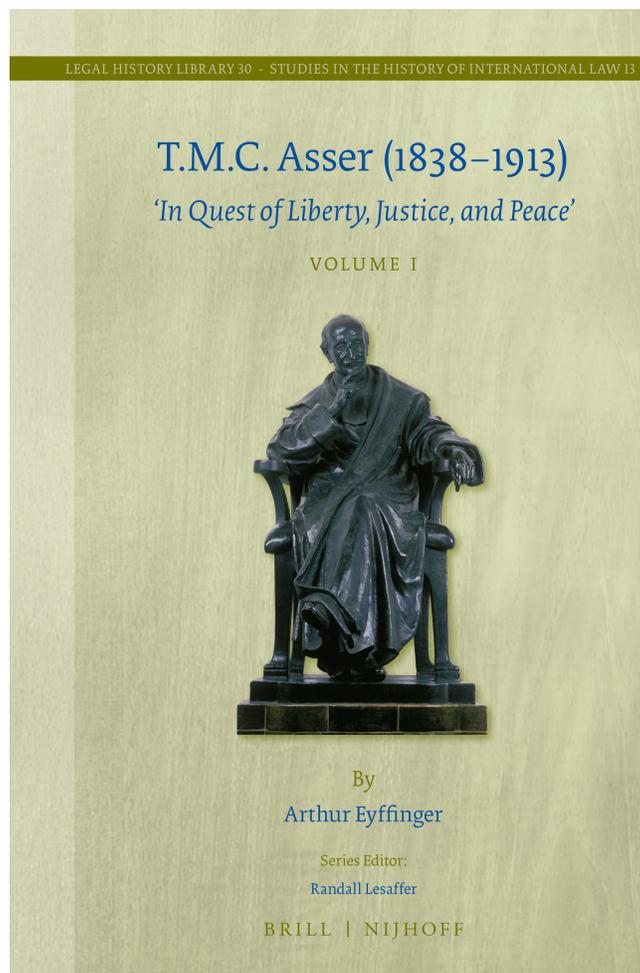


Review
Arthur Eyffinger:
T.M.C. Asser (1838-1913):
'In quest of liberty, justice, and peace'
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Reviewed by Joost Blom



Tobias Asser's name is probably unfamiliar to most people. Some readers of this journal may be acquainted with the T. M. C. Asser Institute, an inter-university research centre on international law in The Hague, or they may happen to have come across the fact that Asser is, so far, the only Dutch recipient of the Nobel Peace Prize (1911). The fame of lawyers, no matter how eminent they are in their profession, rarely extends beyond the legal sphere. Yet here is a monumental biography of a man who achieved prominence entirely as a lawyer — not as a businessman or a holder of public offices — and died more than a century ago. Why does he deserve our attention?

Arthur Eyffinger, former head librarian at the International Court of Justice (ICJ) (1988-2003) and an expert on the history of international law, answers that question decisively. He shows how central a role Asser played in the formation of international legal ideas and institutions, and how profound Asser's legacy has proved to be. That legacy includes the status of The Hague as, in some ways, the most notable centre of international legal life. The seat of the ICJ is there. Several other international legal tribunals are based in the city, as are various intergovernmental and non-governmental institutions concerned with international law. Asser was one among many leading figures, over the decades, who helped bring about The Hague's pre-eminence, but it is hard to imagine that, without him, it could have happened in the way it did.

Eyffinger gives us much more than the story of a lawyer — and networker — of international renown. This is a *life and times* study of a quality and scale that make it an extraordinary scholarly achievement. Its superb sweep, breadth of interest, and richness of detail have almost a 19th-century expansiveness about them. Among many other things, it offers an absorbing portrait of Dutch society and Dutch politics in Asser's time. For all the international ramifications of Asser's career, his life and work were centred in Amsterdam and, later, The Hague, and the Dutch setting receives full attention at every turn.

The Assers were a Jewish family that came to Amsterdam from Germany in the 1660s. They rose to prominence in the 18th century, and Tobias was the fourth generation to make a successful career in law. The account of the history of the family, and that of the Dutch Jewish community, is fascinating.

Tobias's intellect and energy were remarkable early on. He completed his legal studies with a highly praised dissertation on Dutch constitutional law and foreign policy. At the same time, when still only twenty, he wrote a treatise on the Economic Concept of Value that won him a prize and national scholarly attention. Almost as soon as he was qualified to practise, he took over his father's law firm (the father had just been appointed a judge). The practice of law was the core of Asser's professional life from then (1860) until 1893, when he was appointed to

the Council of State and left Amsterdam for The Hague. His son, and then his grandson, carried on the law firm until it was absorbed by another in 1966.

Once Asser gets his career underway, the narrative shifts from chronological to thematic, in order to cope with the fact that, almost from the start, he pursued parallel avenues of endeavour that overlapped for the rest of his life. The threads have to be pulled apart to see them clearly. Every so often, a chapter fills in the personal story, including his happy marriage to his first cousin, Jeanne; their four children; and the friendships, often with professional colleagues, that meant the most to him. Eyffinger has made ample and fruitful use of the very extensive Asser family archive, which became available to the public while he was writing the book. Asser himself hardly ever threw any records away, and the family, especially some of the women, were enthusiastic and engaging writers of journals and letters, many of which survive.

