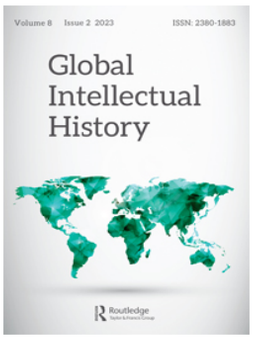

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Putting to Work the Uncanny: Historical Argument in International Economic Law

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International Law and the Politics of History, by Anne Orford, Cambridge, Cambridge University Press, 2021, 382pp, £22.99, (paperback), ISBN 9781108703628.

1. Introducing Law to History

It is thrilling to think through the international. Scholars of different stripes know this well, not least of all historians who hope to harness some aspect of the past on a vaster scale than their more parochial colleagues. To the extent that hard-headed lawyers go to work with the international, one might hope they are thinking squarely in the present—perhaps with an eye to the future—marshalling arguments to prevent armed conflict or designing institutions to curb climate crisis. Yet the raw material for lawyering is always drawn from the past: a living history of treaties, custom, and general principles of law, elaborated through 'judicial decisions and the teachings of the most highly qualified publicists'.[1] Any scholarly claim involving these formal sources or subsidiary means of determining their content is oriented towards the textual remnants of earlier generations of lawyers, diplomats, international organisations, businesses, NGOs, and so on. International disputes, moreover, often require adjudicators to decide which consequences arise from applicable sources that were fashioned in decades or even centuries past.

In this light, it is hardly surprising that an immense amount of intellectual energy has been absorbed by a turf war between lawyers and historians over the proper methods of addressing the histories of international law. Anne Orford's *International Law and the Politics of History* (*ILPH*) presents an authoritative overview of this debate from the vantage of one of its foremost combatants.[2] But she opens by acknowledging its origin as an overgrown chapter from a 'companion book' in progress, *The Battle for the State: Democracy, International Law, and Economics*.[3] As implied by these twinned titles, Orford's research agenda is driven not merely by an interdisciplinary feud but by the conviction that the historiography of international law offers a portal towards grasping its incorrigibly political work in ordering a world economy marked by maldistribution of resources and democratic deficit.

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I begin this response to *ILPH* by unpacking Orford's account of how the past is put to work in international legal argument, which is largely advanced as a corrective to the Cambridge School or contextual approach that dominates intellectual history. The normative transmission of historical materials through the resolution of present disputes is especially salient in the deeply judicialised and politically contested fields of international economic law, specifically the inter-State dispute settlement processes of the World Trade Organization (WTO) and the booming industry of investment treaty arbitration (also known as investor-State dispute settlement or ISDS).

Second, I examine Orford's fiercely critical treatment of Quinn Slobodian's otherwise lauded intellectual history of economic integration, *Globalists: The End of Empire and the Birth of Neoliberalism*.[4] While readers might be struck by the professional dimension to Orford's critique, insofar as she shows how Slobodian's supposedly novel thesis is well worn in legal scholarship, Orford also makes a substantive critique of *Globalists*: the writings of a handful of Ordoliberal ideologues tell us little of how economic theory was transformed through the medium of international law into institutional reality or binding obligation.

Third, I turn to Orford's positive contribution to the role of historical argument in international economic law, unravelling the discrete sensibilities in trade and investment law to explain why appeals to the past may yield uneven results in these neighbouring fields. By often discussing trade and investment law in tandem, Orford misses an opportunity to provide more precise insights into how scholars or practitioners might engage with the past to pursue heterodox arguments in international economic law across different institutional settings.

Finally, I explore Orford's call for lawyers to take responsibility in how they handle the past by making more effective interventions. I do so by reference to the psychoanalytic notion of the uncanny, an uneasy feeling of uncovering something that should have remained hidden. Oddly, this notion is explicitly invoked by some lawyers when they try to revive the past in legal argument. By reference to three prominent lawyers, I identify how one may put to work the uncanny by foregrounding the hidden histories that underpin present practice and thereby priming an audience to be persuaded by a specific intervention. I conclude by suggesting that historians may furnish international lawyers with more material for creative legal argument by operating in a middle register between the idealism of intellectual history and the technicalities of legal practice, tracing how past actors and movements have managed to transform their political or economic projects into positive sources of international law.

2. Marshalling the Past in Legal Argument

A chief target of *ILPH* is the Cambridge School or contextual approach to intellectual history, epitomised by Quentin Skinner and applied to the study of international law by acolytes such as Ian Hunter.[5] Such historians have accused legal scholars of indulging in anachronistic or politically motivated depictions of the past. Orford shows how the Cambridge School's conceit of empirical accuracy in the production of impartial histories has long been misinformed by caricatures of what lawyers really do.[6] Moreover, historians are themselves prone to adopt a partisan conception of international law in their schematisation of past events.[7] My response does not engage deeply with these parts

of the text, except to underscore the importance of Orford's account of how history works in international legal argument.

ILPH sets out this account at length, exposing its epistemic roots in anti-metaphysical and anti-formalist approaches to international law generated by North American and Scandinavian versions of legal realism and postcolonial critiques of Eurocentrism.[8] But an earlier synopsis is well suited to my ends: international law is 'not governed solely by a chronological sense of time in which events and texts are confined to their proper place in a historical and linear progression from then to now' but is rather 'inherently genealogical', depending upon 'the transmission of concepts, languages and norms across time and space. The past, far from being gone, is constantly being retrieved as a source or rationalisation of present obligation.'[9] Lawyers carry out this process of normative transmission by finding applicable facts or relevant precedents, interpreting treaties, and determining the existence or content of customary international law.[10] Certain types of past materials thus retain significance over time in the reproduction of binding rights and duties:

> [T]reaties and their negotiating records, diplomatic acts and correspondence, resolutions adopted by international organisations, decisions of international courts and tribunals, arbitral awards, decisions of national courts, legislative and administrative acts of governments, public statements made on behalf of states, government legal opinions, the reports of fact-finding bodies, and the teachings of 'the most qualified publicists'.[11]

Historical narratives, such as the teleology of economic liberalisation said to underpin trade and investment agreements, are drawn upon in the adversarial organisation of this 'bewildering variety of heterogeneous sources' with a view to persuade another party or adjudicator 'to derive the same patterns from the data'.[12] The 'increasingly central role played by international adjudication in key areas of trade and investment law', observes Orford, has only 'intensified the struggle over the meaning of legal texts' that might be drawn upon in the process of retrieving past materials for the settlement of present disputes.[13] At the same time, the 'backlash against liberal internationalism' is most palpable in international economic law, first evident in criticism of investment treaty arbitration by leftist governments in Latin America, followed by wider withdrawal from or reform of substantive bilateral investment treaties (BITs) and the procedural framework of the World Bank's International Centre for Settlement of Investment Disputes (ICSID), then reflected in popular opposition to the megaregional Transatlantic and Trans-Pacific trade partnerships and the blocking of appointments to the WTO Appellate Body by the United States (US).[14] The regimes for world trade and investment protection have thus assumed critical relevance in the study of international law and the politics of history.

