW*, ch. 4 (noting that “In the twentieth century, and increasingly after the Second World War, other poles of interest and activity have gained international status. They are: international organizations, national liberation movements, and individuals. The emergence of these relatively ‘new’ subjects is a distinct feature of modern international law.”) See also ANNE PETERS, *BEYOND HUMAN RIGHTS* (2016); G. HAFTNER, *The Emancipation of the Individual from the State under International Law* in *ACADEMY OF INTERNATIONAL LAW, RECUEIL DES COURS* 358 (2011) 263–454.

<sup>33</sup> See e.g. W.G. GREWE, *THE EPOCHS OF INTERNATIONAL LAW* (2000) (English translation of *EPOCHEN DER VÖLKERRECHTSGESCHICHTE* (1984) (dividing the history of international law into periods characterized by the hegemony of specific powers).

<sup>34</sup> See e.g. Federico Lenzerini, *Sovereignty Revisited: International Law and Parallel Sovereignty of Indigenous Peoples*, *TEXAS INTERNATIONAL LAW REVIEW* 42 (2007) 155, 165 (noting that Indigenous peoples are seen “as entities actually owning the attributes of sovereignty pursuant to international law.”); MATTIAS ÅHRÉN, *INDIGENOUS PEOPLES’ STATUS IN THE INTERNATIONAL LEGAL SYSTEM* (2016) 149 (arguing that the recognition of Indigenous peoples as “peoples” “for international legal purposes can be described as nothing less than a paradigm shift in international law.”); Russel Lawrence Barsch, *Indigenous Peoples in the 1990s: From Object to Subject of International Law* (1994) 7 *HARVARD HUMAN RIGHTS JOURNAL* 33, 34 (noting that “Indigenous peoples are gaining recognition of their legal personality as distinct societies with special collective rights and a distinct role in national and international decisionmaking.”).

<sup>35</sup> See, for instance (in anti-chronological order), Pierre Marie Dupuy and Vincent Chetail (eds.) *THE ROOTS OF INTERNATIONAL LAW/LE FONDEMENTS DU DROIT INTERNATIONAL—LIBER AMICORUM* PETER HAGGENMACHER (2014); DOMINIQUE GAURIER, *HISTOIRE DU DROIT INTERNATIONAL* (2014); Bardo Fassbender and Anne Peters (eds), *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* (2012); AMNON ALTMAN, *TRACING THE EARLIEST RECORDED CONCEPTS OF INTERNATIONAL LAW: THE ANCIENT NEAR EAST (2500–330 BC)* (2012); CARLO FOCARELLI, *INTRODUZIONE STORICA AL DIRITTO INTERNAZIONALE* (2012); EMMANUELLE JOUANNET, *LE DROIT INTERNATIONAL LIBÉRAL—PROVIDENCE. UNE HISTOIRE DU DROIT INTERNATIONAL* (2011) (placing the origins of international law in the 18th century and suggesting that a dual liberal-welfarist structural framework underlies international law); Alexander Orakhelashvili (ed.) *RESEARCH HANDBOOK ON THE THEORY AND HISTORY OF INTERNATIONAL LAW* (2011); GUSTAVO GOZZI,

methodologies for conducting such research.<sup>36</sup> If international legal historians have written microhistories, such stories have not formed consistent patterns yet, nor has there been a theoretical investigation upon the same.

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 are the historic motives for the relative absence of microhistories reasons against expanding their use today. First, microhistory constitutes an important field of historical investigation and has contributed to the “anthropological turn” in historical writing in the mid-twentieth century.<sup>37</sup> Second, non-state actors have increasingly expanded their role in public international law,<sup>38</sup> and increasingly played an important role in the making of the same.<sup>39</sup> According to some scholars, “human beings are becoming the primary international legal persons.”<sup>40</sup> This process is visible in a range of international law fields, from international investment law to human rights law, from international criminal law to international humanitarian law.<sup>41</sup> Moreover, international law has “a humanist

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DIRITTI E CIVILTÀ. STORIA E FILOSOFIA DEL DIRITTO INTERNAZIONALE (2010); Matthew Craven, Malgosia Fitzmaurice and Maria Vogiatzi (eds.) *TIME, HISTORY AND INTERNATIONAL LAW* (2007); LUIS FERNANDO ALVAREZ LONDOÑO, *LA HISTORIA DEL DERECHO INTERNACIONAL PÚBLICO* (2006); PÉTER KOVÁCS, *L'HISTOIRE EN DROIT INTERNATIONAL – HISTORY IN INTERNATIONAL LAW* (2004); R.P. ANAND, *STUDIES IN INTERNATIONAL LAW AND HISTORY: AN ASIAN PERSPECTIVE* (2004); SLIM LAGHMANI, *HISTOIRE DU DROIT DES GENS, DU JUS GENTIUM IMPÉRIAL AU JUS PUBLICUM EUROPÆUM* (2004); MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960* (2002) (placing the origins of international law in the 19<sup>th</sup> century); CARLO FOCARELLI, *LEZIONI DI STORIA DEL DIRITTO INTERNAZIONALE* (2002); W.G. GREWE, *THE EPOCHS OF INTERNATIONAL LAW* (2000) (English translation of *EPOCHEN DER VÖLKERRECHTSGESCHICHTE* (1984) (dividing the history of international law into periods characterized by the hegemony of specific powers); A. TRUYOL Y SERRA, *HISTORIA DEL DERECHO INTERNACIONAL PÚBLICO* (1998) (adopting a universalist approach to the history of international law, influenced by the axiom *ubi societas inter potestates, ibi ius gentium*, and transcending the Eurocentric framework of the Westphalian state-centered narrative); KARL-HEINZ ZIEGLER, *VÖLKERRECHTSGESCHICHTE* (1994); JUAN ANTONIO CARRILLO SALCEDO, *EL DERECHO INTERNACIONAL EN PERSPECTIVA HISTÓRICA* (1991). For an earlier study, see ARTHUR NUSSBAUM, *A CONCISE HISTORY OF THE LAW OF NATIONS* (1947) (focusing on diplomacy and treaty relations); J. W. VERZIJL, *INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE*, 12 vol. (Brill 1968–1998). For a general bibliography, see Peter Macalister-Smith and J. Schwietzke, *Literature and Documentary Sources relating to the History of International Law*, 1 *JOURNAL OF THE HISTORY OF INTERNATIONAL LAW* (1999) 136.

<sup>36</sup> But see generally Randall Lesaffer, *International Law and Its History: The Story of an Unrequited Love*, in Matthew Craven, Malgosia Fitzmaurice and Maria Vogiatzi (eds.) *TIME, HISTORY AND INTERNATIONAL LAW* (2007) 27 and, more recently, Vadi, *International Law and its Histories*.

<sup>37</sup> See generally Giovanni Levi, *On Microhistory*, in P. Burke (ed.), *NEW PERSPECTIVES ON HISTORICAL WRITING* (1991) (connecting microhistory and works by the anthropologists Frederik Barth and Clifford Geertz).

<sup>38</sup> Philip R. Trimble, *Globalization, International Institutions and the Erosion of National Sovereignty and Democracy* 95 *MICHIGAN LAW REVIEW* (1997) 1944, 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>39</sup> Anthea Roberts and Sandesh Sivakumaran, *Lawmaking by Nonstate Actors: Engaging Armed Groups in the Creation of International Humanitarian Law*, 37 *YALE J. INT'L L.* (2012) 107, 107 (arguing that “it is time to reconsider whether it is possible and desirable for nonstate actors to play a role in the making of international law.”)

<sup>40</sup> See generally ANNE PETERS, *BEYOND HUMAN RIGHTS: THE LEGAL STATUS OF THE INDIVIDUAL IN INTERNATIONAL LAW* (2016).

<sup>41</sup> KATE PARLETT, *THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM. CONTINUITY AND CHANGE IN INTERNATIONAL LAW* (2010) (examining the evolution of the individual’s status in selected areas of international law, including international humanitarian law (at 176–228);



orientation,<sup>42</sup> as it relies on an ethos of union and requires us to recognize our common humanity.<sup>43</sup> Third, international legal history is also gradually reflecting this shift of attention from states to non-state actors<sup>44</sup> and “individual destinies [are being pushed] to the forefront of historical investigation.”<sup>45</sup> In the past decade, international legal microhistories have become bestsellers, attracting the attention of international lawyers, historians, and the public at large.<sup>46</sup> These impactful works, written by eminent academics, show that microhistory is a powerful tool that can contribute to the diffusion of the knowledge of international law and “build peace in the in the minds of men [and women].”<sup>47</sup>

This article contributes to the emerging debates on the history of international law and the method for conducting international legal research focusing on the power of scale. It aims to spark a discussion on the power of scale in international legal scholarship. The article shows that micro-historical approaches can help international legal historians to bridge the gap between the academic and the public realm, 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 notion of microhistory in historiography, international legal history and beyond. Second, it discusses the promises and pitfalls of micro-historical approaches to international law. Third, it briefly examines the recent flourishing of interest with regard to legal biographies among international lawyers and legal historians. Fourth, it addresses some key methodological challenges. It then concludes, highlighting the need for more microhistories, the complementarity of macro- and microhistory, and the emergence of meso-history as a fruitful compromise between the two.

## 1. What is Microhistory?

Historians define microhistory 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>48</sup> They compare it to “a cinematographic close-up” that investigates and can modify “the comprehensive visions delineated by macro-

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international criminal law (at 229–277); international human rights law (at 278–340); and international investment law (at 119 ff.).

<sup>42</sup> Mireille Delmas-Marty, *Droit international et humanism juridique: Quelles perspectives?*, SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW, Hélène Ruiz Fabri, Emmanuelle Jouannet and Vincent Tomkiewicz (eds) (2008) 387, 389.

<sup>43</sup> Georges Abi-Saab, *Droit international et humanism juridique: Quelles perspectives?*, SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW, Hélène Ruiz Fabri, Emmanuelle Jouannet and Vincent Tomkiewicz (eds) (2008) 391, 397. But see David Kennedy, *Perspectives on International Law and Legal Humanism*, in SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW, Hélène Ruiz Fabri, Emmanuelle Jouannet and Vincent Tomkiewicz (eds) (2008) 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>44</sup> Jason W. Yackee, *Politicized Dispute Settlement in the Pre-Investment Treaty Era: A Micro-Historical Approach*, Univ. of Wisconsin Legal Studies Research Paper No. 1412 (2017).

<sup>45</sup> Sabina Loriga, *The Role of Individual in History—Biographical and Historical Writing in the Nineteenth and the Twentieth Century*, in Renders and De Haan (eds) THEORETICAL DISCUSSIONS OF BIOGRAPHY (2013) 113, 133.

<sup>46</sup> PHILIPPE SANDS, *EAST WEST STREET: ON THE ORIGINS OF GENOCIDE AND CRIMES AGAINST HUMANITY* (2016).

<sup>47</sup> UNESCO Constitution, signed on 16 November 1945, in force on 4 November 1946, 4 UNTS 275, preamble.

<sup>48</sup> SIGURÐUR G. MAGNÚSSON AND ISTVÁN M. SZIJÁRTÓ, *WHAT IS MICROHISTORY?* (2013) 4.

history.”<sup>49</sup> Microhistory typically reduces and intensifies the scale of historical research. It adopts the microscope rather than the telescope.<sup>50</sup> It breaks history into small parts, and those parts, in turn, into smaller parts to study these units from the closest angle.<sup>51</sup> The assumption is that a close analysis of a small number of texts, institutions, episodes, or individuals “can be more rewarding than the massive accumulation of repetitive evidence.”<sup>52</sup>

By changing the scale of historical analysis, microhistory adopts an inductive method for evaluating historical evidence, “focusing on obscure clues that have traditionally been ignored or devalued as insignificant.”<sup>53</sup> Microhistory narrates a story, in the attempt to solve a historical jigsaw.<sup>54</sup> It relies on qualitative analysis.<sup>55</sup> It lacks a pre-defined method of investigation;<sup>56</sup> rather, it is a “place for experimentation” and a relatively “new type of research.”<sup>57</sup> By focusing on certain cases, circumstances, and persons, microhistory offers a completely different picture of the past from the macro-histories of the same.<sup>58</sup> While macro-history seeks out large, long-term trends in international legal history, analyzing multiple events and concepts over the course of centuries, microhistory studies the past on small scales.<sup>59</sup>

The term “microhistory” designates a multitude of processes that ask different questions, adopt different methods, and approach the field from a variety of perspectives.<sup>60</sup> It can study events, episodes, institutions, or individuals or groups. It 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 an academic treatise to a novel. Its public is multilayered and cosmopolitan, as microhistories have appealed to both academics and the public at large.<sup>61</sup> Even where their authors aimed at contributing to given academic fields, microhistories have crossed their academic

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<sup>49</sup> Carlo Ginzburg, *Microhistory—Two or Three Things That I know about It*, in CARLO GINZBURG, *THREADS AND TRACES* (2012) 193, 207.

