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Politis and the Limits of Legal Form

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Abstract

Prolific as a scholar, active in the League of Nations, and agent for Greece before the Permanent Court, Nicolas Politis is remembered today as a key figure both in the development of international legal doctrine and in the organization of international political relations. This short article examines three of Politis' texts – the first an early foray into scholarship dealing with issues arising from the 1897 Greek–Turkish War, the second a set of mid-career lectures at the Hague Academy of International Law, and the third the posthumously published La morale internationale*, a work of considerable ambition that never quite managed to find its audience. The article's chief aim is to demonstrate that Politis' trajectory was marked by recurring appeals to extra-legal ideas and arguments – a broadly anti-formalistic tendency which made its influence felt with increasing visibility over time, but which was present even in his earliest and most conventional work.*

1 Introduction

Prolific as a scholar, active in the League of Nations, and agent for Greece before the Permanent Court of International Justice on a number of occasions, Nicolas Politis is remembered today as a key figure both in the development of international legal doctrine and in the organization of international political relations. This short article examines three of Politis' texts – the first an early foray into scholarship dealing with issues arising from the 1897 Greek–Turkish War,[1] the second a set of mid-career lectures at the Hague Academy of International Law,[2] and the third the posthumously published *La morale internationale*, a work of considerable ambition that never quite

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1 N. Politis, *La guerre gréco-turque au point de vue du droit international: contribution à l'étude de la question d'Orient* (1898).

2 Politis, 'Le problème des limitations de la souveraineté et la théorie de l'abus des droits dans les rapports internationaux', 6 *RdC* (1925-I) 1.

managed to find its audience.[3] In the first case, I consider the way in which Politis deploys extra-legal considerations of various kinds when broaching the 'Eastern Question'. In the second case, I examine some of Politis' arguments about limitations on the exercise of sovereign power, particularly as manifested in the incremental reduction of '*le domaine réservé*' and the refinement of the theory of the abuse of rights. In the final case, I analyse the normative vision of world order that Politis sketches in an effort to provide a conceptual blueprint for international cooperation in the midst of global war.

The chief aim of this brief exposition is not to confirm that Politis moved from a typically 19th-century obsession with the stability of the state system through a commitment to constrain sovereignty reflective of larger trends in interwar thinking, and finally to the kind of moralistic universalism with which his final writings are associated. Rather, its chief aim is to demonstrate that Politis' trajectory was marked by recurring appeals to extra-legal ideas and arguments – a broadly anti-formalistic tendency which made its influence felt with increasing visibility over time, but which was present even in his earliest and most conventional work. To be sure, if the final decades of the 19th and first decades of the 20th century transformed doctrines of territory and jurisdiction, statehood and sovereignty, Politis' incremental move away from state-centric and toward 'social' and 'moral' conceptions of international law may be said to exemplify one route through which this change was effected. More interesting, though, is the fact that Politis displayed from the beginning a certain penchant for framing questions concerning the character of state sovereignty and international order in distinctly extra-legal terms.

2 Securing Order

A product of precocity, *La guerre gréco-turque au point de vue du droit international* has long been neglected by students of *fin-de-siècle* international legal scholarship. Devoted to analysing the specifically legal dimensions of a conflict on Europe's semi-periphery, and replete with detailed discussion of the diplomacy which had preceded hostilities and the negotiations which had secured their cessation, the work nevertheless branches out in a variety of non-doctrinal directions, speculating on the evolution and prospective resolution of the 'Eastern Question'.

For the young Politis, the 1897 war over Crete, '*un événement malheureux*',[4] brought to the fore a number of anxieties about state sovereignty and international legal order – anxieties which had been felt with particular intensity in connection with the Near East for some time. From the transformation of the Peloponnese and the territories to its north into an independent Greek kingdom in the 1830s to the sharp rise of rival nationalisms in the second half of the century, from the 1856 Treaty of Paris, conditioning Ottoman participation in the 'public law of Europe' on

[3] N. Politis, *La morale internationale* (1944).

