THE FIGURE OF THE LAWYER IN ORFORD'S INTERNATIONAL LAW AND THE POLITICS OF HISTORY

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I. FORMS OF IMPASSE

Orford's *International Law and the Politics of History* works from a cluster of prominent and influential comments on approaches to history and/of international law, to a general diagnosis of the interdisciplinary encounter.[1] Some of the publications animating the book, particularly those by Ian Hunter, both critique contemporary scholarship and characterize scholarly orientations over centuries. Orford's work responds on a corresponding scale, both substantively and chronologically. Evaluating the "turn to history" and its limits in an extended reflection on critical legal scholarship of recent decades, the book takes issue with recent work by some historians for missing the inner dynamics of legal reproduction and the distinct enterprise in which international lawyers, or legal scholars, are engaged. The book characterizes this failure as "part of,"[2] "depend[ing] upon,"[3] or "shaped by"[4] a "longer tradition" of historical writings in which lawyers figure as apologists for power and defenders of received tradition, and contextualist historians as disrupters of this orthodoxy.[5]

Work on such an expansive terrain offers a rich array of paths in. I find myself wanting to take up points ranging from the challenges of conceiving authorship in highly institutionalized disciplines, to the historiography of revolution. *International Law and the Politics of History* presents, though, preliminary questions about form: how to receive and respond to a work of this genre, and where any discussion might go. The book responds to, and embraces, the taxonomic quality of preceding methodological exchanges, in which an author—inevitably received as a spokesperson for one (sub-)discipline—maps the other with the deceptive clarity of pinning insects in a display case. *International Law and the Politics of History* emphasises how closely history-writing and law-making are interwoven, and disclaims any attempt to build a "new wall" between disciplines.[6] However, the characterizations that the book both recounts and performs reinforce distinctions between the figure of the historian and of the lawyer. Identities are solidified rather than in question, and particular parts stand in for the whole. There is also a sharp

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1. ANNE ORFORD, INTERNATIONAL LAW AND THE POLITICS OF HISTORY (2021).
2. *Id.* at 14.
3. *Id.* at 104.
4. *Id.* at 110.
5. *Id.* at 13–14.
6. *Id.* at 10.

delineation from the outset of who the book is "for or about." It is not for historians uninterested in intervening in the present work of international law. Rather, it is for lawyers (and perhaps some historians) who harbor the ambition that their "study of the past can, and perhaps even should, inform an engagement with and potential transformation of the work that an object called 'international law' or people called 'international lawyers' are doing" today.[7]

The polemical form of the debate, coupled with the delineation of the book's addressees, means the account of history is necessarily stylized. There is a slippage in the book between history of political thought and history writ large—often characterized as "empirical" history (Orford here responding to prescriptions by historians about verifiability and objectivity, which were never, perhaps, reflective of the complexity of the historical enterprise, or even the authors' own work). While history of political thought often stands in for history writ large in Orford's account, questions of how history of political thought constructs the political, negotiates its own relation with the present, or interrogates its own theories of change recede from view. The book delves into a rich array of historiographical debates but, given its focus on warning lawyers about the limits of history, its stress falls on the way these debates undermine pretensions of history to neutral authority, rather than on such debates as markers of dynamism, reflexiveness, or potential in history as a discipline.

The series of taxonomic exchanges culminating in the book has induced, for me, a sense of airlessness. Even if one agrees with aspects of the account offered by one interlocutor or another—and there is much in the book I find compelling—it is not clear what more can be said in this vein. Continuing an exchange from within these categories seems likely to draw interlocutors into ever-tighter formations of misrecognition at a moment in which law and history, like other social sciences and humanities, have pressing and shared epistemological challenges bequeathed by their implication in European particularism. One intuitive response, then, is to try and draw out more of the complexity within "history" or "history of political thought" or "(international) law" that is collapsed in these accounts—the way the self-understanding of each frames its relations to the other as an object or discipline—or start a conversation that is less invested in ex ante propositions about method but thinks "through" themes, boundaries, or concepts at play in the work of scholars across disciplines.[8] A related avenue might be to interrogate what, if anything, is distinctive in the interaction between history and international law, and whether this conversation can really be a binary one (even with a more expansive and variegated sense of what "history" might include). Law is not unique in having

7. *Id.* at 11.