<sup>50</sup> PETER BURKE, *HISTORY AND SOCIAL THEORY*, II ed. (2005) 38 (noting that “in the 1970s ... [some] historians “turned from the telescope to the microscope.”)

<sup>51</sup> MAGNÚSSON AND ISTVÁN M. SZIJÁRTÓ, WHAT IS MICROHISTORY? 4 (noting that “microhistorians hold a microscope and not a telescope in their hands.”)

<sup>52</sup> Edward Muir, *Introduction: Observing Trifles*, in Edward Muir and Guido Ruggiero (eds) *MICROHISTORY AND THE LOST PEOPLES OF EUROPE* (1991) vii, viii (internal reference omitted).

<sup>53</sup> *Id.* viii and x.

<sup>54</sup> Heather Murray, *Literary History as Microhistory*, in Cynthia Sugars (ed) *POSTCOLONIALISM, PEDAGOGY, AND CANADIAN LITERATURE* (2004) 405, 411.

<sup>55</sup> Ginzburg, *Microhistory—Two or Three Things That I know about It*, 196.

<sup>56</sup> Murray, *Literary History as Microhistory*, 409 (noting that microhistory lacks “a mode of established orthodoxy”).

<sup>57</sup> Muir, *Introduction: Observing Trifles*, viii–ix.

<sup>58</sup> Claire Zalc and Tal Bruttman, *Introduction—Microhistories and the Holocaust*, in Claire Zalc and Tal Bruttman (eds.) *MICROHISTORIES AND THE HOLOCAUST* (2017) 1, 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>59</sup> PETER BURKE, *HISTORY AND SOCIAL THEORY*, 40 (highlighting “the shift from large-scale to small-scale studies.”)

<sup>60</sup> Thomas Robisheaux, *Microhistory and the Historical Imagination: New Frontiers*, *JOURNAL OF MEDIEVAL AND EARLY MODERN STUDIES* 47 (2017) 1, 2 (noting that “while having some theoretical foundations, [microhistory] has evolved into a flexible bundle of methodological practices.”)

<sup>61</sup> Tamás Kisantal, *What Is Microhistory?*, *HUNGARIAN HISTORICAL REVIEW* 4 (2015) 502–536, 502 (noting that “The heyday of microhistory was the late 1970s and the 1980s, when its classic and most cited works were published, some of which not only produced important disputes in the field of historiography, but also reached a broader audience and became true bestsellers. And the influence of the microhistorical approach persists.”)

boundaries, attracted the attention of, and influenced academics and the public across different fields of study.<sup>62</sup> By making an outstanding use of the selected narrative form, micro-historians have not only contributed to the scientific development of their field but also have had (unforeseen) major impacts in other fields. Nowadays, microhistory has become an established historiographical practice.

Microhistories have an evolutionary, if not revolutionary potential. Microhistories can help international legal history overcome its traditional state-centrism. While macro-history has traditionally focused on international relations and diplomatic history, microhistory devotes itself to “interactions among historical persons.”<sup>63</sup> While microhistories have rarely focused on ‘great personalities,’ when they have done so, they have focused on aspects that have been traditionally “ignored or devalued as insignificant.”<sup>64</sup> They can “reveal greater complexity,” “challenge bigger stories,” and deepen our understanding of the past.<sup>65</sup>

Microhistory can also help international legal history overcome anachronism.<sup>66</sup> One of the principal assumptions of microhistory is that “the past is a foreign country.”<sup>67</sup> Micro-historians often do not explore the past for its current relevance, but they explore it for its own sake.<sup>68</sup> For instance, for Carlo Ginzburg, one of the major micro-historians, anachronism, that is, investigating the past for its current relevance, is “a kind of conscious or unconscious will to impose [the historian’s] own values...on people.”<sup>69</sup> Therefore, micro-historians prefer contextualizing their stories. However, microhistories can also be used in a presentist fashion; by illuminating past trajectories, they can also illuminate current and future trends. Therefore, their malleability makes them particularly suitable to international legal history.

While microhistory (*microstoria*) has emerged only in the latter half of the twentieth century in such places as northern Italy, particularly in Bologna,<sup>70</sup> it has become a worldwide phenomenon, having spread in North and Latin America,<sup>71</sup> Europe and Oceania.<sup>72</sup> Moreover, micro-approaches to given fields of knowledge are

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<sup>62</sup> See e.g. Soraya de Chadarevian, *Microstudies versus Big Picture Accounts?* STUDIES IN HISTORY AND PHILOSOPHY OF BIOLOGICAL AND BIOMEDICAL SCIENCES 40 (2009) 13, 13 (investigating the diffusion of microstudies in the history of science due to emerging “uneasiness about overarching explanatory systems.”)

<sup>63</sup> Muir, *Introduction*, ix.

<sup>64</sup> Id. x.

<sup>65</sup> Tim Cole and Alberto Giordano, *Microhistories, Micro-geographies—Budapest, 1944, and Scales of Analysis*, in Zalc and Bruttmann (eds.) MICROHISTORIES AND THE HOLOCAUST (2017) 113, 114.

<sup>66</sup> Muir, *Introduction*, xi.

<sup>67</sup> DAVID LOWENTHAL, *THE PAST IS A FOREIGN COUNTRY* (1985).

<sup>68</sup> Muir, *Introduction*, xii.

<sup>69</sup> Id. xii (internal quotation omitted).

<sup>70</sup> Id. viii (noting that “Italian scholars ... coined the term microhistory” and have creatively “explor[ed] its potentialities”); MAGNÚSSON AND SZIJÁRTÓ, *WHAT IS MICROHISTORY?* 7 (cautioning, at 5, that microhistory cannot be “narrow[ed] down to the Italian *microstoria*.”); Carlo Ginzburg, *Microhistory—Two or Three Things That I Know about It*, 208 (examining the use of the terms ‘microhistory’, ‘*microstoria*’, ‘*microhistoire*’ and ‘*microstoria*’ in various historiographical traditions, and narrating the emergence of microhistory as “a historiographical current” and “intellectual convergence” among different fields of study.); Trivellato, *Microstoria/Microhistoire/Microhistory*, 122–134 (persuasively illustrating the differences between the various national variations of microhistory.)

<sup>71</sup> On the American reception, see Sebouh David Aslanian, Joyce E. Chaplin, Ann McGrath and Kristin Mann, *How Size Matters: The Question of Scale in History*, AMERICAN HISTORICAL REVIEW 118 (2013) 1431–72.

<sup>72</sup> Classical examples of microhistory include: EMMA ROTHSCHILD, *THE INNER LIFE OF EMPIRES: AN EIGHTEENTH CENTURY HISTORY* (2011) (looking at a Scottish family to explore issues of British imperialism); FRANCESCA TRIVELLATO, *THE FAMILIARITY OF STRANGERS: THE SEPHARDIC DIASPORA, LIVORNO AND CROSS-CULTURAL TRADE IN THE EARLY MODERN PERIOD* (2009)

anything but new. Understanding a whole, from an examination of its parts, is an ancient phenomenon.<sup>73</sup> René Descartes used a micro scale of analysis to address complex scientific matters. For Descartes, “all the difficulties under examination [should be divided] into as many parts as possible,” and the scientist should “begi[n] [her analysis] with the simplest and most easily understood objects...gradually ascending...to the knowledge of the most complex.”<sup>74</sup> In a similar fashion, microhistory focuses on given events, anecdotes, or individuals, rather than epochal events.

Micro-histories are more ambitious than they might appear to be at first glance. They ask big questions in small places.<sup>75</sup> Despite their small scale, such stories can epitomize the behaviors, logic, and motives characterizing a given society.<sup>76</sup> As Carlo Ginzburg pointed out, “the reduction of scale in observation...is a precious cognitive tool [a]s...one intensely studied case can be the starting point for a generalization.”<sup>77</sup> For Ginzburg, historians should not discard possible anomalies, “because anomaly implies the norm.”<sup>78</sup> Moreover, “what is exceptional to a modern viewer may not have been particularly so in its own day.”<sup>79</sup> Nevertheless, if broad generalizations are not possible, micro-historians can also limit themselves to the so-called “incident analysis” that focuses on intensive analysis of the small, but avoids macro-level general statements.<sup>80</sup>

Finally, microhistories can bridge the worlds of international law, literature, and history.<sup>81</sup> Because microhistories focus on given events, groups, or individuals, they sharpen the narrative tools available to their authors. Microhistories can become a field for keeping the essential clarity that characterizes legal writing, while experimenting further. Quintessentially, they are stories and human being have always been interested in and fascinated by stories. This is the reason why microhistories have sold out crossing bridges and boundaries as well as reaching a cosmopolitan readership.

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(examining a trading network with a global outreach in the first half of the 18<sup>th</sup> century); NATALIE 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); NATALIE ZEMON DAVIS, *THE RETURN OF MARTIN GUERRE* (1983)(examining the trial of a man accused of stealing the identity of another in the sixteenth century); ROBERT 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); CARLO GINZBURG, *THE CHEESE AND THE WORMS* (1980); CARLO GINZBURG, *IL FORMAGGIO E I VERMI* (1976)(studying the heresy trial of Menocchio, a Friulan miller, for his eclectic cosmography); LUIS GONZÁLEZ Y GONZÁLEZ, *PUEBLO IN VILO: MICROHISTORIA DE SAN JOSÉ DE GRACIA* (1968)(investigating the history of a village); CARLO GINZBURG, *I BENANDANTI* (1966); GEORGE R. STEWART, *PICKETT’S CHARGE: A MICROHISTORY OF THE FINAL CHARGE AT GETTYSBURG, JULY 3, 1863* (1959)(minutely analyzing a decisive battle in the American Civil War).

<sup>73</sup> Muir, *Introduction*, xvii.

<sup>74</sup> RENÉ DESCARTES, *DISCOURSE ON METHOD OF RIGHTLY CONDUCTING ONE’S REASON AND SEEKING THE TRUTH IN THE SCIENCE*, trans. Ian Maclean (2006) 17.

<sup>75</sup> MAGNÚSSON AND SZIJÁRTÓ, *WHAT IS MICROHISTORY?* 5 (noting that “microhistorians always look for the answers for great historical questions ... when studying small objects” and “[i]t is the great historical question that legitimates the micro-analysis.”)

<sup>76</sup> William W. Fisher III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, *STANFORD L. REV.* 49 (1996–1997) 1065, 1071.

<sup>77</sup> Carlo Ginzburg, *Some Queries Addressed to Myself*, *Cyber Rev. of Modern Historiography* 18 (2013) 90, 93.

<sup>78</sup> Id.

<sup>79</sup> Murray, *Literary History as Microhistory*, 415.

<sup>80</sup> MAGNÚSSON AND SZIJÁRTÓ, *WHAT IS MICROHISTORY?* 8.

<sup>81</sup> Ginzburg, *Some Queries Addressed to Myself*, 93 (noting that microhistories “typically bridge the worlds of literature and history.”)

## 2. International Law and its Microhistories

Are there evident trends of 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 microhistories of individuals, societies, or events.<sup>82</sup> International legal historians “have been interested in the vicissitudes of sovereignty” rather than those of societies.<sup>83</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>84</sup> As international law steadily adopted a state centric approach, as a result, the history of the same followed such an approach.