3. A Twofold Critique of Slobodian's *Globalists*

Many historians have engaged with international economic law in ways that betray their lack of intimacy with legal method.[15] Yet Orford singles out Slobodian, whose widely acclaimed *Globalists* popularised the thesis that Ordoliberal thought was the main inspiration behind the development of regional and international institutions 'to encase the global market from interference by national governments', ranging from the League of Nations and mid-century codifications of investment protection to the more successful

projects of the WTO and the European Union.[16] Or, as Orford has argued for years, the 'focus of Ordoliberals on the possibilities offered by the pursuit of economic integration through international law' should be understood as a 'battle for the state' following 'the end of empire, decolonisation, and the perceived threats to liberalism posed by communism and socialist planned economies'.[17]

Orford's almost comical critique of Slobodian's *Globalists* operates at two levels, which may be labelled professional and substantive. In the professional critique, so called because it casts doubt on Slobodian's professionalism and underlines the disciplinary divide between international law and intellectual history, Orford shows how legal scholars have examined the influence of Ordoliberal thought on regional and international projects of trade liberalisation and investment protection since at least the 1960s and, inspired by Foucault's lectures on biopolitics,[18] with full force in the last two decades.[19] No punches are pulled in a thinly veiled accusation of plagiarism, at worst, or carelessness, at best, through Slobodian's failure to mention 'the decades of legal scholarship that had actively made the connections that he presented as his own'.[20]

A more generous reading, at which Orford hints, would be to attribute Slobodian's myopia to 'the methodological canons of intellectual history', by which he was professionally 'committed to telling a story about innovating ideologists' and thus produced 'a biographical study of a handful of interwar Ordoliberal theorists'.[21] In a lighthearted but instructive interview, Slobodian reveals how he approached the study of international economic law:

> I started with [Wilhelm] Röpke's stuff, and went to the archives and was like, okay, Röpke, father of the social market economy, let's see what's in his archive … Oh, South Africa, interesting. Oh my god! He's calling postcolonial African leaders 'cannibals' in all of these letters. This is a story. That's one chapter. Let's do [Friedrich] Hayek next.[22]

This method, tacitly informed by the Cambridge School's emphasis on individual thinkers as the drivers of intellectual history,[23] cannot possibly capture the subtleties of international economic law as a terrain of technical argumentation. And that is Orford's substantive critique.

Orford and Slobodian concur on the distinction between neoliberalism at large and its Ordoliberal variant, namely that neoliberals view the price mechanism as the proper form of economic regulation—rather than government intervention, let alone state planning—but Ordoliberals place greater weight on the role of strong institutions at the national, regional, and international levels in reproducing the competitive conditions for allocative efficiency and guarding the world market from distortions of decolonisation, democracy, or redistribution.[24] In exploring the influence of these ideas on trade and investment law, Slobodian focuses on 'a small number of European men' rather than 'the routine operation and technical detail of legal practice and institutions'.[25] This approach is not a problem per se for the study of international law. Also drawing on Röpke's lectures at The Hague Academy,[26] for instance, Ntina Tzouvala argues that such visions of a 'comprehensive internationalised and judicialised framework for foreign investment' inspired the anti-democratic implications of investment treaty arbitration, albeit warning that the regime 'cannot be reduced simply to the influence of ordo-liberal ideas'.[27] Orford similarly refers to Röpke and Hayek to illustrate a 'vision of the relation between economic order and international law' that emerged during

the interwar period.[28] Rather than merely his sources or method, therefore, the trouble with Slobodian seems to be the uncritical character of his warm reception in legal circles: 'Globalists has been cited by international lawyers as an authoritative ground for arguments about the determinative nature of international economic law and the purposes of the WTO,' both by opponents and defenders of the status quo.[29]

Slobodian thus serves as a foil for Orford's broader warning to lawyers who turn to professional historians to ground their 'neoformalist arguments about what a text really means or what an international institution is really designed to achieve or what international law is really for'.[30] Whereas Orford's work on trade law is a self-consciously tactical intervention to 'make the Ordoliberal tendencies of present legal arguments visible',[31] in *Globalists*, 'ideology is magically translated into reality' without attention to the legal form of trade and investment treaties or their subsequent interpretations through which the designs of Ordoliberalism were imperfectly realised.[32] One witnesses this slippage in Slobodian's chapter on draft multilateral codes of investment protection,[33] such as the Abs-Shawcross Convention,[34] and the inaugural 1959 BIT between West Germany and Pakistan.[35] Slobodian draws a straight line from Europe's economic anxieties during the era of decolonisation to the proliferation of BITs in the 1990s, adding a blithe remark that 'the actual practice of international investment law has been far from seamless'.[36] As Orford cautions, '[u]nderstanding the movement between grand ideological visions and routine techniques of interpretation is central to grasping the work that international lawyers do'.[37] Slobodian makes the relationship of Ordoliberalism to international law 'seem much more black and white than a lawyer could present it'.[38]

