

2006

The American Tradition of International Law: Exceptionalism and Universalism

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Recommended Citation

Janis, Mark Weston, "The American Tradition of International Law: Exceptionalism and Universalism" (2006). *Faculty Articles and Papers*. 415.

https://opencommons.uconn.edu/law_papers/415

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Citation:

Mark Weston Janis, The American Tradition of International Law: Exceptionalism and Universalism, 21 Conn. J. Int'l L. 211 (2006)

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Sat Dec 15 22:23:02 2018

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THE AMERICAN TRADITION OF INTERNATIONAL LAW: EXCEPTIONALISM AND UNIVERSALISM

Mark Weston Janis

I am honored by the kind remarks and insightful comments of Bill Alford, Harold Koh, John Noyes, and Scott Horton about *The American Tradition of International Law: Great Expectations 1789-1914*. My heart-felt thanks to these distinguished international lawyers and to Connecticut deans Phillip Blumberg, Hugh Macgill, and Nell Newton, who have been so supportive of my work over the years.

All of the commentators have extrapolated lessons from the book and its period to remark upon the present day situation of American international law. They are entirely right to do so. Besides conveying, I hope, a faithful (albeit like the book's cover) impressionistic picture of the 19th century, if my intellectual history is to have any value, it will be in helping explain why we modern Americans think as we do about international law. In this vein, let me add just a quick word about what I see as the book's mission.

The first volume of *American Tradition* breaks itself into roughly chronological chapters based on different kinds of international lawyers: philosophers, jurists, court room advocates, judges, utopians, scientists, dreamers, and diplomats. Such an analysis helps, I hope, make some sense of the diversity of 19th century American international law thinking, and may help explain why we are even more diverse today.

Another fruitful analytic possibility would be one with which I tinkered and upon which all the commentators have remarked. It can be described in many ways: a division between those Americans who hold a positivist view of international law and those who prefer a naturalist view, or between state-centered and society-centered preferences, or between those of a volunteeristic persuasion and those with a belief in an international community. Such a division, however described, is probably bound to occur in any nation's approach to international law. For America, perhaps, it might be best characterized, employing two very common terms, as a clash between exceptionalism and universalism.

On its universalistic side, international law is the art of fashioning a common law for nations. Such an international common law facilitates the useful exchange of goods, as well as the beneficial movement of people and ideas. An international law based on a community of nations helps build international understanding and lessens the risks and costs of strife and war. On its exceptionalist side, international law, while still a shared international enterprise, strives, not to erase, but to celebrate national differences and preferences. The wonderful varieties of

nations – diverse cultures, languages, religions, histories, economic, legal and political systems – are welcomed and conserved.

I thank all of the commentators – Bill Alford, Harold Koh, John Noyes, and Scott Horton – for commending me for objectivity, for trying to let 19th century American international lawyers speak for themselves. It has also been observed, correctly I suppose, that, despite my objectivity, I seem to have an underlying disposition for the universalistic side of the debate. I agree that universalism is my disposition but I concur with a caveat. This caveat is, that I think it is an important task for American universalism to accept and integrate American exceptionalism.

Crafting an international law that weaves the nations together while not dismissing their genuine and healthy diversity is a real challenge. In a word, American international lawyers need to translate international law universalism to America's exceptionalists, and to translate American international law exceptionalism to international law's universalists. As several of the commentators perceptively remark, it is just this integration of exceptionalism and universalism that is reflected in the book's title, *The American Tradition of International Law*. Blending exceptionalism and universalism is, I believe, the most significant mission of my book. Once again, my thanks to all!