If one adopts the traditional Westphalian understanding of international law as the law governing inter-state relations, microhistories are not only irrelevant but also harmful and paradoxical. Under the state-centric approach to international law, microhistories are irrelevant, because individuals are mere objects rather than subjects of international law. Microhistories can be harmful because they divert the attention of the international legal historians and their readers from states to nations, thus potentially having a subversive character.<sup>85</sup> Finally, according to this view, microhistories are paradoxical because by dealing with the local, the particular, and the individual, they cannot meaningfully engage with a field that is cosmopolitan, general, or international.<sup>86</sup>

However, in the past decades, international law has expanded in an exponential fashion in response to changing needs of the international community.<sup>87</sup> It now governs areas that used to be the exclusive domain of states.<sup>88</sup> While international law remains focused on states, it has increasingly engaged with non-

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<sup>82</sup> See Ginzburg, *Some Queries Addressed to Myself*, 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>83</sup> *Id.* 110.

<sup>84</sup> See WILLIAM TWINING, *GENERAL JURISPRUDENCE: UNDERSTANDING LAW FROM A GLOBAL PERSPECTIVE* (2008) 362.

<sup>85</sup> István M. Szijártó, *The Capacities of Microhistory*, in *ETHNOGRAPHICA ET FOLKLORISTICA CARPATHICA 19—APPROACHES TO HISTORIOGRAPHY*, Elek Bartha (ed) (2016) 191, 194 (noting that “to the founders of microstoria, the value of microhistory rested mainly in its subversive capacity... [it] may indicate the weak points of dominant epistemological paradigms.”)

<sup>86</sup> Francesca Trivellato, *Is There a Future for Italian Microhistory in the Age of Global History?* *CALIFORNIA ITALIAN STUDIES* 2(1) (2011) 1, 1 (noting that “‘globalization’ and ‘global’ are the dominant keywords in the

humanities and the social sciences – keywords that we hardly associate with anything micro” but suggesting that “the potential of a microhistorical approach for global history remains underexploited.”)

<sup>87</sup> Alain Pellet, *L’adaptation du droit international aux besoins changeants de la société internationale*, in *ACADEMY OF INTERNATIONAL LAW, RECUEIL DES COURS* (2007) 9–48.

<sup>88</sup> Katja S Ziegler, *Domaine Réserve*, *MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (2013) (highlighting that “The notion of *domaine réservé* (reserved domain) describes the areas of State activity that are internal or domestic affairs of a State and are therefore within its domestic jurisdiction or competence... Its precise content may vary over time according to the development of international law.”); Mattias Kumm, *The Legitimacy of International Law: A Constitutionalist Framework of Analysis*, *EUROPEAN J. INT’L LAW* 15 (2004) 907 (noting that “International law today is no longer adequately described or assessed as the law of a narrowly circumscribed domain of foreign affairs” and that “Contemporary international law has expanded its scope.”)

state actors.<sup>89</sup> Several international law regimes – ranging from that of international intellectual property rights law to human rights law, from 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.<sup>90</sup> The rise of peremptory norms and *erga omnes* obligations also evidences the paradigm shift from a state centric vision of international law to a more cosmopolitan conceptualization of the same that takes individuals, communities, minorities, and peoples into account, in addition to and beyond states.<sup>91</sup> In parallel, the argument that anthropocentric or locally oriented narratives as such are incompatible with the breadth and scope of international law is not persuasive. Far from being opposed to international legal history, microhistory can become a useful tool of the same. As Ginzburg pointed out, “a close analysis of a single case study may pave the way to much larger (indeed global) hypotheses.”<sup>92</sup>

Because of this evolution, microhistories have become a relevant, fruitful, and sensible way of investigating international law and its histories. They are relevant, because international law has increasingly concerned individuals, communities, minorities and peoples; fruitful, because they enable international legal historians to adopt new perspectives and scales of analysis; and sensible, because the emerging human dimension of international law requires a recalibration of international legal history.

Albeit to a limited extent, international legal historians have increasingly used the microscope to investigate events, episodes, or individuals often discovered serendipitously, while seeking insights into major themes of international legal history.<sup>93</sup> Their international legal histories have ranged from individual cases<sup>94</sup> to material objects,<sup>95</sup> from the life and work of individuals<sup>96</sup> to institutional

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<sup>89</sup> See generally PARLETT, THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM. CONTINUITY AND CHANGE IN INTERNATIONAL LAW.

<sup>90</sup> Lawrence Azubuike, *International Law Regime Against Piracy*, ANNUAL SURVEY OF INTERNATIONAL & COMPARATIVE LAW 15 (2009) 43, 43 (noting that “the twentieth century marked a shift from the state-centric outlook of international law towards a more realistic accommodation that individuals might, in certain cases, be subjects of international law.”); Andrew Clapham, *The Role of the Individual in International Law*, EUROPEAN J. INT’L L. 21 (2010) 25, 27 (noting that “individuals currently have obligations and rights ... under general international law.”); Luigi Condorelli, *Some Thoughts about the Optimistic Pessimism of a Good International Lawyer*, EUROPEAN JOURNAL OF INTERNATIONAL LAW 21 (2010) 31, 39 (“seeing the birth and growth of international criminal justice as an impressive piece of progress, in this very sense of humanization of international law.”)

<sup>91</sup> C. Tomuschat, *Obligations arising for States without or Against Their Will*, in Academy of International Law, RECUEIL DES COURS 241 (1993) 195–374.

<sup>92</sup> Carlo Ginzburg, *Microhistory and World History*, in Jerry H. Bentley, Sanjay Subrahmanyam, and Merry E. Wiesner-Hanks (eds.) THE CONSTRUCTION OF A GLOBAL WORLD, 1400–1800 CE (2015) 446, 462.

<sup>93</sup> See e.g. JAN PAULSSON, DENIAL OF JUSTICE IN INTERNATIONAL LAW (2005) 10 (discussing some historical background); V.V. Veeder, *From Florence to London via Moscow and New Delhi: How and Why Arbitral Ideas Migrate*, 4 JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT (2013) 139, 156 (narrating the story of Maxim the Greek “the only known arbitrator to be a saint” to discuss the migration of ideas across domestic and international jurisdictions).

<sup>94</sup> For an early example, see R. Y. Jennings, *The Caroline and McLeod Cases*, AMERICAN JOURNAL OF INTERNATIONAL LAW 32 (1938), 82-99; JAKOB ZOLLMANN, NAULILA 1914. WORLD WAR I IN ANGOLA AND INTERNATIONAL LAW (2016).

<sup>95</sup> MICHAEL 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: the Brussels Sugar Convention of 1902 and the two International Sugar Agreements (ISAs) of 1937 and 1977 respectively); Jessie Hohmann, *Opium as an Object of International Law. Doctrines of Sovereignty and Intervention*, in Cristina Binder, Mary E Footer, August Reinisch (eds.) INTERNATIONAL LAW AND...: SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW (2014) 277; Valentina

developments,<sup>97</sup> and from events of military history<sup>98</sup> to hidden materials buried in archives.<sup>99</sup> The biographies of some international legal scholars and practitioners have been great subject of microhistories.<sup>100</sup> There is a growing interest in reading the work of international legal scholars in the light of their historical, cultural, and social context. While the move to investigate microhistories is only recent, its potential is only gradually unfolding.<sup>101</sup> Microhistory is certainly on the rise.<sup>102</sup> Sections 3 and 4 will critically assess the promises and pitfalls of the use of microhistories in international legal history in order to determine whether international legal history may benefit from the use of micro-historical approaches, or whether it may be appropriate for it to remain anchored to macro-historical analyses.

### 3. The Promises of Microhistories

Microhistories present both promises and pitfalls. This section identifies three principal promises in conducting micro-historical research. First, microhistories can contribute to the humanization of international law. Second, the small-scale enables researchers to examine given topics from new angles or uncovering hidden histories.

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Vadi, *Grotius' Book Chest, International Law and Material Culture*, 68(3) NORTHERN IRELAND LEGAL QUARTERLY (2017) 317–328 (considering Grotius' book chest as evidence of the pluralist origins of international law).

<sup>96</sup> See e.g. David Armitage and Jennifer Pitts, *This Modern Grotius: An Introduction to the Life and Thought of C.H. Alexandrowicz*, in C. H. ALEXANDROWICZ, *THE LAW OF NATIONS IN GLOBAL HISTORY*, David Armitage and Jennifer Pitts (eds) (2017).

<sup>97</sup> JUAN PABLO SCARFI, *THE HIDDEN HISTORY OF INTERNATIONAL LAW IN THE AMERICAS* (2017) (studying the rise and evolution of the American Institute of International Law); GUY FITT 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>98</sup> PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* (2017) (reviewing the development of blockade law over the past four centuries); Cheah Wui Ling, *Walking the Long Road in Solidarity and Hope: A Case Study of the 'Comfort Women' Movement's Deployment of Human Rights Discourse*, *HARVARD HUMAN RIGHTS JOURNAL* (2009) 63, 65 (stressing that “the comfort women question has become the site of an ongoing struggle between two views or meta-narratives of international life: a state-centric paradigm which revolves around the nation-state and a people-based paradigm that sees individuals and groups as the ultimate constituents and beneficiaries of an international system”).

<sup>99</sup> See, for instance, FRED L. BORCH III, *WAR CRIMES TRIALS IN THE NETHERLANDS EAST INDIES* (2017) (examining the records of the Dutch war crimes tribunals from 1946–9, 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.); MICHAEL BAZYLER, *HOLOCAUST, GENOCIDE AND THE LAW* (2017) (setting out legal stories of the most significant criminal trials relating to the Holocaust); Wui Ling Cheah, *The Curious Case of Singapore's BLA Desertion Trials: War Crimes, Projects of Empire, and the Rule of Law*, *EUROPEAN JOURNAL OF INTERNATIONAL LAW* (forthcoming 2017) (“stud[ying] a set of war crimes trials that dealt with the contentious issue of deserting British Indian Army soldiers and were conducted by the British colonial authorities in post-Second World War Singapore.”)

<sup>100</sup> See e.g. PHILIPPE SANDS, *EAST WEST STREET* (2016) xxviii–xxix (connecting the Nuremberg trials to the histories of Hersch Lauterpacht, Rafael Lemkin, and the history of Sand's own family.); THOMAS BUERGENTHAL, *A LUCKY CHILD* (2007) (a former judge in the International Court of Justice in The Hague, telling his experiences during WWII).

<sup>101</sup> George Rodrigo Bandeira Galindo, *Forve Field: On History and Theory of International Law*, *RECHTSGESCHICHTE—LEGAL HISTORY* 86, 98 (2012) (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>102</sup> MAGNÚSSON AND SZIJÁRTÓ, *WHAT IS MICROHISTORY?* 69.

Third, microhistories can appeal to a broad audience in addition to and beyond academia. The section will examine these positive features more in detail.

First, microhistories can enable bottom-up approaches, illuminating local and individual contributions to international legal history. Not only can microhistories shed light on the life and work of international law scholars and practitioners, but they can also examine historical episodes, institutions, or even material objects that are of relevance to international law. Microhistories can look at historical events such as colonization, war crimes, or the slave trade through the eyes of its perpetrators, witnesses, and victims by investigating specific court proceedings, legal instruments,<sup>103</sup> and conducting ethnographical research. As noted by a microhistorian, “[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>104</sup> Especially where given regimes “turned peoples into numbers...it is for us as scholars...to turn the numbers back into people.”<sup>105</sup> Therefore, microhistory is “history with a human face” and that face is that of the victims, the witness, the persecuted, the subaltern, and the marginalized.<sup>106</sup> Microhistories have a “more human scale” than macro-histories.<sup>107</sup> They can empower the disempowered by enabling them to have their voices heard.<sup>108</sup> By narrating individual fates, microhistories contribute to the humanization of the history of international law.

Second, the small-scale enables researchers to open new horizons of interpretation, examining given topics from new under-researched angles—e.g. exploring the historical smaller details (*minutiae*) of known events—or uncovering hidden histories. Microhistories promote the analysis of material that macro-historians have traditionally marginalized or neglected. As Professor Trivellaro points out, “Microhistory relies on an intensive use of primary sources...while macro-history draws abundantly, if not exclusively, on secondary sources.”<sup>109</sup> Microhistory enables the adoption of multiple perspectives; and this is particularly appropriate when mapping the history of international law because it allows international legal history to overcome its traditional Eurocentric focus.<sup>110</sup> Microhistories show that there is no single international legal history; rather, a plurality of international legal histories exist depending on the selected research questions, perspectives, and approaches.<sup>111</sup>

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<sup>103</sup> Mamadou Hébié, *The Role of the Agreements Concluded with Local Political Entities in the Course of French Colonial Expansion in West Africa*, BRITISH YEARBOOK OF INTERNATIONAL LAW 85 (2016) 21–89.