So, what of legal value is left in *Globalists* after Orford's rather devastating professional and substantive critique? I first read Slobodian's book in late 2018 after he was interviewed on several of my favourite podcasts. I found his accessible narratives, crisp prose, and archival curios—not least the flagrantly racist letters of an ageing Röpke[39] – to add some welcome historical depth to my graduate coursework on the minutiae of WTO law and investment treaty arbitration. Slobodian's exposition of Ordoliberalism helped me to recognise, for example, the ideological provenance of the Energy Charter Treaty's objective of 'efficient, stable and transparent energy markets at regional and global levels based on the principle of non-discrimination and market-oriented price formation'.[40] I recommended *Globalists* to several classmates and later to my own students who hoped to grasp the influence of neoliberalism on international law. But Orford has captured with admirable candour my lingering impression that Slobodian, for all his grunt work with the primary sources, fails to understand 'how law works'.[41] Rather than providing a foundation for scholarly argument or practical intervention, Slobodian's vignettes of Ordoliberal ideologues may nevertheless deliver to modern lawyers some degree of familiarity with the intellectual milieu in which lawyers past were encouraged to pursue trade liberalisation and investment protection, to be read alongside obituaries in the British Yearbook or acknowledgments in old monographs.[42]

4. Unravelling the Histories of Trade and Investment Law

Orford's critique of *Globalists*, however warranted, runs the risk of eclipsing her own account of the historical development of international economic law. That will surely be the focus of her companion book, *The Battle for the State*. But Orford foreshadows

some of her positive insights in scattered comments on the role of historical argument in trade and investment law. For instance, Orford observes that lawyers have developed 'historically informed accounts of the processes through which trade, investment, and regional economic agreements had been used as vehicles to embed a set of costs and constraints on states seeking to implement environmental, labour, or health and safety measures'.[43] But it is worth underscoring, as have other lawyers, that the 'interlocked realms of trade, monetary and investment transactions, so closely connected historically, economically and politically,' are curiously disconnected from the vantage of international law, resulting from professional specialisation and institutional fragmentation through 'agreements under the aegis of the [WTO]' and 'a network of thousands of [BITs]'.[44] The distinct albeit overlapping communities of international lawyers that engage with WTO disputes and investment treaty arbitration are reflected in their different interpretative approaches, including towards the importance of history in legal argument. This point is implicit throughout *ILPH*, but never engaged with directly. In my view, unravelling the hermeneutic sensibilities of trade and investment lawyers is vital in understanding why historical arguments may yield uneven results in these neighbouring fields.[45]

In the field of investment law, practitioners and scholars have 'turned to history to find more objective grounds for formalist doctrinal interpretations of treaty terms or customary international law', offered 'normative accounts of the field's legitimacy' in contrast to gunboat diplomacy, or shown the field's 'origins in supporting imperialism and the interests of capitalist states'.[46] Orford identifies the treaty standards obliging compensation for expropriation, fair and equitable treatment, and most-favoured-nation treatment as examples of key concepts that carry a 'history of meaning' to be unpacked by reference to 'specific precedents, treaties, or state practice when making legal arguments' in investment treaty arbitration.[47] In the academy, moreover, critical scholars have 'pointed to the lack of political institutions to provide checks and balances to international arbitrators' and 'traced the structural asymmetry provided to corporate actors who were empowered to challenge government decision-making in their role as foreign investors'.[48]

In the field of trade law, lawyers and historians have 'traced the Ordoliberal influence on the projects of European integration, the GATT [General Agreement on Tariffs and Trade], and the WTO'.[49] But Orford does not point to any examples of how trade lawyers have turned to history in the making of arguments before WTO panels or the Appellate Body. While historical accounts have tried to show how WTO law is 'as much about an attempt to mandate a form of regulatory alignment as about quotas or tariffs' and 'as much about competition within states between groups or classes as about competition between states or between North and South', Orford laments that this critical work has not had much purchase on the thinking of practising lawyers.[50] One possible explanation may be found in the textualist judicial policy of the WTO Appellate Body, which 'verges on obsession' with strict construction of individual words and 'abundant references to dictionaries' rather than arguments generated from sources beyond the four corners of the WTO agreements.[51] As Georges Abi-Saab explains, this interpretative approach is itself an extension of a 'special historical factor', namely 'the heritage of the GATT'—which was applied by the contracting parties from 1947 until 1995 without any permanent organisation—and the early insistence that the WTO would similarly comprise a suite of agreements applied by consensus among members with

no truly autonomous judicial organ.[52] Because the 'reports' (not judgments or awards) of WTO 'panels' (not a court or tribunal) must be adopted by members, albeit by negative consensus whereby all members must block adoption, WTO law has been marked by considerable restraint in the types of legal arguments that are treated as persuasive.[53]

That said, Mona Pinchis-Paulsen suggests that the 'historicization' of the GATT security exception was 'crucial' to a WTO panel report concerning measures imposed by Russia upon Ukraine in the aftermath of the annexation of Crimea,[54] wherein the panel held that its 'textual and contextual interpretation' was 'confirmed by the negotiating history'.[55] But the fact that Pinchis-Paulsen's archival insights on the drafting of the security exception serve to 'offer perspective to current debates, not to make a formal interpretative claim about the GATT,'[56] underlines how historical argument has relatively limited currency in WTO dispute settlement. Orford's work on trade law is likewise oriented towards the deepening of policy debates or international negotiations rather than providing grist for the mill of WTO dispute settlement.[57] My point here is not to privilege the standpoint of the judge—a common pitfall in legal and historical scholarship—but rather to revisit Orford's observation that the litigation and adjudication of trade and investment disputes is 'almost routine', at least in comparison to other fields of international law.[58] It is accordingly important to distinguish how the past may be brought to bear on present disputes across different institutional settings.