Asser's law practice, central though it was for him, is not analyzed in the same detail as the many other sides of his legal life. That is probably due to the private nature of legal practice, which makes source material very scarce. A law practice's records essentially belong, not to the lawyer, but to the client. However, a parallel public legal career opened for Asser almost at once. In 1862, he was appointed to a professorial chair at the Amsterdam *Athenaeum Illustre*, which in 1877 became the University of Amsterdam. He held his professorship until 1893. His publications, although well-regarded for their forward-looking and practical outlook, were not voluminous and did not include the typical academic *magnum opus*. Asser nevertheless achieved an immense reputation, which rested above all on his sustained success as an organizer. He was a pivotal figure in the origin of some of the most important legal institutions of his own time, and of ours.

He threw himself into one initiative after another. Typically — and naturally, given how small the Dutch legal scene is — these were projects that brought together colleagues from multiple countries. He seemed to know all the right people and how to win them over to his ideas. Most importantly, he had a finely honed ability to keep pressing ahead. His drive was controlled by tact and patience. He had an exceptionally acute sense of the possible, and he would pursue the goal even if the effort took many years. People obviously liked working with him, certainly because of his attractive personality, but also, as repeated episodes in his story suggest, because he typically did more than his share of the heavy work and could be counted on to do it with consummate skill.

Asser was a founder and lifelong member of each of the two leading organizations of experts in international law, the *Institut de Droit International* and the International Law Association. They were formed in the same year, 1873, with complementary objectives and memberships (mostly academics in the *Institut*, a

broader range of legal professionals in the Association). They continue today, their prestige undiminished.

His favourite branch of the law was private international law. It is concerned with how legal systems can do justice in private matters that implicate the laws of more than one country. Many of the problems in this field are highly complex, and there is no international consensus as to how they should be solved. Each jurisdiction is free to deal with them as it sees fit, and the result is an uncoordinated patchwork of approaches that make planning difficult. Asser conceived the idea of convening, in The Hague, a series of international conferences to build consensus as to the right way to handle particular issues, such as (to name one of the most intractable areas) enforcing civil judgments from foreign courts. The agreed rules would be laid down in treaties among the participant nations.

He persuaded the Dutch government to support the conferences, the first of which was held, with Asser as president, in 1893. Other conferences followed. They demonstrated that real progress could be made, even if gradually and painstakingly. Remarkably, they continue today. In 1955, the Hague Conference on Private International Law was set up by member states as a permanent institution. Membership now stands at eighty-nine states. (Canada is a member, and a very active one, at that.) Its diplomatic conferences have crafted a series of multilateral Hague Conventions — by now there are 40 of them — that underpin the progressive harmonization of private international law. If any one institution is Asser's monument, it is this.

The original Hague Conferences on private international law came to be seen as a successful diplomatic model for working out internationally agreed solutions to difficult legal problems. The model's prestige led The Hague to be chosen as the host, and Asser as a principal organizer, for the first (1899) and second (1907) Hague Peace Conferences. These were aimed at strengthening the laws of war and at promoting disarmament. Their main objectives were not achieved — two World Wars in the next 40 years attest to that — but the conferences did produce some beneficial long-term results. The most important was a greater acceptance of international legal tribunals as a means for settling disputes. The conferences set up a Permanent Court of Arbitration (which still exists), which was joined, after World War I, by a Permanent Court of International Justice (now the ICJ). That the city became the seat of these courts (their home, the Peace Palace, opened in 1913) is directly attributable to the Hague Peace Conferences. Asser's Nobel Peace Prize paid tribute to the role he played, in his many capacities, in the movement for international justice.

Arthur Eyffinger's treatise gives us an absorbing study of an important Dutch legal figure. At the same time, it virtually constitutes an encyclopedia of the

formative years of international legal institutions that still shape our world. Anyone wanting to know about these subjects or about any part of them — the book is very clearly laid out and well-indexed — could have no better guide.

About the reviewer

Joost Blom is professor emeritus of law at the Peter A. Allard School of Law at the University of British Columbia (UBC, Canada). He took his LLB at UBC, a BCL at Oxford, and an LLM at Harvard. He joined the UBC Law Faculty in 1972, was dean from 1997 to 2003, and retired from full-time teaching in 2017. He has taught courses in private international law, contracts, torts, and intellectual property, and he has published widely in those areas. He is the co-author, with P. T. Burns, of *Economic torts in Canada*, 2nd ed. (LexisNexis, 2016). He has held visiting academic positions at the University of Victoria in British Columbia, York University's Osgoode Hall Law School in Toronto, the University of Melbourne Law School (Australia), and the University of Trier (Germany). Joost Blom was awarded a King's Counsel (KC) title in 1985 (British Columbia), served as an elected bencher of the Law Society of British Columbia from 2004 to 2011, and is now a Life Bencher. He is also a titular member of the International Academy of Comparative Law.