<sup>104</sup> Jeffrey Wallen, *The Witness against the Archive—Toward a Microhistory of Christianstadt*, in Zalc and Bruttmann (eds.) MICROHISTORIES AND THE HOLOCAUST (2017) 300, 301 (referring to the Holocaust).

<sup>105</sup> Id. 302 (internal reference omitted).

<sup>106</sup> Murray, *Literary History as Microhistory*, 411 (noting “microhistory undermines the model of historical ‘centres’ and ‘margins’ in the first place.”)

<sup>107</sup> Wallen, *The Witness Against the Archive*, 302.

<sup>108</sup> See e.g. ANTHONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2005) 8 (“Against conventional histories ... what may be required is the telling of alternative histories – histories of resistance to colonial power.”)

<sup>109</sup> Francesca Trivellato, *Is There a Future for Italian Microhistory in the Age of Global History?* CALIFORNIA ITALIAN STUDIES 2 (2011) 5.

<sup>110</sup> Lauren Benton, *Law and World History*, in Kenneth R. Curtis and Jerry H. Bentley (eds.) ARCHITECTS OF WORLD HISTORY—RESEARCHING THE GLOBAL PAST (2014) 134, 134 (noting that “until recently [the history of international law] centered resolutely on Europe.”)

<sup>111</sup> See generally, Vadi, *International Law and Its Histories*. On the plurality of methods in international law more generally, see JEAN D’ASPROMONT, EPISTEMIC FORCES IN INTERNATIONAL LAW (2015) 180 (noting that “there is no methodological package that is, a priori, endowed with more validity or force than another. There are just a multitude of methodological packages ... without any of them



Third, microhistories can appeal to a broad audience in addition to and beyond academia. Not only is microhistory appealing to international lawyers and international legal historians but it is also “appealing to the general public”.<sup>112</sup> Microhistories “convey lived experience to the reader”.<sup>113</sup> They “seiz[e] on the power of the narrative, and plac[e] emphasis on telling a...story, thus grabbing the reader’s attention.”<sup>114</sup>

Moreover, microhistories can also involve 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>115</sup> In fact, certain microhistories 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>116</sup> By attributing central importance to the literary quality of the text,<sup>117</sup> microhistory can reach both academia and the public, thus becoming significant, powerful, and impactful research.

#### 4. The Pitfalls of Microhistories

The adoption of a microhistorical approach to the history of international law also has a number of pitfalls. These include, but are not limited to, the difficulties of: (1) selecting a subject matter suitable for inquiry; (2) dealing with scarce evidence and gaps in the data; (3) remaining relevant to a broad audience; (4) overcoming the risk of revisionism; and (5) remaining objective. Finally, critics contend that it is difficult to use the information gleaned from parts of international legal history to build up a history of the whole. This section now considers these challenges more in detail.

First, selecting a subject that is a suitable matter for inquiry can be difficult; the topic ideally has to remain relevant to a broad audience and rely on adequate data. However, the selection of a suitable matter for inquiry is certainly possible. The objects of micro-historical investigation vary. While they have relative significance in and of themselves, they can “reveal larger structures.”<sup>118</sup> They can range from events to material objects, from the life and work of individuals to institutional developments, as well as from events of military history to “hidden treasures” buried in archives.<sup>119</sup> The fact that international legal historians have not investigated certain episodes, material objects, individuals, or institutions before does not necessarily mean that the latter are irrelevant; gaps in the available literature do not necessarily imply the irrelevance of the topic—on the contrary, they may constitute areas for fruitful investigation. Once international legal historians select a small-scale historical approach, they determine which details are relevant based on the research aims and objectives.

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having any methodological or theoretical ascendancy over the other” and suggesting, at 181, that “validation” of the selected method is “social, for it hinges on the assent of the relevant community.”)

<sup>112</sup> MAGNÚSSON AND SZIJÁRTÓ, WHAT IS MICROHISTORY? 75.

<sup>113</sup> Id. 76.

<sup>114</sup> Id. 113 (referring to the writings of Carlo Ginzburg).

<sup>115</sup> Giovanni Levi, *On Microhistory*, in *NEW PERSPECTIVES ON HISTORICAL WRITING* (Pennsylvania State University Press) 93, 106.

<sup>116</sup> Ginzburg, *Microhistory: Two or Three Things*, 24.

<sup>117</sup> MAGNÚSSON AND SZIJÁRTÓ, WHAT IS MICROHISTORY? 24.

<sup>118</sup> Id. 127.

<sup>119</sup> Id. 123 (noting that it may be “hard to find these hidden treasures, mainly because many archives have been poorly indexed and catalogued, so the material [held] there[in] has not been accessible.”)

Second, dealing with scarce evidence and gaps in the data is a fact in historical research, and should not necessarily deter international legal historians. Court records and contextual historical and literary evidence can help in illuminating the past.<sup>120</sup> Both legal and non-legal sources, both written and oral sources can inform the writing of international legal history.<sup>121</sup> Finally, “the obstacles interfering with research such as gaps or contradictory evidence can become part of the account.”<sup>122</sup> The international legal historian can mention the relevant gap in the sources, and provide a series of plausible explanations, hypothesis, or simply admit that the available evidence is not sufficient to formulate hypothesis.

Third, how can microhistories remain relevant to a broad audience? In their HISTORY MANIFESTO, Jo Guldi and David Armitage assert that historians must abandon “bean-counting” and “short-termism” in order to deal with large-scale long-term trends and developments in history.<sup>123</sup> Yet, the fact that microhistories adopt a microscope to investigate given objects of inquiry does not mean that their length is short, their relevance is minimal and they necessarily endorse a short-term perspective.<sup>124</sup> Microhistories are “micro” because of their selected lens. Depending on the available sources, microhistories can constitute lengthy monographs.<sup>125</sup> In certain circumstances, microhistories can be even more significant than macrohistories, because they reveal patterns that can be generalized in the long term, or because they can reach both academia and the public at large. If applied to international law, microhistories can make the field accessible to international lawyers, historians and the public alike.

Fourth, a significant risk in writing international legal history is that of revisionism, that is, distorting the historical record for ideological purposes. Adopting a sound scientific method and objectivity does not merely relate to macro- or microhistory but to international legal history and international law more generally. While interpretations of history can change in response to new evidence, new questions, and new perspectives, “competent lawyers routinely dr[a]w contradictory conclusions from the same norms, or f[i]nd contradictory norms embedded in one and the same text or behavior.”<sup>126</sup> There is “no supreme guardian of interpretation in the community of international lawyers”; rather, “interpretive power in international law has remained extremely diffused.”<sup>127</sup> At the same time,

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<sup>120</sup> See generally Edward Muir and Guido Ruggiero (eds) MICROHISTORY AND THE LOST PEOPLES OF EUROPE (1991). See also Carlo Ginzburg and C. Poni, *Il nome e il come: scambio ineguale e mercato storiografico*, QUADERNI STORICI 40 (1979) 181–90, English translation: *The Name and the Game: Unequal Exchange and the Historical Marketplace*, in MICROHISTORY AND THE LOST PEOPLE OF EUROPE, edited by E. Muir and G. Ruggiero (1991) 2–10 (noting that people’s names may be traced through a wide variety of archival sources, including tax records, birth registers, notarial contracts, and court cases); Karl Appuhn, *Microhistory*, ENCYCLOPEDIA OF EUROPEAN SOCIAL HISTORY (2001) (noting that “Once we have assembled the data, we have not only one individual’s life, but a significant portion of the social and economic networks within which that person lived. These networks, in turn, ideally reveal both the opportunities and constraints faced by our subject in the course of his or her life.”)

<sup>121</sup> For an analogous argument, see Anthony Musson and Chantal Stebbings, *Introduction*, in Anthony Musson and Chantal Stebbings (eds) MAKING LEGAL HISTORY (2012) 1, 3 (referring to domestic legal history).

<sup>122</sup> Ginzburg, *Microhistory: Two or Three Things that I know about it*, 208.

<sup>123</sup> JO GULDI AND DAVID ARMITAGE, THE HISTORY MANIFESTO (2014).

<sup>124</sup> Sigurður Gylfi Magnússon, *Far-reaching Microhistory: the Use of Microhistorical Perspective in a Globalized World*, RETHINKING HISTORY 21 (2017) 312–341, 329 (noting that micro-history can be “far-reaching.”)

<sup>125</sup> See e.g. TRIVELLATO, THE FAMILIARITY OF STRANGERS.

<sup>126</sup> Martti Koskenniemi, *Letter to the Editors of the Symposium*, 93 AM. J. INT’L L. 351, 354 (1999).

<sup>127</sup> D’ASPROMONT, EPISTEMIC FORCES IN INTERNATIONAL LAW, 184.

distortions of history or the legal texts for ideological reasons are inadmissible.<sup>128</sup> If there is no single, eternal, and absolute interpretation of history or international law, at the same time, whether they adopt a micro- or macro-historical approach, international legal historians must use appropriate, sound and adequate research methods. They should interpret history and international law in good faith, relying on genuine and verifiable sources; providing sound reasons; citing, quoting and translating documents in an accurate fashion; and assessing all the available evidence, as impartially as possible, in order to arrive at conclusions that will withstand the critical assessment of others.

Finally, can international legal historians remain objective? Can microhistories help to build up a history of the whole? How do micro- and macro-histories interact? Is there any tension between a panoramic perspective and a narrow focus? 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, losing sight of what really matters. Micro-historians risk not seeing the forest for the trees or mistakenly assuming an anomaly as the norm. This is perhaps the most valid criticism to micro-historical approaches. Microhistories only provide an incomplete picture of international legal history as a whole. Yet, macro-histories also offer incomplete pictures by using magnifying lenses and neglecting the particular.

Therefore, while both micro and macro-histories only offer incomplete sights if taken on their own, they remain relevant and useful if they are combined. While there is tension between big and small, such tension, this article argues, is not only useful but also fruitful, as microhistories can provide “a finer and more complex understanding” of known events,<sup>129</sup> and uncover discarded, hidden, or forgotten histories. At the same time, “certain phenomena can only be grasped by means of a macroscopic perspective.”<sup>130</sup> Macro-histories can offer the bigger picture, the long-term perspective, and context.

Therefore, to understand the complex architecture of international legal history and its multifaceted aspects, international legal historians can go back and forth between micro- and macro- scales of analysis. The “reconciliation between macro- and microhistory ... needs to be pursued” through “a constant back and forth between micro- and macro-history, between close-ups and extreme long-shots.”<sup>131</sup> The micro scale of analysis enables international legal historians to spot the unusual, the “normal exception,”<sup>132</sup> irregular patterns that confirm a given rule.<sup>133</sup>

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<sup>128</sup> See DEBORAH LIPSTADT, *DENYING THE HOLOCAUST* (1993)(analyzing the Holocaust denial movement and considering it pseudohistory); DEBORAH LIPSTADT, *HISTORY ON TRIAL: MY DAY IN COURT WITH A HOLOCAUST DENIER* (2005)(describing the trial, won by Lipstadt, on the accuracy of her statements concerning a denialist); Therese O'Donnell, *Judicialising History or Historicising Law: Reflections on Irving v Penguin Books and Lipstadt* NORTHERN IRELAND LEGAL QUARTERLY 62 (2011) 291–320 (examining the questions about the relationship between law and history, raised by the Queen's Bench Division judgment in *Irving v Penguin Books Ltd*).

<sup>129</sup> Wallen, *The Witness Against the Archive*, 302.

<sup>130</sup> Ginzburg, *Microhistory: Two or Three Things that I Know about it*, 27 (reporting Siegfried Kracauer's view).

<sup>131</sup> *Id.* 27.

<sup>132</sup> Edoardo Grendi first formulated the oxymoron of “normal exception.” Edoardo Grendi, *Micro-analisi e storia sociale*, QUADERNI STORICI 35 (1977) 506-520.