8. For one version of these impulses, see Annabel Brett et al., *Introduction: History, Politics, Law: Thinking Through the International*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 1, 1–16 (Annabel Brett et al. eds., 2021). For an unfolding of assumptions about and in history of political thought, see Annabel Brett, *Between History, Politics and Law: History of Political Thought and History of International Law*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 19 (Annabel Brett et al. eds., 2021); see also Joel Isaac, *The Political Economy of Context: Theories of Economic Development and the Study of Conceptual Change*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 309 (Annabel Brett et al. eds., 2021).

intricate internal norms and institutional practices of meaning-making which pose a challenge to any general theory of interpretation. These must also exist in religious traditions, or the sciences, or really any site of specialist knowledge production—even if law is exceptional in the extent of its imbrication with the coercive apparatus of the state. And the corrosive or destabilizing effects of a history-of-political-thought lens on law's internal claims to authority may be only one variation of effects also fostered by other disciplines (like anthropology or sociology) which loom large in international legal scholarship today.

However, polemic has a productive force of its own, in the way it winds tight oppositions, forging subject-positions and opening for scrutiny the sharp edges it purports to draw. Rather than trying from the outset to dissolve the categories through which the book is structured, I start by reading with its schema, taking seriously the notion of a binary encounter between "lawyer" and "historian." I try to isolate exactly how the book makes sense of their interaction—the objects of their inquiry and the terms on which they encounter each other. Working from this encounter throws up questions about the work being done by and within the figure of the lawyer. I focus on the rearticulation of what it is to work and write as a lawyer, which, to me, lies at the heart of the book. I argue that this rearticulation has far-reaching and generative potential as demand for lawyers to reflect on their practice. However, it cannot stabilize a scholarly identity in any interdisciplinary encounter—or in the politics of, in, and beyond law.

II. OBJECTS OF INQUIRY AND TERMS OF ENCOUNTER

The book's portrayals of what lawyers and historians are doing is crucial to its argument about what has gone awry in the exchanges between them. I read Orford as suggesting that, where their work intersects, historians and lawyers are—or take themselves to be—engaged in the same project and arguing about the same thing. The book frames this thing in different ways: the meaning of a legal text (or the legal past, or past texts and practices); the history of particular legal regimes (or of a body of law named "international law"); or what the law *is*. These objects are, of course, quite different in kind. Debates about the meaning of a particular text; about the history of a norm, regime, or institution; and about the history of a named body of knowledge or academic field, for example, are all going to make rather different calls on method (Skinnerian contextualism offering less purchase on all but the first). They will also figure in somewhat different ways in contemporary legal argument. And it is not clear that any of these are the same thing as what the law *is* in a given place and time: whether they are or not is at the core of the argument. What is crucial here, though, is that the book frames the interdisciplinary encounter as pivoting around a singular object of inquiry, interlocutors potentially differing as to the method of making sense of this object.

Thus, to take the example of interpretation of a legal text—and putting aside how one delineates legal from other texts—the book suggests that (contextualist) historians purport to offer the definitive meaning of any given legal text; and that

lawyers in the post-realist era are at risk of being seduced by this.[9] Lawyers may come to reach for historical accounts as "an impartial and verifiable means of accessing the true 'meaning' of past legal material"[10] and thus "a new empirical ground for formalist interpretations of international law."[11] On Orford's account, this seduction reflects and feeds into a "hermeneutic of suspicion" in which opposing interpretations are seen to be ideologically motivated or politically instrumental, but in which individuals retain faith that a single, "correct" interpretation is possible.[12] This hermeneutic of suspicion allows international lawyers to reconcile realist intuitions with ongoing support for legalism and adjudication in world politics.[13]