The comparative significance of historical argument in investment treaty arbitration may be explained by the fact that BITs largely reflect the traditional standards of State responsibility for injury to aliens and their property—to adopt an outmoded label—that were crafted by the mixed claims commissions of the nineteenth and early twentieth centuries and consolidated in mid-century attempts to codify State responsibility through the prism of investment protection.[59] The case law of mixed claims commissions was kept alive by, among others, the Iran-US Claims Tribunal (IUSCT) since the early 1980s,[60] the first reported investment treaty arbitration in 1990,[61] and the eventual codification of State responsibility by the International Law Commission in 2001.[62] Such 'routine legal techniques of repetition and transmission', observes Orford, reinforce the 'authority and meaning' of historical concepts.[63] Yet the open texture of investment treaty standards also lends itself to interpretation in light of counterhegemonic lawmaking, not least the project of economic self-determination embodied in the customary principle of permanent sovereignty over natural resources (PSNR),[64] underpinning the rights of States freely to dispose of natural resources and to choose their own economic systems.[65]

While the relevance of PSNR was nominally recognised by a WTO panel in a dispute brought by the US concerning China's export restrictions on raw materials, it was defanged by a finding that 'Members must exercise their sovereignty over natural resources consistently with their WTO obligations'.[66] A predictable result, perhaps, given the weight attached to the black letter of WTO agreements over general international law. In *Achmea v Slovak Republic*, however, an investment tribunal reaffirmed that 'customary international law recognizes the sovereign prerogative of States to regulate the economic activities taking place in their territory' and 'the sovereign right of States to expropriate foreign-held assets in their territory', which have 'been recalled in numerous international instruments, most notably milestone resolutions of the General Assembly of the United Nations'.[67] Specifically, the tribunal referred to a 1962

resolution on PSNR, dismissing the claimant's submission that an expropriation clause in a BIT 'entails an express reversal, as opposed to a specification, of the customary right of States to expropriate'.[68] In a separate opinion in *CME v Czech Republic*, moreover, Ian Brownlie drew upon later resolutions generated by the 1970s movement for a New International Economic Order (NIEO) in support of his conclusion that the Hull Standard of prompt, adequate and effective compensation—derived from a 1938 diplomatic note by the US Secretary of State in response to Mexico's nationalisation of the petroleum industry – 'no longer reflects the generally accepted international standard'.[69] These observations illustrate how the transmission of legal concepts is far from linear; the practice of investment treaty arbitration is informed by sources of applicable law that are difficult to square with many legal histories, especially those of a critical character, which tend to narrate a zero-sum account of how the Ordoliberal vision of investment protection superseded the rival project of economic self-determination.

It is refreshing not to find in *ILPH* any nostalgia for an NIEO. But it is troubling not to see any discussion of the fertile archive left behind by this 'high tide of anti-colonial legalism in economic matters',[70] given Orford's sustained engagement with Slobodian (who, like many others, juxtaposes the Ordoliberal vision of international law to that of an NIEO),[71] her excellent observation that the reflex of legal scholars to critique liberal internationalism now offers fuel to an ascendent authoritarianism, and her ultimate emphasis on scholarly responsibility and methodological pragmatism in the types of sources and arguments that might produce effective legal interventions.[72] By frequently speaking of trade and investment law in the same breath and explaining both through a narrative of Ordoliberal ascent, with mere gestures towards the complexities of translating that economic theory into institutional reality or legal obligation, Orford might leave some readers with an impression that these discrete fields of international economic law are uniformly gripped by ideological deadlock. Scholars and practitioners are equipped with little insight into how they might engage with the past to pursue heterodox arguments in the practice or study of trade and investment law, or whether that would even be a worthwhile endeavour.[73]

5. History in the Hands of Canny Lawyers

In *ILPH*, Orford has superbly laid the groundwork for international lawyers to bring the past to bear on politically salient problems well beyond the economic domain. In her forthcoming companion, *The Battle for the State*, Orford may be expected to continue the project of tracing 'the range of roles that law played in the past and could still play to make another world possible',[74] which should provide more granular analysis of how historical methods and materials can be marshalled towards effective interventions in trade or investment law. In this final section, I make a tentative move in that direction. I identify some ways in which international lawyers have selectively uncovered connections between past and present to strengthen their scholarly interventions in shaping the course of WTO dispute settlement or investment treaty arbitration. This exercise also clarifies a possible role for historians in supporting the work of international lawyers.

I take my cue from the intriguing postlude to another historically inflected monograph, penned by Orford's erstwhile colleague at the Melbourne Law School. Gerry Simpson draws on an essay of Freud, wherein he quotes Schelling's definition of the

uncanny as 'something that should have remained hidden but has come into the open'.[75] Instead of the sterile routines of criticising or defending international law ('interring and disinterring'), Simpson seeks to illuminate the 'liveliness of its unfamiliar subterranean existence'.[76] What struck me most about Simpson's emphasis on the uncanny character of international law was the frequency with which one encounters that very notion when lawyers try to revive some aspect of its past.

Three examples will suffice, all drawn from scholarly work on trade or investment law. First, James Thuo Gathii suggests that investment treaty arbitration carries 'an uncanny resemblance to the era when conquest and war were permissible'; notwithstanding 'the guarantees of self-determination, equality of States and [PSNR]', international law 'continues to guarantee regimes of economic governance that protect rights of alien investors' in 'a manner that uncannily reflects the imbalances that characterized colonial rule'.[77] Second, in his analysis of the WTO Appellate Body's application of the doctrine of abuse of rights, Lorand Bartels notes that arbitral recognition of 'a right to regulate for certain purposes, subject to various conditions', in the 1910 award of the *North Atlantic Coast Fisheries Case* 'bears an uncanny resemblance to the general exceptions of GATT and GATS [General Agreement on Trade in Services]'.[78] Finally, James Crawford observes that 'the Venezuelan arbitrations of 1903 produced uncanny similarities to the sort of issues that arise today' in investment treaty arbitration.[79]

To share these lawyers' experience of the uncanny requires both professional competence and epistemic humility: an awareness of the sensibilities that define some segment of the legal profession, coupled with an openness to the possibility that past experiments in international adjudication might provide a forgotten perspective on existing arrangements or an overlooked solution to future disputes. Each of the three lawyers puts to work the uncanny by foregrounding the hidden histories that underpin present practice, thereby priming the reader for his specific intervention.

By linking the ways in which colonial conquest and investment treaty arbitration have secured Western access to natural resources, Gathii shows how the peaceful settlement of international disputes does not 'represent a clean break from the coercive past' but rather repackages 'a set of assumptions and limitations that set the terms on which powerful and less powerful countries relate'.[80] This connection helps him later to make the case for substantive reform of investment treaty arbitration, including investor responsibility for misconduct towards local or Indigenous communities.[81]

Bartels is doing something different. He queries the WTO Appellate Body's interpretation of the chapeau to the GATT and GATS general exceptions by bringing into the open its indirect reliance on the *North Atlantic Coast Fisheries Case*, by way of a citation to Bin Cheng's 1953 treatise.[82] Bartels calls into question the inferences drawn by Cheng regarding the doctrine of abuse of rights and suggests that the language of the 1910 award is much closer to that of the general exceptions rather than their chapeau, thus undermining a key distinction drawn by the Appellate Body and laying the ground for his preferred interpretation.