<sup>133</sup> Karl Appuhn, *Microhistory*, *ENCYCLOPEDIA OF EUROPEAN SOCIAL HISTORY* (2001) (clarifying that the concept of “normal exception” as identified by Edoardo Grendi “holds that while such statistically insignificant behavior is not representative of the majority of people, it may well be ...

The macro scale of analysis enables them to step back and get a wider view of international legal history. In some cases, microhistory has a “fractal-like character,” reflecting patterns that are also present at the macro-level.<sup>134</sup> This leads to a certain symmetry in the different scales of analysis.<sup>135</sup> In other cases, the different scales of analysis are complementary.<sup>136</sup> Microhistory emerged in response to the history of processes and the *longue durée*—an idea developed by the French historian Fernand Braudel earlier in the 20th century—and, in some ways, it reflects upon the hypotheses posited by macro-history from a different angle.<sup>137</sup> Both micro and macro-histories then reflect upon the same hypotheses albeit from different angles. In fact, a new paradigm of historical inquiry—the so-called meso-history—has emerged that allows for a middle way between grand theories and particularistic narratives.<sup>138</sup>

Therefore, macro-histories and microhistories are complementary.<sup>139</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>140</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>141</sup> In conclusion, international legal historians can move “between a wider and a narrower scale[,] in order to gradually come to a clearer view of [their] object.”<sup>142</sup>

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representative of some smaller group whose existence remains hidden to standard data collection techniques.”)

<sup>134</sup> MAGNÚSSON AND SZIJÁRTÓ, WHAT IS MICROHISTORY? 75 (acknowledging “the fractal-like character of microhistory.”)

<sup>135</sup> *Id.* 63 and 74 (noting, at 75, that microhistorians can “recognize the whole in a single case” because of their previous “contextual knowledge.”)

<sup>136</sup> Ginzburg, *Microhistory: Two or Three Things that I Know about it*, 27 (reporting that, for Kracauer, no conclusion attained at the micro-level can be automatically transferred to the macro-level).

<sup>137</sup> Appuhn, *Microhistory* (noting that “Microhistory emerged, primarily in Italy, in the late 1970s and early 1980s, as a revolt against studies of large social groups and long, gradual historical transformations. The first microhistorians were especially dissatisfied with [the] then predominant social history methods that concentrated on broad subjects over extremely long periods of time, the famous *longue durée*.”)

<sup>138</sup> Daniel Little, *Explaining Large-Scale Historical Change*, PHILOSOPHY OF THE SOCIAL SCIENCES 30 (2000) 89, 90 (noting that “it is possible to identify the strands of a new paradigm of historical inquiry—what might be called ‘meso-history’” and adding that “this approach allows for a middle way between grand theory and excessively particularistic narrative.”)

<sup>139</sup> David Christian, *The Play of Scales*, 4 SOCIAL EVOLUTION & HISTORY (2005) 22, 28; see also Jürgen Schlumbohm (ed.) MIKROGESCHICHTE, MAKROGESCHICHTE: KOMPLEMENTÄR ODER INKOMMENSURABEL? (1998); Matti Peltonen, *Clues, Margins, and Monads: The Micro-Macro Link in Historical Research*, HISTORY AND THEORY 40 (2001) 348–357.

<sup>140</sup> Christian, *The Play of Scales*, 26 (referring to the traditional neglect of Aboriginal perspectives into historical narratives of domestic history).

<sup>141</sup> *Id.* 27–8 (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.”)

<sup>142</sup> Koskenniemi, *Histories of International Law*, 236. See also Renders and De Haan, *Introduction*, 8 (arguing that “to understand the whole, we have to understand the parts, but to understand them, we have to understand the whole.”)

## 5. Microhistories and Legal Biographies

Legal biography can be an interesting, promising, and risky sort of microhistory. While microhistories and biographies do not necessarily coincide—rather, there can be biographies that are not microhistories and microhistories that do not constitute biographies—the two can overlap and give rise to fruitful synergy. This section investigates the role of biographies in international legal scholarship. It addresses the question as to why the history of international law has traditionally neglected biographies and aims to start a discussion on the use of the biographical genre in the field. To do so, it briefly highlights the promises and pitfalls of this literary genre and the recent flourishing of interest with regard to the same among international legal historians.<sup>143</sup>

Biographies narrate the history of the lives of persons. While the idea that “history [is] the essence of innumerable biographies”<sup>144</sup> is obsolete, biographies can “illuminate larger historical patterns and developments.”<sup>145</sup> International legal biographies focus on the lives of persons relevant to international law. They can provide important information about international law scholars, adjudicators or practitioners, and the international legal system generally. They “perfectly fit the aspirations of microhistory,”<sup>146</sup> as they shed light on “the inner lives” and “the patterns of thought and belief” of individuals who have not been traditionally represented by historians despite their contribution to the making of international law.<sup>147</sup> In turn, individual lives can become “a way of understanding” international legal history.<sup>148</sup>

Biographies are not a popular genre in international legal scholarship. Rather, the history of international law has often privileged an examination of institutions, events, or concepts. Because international law “primarily regulates relations among states,” international legal historians have traditionally adopted a state-centered approach, focusing on “the whole spectrum of international relations,” international institutions, or international law concepts.<sup>149</sup> During the nineteenth and twentieth centuries, just as “history books were full of facts without protagonists,” international law books were full of legal instruments, institutions, and concepts without individuals. Both historians and international lawyers “talked about powers, nations, peoples, alliances ... but only rarely of human beings.”<sup>150</sup> As previously noted, “Not only were international law scholars uninterested in the life of its makers, but there was an anti-biographical tradition in international law.”<sup>151</sup>

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<sup>143</sup> See e.g. Alexandra Kemmerer, *Law, Exile and the Making of a Transnational Constitution: A Life of Eric Stein* (2014); Anne Boerger, *At the Cradle of Legal Scholarship on the European Union: The Life and Early Work of Eric Stein*, *AMERICAN JOURNAL OF COMPARATIVE LAW* 62 (2014) 859–892.

<sup>144</sup> BARBARA CAINE, *BIOGRAPHY AND HISTORY* (2010) 11.

<sup>145</sup> *Id.* 23.

<sup>146</sup> MAGNÚSSON AND SZIJÁRTÓ, *WHAT IS MICROHISTORY?* 69.

<sup>147</sup> CAINE, *BIOGRAPHY AND HISTORY*, 111.

<sup>148</sup> *Id.* 1.

<sup>149</sup> Stephen Hall, *Researching International Law*, in Mike McConville and Wing Hong Chui (eds) *RESEARCH METHODS FOR LAW* (second ed. 2017) 253, 253.

<sup>150</sup> Loriga, *The Role of Individual in History*, 115 (noting, at 116, “the ethical and political price of this desertification of the past.”)

<sup>151</sup> Vadi, *International Law and Its Histories*, 342. See also G. Simpson, *The Sentimental Life of International Law*, (2015) 3 *LONDON REV. OF INT'L L.* 6, 11 (noting that “Generally speaking, the ideal is a deracinated, anti-biographical, depersonalised, formally circumscribed, view from nowhere, prose style.”);

There is also an epistemic bias against legal biographies. Legal biographies can be a challenging type of scholarship.<sup>152</sup> Lawyers question whether legal biography is legal scholarship<sup>153</sup> contending that legal biographies suffer from ‘methodological individualism.’<sup>154</sup> In parallel, historians question whether biographies belong to historiography or rather constitute a literary genre (*Bildungsroman*).<sup>155</sup> Some historians consider them as a “borderline genre,” “a peripheral, blurry area” between history and literature.<sup>156</sup> Consequently, international legal historians have rarely used the biographical genre.<sup>157</sup>

International legal historians have perceived the life of international lawyers to be historically and legally irrelevant.<sup>158</sup> In general, lawyers are perceived as “agents, rather than principals,” “engag[ing] in specialized and highly repetitive work that is typically dull in its quotidian routines and difficult to represent in an engaging manner.”<sup>159</sup> From a historiographical perspective, there is a general perception that lawyers are not necessarily historically relevant individuals,<sup>160</sup> and that few legal

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<sup>152</sup> Linda Mulcahy and David Sugarman, *Introduction: Legal Life Writing and Marginalized Subjects and Sources* J. LAW & SOCIETY 42 (2015) 1, 4 (suggesting that legal life writing is an “epistemological minefield” and a “problematic form” of scholarship).

<sup>153</sup> Parry, R Gwynedd, *Is Legal Biography Really Legal Scholarship?* LEGAL STUDIES 30 (2010) 208, 208 (arguing that “the legal biography has traditionally been treated with suspicion within the English law school due to ideological and methodological concerns about the intellectual validity and robustness of the form, and because of reservations about its true disciplinary province . . . . More recent biographies, however, have succeeded in . . . demonstrating the potential value of legal biography in deepening our understanding of the human context of legal phenomena.”); Richard A. Posner, *Judicial Biography*, 70 N.Y.U. L. REV. 502, 507 n.16 (1995) (referencing a maxim of Aldous Huxley that “[t]o like a writer and want to meet him is the equivalent of liking *pâté de foie gras* and wanting to meet the goose”); id. at 516 (stating that “nothing in a lawyer’s or legal scholar’s training and experience equips him to write biography. He is not trained to write narratives or to depict human beings empathetically . . . .”). However, Posner also acknowledges that some biographies can set the standard for future works. Id. at 518.

<sup>154</sup> William Craig Rice, *Who Killed History? An Academic Autopsy* VIRGINIA QUARTERLY REV. 71 (1995).

<sup>155</sup> Ginzburg, *Checking the Evidence: The Judge and the Historian*, 85 (referring to Momigliano’s emphasis on “the lasting difference between history and biography as a literary genre.”); Patricia Hagler Minter, *Law, Culture, and History: The State of the Field at the Intersections*, AMERICAN J. OF LEGAL HISTORY 56 (2016) 139–149, at 148 (criticising legal biographies for being “places where hagiography overtakes history.”)

<sup>156</sup> Carlo Ginzburg, *Checking the Evidence: The Judge and the Historian* (1991) 18 CRITICAL INQUIRY 79, 85 and 87.

<sup>157</sup> On the general tendency to neglect individuals’ contribution to history by historians, see Giovanni Levi, *Les usages de la biographie*, ANNALES. ÉCONOMIES, SOCIÉTÉS, CIVILISATIONS 44 (1989) 1325–33 (identifying pros and cons of biographical research); Jean-Claude Passeron, *Biographies, flux, itinéraires, trajectoires*, REVUE FRANÇAISE DE SOCIOLOGIE 31 (1990) 3–22 (investigating the biographical methodology); SABINA LORIGA, *LE PETIT X: DE LA BIOGRAPHIE À L’HISTOIRE* (2010) (arguing that the X factor, meant as the individual contribution to history, gives the latter its own trajectory); Sabina Loriga, *The Plurality of the Past—Historical Time and the Rediscovery of Biography*, in *THE BIOGRAPHICAL TURN: LIVES IN HISTORY* Hans Renders, Binne de Haan, Jonne Harmsma (eds.) (2016) (noting that while in the past two centuries an impersonal history has prevailed, paying more attention to the “collective dimension of the historical experience”, microhistory and the biographical genre has recently been rediscovered.); *THEORETICAL DISCUSSIONS OF BIOGRAPHY—APPROACHES FROM HISTORY, MICROHISTORY, AND LIFE WRITING* Hans Renders and Binne de Haan (eds.) (2014) (illuminating key challenges and problems in studying individual lives and contributing to the emergence of biographical studies).

<sup>158</sup> Vadi, *International Law and Its Histories*, 343.

<sup>159</sup> Mark Fenster, *The Folklore of Legal Biography*, MICHIGAN LAW REVIEW 105 (2006–2007) 1265.

