
TABLE OF CONTENTS

Foreword by Judge P.H. Kooijmans	v
Preface	vii
List of Abbreviations	xvii
Chapter 1	
General Introduction	1
1.1. Introduction	1
1.2. Problem and Purpose	7
1.3. Method	13
1.3.1. Introduction	13
1.3.2. A contextual approach	17
1.3.3. Contextualisation of the concept of International Legal Personality	25
Chapter 2	
Historical Introduction: Leibniz and the Emergence of the Concept of ILP	29
2.1. Introduction	29
2.2. The Post-1648 European Context	31
2.2.1. Restoration of communication and political modernisation in Europe	31
2.2.2. At the crossroads to modernity: rationalisation and the cosmopolis	38
2.2.3. Jurisprudential context: identifying international legal scholarship	45
2.2.3.1. Prelude – Grotius and Hobbes	45
2.2.3.2. The other German advisor – Samuel Pufendorf (1632-1694)	53
2.3. Introduction of ILP within Leibniz’ Universal Jurisprudence	58
2.3.1. Political realism: the concept of relative sovereignty	60
2.3.2. Universal justice: natural law and the law of nations	68
2.3.3. Conclusions on the emergence of ILP: reconciling realism and idealism, sovereignty and justice, and participation and responsibility	76

2.4. The 18th-Century Interlude	80
Chapter 3	
Demystifying ILP: Brierly, Kelsen and Scelle	85
3.1. Introduction	85
3.2. The Contemporary Context of Interbellum Scholarship	92
3.2.1. Political context: democracy endangered	92
3.2.2. Between hope and fear: the public's reason versus the irrationality of the masses	97
3.2.2.1. Introduction	97
3.2.2.2. The public: voice of reason	99
3.2.2.3. The irrationality of the masses: threatening democracy and individuality	101
3.2.2.4. Conclusion	109
3.2.3. Jurisprudential context	110
3.2.3.1. Introduction: the 19th-century legacy	110
3.2.3.2. The concept of ILP in Interbellum international legal scholarship	115
a. Restoration	116
b. Revision	122
c. Conclusion	130
3.3. James Leslie Brierly (1881-1955)	131
3.3.1. Introduction	131
3.3.2. Brierly's concept of international law	134
3.3.3. Personality and the state: towards an anthropocentric approach	137
3.3.4. The <i>true</i> subjects of international law	145
3.3.5. Conclusion	148
3.4. Hans Kelsen (1881-1973)	149
3.4.1. Introduction	149
3.4.2. The Viennese context	153
3.4.2.1. Introduction	153
3.4.2.2. 'The polluted political atmosphere'	155
3.4.2.3. Intellectual context: conceptual monsters	161
3.4.2.4. Conclusion	166
3.4.3. Kelsen's concept of international law	167
3.4.4. Kelsen's concept of legal personality: democracy and reduction	178
3.4.4.1. Introduction	178
3.4.4.2. Hypostatisation and reduction	179
3.4.4.3. The de-deification of the state	184
3.4.4.4. Freedom and democracy	187
3.4.5. Conclusion: <i>Entschleierung</i>	190

3.5. Georges Scelle (1878-1961)	192
3.5.1. Introduction	192
3.5.2. French context: the Third Republic (1870-1940)	197
3.5.2.1. The political context: <i>l'absolutisme des gouvernants</i>	197
3.5.2.2. Intellectual context: debating the decline of democracy and individual liberties	203
3.5.3. Scelle's concept of international law	216
3.5.4. Scelle's concept of ILP: defending democracy and individual liberties	225
3.5.5. Conclusion	241
3.6. Conclusion: Removing the Mask	242
Chapter 4	
Cold War Bi-polarity: ILP hanging in the Balance	245
4.1. Introduction	245
4.2. Context of Cold War International Legal Scholarship	250
4.2.1. International political context: Cold War bi-polarity	250
4.2.2. Intellectual context: two responses to modern anxiety – realism and idealism	258
4.2.3. Jurisprudential context: the reinforcement of sovereignty or justice	277
4.3. Hans Morgenthau (1904-1980)	288
4.3.1. Introduction	288
4.3.2. The identification of international law – a set of static, primitive and weak legal rules – as pretext	292
4.3.3. Morgenthau's use of ILP: impenetrability and exclusion	294
4.4. Hersch Lauterpacht (1897-1960)	297
4.4.1. Introduction	297
4.4.2. A neo-Grotian conception of international law	304
4.4.3. Federalism and the use of ILP: the sovereignty of man and justice	312
4.4.4. Conclusion	323
4.5. Myres Smith McDougal (1906-1998)	325
4.5.1. Introduction	325
4.5.2. International law as policy: authoritative decision-making processes	325
4.5.3. McDougal and ILP: beyond obsession	329
4.6. Wolfgang Friedmann (1907-1972)	334
4.6.1. Introduction	334
4.6.2. International law: co-existence and co-operation	339
4.6.3. Friedmann's use of ILP: inclusion	340

4.7. Conclusion: a gradual process of inclusion	344
Chapter 5	
The Concept of ILP Today: The End of the Subject?	347
5.1. Introduction: a new age?	347
5.2. Context of Contemporary International Legal Scholarship	354
5.2.1. Globalisation and fragmentation: ‘the age of non-state actors?’	354
5.2.2. Post-modernism and the fragmentation of the self: the end of the subject?	365
5.2.2.1. Foucault and the ‘end of the subject’	370
5.2.2.2. Saving <i>capacity</i> and <i>responsibility</i> : Ricoeur and the ethical and moral subject	378
5.2.2.3. Conclusion	386
5.3. Contemporary International Legal Scholarship: skirting round ILP?	387
5.4. Thomas Franck’s struggle with Zeus	407
5.4.1. Introduction	407
5.4.2. Franck’s concept of international law	408
5.4.3. Franck’s construction of the <i>post</i> post-modern self: the world citizen	416
5.4.4. Conclusion	424
5.5. Christine Chinkin: Opening up the Agora	428
5.5.1. Introduction	428
5.5.2. The sexed and gendered nature of international law	432
5.5.3. Chinkin’s use of ILP: the inclusion and empowerment of the female subject	439
5.5.4. Conclusion	442
5.6. Conclusion: has ‘the loathsome mask’ fallen?	444
Chapter 6	
Evaluation and Conclusions: ILP and Universal Justice – From Mask to Vocal Cords	447
6.1. Introduction	447
6.2. An episodic narrative of the conceptual history of ILP	448
6.3. The concept of ILP revisited: the metaphor of the vocal cords	457
Consulted literature	475
Index	491