

## **The Case for a History of Global Legal Practices**

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### **Abstract**

The contextual understanding of treatises of great legal thinkers has become an important focus in the historical study of international law. This article argues for an alternative approach going beyond classics of legal doctrine to study the interlinked broader global legal practices that constituted actual patterns of social order. Dead practitioners can however only be accessed through texts which remain under-conceptualized. I argue that literary theory provides the most helpful insights for developing a framework for studying legal texts. The historical importance of a legal text depends not only on why it was written but also on how it was used, reinterpreted and even modified by later practitioners. The new method highlights an important alternative dynamic of legal change that first takes place through practice and is introduced to doctrine only afterwards with posthumous editors often drastically modifying canonical works in order to make them more useful for contemporary practitioners.

### **Keywords**

Contextualism, historical methods, international law, International Relations theory, literary theory, practice turn

The importance of the study of international law for understanding world politics is nowadays widely recognized within the discipline of International Relations. This insight naturally extends to scholars engaged in the historical study of world politics, whether for the purpose of developing a new historical interpretation or positivist theoretical innovation. Thus the study of international law has been a vital dimension of the ‘historical turn’ in IR that has built on the classical English school research agenda of pursuing a historical understanding of world politics whilst criticizing much of the substantive results of this earlier work (Bell, 2001; Keene, 2008). However the historical study of international law is today not limited to IR theorists, and has become a multidisciplinary endeavour with the recent ‘historical turn’ in international law and the ‘international turn’ in the history of political thought (Tuck, 1999; Armitage, 2012; Bell et al., 2012; Koskenniemi, 2001; Anghie, 2005; Jouannet, 2012; Fassbender et al., 2012). Despite this insight on the crucial importance of international law for the historical understanding of world politics, scholars have spent relatively little explicit attention on the question of how exactly one should study the history of international law?

In practice the contextual understanding of international legal thought, with a particular emphasis on great legal theorists such as Hugo Grotius or Emer de Vattel, has become an important focus in the historical study of international law. This popular approach has two important limitations however. First the emphasis on the contextual understanding of treatises of legal doctrine leaves the tracking of the reception and possible influence of these great thinkers in both later legal doctrine and practice largely underexplored. Second the substantive focus on legal thought leaves practice and the relationship between legal theory and practice largely underexplored though most of this literature is premised on an implicit understanding of the dynamics of legal change. In this doctrinal story legal change first takes place through doctrine and is then afterwards introduced to legal

practice. Before outlining my alternative method and historical interpretation, I will briefly explore the effects of these two limitations in the existing literature.

The doctrinal approach emphasizes developing a contextual understanding of authorial intention in legal treatises, with particular focus on those written by great thinkers. What the author was trying to achieve by his argument can be understood through contextualising his actions with reference to contemporary debate. As Keene argues with reference to Grotius' *De Jure Belli ac Pacis*, 'it is suspiciously coincidental, to say the least, that this account of public and private rights in the law of nations, despite its broadly conservative orientation, provided justifications for the Dutch 'Revolt' as a public war against the usurpations of Philip II and as a private war with the Portuguese and Spanish in the East and West Indies.' (2002: 58) We possess excellent contextual studies of Grotius' legal thought in relation to divisible sovereignty, private property, the freedom of the seas and society (Keene, 2002; van Ittersum, 2006; Roshchin, 2011). In a similar vein Anghie emphasizes that Francisco de Vitoria's jurisprudence reconceptualises existing doctrines or 'invents new ones, in order to deal with the novel problem of the Indians.' (2005: 15) Vitoria 'executes a formidable series of manoeuvres by which an idealized form of particular Spanish practices become universally binding' and justify 'the waging of a limitless war by a sovereign Spain against non-sovereign Indians.' (30; also Bowden, 2005) There also exist a number of influential works seeking to contextualise various aspects of Vattel's *Le Droit des Gens* through reference to Enlightenment discourse (Reus-Smit, 1999; Jouannet, 2012; Rech, 2013).

This popular methodological agenda shares considerable similarities with Quentin Skinner's contextualist approach to the history of political thought, though Skinner's methodological writings have been an explicit influence to only a minority of the authors (van Ittersum, 2006; Keene, 2005; Reus-Smit, 2008; Roshchin, 2011). Skinner's famous essay on method argues that the key to the

history of political thought, with particular focus on pivotal great thinkers, lies in developing a contextual understanding of authorial intention. As Skinner writes, with reference to Niccolo Machiavelli and Thomas Hobbes, the ‘essential question which we therefore confront in studying any given text, is what its author, in writing at the time he did write for the audience he intended to address, could in practice have been intending to communicate by the utterance of this given utterance.’ (1969: 48-9) We can in other words understand the role of say *Leviathan* in the history of political thought by analyzing what the work meant for Hobbes. Yet the contextual focus on authorial intention has an important methodological limitation in the history of international law. It leaves the tracking of the reception and possible influence of great thinkers in both later legal doctrine and practice largely underexplored. In other words from the viewpoint of the historical understanding of the role of international law in world politics the analysis of how a particular thinker’s work was received and used by other and later legal thinkers and practitioners is at least as important as developing a contextual understanding of the author’s original argument. The crucial question then becomes how are we to study, for example, what role Grotius’ legal thought plays in the later development of both legal thought and practice? Though recent work in particular has turned more attention to the reception, use and even the modification of legal texts, there does not yet exist much explicit conceptual work on the implications of this relative shift from the contextualist focus on authorial intention.<sup>1</sup>

The emphasis on developing a contextual understanding of legal thought also leaves practice and the crucial relationship between legal theory and practice largely underexplored. In other words do legal theorists influence the legal practices that constitute actually existing patterns of social order in world politics, and if they do then what are the specific dynamics of this interaction? Instead most of this literature is premised on an implicit assumption of the dynamics of legal change. In this doctrinal story legal change first takes place through doctrine and is then afterwards introduced to

legal practice. It is thus not completely clear why for Keene it is 'fair to say that over time an especially close relationship developed between the specific propositions of the Grotian theory of the law of nations ... and the modern practices of colonialism and imperialism.' (2002: 60) Anghie has also argued that 'Vitoria's real importance lies in his developing a set of concepts and constructing a set of arguments which have been continuously used by western powers in their suppression of the non-western world and which are still regularly employed in contemporary international relations in the supposedly post-imperial world.' (1996: 332) Reus-Smit argues in similar vein that Vattel 'represents an important bridge between the naturalism of the absolutist era and the positivism of the modern.' The 'legislative ideal of procedural justice ... filtered into international legal thought in the late eighteenth century' even though it 'was not until the middle of the nineteenth century ... that this principle began structuring the actual practices of states, establishing over time a distinctly modern international institutional architecture.' (1999: 132-3) For Jouannet the influence of Vattel's 'paradigm model' of 1758 was so pivotal that the 'classical nineteenth century world truly was the *Vattelian moment*.' (2012: 12-3, 111-2)

