EdinLR Vol 15 pp 158-160
DOI: 10.3366/elr.2011.0026

Thomas Skouteris, THE NOTION OF PROGRESS IN INTERNATIONAL LAW DISCOURSE

The Hague: T M C Asser Press (*www.asser.nl*), 2010. xiv + 261 pp. ISBN 9789067042994. £55.

The Notion of Progress in International Law Discourse is one of the most interesting books to have come out in the field of international legal theory in recent years. Written by Thomas Skouteris, an assistant professor in the department of law at the American University in Cairo, it belongs firmly in the tradition of the so-called New Approaches to International Law (NAIL) scholarship. Methodologically, it follows in the footsteps of David Kennedy's landmark *International Legal Structures* (Nomos, Baden-Baden, 1986), except that Skouteris is no mere epigone but an accomplished international law theorist in his own right. His approach to the idea of discourse analysis – which is what this volume is essentially about – looks ultimately as distinct and novel as it is insightful and thought-provoking.

The central question at the heart of the book is deceptively simple. It is a common truism, begins Skouteris, that the discourse of international law is strewn with countless references to the idea of progress. The language of progress has become so "perfectly embedded in international law's everyday life that its constant use [almost always] passes unnoticed" (1). And yet just what exactly is it that international lawyers understand by "progress"? How do they measure "progress"? What sort of implications do they assume follow from recognising something as "progressive"? In most other fields of the social sciences, observes Skouteris, the notion of progress has been a subject of extensive enquiry for more than two centuries. In international law, the debate has not even started (11). What sort of knowledge have the students of international law missed out on as a result of this omission?

It would be difficult not to acknowledge the stakes in Skouteris's enterprise. Few master tropes have been as important in shaping the mental map of the international law discipline as the trope of progress. Firstly, and quite obviously, "[a]ccounts of ... progress give context and meaning to individual events by ... relating them to one another into coherent historical or causal relationships" (9). Secondly, and much more importantly, the language of progress is also a language of authority. "Progress talk is not just hortatory" – it affects the legitimacy of international policymaking, determines the trajectory of international law's disciplinary self-reproduction ("academic education"), and, of course, influences the distribution of various types of institutional resources within the profession (6): "the zeal generated by feeling part of a moment of disciplinary progress yields tremendous energy and can be a compelling source of institutional, doctrinal, or social transformation" (163).

Crucially, though, the idea of progress in modern international law has no discernible semantic essence – it represents what linguists call an "empty signifier". To catalogue the uses to which this signifier has been put, becomes then the first step towards uncovering the hidden logic of international legal discourse. And that for Skouteris is precisely what international legal theory today must aspire towards.

For the legal-theoretic enterprise to qualify as a meaningful form of practice (227), the demonstration of the idea that "progress [is] the product of narratives" (219), reasons Skouteris, must ultimately be followed up by an investigation of the various political effects enabled by the proliferation of these narratives (222). Put differently, if international legal theory is to perform its historic task in an adequate fashion, it must aim not only to unveil the basic structures of international legal thought but also the *structural* political biases that result from them.

To illustrate how this kind of exercise can be performed, Skouteris proceeds to explore three different ways in which the notion of progress has been narrativised in modern international law.

In the first instance, as he shows in Chapter 2 of the book, international law can itself be presented as a manifestation of progress. The idea that there must be something substantive about "international law" that makes it "incompatible with autocratic ideologies", that the triumph of the "internationalist spirit" will inevitably serve the "humanist agenda of democracy" has always enjoyed immense popularity. That, in basic philosophical terms, this way of thinking reflects the traditional value-assumptions of Kantian liberalism is common knowledge. But Skouteris's argument proceeds much further than that. The encoding of international law as a self-evident marker of progress – or as Stelios Seferiades, the main hero of Chapter II, put it, "a superior civilization" (51) – performs a crucial ideological function. First, it creates a whole series of mystified fetishistic binarisms – internationalism/nationalism, law/power-politics, accountability/impunity – that seamlessly merge into one another. Second, it helps de-historicise and de-politicise the essential Eurocentrism of modern international law. Third, it masks various relations of domination produced under the Kantian liberal model. In every one of these moves, it helps reinforce the discipline's commitment to "bourgeois modernism" and "civilizing" colonialism (64-77).