I am not sure that lawyers interested in both the history and present of international law actually think this way. In particular, I am not sure that historically minded lawyers drawn to contextualism—in either its Skinnerian form, or as a looser effort to examine texts and events with an eye to the horizon of possibility of their period of creation or reception—*do* think that this offers access to the "true [legal] 'meaning' of past legal material."[14] If lawyers and historians are preoccupied by the same object, say a given legal text, they are not necessarily doing the same thing with it—making the same kinds of claims—to the same audiences. The move to historical inquiry in much history of international law written by lawyers might be read as opening up meaning-making, rather than pinning down *a* meaning. Legal knowledge production indeed involves "ongoing processes of transmission, interpretation, and transformation of the law rather than some imaginary origin."[15] But contextualist historical inquiry need not ignore this fact. Such inquiry might help make ongoing processes of legal transmission intelligible, and open them to scrutiny, precisely by cutting *against* their operation.[16] To pause and excavate particular speech acts—particular deployments of vocabulary in tightly circumscribed context—is one way of illuminating the work law does in shifting and denaturing earlier understandings, or preserving them, over time.[17]

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9. *Id.* at 294–96.

10. *Id.* at 182.

11. *Id.* at 178.

12. *Id.* at 5–9.

13. *Id.* at 293, 311–14.

14. *Id.* at 182.

15. *Id.* at 280–81.

16. This suggestion aligns with an argument of Kate Purcell's in response to earlier work by Orford. Kate Purcell, *On the Uses and Advantages of Genealogy for International Law*, 33 LEIDEN J. INT'L L. 13, 25 (2020). Purcell understood Orford to be suggesting that, precisely because the internal workings of law do produce anachronism, one can *only* make sense of this phenomenon through a method which is itself anachronistic in a similar way. *Id.* Purcell asked whether this necessarily followed—whether we wouldn't, on the contrary, need to work against the grain of law's operation to see what law is doing. *Id.*

17. Something of this promise seems to me to be present in Orford's own recollection of the "flash of recognition" she experienced when reading the early Ordoliberals. ORFORD, *supra* note 1, at 269. Doing so allowed her to break out of a language that, within law, had become "coded" over time and resistant to analysis, by providing a "snapshot of a moment when the connections between a specific economic ideology and the project of transnational economic integration were being made." *Id.* at 269–70.

The foregoing reading of what international legal scholars are doing is, however, a matter of interpretation, and the scholarship is so rich and diverse that any generalization is difficult. I put this aside for now to continue reading with the thrust of the book: to take seriously the idea that there is a neo-formalist impulse driving lawyers' attraction to historical inquiry—or at least a neo-formalist *effect* of such work. If this is so, the book still seems to open potentially diverging understandings of what is at stake here.

At times, I read Orford as saying that any attempt to establish meaning discerned through a contextualist interpretation does have consequences for the *legal* meaning of a text in the present: that contextualist interpretations might actually *work* as "formalist interpretations of international law."[18] However, it is a central argument of the book that law—as it exists from time to time and place to place—tends to have its own, somewhat distinctive, modes of interpretation, or at least modes of arguing about interpretation (in modern international law, woven into sources doctrine and shaped in less formal and explicit ways by the institutional, bureaucratic, and scholarly cultures in which law operates). Legal argument is anachronistic, transposing texts and norms from radically different moments and circumstances, precisely *because*, as Orford argues, law tends to have internal accounts of how meaning can move across time. Thus, to the extent that the authoritative legal interpretation of a past text is one corresponding to, say, its meaning at the moment of its framing, discerned through a contextualist process (which might correspond to one variant of originalism), this is so because the rules internal to law at the point of the text's interpretation or application say so, or because legal argument has made this plausible. Similarly, to the extent that legal interpretation and adjudication attach significance to putatively disinterested and objective historical accounts of phenomena or texts, they do so because a prevailing legal doctrine on interpretation requires or allows this.