<sup>160</sup> Mary Ann Glendon, William P. Alford, and Geoffrey Sawyer, *Legal Profession*, ENCYCLOPAEDIA BRITANNICA (2016) (noting that “The legal profession has always had an ambiguous social position. Leading lawyers have usually been socially prominent and respected . . . Yet, along with this high repute, sustained over two millennia, lawyers have also engendered tremendous distrust and even hatred in many societies.”)

scholars and practitioners are worthy of a biography.<sup>161</sup> Moreover, from a legal perspective, international lawyers have traditionally assumed that their works matter more than their personal vicissitudes. However, certain international lawyers have had historically relevant lives. Furthermore, knowing more about the lives of international lawyers can sometimes better illuminate their works. In fact, situating the lawyers' works within their historical, cultural, and political contexts "give[s] a sense that [such lawyers] were advancing or opposing particular political projects from their positions at universities, foreign ministries, or other contexts of professional activity."<sup>162</sup> Such contextualization can capture "the dynamism of international law, and...show how it is shaped by the ambitions, fears, dispositions, and sensibilities of individual jurists, reacting to the historical and social problems which they confront in their time."<sup>163</sup> It also illuminates the "notion of international law as a collective endeavor."<sup>164</sup>

The shortage of evidence can be a significant problem for microhistory in general and legal biographies in particular. Such shortage can make the collection of sources and elaboration of it into a significant whole very challenging. However, this criticism is often overrated; as a matter of fact, personal correspondence, visual evidence, literary sources, and network analysis can help the researcher to delineate the person in addition to her work.<sup>165</sup> Because "one person's story is always the story of others,"<sup>166</sup> not only can network analysis provide additional insights as to the cultural, political, and social context in which a given subject lived or a given event took place but it can also provide additional insights into the development of international law.<sup>167</sup> Context can also help in overcoming information gaps.<sup>168</sup>

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<sup>161</sup> Id. (also noting that "There is an inherent conservatism to the legal profession, owing to its commitment to working chiefly through existing institutions and to the fact that law itself is predominantly intended to satisfy expectations arising from inherited patterns of behaviour. Individual lawyers, nevertheless, occasionally have been on the side of revolutionaries and rebels; Robespierre and Lenin were both lawyers... In addition, there is a long and rich tradition in many countries of lawyers' serving as leaders of struggles for social justice, as did Gandhi, Thurgood Marshall in the United States, and Nelson Mandela in South Africa.")

<sup>162</sup> MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960* (2002) 1–2.

<sup>163</sup> Lang and Marks, *People with Projects*, 445.

<sup>164</sup> Id. 449.

<sup>165</sup> Leslie J. Moran, *Judicial Pictures as Legal Life-Writing Data and a Research Method*, *JOURNAL OF LAW AND SOCIETY* 42 (2015) 74, 96 (proposing the use of judicial pictures as sources of data and a tool of research).

<sup>166</sup> David McCooey, *Understanding Ourselves: The Dangerous Art of Biography (Review)*, *BIOGRAPHY* 28 (2005) 667, at 680; Loriga, *The Role of the Individual in History*, 138 (pointing out that "each and every individual is always a hybrid, a point where webs of relationships intersect.")

<sup>167</sup> Pierre Bourdieu, *L'illusion biographique*, *ACTES DE LA RECHERCHE EN SCIENCES SOCIALES*, 62-63 (1986), 69, 72 ("on ne peut pas comprendre une trajectoire ... qu'à condition d'avoir préalablement construit ... l'ensemble de relations objectives qui ont uni l'agent considéré ... à l'ensemble des autres agents engagés dans le même champ..."; "We cannot understand a trajectory ... unless we previously construct ... the set of objective relations that united the person in question ... with all the other people involved in the same field." [Translation of the author]); Appuhn, *Microhistory*, (noting that "As individuals, ... we relate to the world through the particular, creating understandings of the larger world through the accumulation of small fragmentary pieces of data. The microhistorical method mirrors this aspect of human existence, attempting to reconstruct the sometimes peculiar ways in which individuals have tried to understand the larger world from within the confines of their personal experiences.")

<sup>168</sup> Giovanni Levi, *The Uses of Biography*, in *THEORETICAL DISCUSSIONS OF BIOGRAPHY*, Hans Renders and Binne de Haan (eds) (2013) 89, 101 (arguing that "the context does service as padding for documentary lacunas.")

Critics also contend that even if there was an interest in the biographies of international law scholars, the absence of stylistic models constitutes an obstacle to the development of the genre in international legal scholarship.<sup>169</sup> Moreover, different epistemic communities may imply fundamentally divergent aims, methods, and approaches. While “international law scholars may want a more in-depth treatment of the work of a given scholar, legal historians may expect the use of appropriate historical methods”.<sup>170</sup> In turn, the public may prefer short books to long ones, practice a strictly linear reading, unwilling to read footnotes. It may be difficult to satisfy different types of readers.

Yet, the argument that the absence of stylistic models necessarily constitutes an obstacle to the development of international legal biographies is contradicted in practice by the growing number of publications in the field. International legal historians have increasingly focused on the contribution of individuals to the making of international law.<sup>171</sup> Moreover, some stylistic patterns are gradually emerging, showing an increasing attention to the use of primary sources, such as archival materials, the growing adoption of proper historiographical methods, and an attention to language and style.<sup>172</sup>

What can legal biographies offer to the study of international legal history? If international legal historians understand international law as a purely technical subject, then its operators are of little interest. For decades, if not for centuries, international lawyers have constituted what Schachter aptly named “the invisible college of international lawyers.”<sup>173</sup> “However, if international legal historians conceive international law as an art and a science, then investigating the role its artists and scientists played in its making acquires greater relevance.”<sup>174</sup> Not only can the biographies of international law scholars constitute a rich and important source of information about the international legal system<sup>175</sup> but they can also constitute a legacy for future generations. They can inspire and teach,<sup>176</sup> “provid[ing] inspiration and encouragement,” especially in times of adversity.<sup>177</sup>

Moreover, some international law scholars and practitioners make great biographical subjects, offering appealing narrative arcs, “compelling passages and dramatic moments.”<sup>178</sup> Alberico Gentili (1552–1608), one of the founders of the discipline became a professor of law at the University of Oxford, after narrowly

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<sup>169</sup> SUSAN TRIDGELL, *UNDERSTANDING OURSELVES: THE DANGEROUS ART OF BIOGRAPHY* (2004) 25.

<sup>170</sup> Vadi, *International Law and Its Histories*, 343.

<sup>171</sup> See e.g. HENK J.M. NELLEN, *HUGO GROTIUS—A LIFELONG STRUGGLE FOR PEACE IN CHURCH AND STATE, 1583 – 1645* (2014); MARTINE VAN ITTERSUM, *PROFIT AND PRINCIPLE: HUGO GROTIUS, NATURAL RIGHTS THEORIES AND THE RISE OF DUTCH POWER IN THE EAST INDIES, 1595–1615* (2006). For earlier studies, see H. VREELAND, *HUGO GROTIUS* (1986); PETER HAGGENMACHER, *GROTIUS ET LA DOCTRINE DE LA GUERRE JUSTE* (1983); C. GELLINEK, *HUGO GROTIUS* (1983).

<sup>172</sup> See e.g. JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF HUMAN RIGHTS LAW* (2012) (making excellent use of archival materials).

<sup>173</sup> Oscar Schachter, *The Invisible College of International Lawyers*, *NORTHWESTERN UNIVERSITY LAW REVIEW* 72 (1977) 217–227.

<sup>174</sup> Vadi, *International Law and Its Histories*, 344.

<sup>175</sup> Hagler Minter, *Law, Culture, and History*, at 148 (explaining that legal biographies can “offer new insights”, and “frame ... well-known subjects in broader contexts.”)

<sup>176</sup> Fenster, *The Folklore of Legal Biography*, at 1281.

<sup>177</sup> David Sugarman, *From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-Legal Scholarship*, *J. LAW & SOCIETY* 42 (2015) 7–33, 8. See also Susan Bartie, *Histories of Legal Scholars: the Power of Possibility*, *LEGAL STUDIES* 34 (2014) 305 at 317 (noting that studying the life of legal scholars can be empowering).

<sup>178</sup> Fenster, *The Folklore of Legal Biography*, at 1266.



escaping the Inquisition and becoming a religious refugee.<sup>179</sup> Imprisoned for his involvement in religious disputes of the Dutch Republic, Hugo Grotius (1583–1645), another founder of the discipline, escaped appropriately hidden in a chest of books.<sup>180</sup> International lawyers have often faced extraordinary challenges, overcoming wars and exiles, persecution, and loss.<sup>181</sup> They have been resilient in the face of adversity, becoming masters of their own destiny.

International legal historians are gradually becoming interested in the histories of international legal scholars and practitioners. A new biographical direction for the field has gradually emerged.<sup>182</sup> The publication of *THE GENTLE CIVILIZER OF NATIONS* by Martti Koskenniemi was a watershed in the writing of international legal history. The book adopts the biographical method for studying key figures including Hans Kelsen, Hersch Lauterpacht, Carl Schmitt, and Hans Morgenthau.<sup>183</sup> By turning international lawyers into main protagonists, Koskenniemi's history of international law "infuses the study of international law with a sense of historical motion and political, even personal, struggle..."<sup>184</sup> Other monographs and edited collections have focused on international law scholars and practitioners.<sup>185</sup> International law journals have launched a series of legal

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<sup>179</sup> GEZINA VAN DER MOLEN, *ALBERICO GENTILI AND THE DEVELOPMENT OF INTERNATIONAL LAW: HIS LIFE, WORK AND TIMES* (1968); DIEGO PANIZZA, *ALBERICO GENTILI GIURISTA IDEOLOGO NELL'INGHILTERRA ELISABETTIANA* (1981).

<sup>180</sup> For a lively account, see Valentina Vadi, *Grotius' Book Chest, International Law and Material Culture*, 68(3) *NORTHERN IRELAND LEGAL QUARTERLY* (2017) 317–328. See also the classical Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS 65, 68 (Hedley Bull et al. eds., 1992) and MARTINE JULIA VAN ITTERSUM, *PROFIT AND PRINCIPLE: HUGO GROTIUS, NATURAL RIGHTS THEORIES AND THE RISE OF DUTCH POWER IN THE EAST INDIES 1595–1615* (2006).

<sup>181</sup> See Giorgio Sacerdoti, *NEL CASO NON CI RIVEDESSIMO: UNA FAMIGLIA TRA DEPORTAZIONE E SALVEZZA 1938–1945* (2013); Bernhard Grossfeld and Peter Winship, *The Law Professor Refugee*, *SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE* 18 (2014) 1, 7 (highlighting the "constant struggle for freedom and existence" of the refugee law professors).

<sup>182</sup> The literature is extensive. With no pretence of exhaustiveness, I can include only a representative sample of selected publications. See e.g. Jean Allain, *Biographical Note: Joseph-Mathias Gérard de Rayneval*, *JUS GENTIUM. JOURNAL OF INTERNATIONAL LEGAL HISTORY* 1 (2016) 71–84; Andrew Lang and Susan Marks, *People with Projects: Writing the Lives of International Lawyers*, *TEMPLE INT'L & COMP. L.J.* 27 (2013) 437, 437 (commenting Koskenniemi's narration of key aspects of Lauterpacht's life); Roger Alford, *The Nobel Effect: Nobel Peace Prize Laureates as International Norm Entrepreneurs* *VIRGINIA JOURNAL OF INTERNATIONAL LAW* 49 (2008) 61–134 (noting the contribution of given Nobel Prize winners to international law). See also Knud Waaben, *Alf Ross 1899–1979: A Biographical Sketch*, *EUROPEAN J. INT'L L.* 14 (2003) 661–674; Nicoletta Bersier Ladavac, *Hans Kelsen (1881–1973) Biographical Note and Bibliography*, *EUROPEAN J. INT'L L.* 9 (1998) 391–400; Antonio Tanca, *Georges Scelle (1878 – 1961) Biographical Note with Bibliography*, *EUROPEAN J. INT'L L.* 1 (1990) 240–249; Diane Marie Amann, *Cecelia Goetz, Woman at Nuremberg*, *INTERNATIONAL CRIMINAL LAW REVIEW* 11 (2011) 607–620; WARREN F. KUEHL, *BIOGRAPHICAL DICTIONARY OF INTERNATIONALISTS* (1983); J. H. A. Logemann, *Biography of Roeland Duco Kolleijn*, *NETHERLANDS INTERNATIONAL LAW REVIEW* (1962) 17–22.

