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Subaltern families are living the global reality. They are moving—across national, regional, and international borders. Simultaneously they are drawing attention to the disparate arenas of power with which we must engage in order to understand the global movement of people.

[B]efore professors in business schools were talking about global economics, illegals knew all about it. . . . The illegal immigrant is the bravest among us. The most modern among us. The prophet. . . . The peasant knows the reality of our world decades before the Californian suburbanite will ever get the point.⁶

A 90 YEAR-OLD SNAPSHOT OF OUR FAMILY OF INTERNATIONAL LAWYERS

by Mark W. Janis*

It so happened that I was leafing through the Report of the 27th Conference (Paris, May 27–June 1, 1912) of the International Law Association (ILA)¹ on the same day that I received the Preliminary Program for the 96th ASIL Conference (Washington, March 13–16, 2002).² Noting that the 2002 ASIL conference has as its twin themes “the legalization of international relations” and “the internationalization of legal relations,” I thought it might be interesting and useful to see if I could find comparable themes in an international law conference ninety years ago. This led me to some observations about the similarities and differences between the two gatherings ninety years apart. Let me share with you this snapshot comparison of us and of our family of international lawyers as they met in Paris in 1912.

Barbara Stark kindly invited me to sit on the ASIL’s International Family Law panel, so let me focus my snapshot most particularly on international family law and lawyers ninety years ago. The description of our 2002 panel relates that “family law, historically local, is becoming increasingly international” and that “family law is a context in which the legalization of international relations, including respect for divergent norms is increasingly played out.”³ How international had family law become ninety years ago?

The first striking aspect of the picture of the family of international lawyers in 1912 is the absence of women. Though 801 names are listed as Members of the ILA, only two are plainly identifiable as female.⁴ There may indeed have been more women members of the ILA in 1912—about a tenth of all the names show only initials—but the vast majority of identifiable first names are clearly masculine. The two exceptions are “Lefevre-Portalis, Madame, Member of the Institute of France, 31, Rue de Lubeck, Paris,”⁵ and “Pissargevsky, Lydia de, Professeur au Collège libre des Sciences Sociales, Rue Henri Martin 19, Paris.”⁶ Remarkable, too, is that although the 1912 27th Conference of the ILA was being held in Paris, only the second time the ILA had met in France,⁷ neither

⁶ AMITAVA KUMAR, PASSPORT PHOTOS xiv (2000) (quoting Richard Rodriguez).

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¹ Association de Droit International, *Compte Rendu de la Vingt-Septième Conférence tenu au Palais de Justice, Paris, Mai 27me–Juin 1er 1912*, 27 ILA PROC.(1912) [hereinafter cited as “1912 ILA Report”].

² American Society of International Law, *96th Annual Meeting Preliminary Program: The Legalization of International Relations/The Internationalization of Legal Relations, March 13–16, 2002*, [hereinafter cited as “2002 ASIL Preliminary Program”].

³ *Id.* at 13.

⁴ 1912 ILA Report, *supra* note 1, at xxxv–lvii.

⁵ *Id.* at xlvii.

⁶ *Id.* at 1.

⁷ Rouen in 1900 was the other French venue. *Id.* at i.

Madame Lefevre-Portalis nor Professeur Pissargevsky, both of whom gave Paris addresses, is listed among the 177 Conference participants.⁸ Such routine social, although apparently not formal, exclusion of women from the ranks of international lawyers is, of course, a significant and happy way in which our times differ from those.

Looking again at the 1912 ILA membership list, it is interesting to note who else is left out. Woodrow Wilson, then the Governor of New Jersey and previously a professor of, among other things, international law at Princeton, was not a member⁹—a feature somewhat surprising since Wilson would soon become tightly associated with two of international law's most remarkable ventures, the League of Nations and the World Court. Wilson's absence is all the more striking given that the then-Governor of Connecticut, Simeon E. Baldwin,¹⁰ was a member and even contributed a copy of his "Inaugural Message as Governor of Connecticut, to the General Assembly" to the publications received by the Paris Conference.¹¹ With all respect to Governor Baldwin, his ILA membership did not translate into that influence on international law exerted by nonmember Governor Wilson. Similarly, we must modestly remember that some of the more serious movers and shakers of international law are not members of ASIL.

Turning more generally to the "List of Publications received" at the conference, of the 105 items, only one seems explicitly to treat of international family law, a work by J. Péritch, *De la Forme du Mariage dans le Droit International Privé d'après la Législation Serbe*.¹² Several other submissions, however, might well include international family law topics.¹³ For example, we see Léon Clasens, *L'application des lois étrangères et la question du renvoi*; the *Journal of Comparative Legislation*; the *Journal du Droit International Privé et de la Jurisprudence Comparée, Rédigée par Maître Edouard ChUNET*; A.K. Kuhn, *Doctrines of Private International Law in England and America, Contrasted with those of Continental Europe; Questions Universitarie la condizione del Diritto comparato in Italia*; and H. Sirry, *Private International Law*.¹⁴ Among the seventeen committees of the ILA in 1912, only one explicitly deals with international family law: "Law and Jurisdiction of Divorce."¹⁵ Two other committees—"Unification of the Rules of Private International Law" and "Foreign Judgments"—might have considered international family law matters.¹⁶

How does the topical composition of international family law differ in the two conferences: 1912 and 2002? Actually, not all that much. In 1912, international family law figured explicitly in 1 percent and generally in 7 percent of the list of publications received; it was addressed explicitly in 6 percent and generally in 18 percent of the committees. In 2002 some 2 percent of the committees explicitly considered the subject—our panel on "International Family Law"—but there are other related panels—"International Law and the Legal Curriculum," "Women in International Law," "Debate on the Theme: Internationalization of Legal Relations," "Resolving Private International Disputes," "Private International Law in Review," and "Why (Not) Seek Uniform Solutions?" Altogether our 17 percent is just about the same percentage—18 percent—as it was ninety years ago.¹⁷

⁸ *Id.* at lix–lxiii.