Crawford's invocation of the uncanny is most subtle, requiring us to cross-reference his contemporaneous writings and arbitral decisions. Lawyers 'must avoid thinking that all our bright ideas are new ideas,' he warns, 'for sometimes their roots are to be found deep in the historical experience of international law'.[83] At the time, over a dozen awards in the Venezuelan arbitrations had been cited by investment tribunals, but Crawford

draws attention to one in particular: the *Woodruff* case, cited with approval in the 2004 case of *SGS v Philippines* as an old authority also 'dealing with the competing jurisdictions of national and international courts'.[84] Not only did Crawford serve as one of three arbitrators on the *SGS* tribunal, but he relied on its reasoning in an influential article on the hotly disputed topic of contractual claims in investment treaty arbitration.[85] Drawing together these threads allows us to recognise how Crawford's constructive layering of the past is effectively doing the opposite of Bartels' deconstruction of the decisions and teachings relied upon by the WTO Appellate Body. By noting the uncanny similarity between contemporary investment disputes and those resolved in 1903, such as the *Woodruff* case, Crawford strengthens the historical basis for his decision in *SGS* and thus any subsequent interventions that rely on the cumulative authority of a time-tested solution to the arbitral consequences of an exclusive jurisdiction clause.

What is elided in Crawford's reliance on the Venezuelan arbitrations, however, is their coercive origin, which Gathii underlines in his intervention: the mixed commissions were established to settle claims arising from damages suffered by foreigners during the Venezuelan civil war, but only after 'a 1902 warlike blockade of Venezuela by Great Britain and Germany with the diplomatic support of Italy'.[86] Whereas the parity between legal issues in *Woodruff* and *SGS* gives historical heft to Crawford's argument that a contractual claim under a BIT cannot be pursued in breach of an applicable exclusive jurisdiction clause, the unspoken backdrop to the *Woodruff* case supports Gathii's argument that the consent of weaker States to international arbitration cannot be understood in isolation from military and economic asymmetries derived from colonial legacies.[87]

My point is not to imply that one of these lawyers is closer to historical truth, whatever that might look like, but rather to arrive at Orford's final insight:

> [I]t may turn out that an effective legal intervention will require abandoning the axioms of contextualist historiography and instead championing teleological accounts, producing universal histories, creating connections or exploring constellations between present and past, arguing that contingency is overrated, reclaiming the *longue durée* perspective, embracing the use of history as a morality tale, thinking of human beings as collective (political or geological) agents rather than innovating individuals, or abandoning a relentlessly negative form of critique. … All that is available is to construct an argument and commit to the premises or values underpinning it, knowing and fully accepting that everything about that is contingent.[88]

Orford is quite right to shift the onus to lawyers for how they handle the past. But I wonder how deeply they must commit to the underlying premises or values of an argument. Should the tribunal in *Philip Morris v Uruguay*, on which Crawford also sat, have hesitated in determining the international lawfulness of tobacco control measures by reference to another award of the 1903 Venezuelan arbitrations due to its unpalatable links to gunboat diplomacy?[89] In a dire economic crisis, does Argentina need to worry that a 1934 case was decided in favour of the notoriously brutal Belgian Congo if an obiter comment in that precedent serves as a potential bulwark against burdensome expansion of what counts as expropriation?[90] Is it fatal to the legitimacy of international arbitration that something similar was once used to settle disputes between eighteenth-century slavers if the system might now be harnessed to reallocate flows of private capital from fossil fuels towards renewable energy?[91] On all counts, I would likely answer no, but it depends on the task at hand. I take that to be Orford's essential lesson.

If the interventions of Gathii, Bartels, and Crawford illustrate the variable geometry of history in the hands of canny lawyers, what remains for historians who hope for their archival discoveries to inform the course of international law? Crawford suggests that lawyers 'must try to achieve a historical understanding of our own activities, for only in such a way we will be able to fully comprehend them—and, it may be, advance beyond them'.[92] In contrast to the causally dubious leap between Ordoliberal ideology and international law in Slobodian's *Globalists*, other recent histories have operated in a middle register between the 'idealist visions' of intellectual history and 'concrete institutional practices',[93] tracing how actors and movements transformed their political or economic projects into positive sources of law.[94] That might be the best way for historians to furnish international lawyers with professional self-knowledge and more material for creative legal argument.[95]

Notes

1. Statute of the International Court of Justice, art 31(1).
2. Orford, *International Law and the Politics of History* [*ILPH*].
3. Ibid., ix.
4. Slobodian, *Globalists*.
5. Orford, *ILPH*, 93–6.
6. Ibid., ch 4 (discussing Herbert Butterfield, JGA Pocock, Skinner, and Hunter).
7. Ibid., ch 6 (discussing Lauren Benton and Lisa Ford, Samuel Moyn, and Slobodian).
8. Ibid., 206–17.
9. Orford, "On International Legal Method," 175.
10. Orford, *ILPH*, 217–45.
11. Ibid., 249.
12. Ibid., 245–52.
13. Ibid., 249.
14. Ibid., 45–6.
15. Christopher Casey, for instance, argues that 'states had grown weary and wary of intervention on behalf of nationals abroad' in the postwar period, such that international organisations like the World Bank began to 'take note' of proposals from prominent businessmen for 'an effective and enforceable rule of law for private foreign investment' backed by international arbitration: Casey, *Nationals Abroad*, 182. As one reviewer observes, however, Casey's account blurs the boundary between international law and diplomacy, presenting law as 'the outcome of struggles between powerful men and their states' rather than 'a complex argumentative practice' playing out in international adjudication: Tzouvala, "Casey, Christopher A.," 274. To take a second example, Noel Maurer suggests that the forerunners of investment treaty arbitration facilitated a 'slow, incremental, and mostly unplanned' escape from the 'empire trap', his term for the pressure faced by successive US governments to intervene on behalf of overseas investors: Maurer, *The Empire* Trap, 431. But Maurer makes no mention of the international legal backdrop, such as the postwar prohibition on the use of force as a hitherto lawful means of international dispute settlement: see ICJ, *Military and Paramilitary Activities*, paras. 188–195.
16. Slobodian, *Globalists*, 20.
17. Orford, *ILPH*, 268.
18. Foucault, *The Birth of Biopolitics*.
19. Orford, *ILPH*, 265–72.
20. Ibid., 277–8.
21. Ibid., 276–8.
22. "Quinn Slobodian on 'Globalists'."