[4] Politis, *supra* note 1, at 165.

pro-Western reforms and continued adherence to the capitulations, to the 1878 Congress of Berlin, where the Concert of Europe brought the full weight of its power to bear on the 'Eastern Question', the 19th century had provided ample fodder for jurists. Though fractured, conflictual, and fundamentally resistant to claims that it generated a coherent body of law of the sort that Holland seems to have had in mind when speaking of a '*corpus iuris publici orientalis*',[5] this process of delegitimation and peripheralization had destabilized the Ottoman Empire's international status so thoroughly by the century's end that 'the redistribution of power in the Balkan peninsula'[6] had become something of a juridical *cause célèbre*.[7] If Rolin-Jaequemyns had argued even before Berlin that the great powers were duty-bound to close ranks and represent '*l'ensemble de l'Europe*' in its dealings with '*les peuples orientaux*',[8] the 1877–1878 Russo-Turkish War, to which Berlin was a response, had shocked Lorimer into warning his readers of the 'consequences of permitting the Turks to combine the weapons of barbarian with those of civilised warfare'.[9] The potential expansion of Greece was naturally of critical importance here, and Politis saw clearly that any attempt to reconfigure territorial and jurisdictional arrangements in the Near East would have implications as serious for Greece as it would for Turkey.[10]

In some passages, Politis suggested that Greece's adversary during the war retained its '*instincts barbares*', the traditions and institutions of a '*nation asiatique et barbare*' still at a considerable remove from '*la civilisation occidentale*'.[11] Greece could not, for instance, be expected to conclude an ancillary extradition treaty with Turkey – a state which offered no '*garantie de bonne justice*' – when it had refused to conclude such treaties with Europe's '*pays civilisés*'.[12] Nor did the Ottomans have the authority to abrogate the capitulatory privileges enjoyed by nationals of foreign states, a pretence with which they had toyed *vis-à-vis* Greece when war broke out.[13] Though Politis

[5] T.E. Holland, *The European Concert in the Eastern Question* (1885), at 2.

[6] Holland, 'The Execution of the Treaty of Berlin', in T.E. Holland, *Studies in International Law* (1898), at 226, 250.

[7] The phenomenon was not, of course, limited to Turkey. German (and Germanophile) jurists took to characterizing Bulgaria – nominally an Ottoman province until 1908 but in possession of *de facto* independence after 1878 – as an exemplary case of *Halbsouveränität:* see, e.g., K.O. Lutfi, *Die völkerrechtliche Stellung Bulgariens und Ostrumeliens* (1903), at 24–46. Similarly, the *de jure* independence of other Balkan states was often conditioned on adherence to minority protection mechanisms to which the great powers were not themselves beholden. See, e.g., Treaty between Austria-Hungary, France, Germany, Great Britain, Italy, Russia, and Turkey for the Settlement of Affairs in the East, signed at Berlin, 13 July 1878, 153 CTS 171, Arts 27, 35, 44, at 182, 184, and 187.

[8] Rolin-Jaequemyns, 'Le droit international et la phase actuelle de la question d'Orient', 8 *RDILC* (1876) 293, at 368 (emphases omitted).

[9] Lorimer, 'Does the Corân Supply an Ethical Basis on Which a Political Superstructure Can Be Raised?', in J. Lorimer, *Studies National and International, Being Occasional Lectures Delivered in the University of Edinburgh 1864–1889* (1890), at 132, 135.

[10] See, e.g., Politis, *supra* note 1, at 168.

[11] *Ibid.*, at 166.

[12] *Ibid.*, at 116.

[13] *Ibid.*, at 28.

admitted that the capitulations had been abused, he understood why '*les pays chrétiens*' were reluctant to submit their nationals to the Ottoman legal system,[14] given '*la méfiance*' of '*les autorités musulmanes aux populations chrétiennes*' under many circumstances.[15]

In other passages, however, Politis stressed that Turkey was undergoing extensive modernization and stood a good chance of achieving '*un certain progrès*', especially if extended appropriate European support.[16] He was impressed by the emergence of the Young Turks as an increasingly potent, if still diffuse and partly underground, force for reform. Inspired by developments in the West, these '*hommes éclairés*' had realized that incompetence on the part of civilian and military authorities alike was '*responsable du reproche de barbarie qu'on adresse constamment à leur pays*'.[17] Whereas the imposition of a measure of '*contrôle international*' would likely suffice to inoculate Greece with '*habitudes nouvelles d'économie, de travail et d'ordre*', the case of Turkey demanded both a Concert of Europe capable of '*prompte et décisive*' action and '*hommes nouveaux*' ambitious enough to slough off outdated institutions in the name of full-scale state restructuring.[18]