This assumption that great thinkers play pivotal roles in the history of international law seems again at first sight quite compatible with Skinner's study of the evolution of early modern European political thought, with a particular focus on the making of the modern concept of the 'state'. Skinner highlights, in particular, the role of two pivotal thinkers, Machiavelli and Hobbes, in this process (2002: ch. 14, also 1981; 1979; 1996). Yet as we have seen the doctrinal approach in the history of international law makes a more ambitious argument in which the legal theory of great thinkers also trickles down to legal practice which constitutes actually existing patterns of global order. Crucially this influential implicit doctrinal story of legal change has largely been assumed rather than demonstrated as the relationship between legal doctrine and practice has remained largely underexplored. How precisely does the seventeenth-century legal theory of Grotius influence

nineteenth-century patterns of European colonialism; how precisely does the eighteenth-century legal theory of Vattel influence crucial nineteenth-century changes in the practice of international law? Though recent work in particular has turned more attention to connecting thought to practice, there does not yet exist much explicit conceptual work on this shift away from more traditional history of thought (Keens-Soper, 1978; Koskenniemi, 2001; Lesaffer, 2006; Keene, 2007, 2009; Armitage, 2012).

I argue that the so called ‘practice turn’ in social theory offers the best place to begin the historical study of international law, as it offers a way to link the history of ideas to that of actually existing patterns of social order through the study of practitioners. Yet the basic insight of a ‘practice of legality’ needs to be developed significantly.

First the idea of a unified practice of international law is disaggregated into a plurality of interlinked legal practices. This allows us to go beyond the study of legal doctrine, to analyze the relative roles of other crucial legal practices. Though these legal practices are reconstructed through contemporary lawyers’ understandings of the law, it is important to note that a focus on the ‘profession of international law’ is too narrow. Often the most influential actors in global legal practices were not lawyers but for example parliamentarians and diplomats. Furthermore Western international law was not unified both in respect to the importance of specific legal practices and of substantive understandings of the law. Contested regional viewpoints can thus be contextually reconstructed as analytical categories based on contemporary practitioners’ understandings of difference. Also the global legal order does not only consist of the law between sovereign states. Domestic legal practices played a huge role in structuring relations between different communities in both metropolitan and colonial contexts.

Second the usual methods for studying social practices are not directly applicable to the historical study of global legal practices as the practitioners of the world of yesterday are dead. Thus the history of these practices is based on the study of legal texts. The 'text' remains curiously under-conceptualised even though it forms the basis for studying the history of the global legal order. Drawing on the theory of literature, I argue that a contextual study of the author's intentions is not sufficient to understand the historical significance of a legal text. It is necessary to think more broadly about the changing nature of legal texts with regards to their form, genre and production. Printing not only changed the way legal knowledge could be organized and circulated, but different editions allowed to change the text itself. Besides the context of the writing of a legal text, its use by both contemporary and later practitioners is of crucial importance. The reception of a legal text could change drastically with time and the text's meaning could be very different for later practitioners. Moreover, the very content of the legal text could change after the death of its author as the result of the agency of later editors.

The new method highlights an important alternative dynamic of legal change that first takes place through legal practices and is introduced to doctrine only afterwards with posthumous editors often drastically modifying canonical works in order to make them more useful for contemporary practitioners. In this practice story legal change predominantly takes place through practitioners pursuing their interests within broad bounds set by normative expectations rather than with the novel speculations of great thinkers.

I will next outline this historical method in detail. This is followed by a case study in which I demonstrate the value added of the new method through radically rethinking the making of the 'standard of civilization', which is regarded as one of the most important norms in the history of international law.

## **A history of global legal practices**

The key insight of the practice turn is that in order to develop a better understanding of world politics one must study agents engaged in international practices that constitute, change and reify patterns of order. In Adler and Pouliot's words, practices 'are socially meaningful patterns of action, which, in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world.' (2011: 6) The study of practices allows investigating the relationship between ideas and institutional outcomes through looking at actors who are simultaneously enabled and relatively bounded by the practices through which they contest rules (Navari, 2010: 618).

### ***The practice turn and international law***

When applied to international law, the idea of practice allows for the study of practitioners contesting, reifying and changing legal norms within legal institutions. The focus on practitioners, relatively competent agents enabled and bounded by a shared social world of legal practice, enables a better analysis of legal change rather than a more structural framework privileging norms and institutions. Brunnée and Toope's conceptualization of a 'practice of legality' offers an exceptionally useful starting point. They argue that law's 'distinctiveness rests in the concept and effects of legal obligation ... [L]egal obligation is best explained as resulting from the work of communities of legal practice that uphold specific criteria of legality' (2011: 108; also 2010).



Crucially for Brunnée and Toope the influence of legal norms can only be understood through ‘an explicit focus on the practices that sustain legality’ (109). Thus only when a community of practice ‘is engaged in a practice of legality rooted in the specific “Background” criteria of legality can shared legal understandings, be they procedural or substantive, modest or ambitious, be produced, maintained, or altered’ (117). Agents cannot build and contest legal norms in isolation ‘but only as part of a community of practice – because legality is itself a shared understanding’ of the fact that interactions ‘should be *legal*, rather than purely social or political’ (130-1). Despite offering an excellent starting point, I argue that the idea of a ‘practice of legality’ needs to be developed in two distinct ways for the purpose of studying the history of the global legal order.

First the idea of a unified practice of international law needs to be explicitly problematised. The global legal order is in fact constituted of a plurality of legal practices, which have changed over time, and the relative analysis of which allows for a more fine-grained understanding of social and legal change. Though Brunnée and Toope suggest that there ‘exist multiple, overlapping communities of legal practice’ based on specific issue areas within a ‘global practice community that upholds the basic legality requirements’ they do not specify how one is to conceptualise and identify these sub practices (131). Moreover Brunnée and Toope do not explicitly discuss who the practitioners or agents of the global practice of legality are. Though they implicitly suggest that these practitioners are not limited to the narrow profession of international law but include other competent actors such as diplomats (117, 125-6, 129). This implicit take-away, that the competent practitioners of the global legal order, are not limited to the core expert group of professional lawyers, offers a key value added to the history of international law.