The fact that law—or at least the contemporary international law with which Orford is principally concerned—*does* have such internal protocols for meaning-making complicates the idea that there is an intrinsic tension between historians and lawyers: that the claims of the former could threaten to curtail the interpretive and argumentative strategies of the latter. Legal scholars seeking to advance particular legal positions and shape legal norms in particular directions necessarily work to some extent within law's conventions of interpretation, even while they might seek to expand, reorient or renew these (a possibility I discuss further below). This work need not be responsive to the interpretive methods which historians might bring to bear, including but not limited to a canonically contextualist methodology—even if the legal work might make use of historical accounts in ways invited, or accommodated, by prevailing doctrine on sources and interpretation. Whatever the assertions of contextualist historians, then, their methodological claims just cannot pose the sort of existential threat to the free play of legal argument which the book seems to fear.

Perhaps this is merely a circuitous way of restating Orford's point: properly understood, methodological strictures dominant in history from time to time have no

18. *Id.* at 178.

determinative role in the meaning-making which occurs in and through law. But if that is right, and there is no intrinsic tension between disciplinary claims, what we are dealing with is misapprehension (international lawyers and historians over-estimating what historical inquiry can offer), coupled with the vagaries of academic knowledge production (policing of publication and grants as reviewers penalize the absence of conventional historical reference points in legal-historical projects). This is not a trivial issue at all, particularly given the vulnerability of many scholars in the material structures of the academy and the way such policing tends to fall hardest on projects most at odds with dominant understandings. But there are manifold constraints on what counts as (legal) research worthy of publication and funding today, and I wonder whether this gatekeeping is of the same order as—or really susceptible to—the kinds of argument made in the book.

Where there might remain a tension between the work of historians and lawyers is where lawyers are seeking to make arguments about the meaning of a text which do *not*, or do not obviously, purport to be arguments *in* law—in other words, arguments which do not appeal to or even acknowledge as relevant the prevailing protocols within a given system of law for authoritative interpretation. I read Orford as defending a space for even such arguments as partaking in something disciplinarily specific—as *legal* arguments in the fullest sense of the word—because they are animated by distinct expertise and understanding of how law evolves over time. This is an important claim, as much for its reworking of *law* as a discipline as for its bearing on the international law/history encounter.

II. THE FIGURE OF THE LAWYER AND THE FUTURE OF INTERNATIONAL LAW

Many passages of the book pay close attention to the particular features of law as a discipline, such as its late and precarious migration into the university or its ongoing close connection with professional practice.[19] Orford captures with great vividness the subtlety and force of these connections: the way in which positions taken in government or corporate roles, or with non-government organizations, shape scholarship, and scholarship can then be cited to reinforce those positions in the interests of a client.[20] Attention to these aspects of the discipline offers a crucial reminder of the structural work of law in preserving and renewing relations of domination over time. It also emphasizes the intricacy of law as argumentative practice. Law contains within it historical or quasi-historical narratives bearing on the meaning of particular provisions, the telos of regimes, fields, and law itself,[21] as well as historicizing and anti-metaphysical approaches deployed against these narratives.[22] In any single sub-field or dispute, one can trace instances playing against each other. Making sense of law's work, and how law perpetuates its authority, calls for an understanding of the ways in which legal reasoning manages temporality and spans chronological periods as well as the institutional, bureaucratic, and professional cultures which shape and develop this reasoning.

19. *See id.* at 185–94.
20. *See id.* at 187–88.
21. *See id.* at 29, 45–50, 246–47.
22. *Id.* at 14.