Crucially, both sides of this coin – relegating Turkey to the margins in one moment, underscoring the feasibility of its revitalization in the next – were reflected in the largely extra-legal observations respecting the 'Eastern Question' with which Politis studded his otherwise positivist study. On the one hand, Politis argued, the legitimacy of Greece's '*intervention énergique*' in Crete,[19] frequently propelled by acts of '*patriotisme spontané*',[20] was untouched by its somewhat dubious legality. While the intervention involved, '*pour la Grèce, l'exercice d'un droit primordial, son droit de conservation*', it also entailed '*une violation flagrante*' of the '*droits souverains du Sultan*', resting, when all was said and done, upon '*une question de sentiment, d'humanité et de sympathie, non une question de droit*'.[21] That is, the negotiations which preceded and followed the armed conflict may have called for sustained legal analysis, but Greece's entry into war was not itself an issue of pure law; it was, at least in part, an issue of extra-legal resolve, fuelled by convictions '*d'humanité et de sympathie*' rather than strict adherence to the letter of the law.

On the other hand, Politis' proclivity for stepping outside the orbit of purely doctrinal analysis also enabled him to hazard a sweeping call for solidarity with Turkey. The great powers were keen to use the opportunities afforded by the 1897

[14] *Ibid.*, at 116, 116–120 generally.
[15] *Ibid.*, at 28.
[16] *Ibid.*, at 166.
[17] *Ibid.*
[18] *Ibid.*, at 166–167, 170. Given that Abdülhamid II, against whom many Young Turks mobilized, had benefited from victory in Crete, Politis' stance also invites a power-political reading: in backing the Young Turks, Politis was supporting not only a force of modernization, but also a force of intra-imperial destabilization.
[19] *Ibid.*, at 5.
[20] *Ibid.*, at 161.
[21] *Ibid.*, at 6.

war to address a number of outstanding questions, some of which were related only indirectly to the war itself.[22] Yet, it was best to believe, wrote Politis, '*qu'une politique sage de la part de tous ces intéressés pourrait aboutir à l'établissement d'une association en forme de Confédération non pas, comme on l'a souvent demandé, contre la Turquie, mais avec elle*'.[23] After all, he observed with a nod to well-established great power policy, a '*Turquie régénérée*' and amenable to consistent European pressure remained essential to countering '*le danger d'une invasion russe*', arguably the most serious and intractable threat to the continental balance of power.[24] Only with an undertaking on this scale might '*une ère de pacification*' be ushered into the Near East, so that '*les peuples d'Orient*' might begin '*à marcher dans la voie de la liberté et de la civilisation*'.[25] Once again, the issue at hand demanded an approach which at times exceeded the bounds of positive law.

3 Constraining Sovereignty

International legal historians have long characterized 1919 as a watershed, transforming the discipline – its theory, doctrine, and practice – from top to bottom. Treaty and custom had proven no more able to control military and industrial rivalry between Manchester and the Rhineland than to manage majority–minority relations within the few multinational empires that remained. Inter-state competition within Europe, reaching downright toxic levels as 1914 neared, had spawned struggles for territory and resources throughout Asia and Africa. 'Sovereignty', however understood, was to be disaggregated and disciplined in the name of a new world order.

Whatever the merits and shortcomings of this account,[26] it seems that Politis found his footing on the post-Versailles terrain without much difficulty. In his 1925 course in The Hague, he noted that it was notoriously difficult to locate sound theoretical foundations for reconciling state sovereignty with international order.[27] He argued that doctrines of absolute sovereignty were '*un formidable obstacle*' to the achievement of peace and justice,[28] that '*[l]e fait dominant*' of the new '*époque*' had revealed

[22] Politis was alert to this fact; see, e.g., *ibid.*, at 103 ff.

[23] *Ibid.*, at 169.

[24] *Ibid.*, at 169–170.

[25] *Ibid.*, at 171.