<sup>183</sup> See generally MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960* (2002).

<sup>184</sup> *Id.* at 2.

<sup>185</sup> See e.g. D. ALLAND, *ANZILOTTI ET LE DROIT INTERNATIONAL. UN ESSAI* (2013); GEOFFREY LEWIS, *F.A. MANN—A MEMOIR* (2013); ELIHU LAUTERPACHT, *THE LIFE OF HERSCH LAUTERPACHT* (2012) (narrating the life and work of Hersch Lauterpacht, one of the most prominent 20th century international lawyers); REUT Yael Paz, *A GATEWAY BETWEEN A DISTANT GOD AND A CRUEL WORLD. THE CONTRIBUTION OF JEWISH GERMAN SCHOLARS TO INTERNATIONAL LAW* (2013); Bardo Fassbender and Anne Peters (eds.) *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* (2012) (including short biographies of Muhammad al-Shaybani, Francisco de Vitoria, Francisco Suárez, Alberico Gentili, Hugo Grotius, Emer de Vattel, Friedrich Fromhold von Martens, Lassa Oppenheim, Max Huber, Georges Scelle and Hersch Lauterpacht among others); Jack

biographies.<sup>186</sup> Other articles have appeared in journals of legal history or international law.<sup>187</sup>

A recent trend, emerging in the past decade, is the adoption of the autobiographical genre. International lawyers investigate their own past, relying on family documents, pictures, and letters as well as other unpublished materials. Some of these autobiographies do not necessarily have international law and its development as their object of inquiry, and therefore they remain outside the proper scope of international legal history and this article.<sup>188</sup> Whilst written by international law scholars, such autobiographies can enrich our understanding of human experience and belong to literature, but do not directly contribute to the history of international law. Other autobiographies, however, challenge the disciplinary boundaries between law, history, and literature. These recent works mix family memoir with the history of international law.<sup>189</sup>

A notable example of such mixing of genres is Philippe Sands's *EAST WEST STREET: ON THE ORIGINS OF GENOCIDE AND CRIMES AGAINST HUMANITY*.<sup>190</sup> The book recounts the life and work of Leon Buchholz (Sands' grandfather); Hersch Lauterpacht, who elaborated the concept of crimes against humanity; Raphael Lemkin, who elaborated that of genocide; and Hans Frank, who was prosecuted at the Nuremberg trials.<sup>191</sup> The book is not solely a family memoir, but it is also the story of the Nuremberg trials and human rights laws. It connects ordinary human experience and questions of international law. As aptly noted by one reviewer, "the account of how the Holocaust affected one family is yet another reminder of the impossibility of grasping the scale and intensity of the destruction inherent in that event. Millions and millions of families, all so ordinary and yet all so unique, suffered

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Beatson and Reinhard Zimmermann (eds.) *JURISTS UPROOTED. GERMAN-SPEAKING ÉMIGRÉ LAWYERS IN TWENTIETH-CENTURY BRITAIN* (2004) (featuring several international law scholars including Ernst J. Cohn; Francis A. Mann; Wolfgang Friedmann; Lassa Oppenheim; Hersch Lauterpacht; and Georg Schwarzenberger); Lauri Mälksoo, *The Liberal Imperialism of Friedrich (Fyodor) Martens (1845–1909)*, *SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW*, Hélène Ruiz Fabri, Emmanuelle Jouannet, Vincent Tomkiewicz (eds.) (2008) 173–180. For earlier studies, see e.g. MARY ANN GLENDON, *A WORLD MADE NEW—ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001); EMMANUELLE JOUANNET, *EMER DE VATTEL ET L'ÉMERGENCE DOCTRINALE DU DROIT INTERNATIONAL CLASSIQUE* (1998).

<sup>186</sup> For instance, the *EUROPEAN JOURNAL OF INTERNATIONAL LAW* launched the series *The European Tradition in International Law* featuring Georges Scelle, Dionisio Anzilotti, Alfred Verdross, Hersch Lauterpacht, Hans Kelsen, Charles De Visscher, Alf Ross, Max Huber, Walther Schücking and Lassa Oppenheim. The *LEIDEN JOURNAL OF INTERNATIONAL LAW* launched the series on non-European international law scholars, featuring Alejandro Alvarez and Taslim Olawale Elias.

<sup>187</sup> See e.g. Nico Schrijver, *A Portrait of Judge P. H. Kooijmans – A Passionate Advocate of the Rule of Law in International Affairs*, *LEIDEN J. INT'L L.* 27 (2014), 839–858; Yolanda Gamarra, *Rafael Altamira y Crevea (1866–1951). The International Judge as "Gentle Civilizer"*, *JOURNAL OF THE HISTORY OF INTERNATIONAL LAW* 14 (2012) 1–49; Ana Vrdoljak, *Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law* *EUROPEAN JOURNAL OF INTERNATIONAL LAW* 20 (2009) 1163–1194; Lauri Mälksoo, *The Definition of Genocide and the Role of Soviet International Lawyers: Reflections on Socialist Legacy in International Law*, 6 *BALTIC YEARBOOK OF INTERNATIONAL LAW* (2006) 111–124. C. Landauer, *J.L. Brierly and the Modernization of International Law* 25 *VANDERBILT J. TRANSNATIONAL L.* (1992–1993) 881–917.

<sup>188</sup> *GIORGIO SACERDOTI, NEL CASO NON CI RIVEDESSIMO: UNA FAMIGLIA TRA DEPORTAZIONE E SALVEZZA 1938–1945* (2013); MARC MAZOWER, *WHAT YOU DID NOT TELL* (2017).

<sup>189</sup> THOMAS BUERGENTHAL, *A LUCKY CHILD* (2007); JOACHIM VON ELBE, *WITNESS TO HISTORY—A REFUGEE FROM THE THIRD REICH REMEMBERS* (1988).

<sup>190</sup> PHILIPPE SANDS, *EAST WEST STREET: ON THE ORIGINS OF GENOCIDE AND CRIMES AGAINST HUMANITY* (2016).

<sup>191</sup> *Id.*

the same fate.”<sup>192</sup> Without Sands’ narration, his grandfather would have remained unknown, another “unknown man” (*homme inconnu*).<sup>193</sup> At the same time, Sands has made key concepts of public international law and its history accessible to the public.<sup>194</sup> Therefore, the book contributes to knowledge about international law and to the history of WWII. Writing in the first person and adopting a detective-style writing makes the book a “page-turner.”<sup>195</sup> While the use of the biographical genre in international legal history remains limited, it “reaches a general audience that most history writing...does not.”<sup>196</sup>

## 6. Addressing Methodological Challenges

While writing microhistories of international law seems to be a promising path, it is also risky as several methodological issues characterize this specific genre. This section illustrates such challenges and aims to identify a toolkit to help international legal historians to address methodological challenges.

First, with regard to the issue of relevance, microhistories should explain *why* a given event, person or object deserves historiographical treatment. To what extent was an event, person or object “normally exceptional?”<sup>197</sup> To what extent did the selected object of study shape the history of international law? How does it serve “as an allegory for broader issues?”<sup>198</sup> This is not to say that international legal historians should study only great events or historical characters.<sup>199</sup> In fact, unknown events and people can be more interesting, precisely because they are unknown. Moreover, the subjects of microhistories can include “the losers of history, the victims of the past.”<sup>200</sup> Explaining why one event, scholar or object deserves analysis helps the reader to decide whether the study can be useful and/or interesting.

Second, with regard to the appropriateness of conducting micro-historical research in relation to international law, critics could contend that microhistories are an absurdity in relation to international law. After all, “[t]he historiographical approaches of microhistory and world history ... appear to be polar opposites in terms of their focus: on the small scale in the former case and the large scale in the latter.”<sup>201</sup> While international law governs inter-state relations, microhistory focuses on neglected stories, individuals, or communities.<sup>202</sup> Yet, microhistories can help international legal history overcome its traditional focus on states and the traditional

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<sup>192</sup> Sarah Nouwen, *The Story of His Life: Philippe Sands’ East West Street*, UNIVERSITY OF CAMBRIDGE LEGAL STUDIES RESEARCH PAPER SERIES, 2.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* 1.

<sup>195</sup> *Id.* 6.

<sup>196</sup> JEREMY D. POPKIN, *HISTORY, HISTORIANS & AUTOBIOGRAPHY* (2005).

<sup>197</sup> See generally Grendi, *Micro-analisi e storia sociale*.

<sup>198</sup> Jill Lepore, *Historians Who Love Too Much: Reflections on Microhistory and Biography*, 1 *JOURNAL OF AMERICAN HISTORY* 88 (2001) 129–144.

<sup>199</sup> G.R. Bandeira Galindo, *Martti Koskenniemi and the Historiographical Turn in International Law*, (2005) 16 *EUROPEAN JOURNAL OF INTERNATIONAL LAW* 541, 554 (noting that “[o]ne of the problems in studying the history of international law from a biographical point of view is that, in doing so, attention is paid only to what the great masters of the discipline thought and did.”)

<sup>200</sup> Loriga, *The Role of the Individual in History*, 134.

<sup>201</sup> But see Mark Gamsa, *Biography and (Global) Microhistory*, *NEW GLOBAL STUDIES* 11 (2017) 231–241, 231 (noting the emergence of “global microhistory” and arguing in favor of “navigating between the ‘micro’ and ‘macro’ layers of historical enquiry.”).

<sup>202</sup> See e.g. Tonio Andrade, *A Chinese Farmer, Two African Boys; and a Warlord: Toward a Global Microhistory* *JOURNAL OF WORLD HISTORY* 21 (2010) 573.

state-centric Westphalian view of international law as law governing inter-state relations only. Microhistories reflect recent trends in international law, which have repositioned individuals and communities at the heart of the international legal system, as attested, *inter alia*, by the growing importance of international human rights law.

Third, methods matter. International legal historians should explain *how* they are conducting their research. There is no single method of writing international legal history; rather, a number of methods can be used to approach the history of international law. Irrespective of the method chosen, microhistories should not glorify or revise the past; rather, they should include rigorous research based on verifiable sources.<sup>203</sup> The selection of a given research method ultimately depends on the specific research questions and the given object of analysis.<sup>204</sup>

Fourth, international legal historians should write microhistories with their readers in mind. To whom do international legal historians address their work? There is a fine line between academic and popular literature, science and fiction. Yet, one may wonder whether international legal historians can or “should consider how best to persuade [a] wider audience of the value of their field”<sup>205</sup> and make international historical research both understandable and interesting for both academics and “outsiders.”<sup>206</sup> As noted by Ginzburg, “a greater awareness of the narrative dimension does not imply a weakening of the cognitive possibilities offered by historiography, but rather, to the contrary, their intensification.”<sup>207</sup> Ideally, microhistories should be relevant to lawyers, historians, and the public.

Fifth, the role of authors deserves some consideration. Admittedly, pure objectivity does not exist in history—no international legal historian can remain completely external to or detached from the world she aims to know. There are no perfectly objective narratives in international legal history. While “most historians . . . yearn to be . . . objective and . . . true to the past,”<sup>208</sup> “every author writes from an individual perspective.”<sup>209</sup> Unavoidably, “our own personal experiences or the questions raised by our current historical moment inform the questions that we raise about the past.”<sup>210</sup> Who the author is can influence her output.

With regard to biographies, the authorial role becomes a central issue. In particular, biographies are often “the product of the biographies of the subject and the biographer.”<sup>211</sup> Freud famously contended that biographies cannot provide a critical assessment of their subject.<sup>212</sup> Experts in biographical studies have claimed

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<sup>203</sup> Hans Renders and Binne de Haan, *Introduction—The Challenges of Biography Studies*, in Hans Renders and Binne de Haan (eds) *THEORETICAL DISCUSSIONS OF BIOGRAPHY* (2013) 1, 6.

<sup>204</sup> See generally Vadi, *International Law and Its Histories*.

<sup>205</sup> M. Dyson, *If the Present were the Past*, (2016) 56 *AMERICAN JOURNAL OF LEGAL HISTORY* 50.