The book does, though, seem to fluctuate in its attachment to specificity *within* law as a discipline. The attentiveness to the particular roles of advocate, judge, and academic in international law fades in parts, perhaps because the book is responding to constructions of "lawyers" which are significantly abstracted, or perhaps as part of a conscious articulation of an expansive ideal-typical intellectual-professional role. Identity as an international lawyer/international legal scholar (a revealing duality in the terminology) seems, at times, as thin as one's institutional affiliation or one's training. Despite caveats about individuals' quite varied orientations,[23] the book argues that lawyers writ large work in particular ways: they "think about facts and evidence in the register of proof rather than truth,"[24] "use past cases both as a source of exemplary patterns of argument and in order to persuade an audience that a particular situation should (or definitely should not) be treated in the same way as an earlier precedent," etc.[25] In this discussion we have lost any distinction between the different professional roles that lawyers can hold and the different degrees of freedom these bring in choosing one's own avenues of inquiry and modes of argument, versus being tethered to the marshaling of arguments in support of a specific client's position.

It is true, of course, that individuals move between academia and roles as government or corporate advisers, as arbitrators or judges; and that law is "made, expanded, and handed on through a process of transmission that involves legal scholarship, commentary, and teaching as well as legal negotiations, advocacy, and judgment."[26] One can well imagine that past and possible future roles shape a legal scholar's practice in ways of which the individual may not even be conscious. Nevertheless, the notion that there is a unitary figure of the lawyer, deploying a distinctive corpus of intellectual techniques, is doing significant work in Orford's account. The figure of the lawyer posited in the book brings within its mantle not only the adviser and the judge, for example, but the international legal scholar who writes about law in ways which are not calculated primarily to *have effects in law*—to persuade legally empowered agents to act or decide in particular ways—and which may not ever have such effects. This runs parallel to Orford's invocation elsewhere of a distinct "juridical" method of engagement with the past, shared not only by professional lawyers representing their clients, and by judges, but also by critical legal scholars.[27]

For me, the intellectual energy of this position comes not from any sharp opposition between lawyers and historians but from Orford's complication of the edge of law itself: what counts as law, and what it is to speak within law. Orford's expansive figure of the lawyer operates most provocatively as a claim to live within

23. *See id.* at 185–86.

24. *Id.* at 220.

25. *Id.* at 224.

26. Anne Orford, *Law, Economics, and the History of Free Trade: A Response*, J. OF INT'L L. & INT'L RELS., Fall 2015, at 155, 163 [hereinafter Orford, *Law, Economics*].

27. This runs parallel to Orford's invocation elsewhere of a distinct "juridical" method of engagement with the past, shared not only by professional lawyers representing their clients, and judges, but also by critical legal scholars. Anne Orford, *On International Legal Method*, 1 LONDON REV. INT'L L. 166, 171 (2013).

the apparatus and vocabulary of law, yet still to work against it, producing accounts that are both historical interventions of a kind and legal arguments. This is a demand to be understood as internal to legal discourse, yet resistant to its internal constraints and much of its ideological orientation—as well as to the conventional demands of history.

Conceiving of the "lawyer" so expansively enlarges our sense of the porousness of law's borders and the relative openness of its reasoning. While insisting on the specificity of law's internal account of meaning and interpretation, Orford recognizes that this internal account is often startlingly unstable and variegated. The "intertemporal rule," for example, shows significant, and politically salient, flex in its application.[28] Dominant understandings of stated rules of interpretation, like those for treaties, are in some ways at odds with widely established interpretive practice,[29] and these formally stated rules have no necessary application to the wide range of other texts capable of being legally significant. As Orford argues:

> [E]verything is contested, including what counts as a source of international law, for whom and why, what counts as legally relevant practice, what counts as a treaty, how a treaty should be interpreted, how to choose between precedents and analogies, what counts as a rule and what counts as an exception, and whether our situation is radically new or one to which a routine response applies.[30]

This contestability opens important avenues, inter alia, for the recovery and recalibration of relations between legal orders and legalities, and for intervening in law's interaction with the other disciplines and bodies of expertise (economic, military, scientific, etc.) which have shaped particular legal regimes. It invites closer examination of what Natasha Wheatley has called law's "technologies of . . . temporal indifference": the devices like analogy, and legal personality, which work to resist chronological context[31] (and to which we might add genres of writing, like eponymous textbooks continued after the original author's death, gradually amended by others, through which lawyers make sense of changes in law). The contestability which Orford underlines helps us think about the way law manages its own relationship with the extra-textual: how acts and gestures are recast through description or silence, bureaucratic ritual and record-keeping, publicity and secrecy, in ways that shift the significance of these acts and gestures for later legal argument.