The idea of a focus on ‘practitioners’ rather than doctrine in the history of international law is of course not new. Yet one limitation to Koskeniemi’s seminal *Gentle Civilizer* is the work’s

exclusive focus on reconstructing the rise and fall of a particular liberal internationalist ‘sensibility’ within the emerging ‘modern’ profession of international law –from around 1870 onwards (2001: 2-4). Though this gives focus to an important disciplinary and professional history, practitioners need to be conceptualized more broadly if the aim is to produce a broader interpretation of the history of the global legal order. Armitage’s study of the increasing use of positivist international legal argument in eighteenth-century British parliamentary debates points to one relatively neglected legal practice, which is very important for understanding global legal change and in which many key practitioners have not been trained and do not identify as lawyers (2012: ch. 8). In similar vein Koskenniemi has recently argued that the ‘increasingly professionalised’ system of eighteenth-century European diplomacy and treaty-making constitutes the context for the positivist turn in international legal doctrine (2008: 194-5; also 2009). Benton and Ford’s work on the legal ordering of the early nineteenth-century British empire has also emphasized the relatively minor role played by international lawyers. Most competent practitioners of what they conceptualize as the ‘vernacular imperial constitution’ lacked a formal legal education (2016: 13-8). In other words, the historical study of the global legal order requires going beyond the core of professional lawyers to analyze broader vernacular practices of legality.

Yet the plurality of legal practices constituting the global legal order at a given point in time must be grounded in the contemporary understandings of a core expert group of legal practitioners who identify as international legal professionals (Adler and Pouliot, 2011: 7). Lawyers’ views on the sources of the law offer an excellent contextual viewpoint for identifying the plurality of relevant legal practices. Joseph Chitty’s English edition of Vattel (1834) and Henry Wheaton’s *Elements of International Law* (1836), for example, played crucial roles in recognizing the case law of both international and domestic tribunals as a source of international law within international legal doctrine.<sup>2</sup> This addition was based on the important role courts played in Anglo-American legal

practice. Including ‘adjudications of international tribunals, such as boards of arbitration and courts of prize’ explicitly among the ‘various sources of international law’ (Wheaton, 1836: 47-50) was markedly different from the earlier international legal doctrine of G. F. von Martens who had defined treaties and custom, inferred from the diplomatic practice of states, as the sources of the ‘positive Law of Nations’ (1795 [1789]: 11-2; also Vattel, 1758: xxi-ii). Yet we must not apply this heuristic uncritically. In fact domestic courts had already played an important role as a global legal practice during the late eighteenth-century. If we rely solely on texts of international legal doctrine our understanding of the history of the global legal order will remain relatively inaccurate and patchy. Despite of this limitation, international legal doctrine has thus helped us to recognize several legal practices that were extremely relevant by the early nineteenth-century: treaty-making the vast majority of which was still bilateral – ‘open’ plurilateral treaties developed only in the latter half of the century (Lemnitzer, 2014); diplomacy that both constituted a source of customary law and was in itself becoming even more legalized through recourse to legal advisers (McNair, 1956); the judicial practice of both international and domestic courts which interpreted international law in disputes and in so doing often modified it.

The narrow focus on the practice of ‘international law’ also needs to be problematized in order to develop a better understanding of the history of the legal frameworks of world politics. The narrow idea of ‘international law’ as the law between sovereign states leaves out crucial patterns of global legal order. Domestic legal practices, both in contested colonial and metropolitan contexts, played a huge role in international society (Anghie, 2005; Koskenniemi, 2001, ch. 2; Benton, 2002; Keene, 2002). Once again even though the shrinking of the sphere of fully sovereign international actors to encompass only Christian or European states was an extremely significant feature of nineteenth-century international legal doctrine, for example the work of Wheaton (1836: 46), there is no reason to limit our inquiry by these increasingly narrow contemporary conceptions of international law that

left out most of the global legal order. We may thus add domestic law-making and judicial practice –interpreting and in effect often modifying domestic law– to our plurality of relevant legal practices.

In a parallel move, the idea of a unified and uncontested European or Western practice of ‘international law’ needs to be challenged. In fact there existed very significant regional differences in both understandings of the content of the law and of the relative importance of various legal practices (Fawcett, 2012). These regional variations in legal practices that can serve as useful analytical concepts can be once again reconstructed based on contemporary lawyers’ understandings. For example nineteenth century lawyers commonly noted that whereas ‘[a] judicial sentence or decision is regarded in England or the United States as clear evidence of the correct application of the law : it is a statement of the common law’ amongst ‘the monarchist peoples of the European continent, judicial decisions do not enjoy the same authority’ (Calvo, 1896: 159-67, translation by the author). The patterns of de facto hierarchy or ‘informal empire’ between the core Western powers and the ‘rest’ of international society constituted a significant background factor to this legal contestation (Gong, 1984; Kayaoglu, 2010; Koskenniemi, 2011; Schultz, 2014; Becker Lorca, 2014). As Koskenniemi argues ‘the mainstay of Western domination has been the informal one – rule through private property, and contract – instead of formal annexation.’ (2011: 18)

Second Brunnée and Toope’s idea of a practice of international law is limited by the implicit presentism brought about by a focus on contemporary world politics. This results in a lack of awareness on historical method, which is a more general feature of the practice turn (Neumann, 2002: 628). The usual means of interviewing practitioners are not available for historians who go beyond the very recent past, and the scholar has to base her/his work almost exclusively on texts. Thus the question of how to study legal texts becomes a crucial methodological question in the

history of the global legal order. Despite this, conceptualising the ‘text’ has elicited surprisingly little attention from scholars of the history of international law. In the following section, I propose an explicit method for the study of legal texts that goes beyond the conventional focus on context to also examine both the nature and the use of the text, in order to understand its significance for the history of the global legal order. I argue that in terms of method for studying legal texts, the most constructive ideas are available not in the history of political thought, but from literary theorists.