<sup>206</sup> For an analogous argument with regard to international legal scholarship, see Cecily Rose, *International Lawyers as Public Intellectuals and the Need for More Books*, 28 *LEIDEN JOURNAL OF INTERNATIONAL LAW* (2015) 393–401 (referring to books as a medium through which public international lawyers might reach a mass audience and arguing that “international legal academics do not diminish their status as scholars by acting as public intellectuals”).

<sup>207</sup> Carlo Ginzburg, *Proofs and Possibilities*, in Carlo Ginzburg, *THREADS AND TRACES* (2012) 54, 67.

<sup>208</sup> Gordon Wood, *In Defense of Academic History Writing*, 48 *PERSPECTIVES ON HISTORY* (2010) 19–20.

<sup>209</sup> B. Fassbender and A. Peters, *Introduction: Towards a Global History of International Law*, in Fassbender and Peters (eds.) *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* (2012), 15.

<sup>210</sup> R.J. Hoyos, *Legal History as Political Thought*, (2016) 56 *AMERICAN JOURNAL OF LEGAL HISTORY* 78–9.

<sup>211</sup> Sugarman, *From Legal Biography to Legal Life Writing*, 15 (noting that “debate rages as to how much of the relationship between biographer and subject should be in the background...”); Nouwen, *The Story of His Life*, 1.

<sup>212</sup> CAINE, *BIOGRAPHY AND HISTORY*, 71 (quoting Freud).

that transference—the redirection of feelings and desires and especially of those unconsciously retained from childhood toward a new object—“is at the core of all biographical writing.”<sup>213</sup> And international lawyers have also observed “there is a strong autobiographical aspect to everyone’s writing.”<sup>214</sup>

If a subjective perspective is inevitable, 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>215</sup> In this manner, the “inevitable distortions are themselves a source of richness for...argumentation and thinking rather than an invalidating flaw.”<sup>216</sup>

Can international legal historians enter the hearts of the people they bring back to life? Should they do so? The incompleteness of the surviving record limits what we do know about these people;<sup>217</sup> and the available record often omits such details. Any historical account remains imperfect.<sup>218</sup> Yet, some sources can offer valuable clues on the character of a given person. Because history is largely “interpretive by its very nature,” it can admit many nuances.<sup>219</sup> Historians often struggle to find a balance between archival accuracy and narration, in combining “sufficient immersion in the life of another to understand it, and yet enough detachment to analyze and to explain.”<sup>220</sup> They try to balance closeness and distance moving “from text to context and back again.”<sup>221</sup> The political, cultural, and social context can help understand the meaning of human behavior.<sup>222</sup>

Source critique is also important. As noted by a historian, “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>223</sup> To cope with this problem, micro-historians have intentionally integrated their research processes and source analysis into the narrative itself.<sup>224</sup> According to Ginzburg, “[t]he sources must be read between the lines (*in controtulce*)”<sup>225</sup> to understand the tensions within a text. Gaps in the sources, hypothesis, doubts and uncertainties all become part of the narrative.<sup>226</sup>

In conclusion, this section discussed some key methodological challenges. This section is neither exhaustive nor prescriptive by nature; rather, it aims at

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<sup>213</sup> Id.

<sup>214</sup> Andrew Lang and Susan Marks, *People with Projects: Writing the Lives of International Lawyers*, TEMPLE INT’L & COMP. L.J. 27 (2013) 437, 439; MARTTI KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW* (2011) at ix (“[t]here is a strong autobiographical aspect in his writing.”)

<sup>215</sup> Fassbender and Peters, *Introduction: Towards a Global History of International Law*, at 15.

<sup>216</sup> J. D’Aspremont, *M. Koskenniemi, the Mainstream, and Self-Reflectivity*, (2016) 29 LEIDEN JOURNAL OF INTERNATIONAL LAW, 626–627 (arguing, however, that “It is not possible to unveil such biases”).

<sup>217</sup> Thomas V. Cohen, *The Macrohistory of Microhistory*, JOURNAL OF MEDIEVAL AND EARLY MODERN STUDIES 47 (2017) 53, 55.

<sup>218</sup> Cohen, *The Macrohistory of Microhistory*, 56.

<sup>219</sup> ROBERT DARNTON, *THE GREAT CAT MASSACRE AND OTHER EPISODES IN FRENCH CULTURAL HISTORY* (Basic Books 2009), xvii (adding, at 4 that “other people are other. They do not think the way we do.”)

<sup>220</sup> James Walter, *The Solace of Doubt? Biographical Methodology after the Short Twentieth Century*, in *THEORETICAL DISCUSSIONS OF BIOGRAPHY*, Hans Renders and Binne de Haan (eds) (2013) 63, 67.

<sup>221</sup> DARNTON, *THE GREAT CAT MASSACRE*, 6.

<sup>222</sup> Port, *History From Below*, 110.

<sup>223</sup> Id.

<sup>224</sup> Id.

<sup>225</sup> Ginzburg, *Some Queries Addressed to Myself*, 95 (quoting A. Frugoni).

<sup>226</sup> Port, *History From Below*, 111 (cautioning that one should try not to impose “present sensibilities to on the past.”)

opening a debate on the best ways to write microhistories and to contribute to the evolution of international legal history. International legal microhistories are in the making, whether they can fulfill their potential depends on whether international legal historians have the audacity to address the challenges they pose.

## 7. The Power of Scale

Discussing the scale of analysis in international legal history can seem a question of strict historiographical interest rather than within the purview of international lawyers. Yet, the way we write international legal history should matter a great deal to international lawyers. 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 inter-state relations, then micro-historical approaches are of limited or no relevance. If we understand international law in a more progressive fashion—as law governing inter-state relations, promoting peace, prosperity, and the respect of fundamental values and having an impact upon a range of varied actors, including non-state actors—then microhistories become appealing.

At first sight, there seems to be a contradiction between the apparent modesty of microhistory<sup>227</sup> and the perceived arrogance of international law.<sup>228</sup> However, this is a false contradiction, because microhistories are ambitious projects; by intensifying the scale of analysis, they think big.<sup>229</sup> Paradoxically, narrowing the focus of inquiry is a good way to broaden and deepen the knowledge of international law as well as to address big problems. In parallel, reflections on the scale of analysis can contribute a dose of self-reflexivity into the practice of international legal history.<sup>230</sup> Greater reliance on microhistory would beneficially enhance the development of international legal history, by strengthening its comprehensiveness, intensifying its depth, and fostering multi-polar, multifaceted, and critical analysis. In sum, microhistory can stimulate and address new research questions, foster the adoption of new research methods, and reach new insights on international legal history.<sup>231</sup>

Microhistories can broaden and deepen knowledge about international legal history. Attention to microhistories can help identify less trodden paths of analysis, thus contributing to the comprehensiveness of international legal history. These more fine-grained studies can also provide a better understanding of known subjects. Therefore, microhistories can enrich the history of international law by opening new fields of knowledge and unveiling hidden aspects of known stories.

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<sup>227</sup> Cohen, *The Macrohistory of Microhistory*, 67.

<sup>228</sup> D. Acheson, *The Arrogance of International Lawyers*, *THE INTERNATIONAL LAWYER* 2 (1968) 591–600.

<sup>229</sup> Filippo De Vivo, *Prospect or Refuge? Microhistory, History on the Large Scale*, *CULTURAL AND SOCIAL HISTORY* 7 (2010) 387–397, 387 (noting that ‘to identify microhistory with the size of its object is a common misconception.’)

<sup>230</sup> See e.g. ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* (OUP 2017) (showing that international lawyer are gradually adopting a reflexive stance).

<sup>231</sup> See e.g. Eyal Benvenisti and Doreen Lustig, *Taming Democracy: Codifying the Laws of War to restore the European Order, 1856–1874*, UNIVERSITY OF CAMBRIDGE, FACULTY OF LAW, LEGAL STUDIES RESEARCH PAPER No. 28/2017 (2017) 1, 6 (attributing “antidemocratic implications ... to the project of codifying the laws of war” and arguing that “such laws cemented the political and economic order more than they protected the fate of combatants, much less civilians”).

Microhistories bridge the gap between international law, history and literature, thus contributing to the interdisciplinary dimension of international legal history. In fact, “the change of scale entails a change of paradigm in the way of writing history”;<sup>232</sup> it requires a range of different intellectual, archival, and stylistic choices. A narrative style can combine “the warmth of the narrator’s [close] glance and the coldness of the scientist’s detached observation.”<sup>233</sup> A narrative style is accessible to a larger audience and can recover the subjectivity of individual protagonists.<sup>234</sup>

Microhistories 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, microhistories can give voice to the disempowered non-elites, the losers of history, and the outliers, those who did not have access to hegemonic power.<sup>235</sup> Microhistory is a type of history from below.<sup>236</sup> Microhistories can unveil discarded histories of international law, moving away from sovereignty and centering on the human dimension of international law. They “bring front and center the relationship between structure and agency, between free will and determinism.”<sup>237</sup> They explore agency, that is, “the capacity to make a difference amidst constraints.”<sup>238</sup> On the other hand, they can make international law accessible to the public, bringing the reader to a legal historical jigsaw and engaging her in its resolution. Microhistories “intrigu[e] writers, beguil[e] readers and charms...students.”<sup>239</sup>

Some objections to microhistory as a type of international legal history relate to its alleged fragmentation, over-specificity, and ultimate irrelevance. Microhistories often have a fragmentary nature as they focus on fragments of history rather than the whole. Micro-historians adopt a microscope rather than a telescope; they look for the specific rather than the general. However, this does not mean that microhistories are irrelevant. On the contrary, they may complement macro-histories and contribute to answer great historical questions.

The consideration of microhistories as a useful tool of inquiry in international legal history does not mean that micro-historical approaches are normatively superior to macro-historical approaches. There is no single method in international legal history; rather, a plurality of methods coexists. International legal historians should select the appropriate method(s) to address the particular questions posed by a given object of inquiry. Microhistories provide a critical platform from which to narrate international legal history. However, they do not supplant, rather they complement, other forms of investigation. Combining the careful gaze of the micro-historian with a capacity to see the larger international law implications seems to be among the best ways forward.

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<sup>232</sup> Zalc and Bruttman, *Introduction*, 2.

<sup>233</sup> Ginzburg, *Microhistory: Two or Three Things*, 16.

<sup>234</sup> Trivellato, *Microstoria/Microhistoire/Microhistory*, 127.

<sup>235</sup> Ginzburg, *Some Queries Addressed to Myself*, 91 (highlighting that microhistories’ concern “oppressed and/or minority groups” including women, children, slaves, and heretics).

<sup>236</sup> Cohen, *The Macrohistory of Microhistory*, 57.

<sup>237</sup> Port, *History from Below*, 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>238</sup> Cohen, *The Macrohistory of Microhistory*, 59.

<sup>239</sup> *Id.* 53.

## Conclusions

This article highlights increased academic attention in international legal history to the methodologies, promises, and pitfalls of microhistory. Microhistory pushes individual destinies to the forefront of international historical investigation and adopts a microscope, rather than a telescope for investigating the history of international law. The critical and commercial success of Philippe Sands' *EAST WEST STREET* and several strikingly effective articles attest to the value impact of this method or style. Microhistories give voice to under-represented groups.

Microhistories are an imperfect tool of analysis; they often have a fragmentary nature, as they focus on fragments of history. While the narrative approach might appeal to broader readership, the micro-scale means that such works may focus on small fragments of international legal history. The introduction of new subjects, groups, and persons previously considered marginal in international legal history may cause anxiety.

However, microhistories remain “parts of a bigger picture” and “allow us to see something of the bigger picture which we would otherwise miss.”<sup>240</sup> They enrich the methodological toolkit of international legal historians. Their ways of communicating bridges the gap between international law, history, and literature. In fact, microhistories attract the attention of both academics and the public, shine and lodge in the memory. Microhistories do not replace other types of history; rather, macro and microhistories are complementary. Microhistories are small as opposed to minor.

Whether to adopt a micro-historical approach in international legal history remains an open question; international legal historians must evaluate the risks and opportunities on both a practical and theoretical level. Microhistories open up new horizons of knowledge. Their bottom-up approach favors a pluralist, inclusive, and enriching concept of international legal history. Not only do microhistories seem to be a useful tool of investigation experiment but they also seem to be a promising one.

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<sup>240</sup> De Vivo, *Prospect or Refuge?* 391.