[26] For an attempt to demonstrate that the assault on 'sovereignty' encountered so often in post-1919 scholarship was driven partly by ignorance or misreading of 19th-century treatises see Carty, '19th Century Textbooks and International Law' (Ph.D. dissertation, University of Cambridge, 1972), at pp. i–xxiii. See further Kennedy, 'The Move to Institutions', 8 *Cardozo L Rev* (1987) 841.

[27] Politis discussed (largely French) attempts to draw upon social contract theory to demonstrate that acquisition of international legal personality is always already conditioned upon recognition of the 'fundamental rights' of other states. He also analysed (predominantly German) attempts to sidestep questions of bindingness by arguing that states bear only those international legal obligations which they have accepted voluntarily. For Politis, as for others, the first position gave rise to a vicious circle, while the second begged the question whether anything a state accepted of its own volition could legitimately be termed a legal 'obligation': See Politis, *supra* note 2, at 14–16.

[28] *Ibid.*, at 11 and similarly at 111.

[29] *Ibid.*, at 6 and also at 22.

itself to be '*la solidarité*',[29] and that international law now needed to keep pace with '*la vie internationale moderne*'[30] by reclaiming its '*caractère démocratique*' and '*conscience juridique*'.[31] In Politis' view, a necessary, if not sufficient, condition for realizing this last objective was to work toward '*la réduction progressive du domaine réservé*',[32] partly, though not exclusively, through the enhancement and popularization of the theory of abuse of rights.

Many of Politis' contemporaries voiced discomfort with the fact that the line between municipal and international law was becoming increasingly difficult to draw – a development illustrated well by the problem of determining what could and could not be shielded from international legal scrutiny through characterization as a 'matter of domestic jurisdiction' pursuant to paragraph eight of Article 15 of the League Covenant.[33] The thorny issue of '*le domaine réservé*', a '*norme du droit international*',[34] lay at the centre of these concerns. As Politis pointed out, some jurists held that states retain power over certain domestic affairs only because international law authorizes them to do so. Such an account assumed that '*[l]a prétention d'un État de régler seul ses affaires domestiques est légalement fondée*' – in other words, that it '*est légitime, parce qu'elle est conforme à la règle de droit*'.[35] Conversely, other jurists subscribed to the view that exclusive domestic competence is not sanctioned but simply tolerated by international law. This, for its part, suggested that '*le domaine réservé est . . . un terrain juridiquement inexploré, où le droit n'a pas encore pénétré*'.[36]

Politis' initial response to this dilemma was a nuanced one. International law may recognize the existence of '*le domaine réservé*', he wrote, but it certainly does not preordain its content. In no way can the mere fact that international law makes room for a certain sphere of domestic discretion be taken to justify the considerably more ambitious claim that its constituent rules and principles determine the manner in which such discretion is to be exercised.[37] For Politis, the content of '*le domaine réservé*' was '*principalement une question de fait*',[38] though one ideally determined multilaterally

[30] See, e.g., *ibid.*, at 11.

[31] *Ibid.*, at 8, 9, and similarly at 111.

[32] *Ibid.*, at 59.

[33] It will be recalled that this provision declared that '[i]f the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement': Covenant of the League of Nations Adopted by the Peace Conference at Plenary Session, 28 Apr. 1919, 13 *AJIL Sup.* (1919) 128, at 134. Kelsen called this 'one of the worst drafted provisions of the Covenant', rejecting outright the notion that 'there are objects which by their nature escape from the control of international law': H. Kelsen, *Legal Technique in International Law: A Textual Critique of the League Covenant* (1939), at 125, 127. Trenchant criticisms came from a variety of other directions. See, e.g., Brierly, 'Matters of Domestic Jurisdiction', 6 *British Yrbk Int'l L* (1925) 8, especially at 13–14; and, for a broader and more charged discussion, G. Schwarzenberger, *The League of Nations and World Order: A Treatise on the Principle of Universality in the Theory and Practice of the League of Nations* (1936), at ch. 3.

[34] Politis, *supra* note 2, at 46.

[35] *Ibid.*, at 47.

[36] *Ibid.*

[37] *Ibid.*, at 48.

