

Philippe Rygiel, L'ordre des circulations? L'Institut de Droit international et la régulation des migrations (1870–1920), Paris (Éditions de la Sorbonne), 2021, 349 p. (Histoire contemporaine, 31), ISBN 979-10-351-0634-8, EUR 28,00.

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Michele Pifferi, Ferrara

The legal history of migration has been developing in recent decades as a specific field of research. Fostered by the contemporary relevance of migration issues, it has benefitted from new methodological approaches such as global and postcolonial legal history, as well as from a growing interest in the history of international law. Following this latter line of investigation, »L'ordre des circulations?« analyses the contribution of the Institute of International Law (IIL) to the debate concerning migration issues between its foundation in 1873 and World War I. Confronted with mass migration waves, the building of the welfare state, the development of an international labour movement and growing fear of socialism and anarchism, the IIL's jurists tried to build and defend a liberal legal order of movement.

In the first two chapters, the founders and members of the Institute are presented as a mainly northwest European intellectual elite, advocates of liberalism strongly convinced that goods, capital, and people should freely move within a (Western) world regulated by sovereign states. The IIL suffered, as the book explains, the same ambiguities and contradictions of late 19th-century Western liberalism: colonialism was tempered but not questioned, racial discrimination between civilized and uncivilized nations was accepted, and international law was conceived of as a legal order governing relationships between sovereign states where human rights had virtually no relevance.

The third chapter examines the IIL's position on key issues of late 19th-century private international law, such as equality between citizens and aliens in the enjoyment of civil rights and the rules governing the conflict of laws, which were at that time mostly regulated by bilateral treaties based on the principle of reciprocity. In 1874, the IIL adopted a resolution recognizing the natural juridical capacity of each individual, independent of any concession granted by the sovereign state and regardless of any reciprocity clause. In family law and personal status matters, nationality had to prevail, whereas in other cases, the *lex loci* was applied.

Although it was confirmed at the 1880 Oxford session, Rygiel points out the limits of this theoretical position. It still considered the states as the main actors of the international law scenario by admitting their arbitrary power to disentangle the aliens of their rights for reasons related to public order. Moreover, it assumed



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symmetrical positions between equal parts (states with states; citizens with foreigners), which corresponded to neither the real dissymmetry between emigration and immigration states nor the growing class inequality characterizing the fin de siècle society. The position of the IIL, conflicting with the practice of the USA, turned out to be the expression of a simply continental law approach, which, in addition, was increasingly challenged by the new features of the welfare state.

Inherent tensions of the IIL's view also are shown in the fourth chapter, which focuses on extradition and asylum, which are both considered to be exclusive prerogatives of sovereignty and manifestations of state discretionary decisions. Many extradition treaties were signed in the last decades of the 19th century, founded on the principle that national citizens and political refugees should not be extradited. The definition of political offence, though, was controversial and varied because of the growing fear of socialism and anarchism. Rygiel confronts the IIL's resolutions in Oxford 1880 and Geneva 1892 to show how the rising tide of socialism led the jurists to change their opinion. While the former affirmed the principle of nonextradition for political offenders, although with some exceptions, the latter introduced further restrictions to strengthen international cooperation against criminals (socialists, communists and anarchists) who, being considered general enemies of public order and opponents of all liberal regimes, could not be treated as political refugees.

The book then addresses freedom of migration. Since the 1870s, many Western immigration states, such as the USA, Germany, France and the UK, have abandoned their open-door policies and strengthened their border controls. Facing waves of migrant workers, states introduced restrictions for undesirable aliens and extended the ability to expel or deport noncitizens. Between 1885 and 1892, the IIL's discussion focused on expulsion. Two contrasting views characterized the debate, one more inclined to safeguard migrants' individual rights and the other more interested in disciplining expulsion as a matter of international law and positive relations between states. In both cases, the right of any state to reject or deport aliens was considered a legitimate manifestation of its sovereignty and never questioned. Rygiel maintains that the purpose of the IIL was neither to regulate the increased global circulation of the labour force nor to guarantee migrants' rights but rather to reduce the conflicts between Western states originating from the aliens living within their territories.

The 1892 resolution on the legitimate reasons for aliens' expulsion revealed again the contradictions of the IIL: its members tried to defend a liberal migration order based on individual rights and the free circulation of factors of production, but at the same time, they knew that such an order could never oppose the sovereign states whose immigration policies were actually driven by racial discrimination, political fears and economic protectionism. Its difficulty in concretely affecting the international legal order, firmly grounded on the state's right to control its borders, together with



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its ideological reluctance to interpret and regulate the economic migration of the labour force in terms of class inequalities and discrimination, finally made the contribution of the IIL in shaping migration policies rather inconsequential.

In the last chapters, Rygiel examines more closely the connections between the Institute and the French legal literature on migration, providing a useful though only partial contextualization of the interaction between the IIL's members and the legal culture of the time. The book has the merit of shedding light on a new piece of migration legal history. Its findings, however, could have profitably benefitted from a closer comparison between the IIL's theses, general theories of international law, and the debate on – and enforcement of – emigration/immigration acts on a national basis (and the historiography thereon).

By focusing almost exclusively on the IIL, the risk is to view as particularly original or inconsistent some of its positions which rather were, if seen within a broader transnational legal context, widespread and in line with the Western states' migration policies (and it could not have been otherwise). Historiography has already shown that migration policies, both in leaving and receiving countries, were dominated by state sovereignty over migrants' rights. Western states' legal and political theories, as well as their constitutional orders, openly clashed with their border control practices, unveiling all the contradictions of liberalism. The IIL was part and parcel of this Eurocentric perspective, and its members could only reproduce a narrative of migration increasingly distant from the social and economic forces that were driving such a mass circulation of people and workers.



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