There are multiple ways of exploiting possibilities of contestation left open by these features of law. One might make explicit arguments for the expansion or amendment of systemic aspects of legal doctrine like sources or rules of interpretation. One might draw on ideas or categories external to law to generate new legal norms—ones which force a confrontation with the status quo. Or one

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28. *See, e.g.,* Martti Koskenniemi, *The Past According to International Law: A Practice of History and Histories of a Practice*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 49, 57–59 (Annabel Brett et al. eds., 2021).

29. *See, e.g.*, Julian Davis Mortenson, *The* Travaux *of* Travaux*: Is the Vienna Convention Hostile to Drafting History?*, 107 AM. J. INT'L L. 780 (2013).

30. ORFORD, *supra* note 1, at 316.

31. Natasha Wheatley, *Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines*, 60 HIST. & THEORY 311, 328 (2021).

might work more obliquely. This could involve taking seriously how law works with a shifting array of texts of unclear status, generating relevance and normativity through accretion of "soft law," to bring in heterodox materials. It might entail speaking within law in ways that are *not* fully within orthodox genres of legal reasoning, but which are half-recognizable, or at least resonant, to legal interlocutors—familiar yet resistant enough to destabilize the boundaries of what counts as legal authority and argument. This is the core of what I take Orford to be advocating.[32] As I have argued elsewhere, it is an important element of her book *International Authority and the Responsibility to Protect*,[33] which speaks a language of authority and jurisdiction in ways lawyers find suggestive, but subverts more recent and doctrinally embedded approaches, and in turn makes it difficult to advance conventional arguments about the "responsibility to protect" without a sense of unease.[34] Processes of this kind—both explicit critique of how law manages the parameters of its own knowledge production, and a subtler effort to speak within, yet against, law—are also part of the work of teaching (even if they might thereby involve ethical and vocational questions distinct from those arising when one is writing and speaking in one's own name).

The difficulty is that the more one insists on the internal complexity and plasticity of legal discourse—and the dynamic potential it offers to international lawyers positioned to intervene in it—the less intelligible, or compelling, these interventions may be to anyone outside the language game of law.[35] I am within the language game of law, at least sometimes, and even I feel occasionally claustrophobic at the vision of law which I read as emerging from the book: a self-referential, self-authorizing, perpetually mobile discourse, distinguished by its particular (albeit causally complex) proximity to state power. Writing both in and beyond law, straddling the edges in the way that I take Orford to be advocating, will demand a particular style and openness.

It is also the case that some, even many, international legal scholars drawn to history will not be seeking to speak *within* law in any real sense, even obliquely. There are, of course, multiple facets to the intentionality and effects of scholarship

32. Anne Orford, *International Law and the Limits of History*, *in* THE LAW OF INTERNATIONAL LAWYERS: READING MARTTI KOSKENNIEMI 297, 312 (Wouter Werner et al. eds., 2017); Orford, *Law, Economics*, *supra* note 26, at 177–78.

33. ANNE ORFORD, INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT (2011).

34. *See* Megan Donaldson, *Ventriloquism in Geneva: The League of Nations as International Organisation*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 253, 275–78 (Annabel Brett et al. eds., 2021).