[38] *Ibid.*

rather than unilaterally, the alternative being tantamount to a kind of global '*anarchie*'.[39] Politis' more sustained and comprehensive response, however, was to caution against '*le domaine réservé*' as '*un véritable obstacle à la paix internationale*'.[40] Domestic jurisdiction encompassed an array of complex issues relating to customs, nationality, immigration, labour and employment, and other aspects of '*la vie sociale contemporaine*'.[41] The '*libertés qu'il renferme*' were '*éminemment dangereuses*',[42] and steps needed to be taken to render international law '*plus souple et mieux adapté aux nécessités de la vie moderne*'.[43] Without a full-blown '*reconstruction du droit international sur de nouvelles bases*',[44] the cultivation of an international law that would accord with '*la réalité des choses*'[45] and enshrine '*une politique d'hygiène préventive*',[46] it would not be possible to check parochial commitments to national sovereignty of the sort that had engendered the Great War and that now imperilled the League of Nations.

It was here that the doctrine of the abuse of rights, on Politis' account a product mainly of late 19th-century French jurisprudence,[47] could be of use. Insofar as it was intended to curb excesses in the interpretation and application of law, to impede, that is, '*l'exercice anti-social d'un droit*',[48] this theory might be extended from municipal law, its place of origin, to international law. It was clear, in any event, that '*[l]'individualisme national*' had become just as much an anachronism as had '*l'individualisme privé*' – that '*la conception de l'indépendance*' had given way '*à celle de l'interdépendance*' after '*[l]'idée d'un droit déterminé par des buts sociaux*' began to penetrate '*dans les esprits*'.[49] *Pace* Schmitt, who had maintained only three years earlier that what matters for 'the reality of legal life' is the question of 'who decides' and not that of whether a given decision conforms to a pre-existing norm,[50] Politis argued that state powers must always be exercised in accordance with '*leur destination sociale*',[51] fidelity to the '*mouvement moralisateur*' which motored the theory of abuse of rights being of paramount importance.[52]

Politis' mistrust of sovereignty ran deep – and sometimes counter to the diplomatic and intellectual forces with which he was confronted. In 1916, for instance, one finds him standing before the Greek parliament to condemn the 'bands of pirates which all

[39] *Ibid.*, at 52.
[40] *Ibid.*, at 56.
[41] *Ibid.*, and also at 49.
[42] *Ibid.*, at 56.
[43] *Ibid.*, at 59.
[44] *Ibid.*, at 5.
[45] *Ibid.*, at 61 and also at 116.
[46] *Ibid.*, at 113.
[47] *Ibid.*, at 79 ff.
[48] *Ibid.*, at 81.
[49] *Ibid.*, at 87 and 89.
[50] C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (trans. G. Schwab, 2005), at 34.
[51] Politis, *supra* note 2, at 86.
[52] *Ibid.*, at 83.
[53] Quoted in Holsti, 'In Memoriam: Nicolas Politis, 1872–1942', 36 *AJIL* (1942) 475, at 475. It is worth recalling that Politis was leaning here on an exceedingly long-standing tradition of positioning the pirate as a signature outlaw or *communis hostis omnium*, and therefore as capable of being eliminated legitimately by all and sundry: see especially D. Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (2009). The politically problematic nature of this approach should be evident.

states have the right and the duty to outlaw'.[53] Ten years later, he is lamenting the fact that judges of the same nationality as parties in a case may sit on the Permanent Court, a decidedly unfortunate practice given the 'moral weakness of men' and 'the lack, in most countries, of the international spirit'.[54] What is most striking about the critique of sovereignty that unfolds on the pages of Politis' Hague lectures, however, is the repeated reliance upon extra-legal arguments driven by a compulsion to meet the challenges of what he alternately terms '*la vie sociale contemporaine*', '*la vie internationale moderne*', and '*la réalité des choses*'. At crucial moments in his argument on behalf of a revitalized international law, Politis marshals a moralized conception of world order which he takes to be inspired by and responsive to the fragile spirit of '*solidarité*' he sees at work in the *interbellum*.