⁹ *Id.* at vii.

¹⁰ *Id.* at xxxvi.

¹¹ *Id.* at xiv.

¹² *Id.* at lxvi.

¹³ *Id.* at lxvi.

¹⁴ *Id.* at lxiv–lxviii.

¹⁵ *Id.* at lxix.

¹⁶ *Id.*

¹⁷ 2002 ASIL Preliminary Program, *supra* note 2, at 5–21.

When the international family lawyers gathered together ninety years ago, who were they and what did they talk about?

The Divorce Committee had ten members: Arthur Barratt, a barrister from London; Prince Cassano of Italy; W. O. Hart, from New Orleans; Dr. Edwin Katz, from Berlin; Sir William Rann Kennedy, an English Lord Justice of Appeal; Gaston de Leval, an avocat before the Cour d'Appel in Paris; Dr. Victor Schneider, also from Berlin; Walter G. Smith, from Philadelphia; Lord Mersey of England; and Sir John Macdonell, also a London barrister.¹⁸ Besides apparently all being men, the ten are mostly Anglo-American (four English and two Americans) and otherwise entirely Western European. We are, of course, much more diverse today. Looking at this morning's meeting, for example, four of our five panelists are women, and in the audience twenty-one of twenty-seven are women. One more small point: it could be that the committee in 1912 was more honorary than real. Only four of its members actually attended the Paris Conference: Barratt and Kennedy from England, Katz from Germany, and de Leval from France.¹⁹

The Law and Jurisdiction of Divorce Committee Report was presented by Arthur Barrett, who remarked that the committee had requested reports from lawyers from a broad range of countries: India, Italy, Iceland, Spain, Scotland, South Africa, the Argentine, other South American states, and Switzerland, but that only four reports had been submitted: India, Scotland, South Africa, and Switzerland.²⁰ Also unfortunately missing was the Report on the Royal Commission on Divorce in England, the completion of which had been delayed.²¹ The account of the reports and comments about them and other countries cover some twenty pages.²²

Although much of the material considered in 1912 may be deemed simply "national," or at best "comparative" law, a considerable number of points raised would fit within our 2002 theme of "The Legalization of International Relations/The International Justice of Legal Relations." For example, in South Africa, the courts were permitted to grant leave to serve writs outside the country or by publication in a foreign newspaper.²³ Moreover, there was "no difference in the binding effect of judgments, whether obtained after personal service within, or any form of service permitted by the courts outside, the country,"²⁴ and the decrees of foreign courts were "recognized whether against the subjects of South Africa or of other countries."²⁵

In Scotland, decrees "were equally binding whether summons [was] served in Scotland or abroad."²⁶ In the United States, it was reported that the model divorce act had gone into force in just three states: Delaware, New Jersey, and Wisconsin.²⁷ Connecticut Governor Baldwin had rather remarkably vetoed a bill granting divorce as "being contrary to the Constitution of the United States."²⁸ Barratt commented that "This is a new view of the law."²⁹ He also noted that "Nevada still continues to have an undeniable reputation for 'migratory' divorces," with a new law meant to "circumvent the

¹⁸ *Id.* at xxxv–lvii, lxxiv.

¹⁹ *Id.* at lix–lxxiii.

²⁰ *Id.* at 594.

²¹ *Id.*

²² *Id.* at 594–613.

²³ *Id.* at 594.

²⁴ *Id.*

²⁵ *Id.* at 595.

²⁶ *Id.*

²⁷ *Id.* at 596.

²⁸ *Id.*

²⁹ *Id.*

action of certain judges who insist on *bona fide* residence before granting divorce.”³⁰ He observed that “from the point of view of International Law, it is obvious that such an Act is useless” because only *bona fide* domicile “will be recognized in other countries by the comity of nations.”³¹

In India, “Dissolution may be granted of a marriage between persons (not being Christian, Mohammedans or Jews), if one of the spouses having since changed his or her religion for Christianity is on that ground deserted or repudiated by the other.”³² Also, “Marriages solemnized out of India can be dissolved only where the matrimonial offence was committed in India.”³³ “Decrees of competent foreign courts are recognized and their jurisdiction is held to depend on domicile in cases where that view is adopted in England.”³⁴

I am sure that others reading papers here will agree that our presentations and discussions today have an even more international flavor. We have, for example, concentrated on international family law conventions. These treaties were only goals and aspirations in 1912.

It is poignant to remember the 1912 Paris proceedings while in Washington in 2002. Despite the many and obvious differences between them and us, there are strong similarities, especially of topic and of enthusiasm. There was then and is now a goodhearted enthusiasm for international law and for what it might achieve not only for family law but for families. I hope that, if our snapshot is remembered in ninety years, those meeting in 2092 will still see some family resemblances not only between them and us, but among us all and our predecessors in 1912.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 597

³³ *Id.*

³⁴ *Id.*