### ***Literary theory and global legal practices***

Texts need to be studied in their context, in order to discover why their author wrote them. It is necessary to ask what sort of debates was the practitioner engaging in and what he sought to achieve through his actions (Skinner, 1969: 48-9). Yet this conventional focus of studying minor texts as context for understanding great thinkers needs be turned upside down when the object of inquiry is the history of the global legal order. The focus is no longer in understanding how contemporary developments in legal practices provide the background for the seminal moves of great writers of legal doctrine such as Grotius or Vattel but rather on change in those legal practices themselves. Great thinkers may indeed have played major or minor roles in the evolution of these legal practices. Thus the attention needs to be redirected from thinking of the social world as context for great thinkers to how ideas play out in legal practices and constitute contested patterns of legal order. Understanding what a legal text meant to its author is only the first step in studying its significance for the history of the global legal order. We must also more broadly consider the nature of the text and its use by other practitioners. This dovetails with Pocock’s apt observation that ‘[s]tudents of literature know that text-reader relationships are complex and unpredictable affairs; students of ‘the history of ideas’ may need to be reminded that they are a very large part of what they are studying.’ (2009: 115) This broad insight has been echoed in legal theory. In Ward’s

words ‘law *as* literature ... seeks to apply the techniques of literary criticism to legal texts.’ (1995: 3; for a critique Posner, 2009) The following section outlines a discrete application of this broad observation to the historical study of the global legal order.

The nature of the legal text needs to be analysed in detail rather than taken as a given starting point. The primary purpose of legal texts is practical, they are intended to help practitioners navigate within practices that constitute the legal order. Legal practices are to a considerable extent characterized by the use of texts in order to store, contest and disseminate information. The sixteenth-century saw an extremely important change in the nature of the text with the advent of printing. Despite this the implications of the shift have very seldom been analysed from the point of view of legal practice (Harvey, 2015; also Knutsen, 1997: 60, 180). Printing allowed for significantly more efficient storing, disseminating, and searching of legal knowledge. Yet this change was gradual rather than revolutionary (McKitterick, 2003; Johns, 1998). The nature of the printed book itself also evolved greatly from the sixteenth to the nineteenth centuries. The main body of the text became increasingly accompanied by footnotes, and the text became easier to search through indices (Greengrass, 2015: 229-30). One often ignored key attribute of text in general is that it is not constant but usually changes. What crucially changed with printing was that the text could be explicitly and discretely changed through later editions. In the words of David Hume, ‘[t]his power, which Printing gives us, of continually improving and correcting our Works in successive Editions, appears to me the Chief Advantage of that Art.’ (McKitterick, 2003: 135)

Legal texts need to be studied beyond trying to find out what its author meant by it, in order to understand their significance for the history of the global legal order. At least as important as the intention of the author was the use of the text by other practitioners. The reception of a text could change considerably across time, sometimes radically changing the meaning of the text from that of

its author's. It is not enough to understand what Vattel meant by *Droit des gens*, it is also of crucial importance to investigate how the text was received and used by contemporary and later practitioners.<sup>3</sup> This can be achieved through a reception history of texts. Jauss argues that the 'historical life of a literary work is unthinkable without the active participation of its addressees'. The 'historical significance of a work will be decided' by 'a chain of receptions from generation to generation' (1982 [1967]: 19-20). For example later lawyers understood Grotius' treatise through the Enlightenment idea of the progress of civilisation emerging from a barbarous 'Middle Age', even though Grotius significantly predated this new notion of history as progress as becomes clear from Jean Barbeyrac's 1724 French translation, which introduces the neologism 'civilization' to the work (1625: bk. ii, ch. vi, xiv; 1724: bk. ii, ch. vi, xiv). The take away point from this is that a text can be interpreted by posterity in ways that are squarely at odds with what its author meant by it. In Eco's words, the 'fact that' a 'work could be looked at in a completely different way ... was an aberrant decoding which the artist would never have thought of.' (2005 [1965]: 238)

The idea of the use of texts needs also be taken beyond the notion of the reception of a constant text. If there exist multiple editions of a text, it is not enough to study a 'definitive' final edition written before the author's death. As noted by Hume, '[i]t is one great advantage that results from the Art of printing, that an Author may correct his works, as long as he lives.' (McKitterick, 2005: 135) Yet in order to study the history of global legal practices it is paramount to understand that published legal texts are also very often extensively changed after the death of the author. Editors of posthumous editions can alter the text in order for it to be up to date and thus useful and attractive for contemporary legal practitioners.<sup>4</sup> In this respect it is useful to distinguish between change within the 'core text' and 'around the core text', namely through adding footnotes –that can at times be contradictory to the substance of the original text– or additional documents and organizing devices such as indices. The latter seems to have been the norm for works of international legal

doctrine until around the turn of the twentieth-century, which dovetails with Foucault's broad notion that the 'author function does not affect all discourses in a universal and constant way' (1969: 211-3). The lengthy 'original contributions' undertaken by Richard Dana in what is held to be the most influential edition of Wheaton (1866) are also 'all in the form of notes ... and signed with the letter D.' (v-vi) By 1916 Coleman Phillipson wrote that whilst 'preceding editors left Wheaton's text throughout intact ... Now, in view of modern requirements, the whole –both original text and editorial additions– has been subjected to revision'. Rather modestly concluding that 'the present editor ought perhaps to be regarded as a co-author of this edition of the book, rather than as an editor in the usual sense of the term.' (vi, viii)

This brings us directly to the idea of the 'author' of a legal text, which has remained curiously under-problematised. Despite the fact that it is crucial for developing a better understanding of not only the history but also of the broader dynamics of legal change. If an important legal norm is for example added to a text of international legal doctrine after the death of the original author, then surely we need to rethink our conception of the 'author' at least with regards to that particular aspect of the work. For example Wheaton has conventionally been seen as a key actor in inventing the idea of a 'standard of civilization' whereas the norm seems first to have been discussed only in the 1929 edition (201-2). Eighty-one years after Wheaton's death. Thus problematising the idea of the 'author' between say Wheaton's first edition of 1836, Dana's edition of 1866, Phillipson's edition of 1915 and the Berriedale edition of 1929 has very significant implications for understanding the history of the crucial norm of a 'standard of civilization'. This notion dovetails somewhat with Barthes' strong critique of the contextualist idea that 'once the Author is discovered, the text is "explained:"'. Instead in 'a multiple writing, indeed, everything is to be distinguished'. (1967: 5) Significantly the title of Barthes' essay –'The Death of the Author'– has been interpreted as a pun on Thomas Malory's medieval romance *Le Morte d'Arthur*. Though King Arthur's story is



principally known through this version, Malory's text is based on earlier written versions of the Arthurian cycle that drew on a prior oral tradition. The question is thus no longer limited to Wheaton's original 'authorial intention' but also several later 'editorial intentions'. To use an analogy: it would probably be a significant finding if the modern concept of the 'state' had actually been outlined in *Leviathan* not by Hobbes but by an obscure eighteenth-century editor.