4 Universalizing Morality

Penned in 1940 but published only after Politis' death in 1942, *La morale internationale* marks something of a departure. Having devoted the bulk of his career to teaching international law, producing largely doctrinal scholarship, defending Greek interests before the World Court, and pressing League members to take disarmament and non-aggression seriously, an aged Politis now found himself arranging to have a romantic, heavily stylized tract on international law's intrinsic morality smuggled out of occupied France.[55] The influence of solidarist thinkers like Duguit had already been palpable in the Hague lectures, as well as in any number of other writings.[56] But now it came fully into the open.

True to its title, *La morale internationale* set out to establish that international positive law is rooted in '*la morale internationale*', an expression which Politis used as a placeholder for the international system's background normative architecture – the bedrock of '*le bon ordre, la paix et la prospérité de la communauté internationale*'.[57] While it was open to significant change over time,[58] and while it did not, of course, possess the binding force of positive international law,[59] '*la morale internationale*' was comprised of six basic principles: 'loyalty', 'moderation', 'solidarity', 'mutual respect', 'mutual assistance' ('*l'entr'aide*'), and 'the spirit of justice' ('*l'esprit de justice*').[60] Only

[54] Politis, 'How the World Court Has Functioned', 4 *Foreign Affairs* (1926) 443, at 447.

[55] It seems that, despite significant pruning on Politis' part, Vichy censors impeded the manuscript's publication in France: Tenger, 'Nicolas Politis', in Politis, *supra* note 3, at 11, 12.

[56] See, e.g., Politis, 'The Changes in International Law', in N. Politis, *The New Aspects of International Law: A Series of Lectures Delivered at Columbia University in July 1926* (1928), at 1, 15.

[57] Politis, *supra* note 3, at 73. Note, though, that Politis had already been using the expression for some time: see especially N. Politis, *La justice internationale* (1924), at 251.

[58] See, e.g., Politis, *supra* note 3, at 52–53 (arguing that '*[l]es règles de la morale, comme les règles du droit, . . . évoluent, se modifient, changent, se complètent au gré des nécessités de la vie*', and comparing this evolutionary dynamic with that outlined by Herbert Spencer).

[59] See especially *ibid.*, at 73.

[60] *Ibid.*, at 80. For extended treatments of each principle see generally *ibid.*, at 81–194.

by regenerating respect for each of these principles – '*l'infrastructure morale*' of the international system[61] – could Europe's '*extrême déséquilibre*'[62] be replaced with a '*nouvel état de choses*',[63] a global '*existence bien ordonnée*',[64] and directed towards the cause of advancing universal cooperation rather than that of catalysing competition or entrenching provincialism.

Quite apart from the somewhat nebulous character of Politis' working vocabulary, the argument that was put on offer in *La morale internationale* was beset by problems. First and foremost was Politis' claim that international legal order had been run aground through failure to adhere to '*la morale internationale*', and could be restored only if the '*révolution spirituelle*' presupposed by the League Covenant was finally completed with a view to submitting '*la vie internationale à une nouvelle moralité politique*'.[65] This seemed to sit well with Politis' general thesis that international law flowed from '*la morale internationale*' – that, '*en faisant plus impérieusement sentir son empire, la morale évolue vers le droit*'.[66] Yet it also raised a critical question of causation. For if the League project of ensuring '*au monde la paix dans l'ordre et la légalité*' had come to naught because of a failure to respect '*la morale internationale*',[67] such that a thoroughgoing '*révolution spirituelle*' was now needed, in what sense could it be said that international law was an indispensable engine of '*la collaboration internationale*' and '*une civilisation raffinée*'?[68] Either international law codified and crystallized '*la morale internationale*', in which case all its rules and principles were automatically outgrowths of moral rules and principles, or else international law was not in fact derived from '*la morale internationale*', in which case Politis was simply wrong in maintaining that it was ultimately more important to say *ubi societas ibi mores* than it was to say *ubi societas ibi jus*.[69] Put differently, if international law always tracked '*la morale internationale*', it was hard to see why the League had failed and a '*révolution spirituelle*' was needed (not to mention why one would place one's hope in international law and not in '*la morale internationale*', working not as a moral philosopher but as an international lawyer). Conversely, if international law did not track '*la morale internationale*', it was not terribly easy to resist the conclusion that *La morale internationale* ought never to have been written in the first place, at least not in the way that it had been.

