

The Turn to History in International Law: A Twisted Road to the Past?

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Abstract

We witness today an increasing interest in the history of international law, which is commonly referred to as “the turn to history in international law”. As this turn, however, is still searching for its place within international legal scholarship, it raises more questions than it is yet able to answer. Consequently, before the historical analysis of international law is able to offer a way forward, it is necessary to situate it within a solid theoretical and methodological framework. The present study, therefore, aims to identify the discipline’s current state of the art and focuses particularly on the crucial theoretical enquiries it has to make:

In a first step, we have to clarify the role of time, the past and history in international law and the overall relation – and perhaps even interaction – between the past and present before we can, in the second step, elaborate on the appropriate methodological means to access the past. As we will see, the answers we get depend to a large extent on the questions we pose, which is why the analysis of historical texts or sources is also an issue that has to be tackled. For this purpose, it is necessary to develop a genuine legal understanding of the past. Notwithstanding that it – of course – has to comply with the professional standards of (the philosophy of) history and historiography, it has also to put a special emphasis on the peculiarities that the legal perspective demands.

Next, following an apologetic approach, we must deal with the reasons for the sudden rediscovery of the history of international law and focus on the differences between the “new” and “old” historiography of international law and the possibilities that derive therefrom for today’s international legal discourse.