### ***An alternative dynamic of legal change***

The new method highlights an important alternative dynamic of legal change that first takes place through legal practices and is introduced to doctrine only afterwards with posthumous editors often drastically modifying canonical works in order to make them more useful for contemporary practitioners. In this practice story legal change predominantly takes place through practitioners pursuing their interests within broad bounds set by normative expectations rather than with the novel speculations of great thinkers.

This practice story significantly qualifies an implicit assumption of international legal change present in an influential strand of the literature. As we have seen, in the conventional doctrinal story legal change first takes place through doctrine and is then afterwards introduced to legal practice. In Benton and Ford's words, according to an influential understanding of the origins of international law '[t]he star of this tale is ... Vattel, whose treatise ... instructed a generation of followers that the world order was made up of sovereign states.' (2016: 20; also Koskenniemi 2001: 8, 2011: 9-12) The main alternative to an ideational history of international law has conventionally been an interest-based 'realist' understanding. Grewe's is perhaps the most well-known of these accounts emphasizing the role of material interests, of hegemonic states in particular, as driving international legal change. Grewe for example argues that 'emotional motives alone' could not have led to

Britain's decision to end the slave trade because of its 'broad political and economic importance'.

Abolition became 'an imperative necessity for Britain for economic reasons, and for reasons of colonial policy.' (2002: 555; also Koskeniemi, 2002: 749-50) The limitation of an almost exclusively interest-based 'realist' explanation of international legal change lies, of course, in that it cannot account for the role of normative ideas and the 'logic of appropriateness'. Crawford has for example demonstrated how the abolition of the slave trade was driven primarily by changing 'normative and constitutive beliefs' rather than economic interests (2002: 162).

The practice story of international legal change outlined in this article conceptualizes a neglected, important and seemingly dominant dynamic of legal change. In contrast to interest-based and realist accounts, even powerful practitioners pursuing their interests are loosely –or 'relatively indeterminately' to borrow a term<sup>5</sup>– bound by prevailing normative ideas, conceptions of 'legality' and cultural expectations. In other fashionable words, practitioners pursue interests through a 'bounded rationality'.<sup>6</sup> In contrast to the doctrinal or ideational story, I argue that legal change predominantly first takes place through practice –with key practitioners often not being professional lawyers– and is transferred to legal doctrine only afterwards through either less well-known contemporary doctrinal works or the posthumous editions of great thinkers' canonical texts. Both of these types of work sought to incorporate new legal changes in order to be useful and thus attractive for practitioners. This alternative dynamic of legal change has been uncovered through rethinking the 'meaning and understanding' of a text, the idea of a 'legal text' and the idea of an 'author' of a legal text, which allow for a far more precise process tracing of legal change.

## **Great thinkers and the making of the ‘standard of civilization’**

I will next demonstrate the value added of the new method through radically rethinking the making of the ‘standard of civilization’, which is regarded as one of the most important norms in the history of international law. The conventional understanding of the standard of civilization follows Gong’s classic account in which he conceptualized the norm as a set of criteria regulating membership of late nineteenth and early twentieth century international society (1984; also Koskenniemi, 2001: 132-6; Bowden, 2005; Keene, 2014; Becker Lorca, 2014: 65-75; Benton and Ford, 2016: 19). Gong argues that ‘with the emergence of Japan, the implicit set of customary practices, carried from the European state tradition into a global setting by the expansion of the international society, became an explicit standard of ‘civilization’’ (30). The ‘actual task of articulating the standard of ‘civilization’ fell to the leading publicists of the day. Of these none was more successful or important than Henry Wheaton’ (26; also Bowden, 2005: 16). The question of membership of international society was indeed linked with ideas of civilization and was a very important dimension of European dominated international society. Yet early twentieth-century international lawyers understood the ‘standard of civilization’ to refer to something quite different and specific. Namely the idea of a strong customary norm protecting foreigners and their property in states that had been recognized at least in principle as members of the family of civilised nations (Paparinskis, 2013: 20; Schultz, 2014: 847-9). The conventional narrative holds that the idea of a customary norm protecting foreigners’ property rights in international legal doctrine can be traced to Vattel (1758) in particular. In Lipson’s words, ‘[a]s early as Vattel, legal scholars defended the rights of states to protect their citizens abroad.’ (1985: 8 n. 10) It then seemingly takes states a long time before they

begin applying Vattel's idea with the 'international standards' protecting foreign property having become well established by the middle of the nineteenth-century (Lipson, 1985: 8-9, 37-8; also Keene, 2002: 104-5; Miles, 2013: 47-50).

My new analysis of the origins of the 'standard of civilization' will demonstrate how the norm first emerged through legal practice rather than the writings of great thinkers such as Vattel and Wheaton, with professional lawyers playing a relatively minor role in the shift in comparison to diplomats and parliamentarians. The norm was then introduced to legal doctrine only afterwards through less well-known works and posthumous editions of canonical treatises.

### *The 'standard of civilization' in legal doctrine*

Though the idea of a customary norm protecting foreigners and their property in the event of a 'denial of justice' had existed from the Middle Ages and continued in the early modern period it was quite weak. The norm was subject to the exhaustion of 'local remedies', thus diplomatic intervention or indeed reprisals was possible only after the foreigner had unsuccessfully appealed to the highest local court after an extremely blatant injustice (McNair, 1956: vol. 2, 297, 312-4; Amerasinghe, 2004: 22-30; Paulsson, 2005: 13-26). Writers of legal doctrine such as Grotius and Vattel then afterwards affirmed this existing state practice (1632: bk. iii, ch. ii, iv-v; 1758: 317-8).