23. Orford, *ILPH*, 142–4 (discussing Skinner's focus on individual agency).
24. Orford, "Europe Reconstructed," 276–7; Slobodian, *Globalists*, 7–13. Orford calls the Ordo-liberal variant of neoliberalism the Freiburg School, whereas Slobodian adopts the notion of a Geneva School, riffing on the remark of a veteran trade lawyer: see Petersmann, "International Economic Theory," 237.
25. Orford, *ILPH*, 280.
26. Röpke, "Economic Order and International Law."
27. Tzouvala, "The Ordo-Liberal Origins," 38 and 51.
28. Orford, "Theorizing Free Trade," 727.
29. Orford, *ILPH*, 297.
30. Ibid., 320.
31. Ibid., 271.
32. Ibid., 283.
33. Slobodian, *Globalists*, ch 4.
34. Abs and Shawcross, "The Proposed Convention to Protect Private Foreign Investment."
35. Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments.
36. Slobodian, *Globalists*, 145.
37. Orford, *ILPH*, 281.
38. Woodcock, Duval, and Van Den Meerssche, "'I Want to Put the Social Question Back on the Table'."
39. Slobodian, *Globalists*, ch 5.
40. Concluding Document of The Hague Conference on the European Energy Charter, title I, incorporated in Energy Charter Treaty, art 2.
41. Orford, *ILPH*, 278.
42. Not to deprecate these potential archives: see Pereira and Ridi, "Mapping the 'Invisible College of International Lawyers' through Obituaries"; Simpson, *Sentimental Life*, 39–41.
43. Orford, *ILPH*, 50.
44. Kurtz, Viñuales, and Waibel, "Principles Governing the Global Economy," 333 and 361.
45. I borrow this notion of hermeneutic sensibility from Weiler, "The Interpretation of Treaties."
46. Orford, *ILPH*, 49–50.
47. Ibid., 243.
48. Ibid., 50.
49. Ibid., 53.
50. Ibid., 269.
51. Abi-Saab, "The Appellate Body and Treaty Interpretation," 106–7.
52. Ibid., 100 and 106.
53. Ibid., 100–1.
54. Pinchis-Paulsen, "Trade Multilateralism," 113.
55. WTO, *Russia*, paras 7.83–7.100.
56. The main reason for Pinchis-Paulsen's caveat is her reliance on the preparatory works of only one negotiating party, namely the US, which has doubtful relevance in determining the common intention of the parties under customary rules of treaty interpretation when the WTO is composed of 164 members: Pinchis-Paulsen, "Trade Multilateralism," 120. Unilateral preparatory works may nevertheless serve as supplementary means of interpretation, at least in a BIT dispute: see e.g. PCA, *HICEE*, paras. 126–140.
57. See e.g. Orford, "Food Security," 64–7.
58. Orford, *ILPH*, 197–201.
59. See Mégret, "Mixed Claim Commissions"; Crawford and Grant, "Responsibility of States for Injuries to Foreigners."
60. See Caron, "The Nature of the Iran-United States Claims Tribunal." As an aside, it is strange not to see any mention of Iran in the pages of *ILPH*, given the importance of the aftermath to the 1951 nationalisation of the Anglo-Iranian Oil Company and later the IUSCT as

forerunners to investment treaty arbitration, the regional attention paid by Orford to the Middle East (specifically, the 'invasion of Iraq and the broader war on terror'), the enduring salience of diplomatic tensions over Iran's nuclear programme and economic sanctions, and Orford's acknowledgement that 'the turn to history in international law requires attending to the political, economic, and social moment in which it took place beyond the United States and Europe' (which she parses as the demise of the Soviet Union and the rise of China): Orford, *ILPH*, 37 and 56. Cf Lustig, *Veiled Power*, ch 4.

61. ICSID, *Asian Agricultural Products*.
62. See Paddeu and Tams, "Encoding the Law of State Responsibility."
63. Orford, *ILPH*, 245.
64. See ICJ, *Armed Activities on the Territory of the Congo*, para. 244 (recognising PSNR as a principle of customary international law).
65. See Abi-Saab, "Permanent Sovereignty over Natural Resources and Economic Activities."
66. WTO, *China*, paras. 7.377–7.383.
67. PCA, *Achmea*, paras. 244–245.
68. Ibid., paras. 244–246, citing UNGA, Permanent Sovereignty over Natural Resources.
69. Ad hoc arbitration, *CME*, paras. 23–28, citing UNGA, Charter of Economic Rights and Duties of States.
70. Moyn, "The High Tide of Anticolonial Legalism," 25.
71. Slobodian, *Globalists*, 240–51.
72. Orford, *ILPH*, 315–20.
73. Cf Tzouvala, "The Academic Debate about Mega-Regionals."
74. Orford, "Food Security," 65.
75. Simpson, *Sentimental Life*, 211, citing Freud, *The Uncanny*.
76. Ibid.
77. Gathii, "War's Legacy," 354 and 385.
78. Bartels, "The Chapeau of the General Exceptions," 101–3, citing PCA, *North Atlantic Coast Fisheries*, 189.
79. Crawford, "International Protection of Foreign Direct Investments," 19.
80. Gathii, "War's Legacy," 383 and 385. See further Miles, *The Origins of International Investment Law*.
81. Gathii and Puig, "Introduction to the Symposium on Investor Responsibility"; Gathii, "Reform and Retrenchment."
82. Cheng, *General Principles of Law*, ch 4, cited in WTO, *United States*, para. 158.
83. Crawford, "Continuity and Discontinuity," 24.
84. Ibid., 23, citing American-Venezuelan Commission, *Woodruff*, 222; ICSID, *SGS*, para. 150.
85. Crawford, "Treaty and Contract in Investment Arbitration," 363.
86. Gathii, "War's Legacy," 355.
87. Ibid., 361–2.
88. Orford, *ILPH*, 320 (footnotes omitted).
89. ICSID, *Philip Morris*, para. 298, citing German-Venezuelan Commission, *Bischoff*.
90. ICSID, *LG&E*, para. 197, citing Permanent Court of International Justice, *Oscar Chinn*, 88.
91. See Martineau, "A Forgotten Chapter"; Baetens, "Combating Climate Change."
92. Crawford, "Continuity and Discontinuity," 24.
93. Orford, *ILPH*, 282.
94. See Özsu, "Legal Form."
95. To take three examples that I find useful, see Dietrich, *Oil Revolution*; St John, *The Rise of Investor-State Arbitration*; Getachew, *Worldmaking After Empire*.