Koskenniemi has argued that *La morale internationale* is best understood as a contribution to francophone solidarist thinking.[70] Sound as it very clearly is, *La morale internationale* also lends itself to a more audatious, explicitly aspirational reading:

[61] *Ibid.*, at 47.
[62] *Ibid.*, at 39.
[63] *Ibid.*, at 43 and also at 97.
[64] *Ibid.*, at 46.
[65] *Ibid.*, at 96–97.
[66] *Ibid.*, at 68.
[67] *Ibid.*, at 96.
[68] *Ibid.*, at 154–155.
[69] *Ibid.*, at 48.
[70] M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), at 308, 305–309 more generally.

Politis' insistence on grounding legal relations in moral relations, his willingness to ask *quid leges sine moribus* before *quid mores sine legibus*,[71] rested in the final instance upon an implicitly messianic vision of world order, a commitment to the (neo-Kantian?) claim that '*la morale internationale*' imposed itself, '*dans les constructions de l'avenir, avec la force d'un impératif catégorique*'.[72] Viewing 'law' and 'morality' as two sides of the same coin was in no way unknown at the time. Nor, for that matter, was the fear that the legitimacy of law was under threat, and could only be rescued through a retrieval of moral ambition. One need only re-read Fuller to recall how, even as late as the 1960s, such positions could generate sweeping, often speculative forms of idealism.[73] And yet it is obviously unclear how much one could reasonably hope to achieve by stating time and again that *pacta sunt servanda* is '*la clé de voûte de la communauté internationale*',[74] that '*[l]e respect mutuel de la liberté et des biens des Etats est un devoir légal*',[75] that '*[l]e nationalisme exagéré, exclusif, agressif, constitue une véritable maladie internationale*',[76] that principles of sovereign equality and non-intervention must be tempered with rules prohibiting the abuse of power.[77] Repeated claims of this type plainly do not suffice either to effect concrete change or to describe and explain existing states of affairs, especially when made in isolation and without much in the way of supporting evidence. Indeed, it is not a little odd that Politis should have insisted on the need for '*[l]'hygiène spirituelle*' in the very midst of a global catastrophe.[78]

Such faith in international law may have owed something to the fact that Politis did not hail from a principal belligerent in the Second World War. As influential as he was, he had, after all, spent much of his life representing what an American reviewer of the book termed a 'minor power'.[79] This may have enabled him to approach a year like 1940 – as personally and professionally devastating as it must otherwise have been – with a tinge of crypto-theological optimism. Such, at any rate, is the impression left by the book, particularly by its tendency to link generalized calls for interdependence to the grievances and aspirations of '*petits pays*'.[80]

5 Conclusion

A product of liberal internationalism, Politis' *oeuvre* moved within a familiar circle of tensions, pitting national autonomy against international authority at every turn. As

[71] *Politis, supra* note 3, at 50.
[72] *Ibid.*, at 47.
[73] L.L. Fuller, *The Morality of Law* (2nd edn, 1969), especially at ch. 2.
[74] Politis, *supra* note 3, at 91.
[75] *Ibid.*, at 136.
[76] *Ibid.*, at 109.
[77] *Ibid.*, at 144.
[78] *Ibid.*, at 44.
[79] Whitton, '*La morale internationale*. By Nicolas Politis. New York: Brentano's, 1944. Pp. 194.', 45 *Columbia L Rev* (1945) 808, at 808.
[80] See, e.g., Politis, *supra* note 3, at 140 (suggesting that '*[s]i la collaboration économique est nécessaire à tous les Etats, elle est particulièrement indispensable aux petits pays*').

frequently as his work may have moulted earlier incarnations, shifting dramatically and sometimes unpredictably from one moment to the next, Politis always sought to bolster adherence to international law in a way that spoke directly to the mainstream of his discipline. That he made a point of invoking extra-legal ideas and crafting extra-legal arguments throughout his career bears witness to the depth of his conviction that the project of reinforcing the international legal system demanded a certain ability and willingness to step outside positive international law. For Politis, it would seem, respect for international law seldom manifested itself more lucidly than in the act of transgressing the international legal form, not so as to subvert but precisely so as to *secure* it.