35. In an exchange in the symposium, Orford probed what I meant by "intelligibility," and pointed out that it is often avowedly critical work which offers non-lawyers the most appealing and obvious avenue into legal scholarship. Such critical work is, generally, more approachable for the non-specialist than technical doctrinal work, and perhaps more attuned to the larger intellectual concerns of other humanities disciplines. I think all this is right. What gives me pause is how this (perhaps only apparent) intelligibility sits with Orford's arguments that we need to understand critical work as necessarily directed to, and intervening in, protocols particular to the legal discipline and profession. I wonder if non-specialists necessarily see and follow the moves being made on this front, which might be as obscure in their own way as doctrinal intricacy.

here, rather than one clear inside/outside boundary.[36] Scholarship describing the past of legal institutions—or tracing legal biographies, tracking the recurrence of patterns of inclusion and hierarchy, examining rhetorical shifts and continuities, or any of the other myriad paths being taken—will be intelligible within law to the extent that these projects take up categories and institutions and offices which current law endows with significance, and may be operationalizing law's own vocabulary to make sense of them. Such work will often be undertaken with the ambition or hope that it will "inform an engagement with and potential transformation of the work that an object called 'international law' or people called 'international lawyers' are doing" today,[37] thus bringing it squarely within the book's ambit. It will likely also benefit from an "insider" view—in the sense that those trained in law might have better intuitions about where to look for evidence and how to make sense of change over time within the system. But if this work is not seeking to appeal to law's internal criteria for authoritative interpretation, then I wonder if it is really addressed by the arguments in *International Law and the Politics of History* about the particular character of legal reasoning. And I wonder whether authors writing in this vein can rely on what I think the book purports to offer—a professional identification as *lawyers*—to justify the intellectual moves they are making.

This is not an assertion that history is necessarily the master discipline for any claim about the past, to which even those who identify primarily as lawyers must defer. It is a simpler point: To whom are these lawyers speaking? With whom are they in conversation? There might be any number of audiences—in a host of disciplines—but many of these claims *are* framed, at least in part, as historical. Authors are saying something about how the world was—what happened in it—that they expect or hope that others outside law will take up. In many cases the most natural constituency is historians—and one of the criticisms running through the book is that some recent intellectual histories have simply not engaged with, or understood, the histories that lawyers write. That means that there is no escaping negotiation with the terms of truth claims in history or in any other field with which lawyers seek to converse. I think the nature and form of that negotiation remains open, because the truth claims are more complex than recent methodological writings by historians sometimes suggest, and because, as the book argues, accounts of what happens in and through law are a major element of what (intellectual) histories of international and global ordering confront.

The book closes with the possibility that lawyers drawn to history as an engagement with the present of law might, in effect, see contextualism as a contingent and now-exhausted strategy. As Orford powerfully argues, liberal internationalism "is well and truly unveiled already."[38] As it loses its role as a dominant organizing ideology, established modes of critique lose their edge. Lawyers interested in the present and future might need to embrace different ways of speaking about the past—teleological accounts, universal histories, morality

36. I thank Surabhi Ranganathan for valuable exchanges on these points.

37. ORFORD, *supra* note 1, at 11.

38. *Id.* at 318.

tales—and different understandings of the human agent.[39] This prospect seems to cut lawyers free from any direct conflict with contextualist historians, who will have less interest in such forms of argument. But it does not resolve questions about what the professional identity of "lawyer" authorizes or makes possible.

If lawyers are developing these new arguments *within* law—that is, they are invested, to some extent, in making themselves persuasive, or at least intelligible, within existing parameters and to existing figures of legal authority—those parameters impose constraints on what can be said and how, and on the intelligibility of claims to those not sensitized to law's internal workings. If lawyers take up an implicit invitation to reach well beyond law's conventional structures of authority, their conversation is with a much larger and more diverse audience. In this task, the distinctive character of legal reasoning emphasized in the book may have no particular role or persuasiveness, and the professional identity of lawyer little purchase. Not only will the lawyer be without formalist foundations, but the name "lawyer" can offer no particular foundation of its own.

39. *See id.*