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Bibliography

Concluding Document of The Hague Conference on the European Energy Charter (adopted 17 December 1991).

Energy Charter Treaty (adopted 17 December 1994, entered into force 16 April 1998) 2080 UNTS 95.

Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) USTS No 993.

Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments (adopted 25 November 1959, entered into force 28 April 1962) 457 UNTS 24.

Abi-Saab, Georges. "Permanent Sovereignty Over Natural Resources and Economic Activities." In *International Law: Achievements and Prospects*, edited by Mohammed Bedjaoui, 597–617. Paris: UNESCO, 1991.

Abi-Saab, Georges. "The Appellate Body and Treaty Interpretation." In *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On*, edited by Malgosia Fitzmaurice, Olufemi Elias, and Panos Merkouris, 99–109. Leiden: Brill Publishers, 2010.

Abs, Hermann, and Hartley Shawcross. "The Proposed Convention to Protect Private Foreign Investment: A Round Table." *Journal of Public Law* 1 (1960): 115–124.

Ad hoc arbitration. *CME Czech Republic B.V. v Czech Republic*, UNCITRAL, Separate Opinion on the Issues at the Quantum Phase of: CME v Czech Republic by Ian Brownlie, C.B.E., Q.C. (14 March 2003) 9 ICSID Reports 412.

American-Venezuelan Commission. *Woodruff Case*. IX Reports of International Arbitral Awards 213, 1903.

Baetens, Freya. "Combating Climate Change through the Promotion of Green Investment: From Kyoto to Paris without Regime-Specific Dispute Settlement." In *Research Handbook on Environment and Investment Law*, edited by Kate Miles, 107–130. Cheltenham: Elgar Publishing, 2019.

Bartels, Lorand. "The Chapeau of the General Exceptions in the WTO GATT and GATS Agreements: A Reconstruction." *American Journal of International Law* 109 (2015): 95–125.

Caron, David D. "The Nature of the Iran-United States Claims Tribunal and the Evolving Structure of International Dispute Resolution." *American Journal of International Law* 84 (1990): 104–156.

Casey, Christopher A. *Nationals Abroad: Globalization, Individual Rights, and the Making of Modern International Law*. Cambridge: Cambridge University Press, 2020.

Cheng, Bin. *General Principles of Law as Applied by International Courts and Tribunals*. London: Stevens & Sons, 1953.

Crawford, James. "Treaty and Contract in Investment Arbitration." *Arbitration International* 24 (2008): 351–374.

Crawford, James. "Continuity and Discontinuity in International Dispute Settlement: An Inaugural Lecture." *Journal of International Dispute Settlement* 1 (2010): 3–24.

Crawford, James. "International Protection of Foreign Direct Investments: Between Clinical Isolation and Systematic Integration." In *International Investment Law and General International Law: From Clinical Isolation to Systemic Integration?*, edited by Rainer Hofmann, and Christian J Tams, 17–28. Baden-Baden: Nomos, 2011.

Crawford, James, and Tom Grant. "Responsibility of States for Injuries to Foreigners." In *The Harvard Research in International Law: Contemporary Analysis and Appraisal*, edited by John P Grant, and J Craig Barker, 77–126. Buffalo: William S Hein & Company, 2007.
Dietrich, Christopher RW. *Oil Revolution: Anticolonial Elites, Sovereign Rights, and the Economic Culture of Decolonization*. Cambridge: Cambridge University Press, 2017.
Foucault, Michel. *The Birth of Biopolitics: Lectures at the Collège de France, 1978–79*. London: Palgrave Macmillan, 2004.
Freud, Sigmund. *The Uncanny*. London: Penguin Classics, 2003.
Gathii, James Thuo. "War's Legacy in International Investment Law." *International Community Law Review* 11 (2009): 353–386.
Gathii, James Thuo. "Reform and Retrenchment in International Investment Law." *Social Science Research Network* (9 February 2021). Accessed May 20, 2022. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3765169.
Gathii, James, and Sergio Puig. "Introduction to the Symposium on Investor Responsibility: The Next Frontier in International Investment Law." *American Journal of International Law* 113 (2019): 1–3.
German-Venezuelan Commission. *Bischoff Case*. X Reports of International Arbitral Awards 420, 1903.
Getachew, Adom. *Worldmaking After Empire: The Rise and Fall of Self-Determination*. Princeton: Princeton University Press, 2019.
ICJ. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (Merits) (Judgment) [1986] ICJ Reports 14.
ICJ. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2005] ICJ Reports 168.
ICSID. *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v Argentine Republic*, ICSID Case No ARB/02/1, Decision on Liability (3 October 2006).
ICSID. *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v Oriental Republic of Uruguay*, ICSID Case No ARB/10/7, Award (8 July 2016) 18 ICSID Reports 450.
ICSID. *SGS Société Générale de Surveillance S.A. v Republic of the Philippines*, ICSID Case No ARB/02/6, Decision on Objections to Jurisdiction (29 January 2004) 8 ICSID Reports 515.
ICSID. *Asian Agricultural Products Ltd v Republic of Sri Lanka*, ICSID Case No ARB/87/3, Final Award (27 June 1990) 4 ICSID Reports 245.
Kurtz, Jürgen, Jorge E Viñuales, and Michael Waibel. "Principles Governing the Global Economy." In *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law*, edited by Jorge E Viñuales, 331–361. Cambridge: Cambridge University Press, 2020.
Lustig, Doreen. *Veiled Power: International Law and the Private Corporation 1886–1981*. Oxford: Oxford University Press, 2019.
Martineau, Anne-Charlotte. "A Forgotten Chapter in the History of International Commercial Arbitration: The Slave Trade's Dispute Settlement System." *Leiden Journal of International Law* 13 (2018): 219–241.
Maurer, Noel. *The Empire Trap: The Rise and Fall of U.S. Intervention to Protect American Property Overseas, 1893–2013*. Princeton: Princeton University Press, 2013.
Mégret, Frédéric. "Mixed Claim Commissions and the Once Centrality of the Protection of Aliens." In *Experiments in International Adjudication: Historical Accounts*, edited by Ignacio de la Rasilla, and Jorge E Viñuales, 127–149. Cambridge: Cambridge University Press, 2019.
Miles, Kate. *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital*. Cambridge: Cambridge University Press, 2013.
Moyn, Samuel. "The High Tide of Anticolonial Legalism." *Journal of the History of International Law* 23 (2021): 5–31.
Orford, Anne. "Europe Reconstructed." *Modern Law Review* 75 (2012): 275–286.
Orford, Anne. "On International Legal Method." *London Review of International Law* 1 (2013): 166–197.