Skouteris's second case-study focusses on a somewhat different dimension of progress discourse: narratives that depict international law's internal development. The basic idea here is that to this day a very large proportion of legal literature has been geared towards presenting the emergence of certain theoretical methods, governance techniques, and structural arrangements between legal regimes as evidence of international law's disciplinary "growth" in the purely technocratic, efficiency-oriented sense of the term. The particular examples Skouteris uses to illustrate how this type of narrative operates come from the field which international lawyers traditionally call the "doctrine of sources". The two principal tropes that are used to encode the feeling of progressivity into the sources discourse are "standardization" and "formalisation" (126-35). The former helps reinforce the message that "closure and universality" (and thus conservatism) are superior to difference and pluralism (and thus experimentationism); the latter helps protect the social interests of the legal profession by promoting an image of law as an a-political, expertise-driven activity.

The third sense in which the notion of progress is typically used in modern international law discourse, as the book's fourth chapter shows, is best reflected in the rise of what Skouteris calls "new tribunalism". It was never uncommon in international law to see "instances where a single disciplinary development is described as embodying both [previously discussed] categories (international law as progress; progress within international law) at the same time" (8). The most vivid example of this trend in recent years has been the "enthusiastic advocacy" and celebration of the "proliferation" of various international judicial bodies which, as Skouteris remarks, is typically seen both to represent a "process of internal maturation" of the international legal system and – "as the hallmark of a new rule-oriented approach" to international dispute settlement – "as an absolute and necessary condition for social progress" (161).

Derived in large part from the early NAIL heritage, Skouteris's methodological approach is rooted in structuralist semiotics. But it certainly comes with a strong twist. Like US critical legal studies before it, most NAIL scholarship that drew on semiotic theory focused in this interdisciplinary foray mainly on Saussurean semiotics and Foucault's theory of "archaeology". Not so with Skouteris. Despite a few lively passages discussing Foucault's concept of "archaeology" (32), the basic model of discourse analysis he puts into practice in *The Notion of Progress* is decidedly un-Foucauldian. Rather, it is mainly Hayden White

(theory of emplotment) and early Roland Barthes (theory of myth) to whom Skouteris looks as his main external theoretical influences. From the former, he borrows his general conception of narratological criticism; from the latter, his understanding of the political effects of mythologization. Thus, it is mainly the syntagmatic dimension of the structuralist enterprise that attracts Skouteris's attention, as opposed to the more traditional paradigmatic structuralism of first-generation NAIL scholars, such as Martti Koskennniemi or Nathaniel Berman.

Still, this is not yet the whole story. The broader, overarching vision which underpins Skouteris's inquiry is rooted, ultimately, as much in the Marxian tradition of ideology criticism as it is in modern literary theory. Thus, it is not only the "how" of the various progress narratives that Skouteris puts at the centre of his critical analysis, but also the "why" and the "what one should make of that".

In a sense, of course, the addition of these follow-up questions was perhaps inevitable. Indeed, if there is anything one might have learned from White or Foucault, it is certainly that the pursuit of knowledge is never politically neutral. As soon as something becomes fixed as an object of study, it immediately becomes problematised and is thereby transformed into an object of moral concern and, with that, ethical regulation. But there is obviously much more to Skouteris's project than that. To describe *The Notion of Progress* as merely an attempt to subject the narrativization of progress in modern international law to moral judgment, is to undersell Skouteris's message to his fellow international law theorists as well as his contribution to the broader NAIL enterprise.

Demystifying the poetic logic of progress narratives is not an "innocent" activity. It produces ideological implications that in some circumstances may translate into a considerable disruption of various everyday routines, professional and academic alike. To be sure, "may" is the main operative verb here: there exists no guarantee whatsoever that every act of demystification will necessarily result in such disruptions. The wager, in many ways, is no more attractive than Pascal's. But, as Skouteris's book so vividly demonstrates, that is precisely where the need for supplementing structuralism with ideology criticism – interrupting Saussurean aestheticism with a Gramscian intervention (89) – comes from. For the only alternative would be to consign the whole enterprise of legal theory to a lifetime of empty formalist talk.

Akbar Rasulov
University of Glasgow