Vattel places a strong emphasis on sovereignty and non-intervention in general: 'It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no state has the smallest right to interfere in the government of another. Of all the rights that can belong to a nation, sovereignty is, doubtless, the most precious' (1758: 297-8, translation from the 1834 English edition). Yet Vattel does invoke the idea of a weak customary

norm protecting foreigners and their property. If a foreigner has been treated in a manifestly unjust way his home state can intervene diplomatically. He does not however link this idea to examples of peace-time diplomatic interventions on behalf of citizens and their property and his only reference to state practice actually emphasizes the weakness of the norm (317-8). Wheaton's work (1836) has an even stronger emphasis on sovereignty and non-intervention, and does not mention Vattel's idea of the possibility of a diplomatic intervention in the case of manifest injustice at all (131, 109-13). For Wheaton the 'supreme, exclusive power of civil and criminal legislation is ... an essential right of every independent state. This sovereign right extends ... to the regulation of all ... property ... whether it belongs to subjects or foreigners.' (136) As has been mentioned, though Wheaton has conventionally been seen as a key actor in inventing a 'standard of civilization' the norm was first discussed only in the 1929 edition. The editor A. Berriedale Keith does this by adding a new subheading of cases on 'Intervention to redress wrongs of subjects' to the passage on the 'Rights of Intervention' (201-2).

Instead Robert Phillimore introduced the positivist idea of a strong customary norm to international legal doctrine, by linking the idea of diplomatic intervention in the case of manifest injustice to contemporary mid-nineteenth century British state practice (1855-7: vol. 2, 3-5). What is crucial about Phillimore's argument is that even though he cites the natural rights doctrine of Grotius and Vattel profusely he also refers to contemporary state practice. Thus the fact that 'foreigners ... are entitled ... to the execution of justice' is backed up by a footnote referring to 'Debates in both Houses of Parliament on the Affairs of Greece and the Claims of Don Pacifico.—Hansard's Parl. Deb. June, 1850.' (3 fn. f) Phillimore provides a detailed discussion of this contested 1850 British intervention in Greece known as the Pacifico incident which crucially mirrors the British government's argument by grounding the existence of a strong customary norm protecting foreigners and their property through the idea of civilisation –though Phillimore is markedly

skeptical as to the solidity of Britain's legal argumentation with regards to the specific case (vol. 3, 29-33). Thus Phillimore argues that 'the real question of International Law at issue in this case was, whether the state of the Greek tribunals was such, as to warrant the English Foreign Minister in insisting upon M. Pacifico's demand being satisfied by the Greek Government, before that person had exhausted the legal remedies which, it must be presumed, are afforded by the ordinary legal tribunals of every civilised State.' (29)

Phillimore's pivotal role becomes clear by comparing different editions of Andres Bello's influential contemporary work. Bello's first and second editions (1837 [1832]: 54-5; 1847: 77) do not refer to contemporary state practice with regards to the idea of the possibility of diplomatic intervention in the case of manifest injustice towards a foreigner or his property but this has changed in the third edition of 1864. In it Bello writes that '[a]s an example of the application of this rule, allow me to summarize here the exposition of the famous case of don Pacifico, which we can find in volume III of Roberto Phillimore' (1886 [1864]: 119-21, translation by the author). Having established that Wheaton cannot have played a pivotal role in inventing the 'standard of civilisation' in international legal doctrine, the next logical author to look at seems to be Lassa Oppenheim (1905) who wrote the most influential early twentieth-century doctrinal work. However Oppenheim merely reproduces the idea of a strong customary norm protecting foreigners and their property deriving from Phillimore. Moreover in contrast to Phillimore Oppenheim does not explicitly link the customary norm to the idea of civilisation (vol. 1, §319-20). It was only with Arnold McNair's edition (1928) of Oppenheim's *International Law* that the term 'ordinary standards of civilization' was explicitly introduced to the mainstream of international legal doctrine. McNair adds a footnote to the paragraph on the 'Protection to be afforded to Foreigners' Persons and Property' in which he refers readers on 'the question whether equality of treatment of aliens and nationals is the test or whether aliens are entitled to be treated in accordance with the ordinary

standards of civilization’ to ‘*Robert’s Claim* before the American-Mexican Claims Commission’ (§ 320 fn. 1).

### ***The ‘standard of civilization’ in legal practice***

In the early nineteenth-century foreigners’ property rights were thus still to a very great extent based on bilateral trade treaties, due to the weakness of the customary norm protecting them and their property. The crucial importance of treaty law led states to construct treaty networks that were seen as pivotal for fostering foreign trade (Lipson, 1985: 8-9; Armitage, 2012: 151).

A late 1830s dispute over rights accorded to British merchants in the Two Sicilies serves as an example of the application of this legal framework based on bilateral trade treaties (Fachiri: 1925; Miles, 2013). Drawing on advocate general John Dodson’s legal advice, foreign secretary Viscount Palmerston grounded Britain’s position during the dispute on the provisions of a trade treaty of 1816. The diplomatic intervention concerned the Neapolitan government’s intention to grant a monopoly on the profitable trade in sulphur to a French company. Palmerston informed the British minister that ‘Her Majesty’s Government’ considered such a grant ‘as an infraction of the Treaty of 1816, the IVth Article of which expressly stipulates that British commerce ... shall be treated ... upon the same footing as the commerce and subjects of the most favoured nations, not only with respect to the persons and property of such British subjects, but also with regard to every species of article in which they may traffic’.<sup>7</sup> This exclusive emphasis on treaty law remains in a memorandum –setting out a position on negotiations for a new trade treaty with Sicily– that Palmerston wrote and sent to the prime minister Viscount Melbourne in the aftermath of the dispute, in which British demands were eventually met after a naval demonstration. ‘[I]n the

Sicilian sulphur case ... our Demands were just, and borne out of our Treaty Rights ... I told ... the Neapolitan Govt [that they] must satisfy us on that Point; and fulfill the Existing Treaty'.<sup>8</sup>

British diplomats began invoking the idea of a stronger customary norm protecting foreigners' property rights, thus broadening the more narrow and contingent rights granted by trade treaties, during the 1840s dispute with the new kingdom of Greece –which we have encountered in Phillimore. Though Britain had concluded a trade treaty with Greece in 1837 Britain never invoked its provisions during the disputes as it conformed to a strong conception of sovereignty. Instead Palmerston eventually grounded Britain's diplomatic intervention, that in effect came to ignore the Greek judicial system, on a more vague and expansive notion of a customary norm protecting foreigners and their property that was linked to the idea of civilization –to which conceptualization Dodson acceded. After British subject David Pacifico's house had been burnt in a riot in Athens, Dodson had first opined that if 'the Greek Authorities acted with due promptitude, and used their best, although ineffectual exertions to afford defence to M. Pacifico, I think that Her Majesty's Government would not be borne out in holding the Greek Government to be responsible for the losses of M. Pacifico.'<sup>9</sup> This report seems not to have been satisfactory to Palmerston, as the foreign secretary wrote on the same day that '[i]t seems to me that the Queens adv's Principle would go to the full rather [?] and beyond the limitation which he assigns to it.' Palmerston crucially argued that British demands were justified '[s]imply because it is the Duty of every Civilized Gov to protect Persons & Property within its Jurisdiction and if it neglects to do so having the means of doing so, it should [?] be answerable for Consequences'.<sup>10</sup> In his reply Dodson chose to agree with the foreign secretary's viewpoint. 'In obedience to your Lordship's commands, I have the honour to report that I perfectly accede to the Justice of the Propositions laid down by Your Lordship, respecting the responsibility of a Government for the protection of the Lives and Properties of Foreigners, resident



within its Dominions'.<sup>11</sup> This crucial affirmation of Palmerston's argument is notably not supported by any reference to either legal doctrine or state practice.