Orford, Anne. "Food Security, Free Trade, and the Battle for the State." *Journal of International Law and International Relations* 11 (2015): 1–67.
Orford, Anne. "Theorizing Free Trade." In *The Oxford Handbook of the Theory of International Law*, edited by Anne Orford, and Florian Hoffmann, 701–737. Oxford: Oxford University Press, 2016.
Orford, Anne. *International Law and the Politics of History*. Cambridge: Cambridge University Press, 2021.
Özsu, Umut. "Legal Form." In *Concepts for International Law: Contributions to Disciplinary Thought*, edited by Jean d'Aspremont, and Sahib Singh, 624–635. Cheltenham: Elgar Publishing, 2019.
Paddeu, Federica I, and Christian J Tams. "Encoding the Law of State Responsibility with Courage and Resolve: James Crawford and the 2001 Articles on State Responsibility." *Cambridge International Law Journal* 11 (2022): 6–23.
PCA. *HICEE BV v Slovak Republic*, PCA Case No 2009-11, Partial Award (23 May 2011) 19 ICSID Reports 314.
PCA. *North Atlantic Coast Fisheries Case (Great Britain v United States)* (1910) XI Reports of International Arbitral Awards 167.
PCA. *Achmea B.V. v Slovak Republic*, PCA Case No. 2013-12, Award on Jurisdiction and Admissibility (20 May 2014).
Pereira, Luíza Leão Soares, and Niccolò Ridi. "Mapping the 'Invisible College of International Lawyers' through Obituaries." *Leiden Journal of International Law* 34 (2020): 67–91.
Permanent Court of International Justice. *Oscar Chinn Case (Britain v Belgium)* (Judgment) PCIJ Series A/B No 63.
Petersmann, E. U. "International Economic Theory and International Economic Law: On the Tasks of a Legal Theory of International Economic Order." In *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory*, edited by R. St J. Macdonald, and Douglas M. Johnston, 227–261. Leiden: Martinus Nijhoff Publishers, 1983.
Pinchis-Paulsen, Mona. "Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions." *Michigan Journal of International Law* 41 (2020): 109–193.
"Quinn Slobodian on 'Globalists'". *Rosa Luxemburg Stiftung*, 29 November 2019. Accessed May 20, 2022. www.rosalux.de/en/documentation/id/41370/globalists.
Röpke, Wilhelm. "Economic Order and International Law." *Recueil des Cours de l'Académie de Droit International* 86 (1954): 203–273.
Simpson, Gerry. *The Sentimental Life of International Law: Literature, Language, and Longing in World Politics*. Oxford: Oxford University Press, 2021.
Slobodian, Quinn. *Globalists: The End of Empire and the Birth of Neoliberalism*. Cambridge, MA: Harvard University Press, 2018.
St John, Taylor. *The Rise of Investor-State Arbitration: Politics, Law, and Unintended Consequences*. Oxford: Oxford University Press, 2018.
Tzouvala, Ntina. "The Academic Debate About Mega-Regionals and International Lawyers: Legalism as Critique?" *London Review of International Law* 6 (2018): 189–209.
Tzouvala, Ntina. "The Ordo-Liberal Origins of Modern International Investment Law: Constructing Competition on a Global Scale." In *New Voices and New Perspectives in International Economic Law*, edited by John D Haskell, and Akbar Rasulov, 37–54. Cham: Springer Publishing, 2020.
Tzouvala, Ntina. "Casey, Christopher A.: Nationals Abroad: Globalization, Individual Rights, and the Making of Modern International Law (2020)." *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 81 (2021): 271–276.
UNGA. Permanent Sovereignty over Natural Resources UNGA Res 1803 (XVII) (14 December 1962) UN Doc A/5217.
UNGA. Charter of Economic Rights and Duties of States UNGA Res 3281 (XXIX) (12 December 1974) UN Doc A/RES/3281(XXIX).
Weiler, J. H. H. "The Interpretation of Treaties – A Re-Examination: Preface." *European Journal of International Law* 21 (2010): 507.

Woodcock, Taylor, Antoine Duval, and Dimitri Van Den Meerssche. "'I Want to Put the Social Question Back on the Table' – An Interview with Anne Orford." *Opinio Juris*, 27 November 2019. Accessed May 20, 2022. http://opiniojuris.org/2019/11/27/i-want-to-put-the-social-question-back-on-the-table-an-interview-with-anne-orford.

WTO. *China: Measures Related to the Exportation of Various Raw Materials—Panel Report* (22 February 2012) WT/DS394/R.

WTO. *Russia: Measures Concerning Traffic in Transit—Panel Report* (26 April 2019) WT/DS512/R.

WTO. United States: Import Prohibition of Certain Shrimp and Shrimp Products—Appellate Body Report (6 November 1998) WT/DS58/AB/R.