What was novel in Palmerston's use of the norm was its new expansiveness and justification through the idea of civilization, which seems to dovetail with a hierarchical vision of international order in which some states could be more sovereign than others. As Greece had failed in its duties as a civilized state its sovereignty and the jurisdiction of its courts, which Britain had recognized in treaties, could in effect be qualified. It is important to note though that Palmerston innovated within broad bounds set by contemporary ideas of law and appropriateness grounded in 'civilization'. Thus though the Greek government had failed in its duties as a 'civilized' state Palmerston did not question its sovereignty in principle, in contrast to his earlier actions in 1841 with reference to Britain's legal relations with African 'Native Chiefs' who in effect lost their status as international actors because they became considered as 'barbarous' (Keene, 2007).

The Greek government finally accepted Britain's claims, most notable of which concerned the violation of the property rights of *Pacífico*, after a naval intervention the legality of which Palmerston famously defended in the House of Commons (Hansard: vol. cxii (1850), 380-443). Palmerston argued that 'our doctrine is, that, in the first instance, redress should be sought from the law courts of the country ; but that in cases where redress cannot be so had—and those cases are many—to confine a British subject to that remedy only, would be to deprive him of the protection which he is entitled to receive.' (383-4) The foreign secretary alleged 'instances of barbarity of the most revolting kind practiced by the [Greek] police' (386-7) and declared on the *Pacífico* claim that 'I think that there is no civilised country where a man subjected to such grievous wrong ... would not justly expect redress from some quarter or other ... The Greek Government neglected its duty' (395). The foreign secretary explicitly concluded that his policy, expounding a strong notion of a

customary norm protecting foreigners and their property, was conducive ‘to the maintenance of peace, to the advancement of civilization, to the welfare and happiness of mankind.’ (443)

Palmerston’s argument did not go down uncontested. Opposition MP William Gladstone argued that local remedies needed to be exhausted before diplomatic intervention and that this indeed was ‘the general principle which governs this question’ of which ‘there can in terms be little dispute’ (557). In contrast to Palmerston, Gladstone grounded this argument in legal doctrine: ‘I have here the citations from Vattel, who is perfectly clear upon it’ (556). As for Palmerston’s crucial argument that ‘the tribunals of Greece are practically so corrupt that these cases could not with propriety be taken before them’, Gladstone replied that he had precluded this by signing an Anglo-Greek trade treaty that had explicitly recognized the jurisdiction of the Greek courts and thus weakened the case for diplomatic intervention before the exhaustion of local remedies even further (561-2). Gladstone had already similarly declared the home secretary’s citation of the Sicilian sulphur case as a precedent for the Greek intervention ‘in truth totally irrelevant’ as that ‘claim was founded upon the construction of a treaty ... That was a principle of unquestioned obligation; whereas in the case of Greece, you have proceeded wholly on vague and arbitrary notions of your own’ (549-50). Finally Gladstone contested Palmerston’s invocation of the idea of civilization to qualify the requirement to exhaust local remedies as merely resulting in ‘one rule for the weak and another for the strong’ (561).

Yet the government won the motion and it was Palmerston who was cheered from the public gallery and escorted home by an excited crowd (Brown, 2010: 320). This viewpoint is echoed by the newspaper reception of the Greek debate, which was overwhelmingly supportive of Palmerston as a champion of liberal ideas, merchants’ interests and Britain’s greatness. *The Globe* opined that the foreign secretary had united the free trade classes that were ‘determined to hold fast by their love of

liberal institutions in foreign as well as in domestic politics' (Brown, 2002: 113). Palmerston's other contemporary parliamentary remarks provide additional evidence for his rather hierarchical conception of civilization. These make clear that the foreign secretary considered some southern European states, including Greece and Spain, and Latin American states 'less open to statements and arguments concerned with justice and right' than Britain and the United States (Hansard: vol. cxi (1850), 716-20). The American reception of Palmerston's idea of a strong customary norm justified through the idea of civilization can be tracked in John Bassett Moore's *Digest* (1906) which cited 'Lord Palmerston, in the House of Commons, June 25, 1850, on the case of Don Pacifico' on the crucial point that '[l]ocal remedies need not be exhausted ... where justice is wanting' (vol. vi, 681-2). This reference to the British intervention in Greece is Moore's oldest example of state practice on this point and the only one in which the US is not involved. Most of the section's citations are related to diplomatic disputes concerning the property of American citizens in Mexico in which US secretaries of state justify diplomatic intervention before judicial remedies were exhausted due to the notorious weaknesses of Mexico's domestic legal system (677-82).

This idea of a strong customary norm protecting foreigners' property was subjected to a radical challenge by several Latin American states, which had often been at the receiving end of Anglo-American interventions and contested the possibility of diplomatic intervention altogether. The challenge was expressed in Mexico's 1857 constitution, which declared that aliens 'are obliged to ... respect the institutions, laws and authorities of the country, subjecting themselves to the judgments and decisions of the courts, without the power to invoke additional remedies other than those available to Mexicans' (Dawson, 1986: 307). This unsurprisingly popular viewpoint in Latin American legal practice was later coined as the 'national standard' with regards to foreigners and their property or alternatively the 'Calvo doctrine' as Carlos Calvo introduced it into international legal doctrine in his 1863 work. The label of a 'Calvo doctrine' is however misleading with regards

to the origins of this heavily contested alternative norm, as once again legal change emerges from legal practice –of the delegates of the Mexican constitutional convention– and is only afterwards introduced to legal doctrine thus demonstrating ‘Calvo’s lack of originality’ in this respect (308).

These diametrically opposed receptions of the idea of a strong customary norm provide the context for former US secretary of state Elihu Root’s speech (1910) in which he explicitly conceptualized a ‘standard of civilization’ protecting foreigners and their property whilst using the ‘Don Pacifico case’ as his only empirical example of state practice. Root argued in his presidential address to the *American Society of International Law* that ‘[e]ach country is bound to give to the nationals of another country in its territory the benefit of the same laws, the same administration, the same protection ... and neither more nor less: provided the protection which the country gives to its own citizens conforms to the established standard of civilization.’ (521) This crucial argument is exclusively grounded on citing what ‘[i]n the famous Don Pacifico case, Lord Palmerston said, in the House of Commons’ (522). The former secretary of state argued that nations ‘to which such observations apply must be content to stand in an intermediate position between those incapable of maintaining order, and those which conform fully to the international standard. With this understanding there are no exceptions to the rule and no variations from it.’ (522-3) American diplomatic correspondence began referring to an ‘international standard’, which Root’s speech employs as a synonym to the standard of civilization, in the aftermath of world war one (Foreign Relations of the United States: 1918, 784-9). International arbitration tribunals’ case law recognized the existence of a customary norm only with the late 1920s opinions of the US-Mexican general claims commission, which are, as we have seen, cited in McNair’s posthumous edition of Oppenheim as state practice supporting the existence of ‘ordinary standards of civilization’ (1928: § 320 fn. 1).

## **Conclusion**

I have argued that the so called ‘practice turn’ in social theory offers the best place to begin the historical study of the legal frameworks of world politics, as it offers a way to link the history of ideas to that of actually existing patterns of social order through the study of practitioners. Yet the basic insight of a ‘practice of legality’ needs to be developed significantly. The idea of a unified practice of international law is disaggregated into a plurality of interlinked legal practices. This allows us to go beyond the study of legal doctrine. Though legal practices are reconstructed through contemporary lawyers’ understanding of the law, it is important to note that a focus on the ‘profession of international law’ is too narrow. Often the most influential actors in global legal practices have not been lawyers but, for example, parliamentarians and diplomats. The usual methods for studying social practices are also not directly applicable to the historical study of global legal practices as the practitioners of the world of yesterday are dead. Thus the history of these practices is based on the study of legal texts. The ‘text’ remains curiously under-conceptualized even though it forms the basis for studying the history of the global legal order. Drawing on the theory of literature, I have argued that a contextual study of the author’s intentions is not sufficient to understand the historical significance of a legal text. Besides the context of the writing of a legal text, its use by both contemporary and later practitioners is of crucial importance. The reception of a legal text could change drastically with time and the text’s meaning could be very different for later practitioners. Moreover, the very content of the legal text could change after the death of its author as the result of the agency of later editors.

The new method has highlighted an important alternative dynamic of legal change that first takes place through practice and is introduced to doctrine only afterwards with posthumous editors often drastically modifying canonical works in order to make them more useful for contemporary practitioners. In this practice story legal change predominantly takes place through practitioners pursuing their interests within broad bounds set by normative expectations rather than with the novel speculations of great thinkers.

I have demonstrated the value added of the new method through radically rethinking the making of the ‘standard of civilization’, which is regarded as one of the most important norms in the history of international law. The origins of the norm lie in legal practice instead of the doctrinal writings of great thinkers such as Vattel or Wheaton. Several of the key practitioners in this story, such as Palmerston, were actors in global legal practices despite not being professional lawyers. Even powerful practitioners pursued their interests within broad bounds set by contemporary understandings of legality and ‘civilization’. Moreover tracking the emergence of the norm in legal doctrine would not be possible without taking into account posthumous editions of the doctrinal works of Wheaton and Oppenheim. In empirical terms the article points out the need for further study of the pivotal and relatively underexplored legal frameworks of the liberal global economic order. The methodological argument has crucial multi-disciplinary implications, as it to a significant extent goes against an influential conventional approach that focuses on the contextual study of legal doctrine in the history of international law. A potential first step in this broader research agenda of reimagining past global legal practices lies in an in depth comparative study of editorial agency and of various posthumous editions in order to develop a new interpretation of the role of the most famous classics of international legal doctrine in the history of the global legal order.

## **Notes**

1. On reception, Nabulsi, 1999; Keene, 2006; Hunter, 2010; Fiocchi Malaspina, 2017; Vergerio, 2017; also Roshchin, 2011; Pocock, 2009; Jahn, 2006. On editorial changes in works of legal doctrine, Gong 1984: 24–35; Hunter, 2010: 22–23; Fiocchi Malaspina, 2017: ch. 4.
2. Wheaton, 1836: 48–50; Vattel, 1834: liv fn. 1. Chitty’s earlier doctrinal work had already included judicial practice as a source of international law, see 1824; 1812. On Chitty’s Vattel, see Hunter, 2010: 22–23.
3. For studies of the reception of international legal doctrine, Nabulsi, 1999; Keene, 2006; Hunter, 2010; Fiocchi Malaspina, 2017; Vergerio, 2017.
4. For studies noting editorial changes in works of international legal doctrine, Gong, 1984: 24–35; Hunter, 2010: 22–23; Fiocchi Malaspina, 2017: ch. 4.
5. Koskenniemi, 2005. For a critique of structuralist ‘relative indeterminacy’ that however also notes its compatibility with the practice approach, Koskenniemi, 2001, 1-2.
6. On bounded rationality and international law, Poulsen, 2015. On compatibility of bounded rationality and the practice turn, Bruneau, 2016.
7. Viscount Palmerston to William Temple, 27.10.1837, *British Foreign and State Papers*, vol. 28, 1165. Also Sir John Dodson to Viscount Palmerston, 16.10.1837, FO 83/2340 in ‘Foreign Office Papers’.
8. ‘Memorandum on Ld Lyndhurst’s Motion for Production of Papers rel: to Negotiations between Neapolitan & British Govts’, 26.5.1840, MM/IT/10A, ‘Palmerston Papers’, 1-2.
9. Sir John Dodson to Viscount Palmerston, 2.7.1847, FO 83/2286 68.
10. Viscount Palmerston to Henry Unwin Addington [?], 2.7.1847, FO 32/158 121-122. Also Henry Unwin Addington to Sir John Dodson, 7.7.1847, FO 83/2286 69.
11. Sir John Dodson to Viscount Palmerston, 13.7.1847, FO 83/2286 71.

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