

Interdisciplinary Perspectives on International Law and International Relations

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International Law and International Relations Theory:

Twenty Years Later

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Turning the pages back two decades to confront my hopes and claims as a younger scholar is an interesting and slightly scary prospect. Jeffrey Dunoff and Mark Pollack have been kind enough to refer to *International Law and International Relations Theory: A Dual Agenda* (Slaughter Burley 1993), as one of the “canonical” calls for interdisciplinary scholarship, alongside Kenneth Abbott’s *Modern International Relations Theory: A Prospectus for International Lawyers* (published four years earlier, in 1989). As the proud possessor of a newly minted DPhil in international relations (IR) from Oxford, the writing of which was spent mostly at Harvard absorbing more social scientific American approaches to the discipline, and two years of law teaching, I perceived a more vibrant and interesting set of debates taking place among IR scholars than among my international law (IL) colleagues. At the same time, I knew that those debates raised many issues familiar to international lawyers. I envisioned a series of conferences that would bring together scholars from both disciplines working on common problems, as occurred in the work presented in a special symposium issue of *International Organization* devoted to “Legalization and World Politics” and other conferences hosted both at law schools and by political science scholars like Robert Keohane at Duke and Beth Simmons at Harvard. Indeed, perhaps the best evidence of at least the partial convergence of parts of both disciplines is that virtually all the participants in this volume know one another and one another’s work.

The essays in this volume, as the editors point out, reflect multiple strands of IL/IR work. Pieces like Laurence R. Helfer’s chapter on “Flexibility in International Agreements” (2013, Chapter 7, this volume) and Karen Alter’s chapter on “The Multiple Roles of International Courts and Tribunals” (2013, Chapter 14, this volume) are archetypes of different kinds of interdisciplinary work. Helfer, an international lawyer with a public policy degree, takes a subject that is of interest to international lawyers, political scientists, and practicing regime designers: what degree of flexibility, with regard to withdrawal provisions, is optimal for effective international

agreements? He draws on a wide range of empirical and theoretical studies by both political scientists and international lawyers to bring the disciplines together in a search for systematic answers to this basic question. This type of work allows scholars from both disciplines to draw on a wider range of sources and intellectual perspectives to ask questions and generate insights on an issue that would not necessarily occur to a scholar working in only in IR or IL.

On the other hand, Alter, a political scientist who has spent a great deal of time with lawyers, looks at legal institutions as political actors and thereby investigates dimensions of their behavior that lawyers are actively discouraged from examining lest it undermine their authority as agents of the law. She studies the activities of international courts and tribunals “in the round,” looking at the different types of cases that they hear, including categories of cases that international lawyers would not typically think are relevant. For instance, she analyzes the role of international courts in the function of “administrative review,” reviewing the actions of administrative actors in cases brought by private litigants typically working within the regime that established the international court or tribunal in question. She is able to show how even these kinds of cases actually play an important role in what she calls the “uneven construction of an international rule of law.” Her training as a political scientist allows her to see the importance of features of the international judicial landscape that classically trained international lawyers might be inclined to overlook.

In addition, the increasing specialization of both IR and IL means that more and more of the best work is being done in teams. Over the same past two decades, public international law has splintered into international human rights law, international environmental law, international criminal law, international humanitarian law, international litigation, international arbitration, international trade, and international investment – each of which can now merit its own course. Most of these subjects were covered in a week or so as part of the general public international law course in the 1980s; some, like international criminal law and international environmental law, did not exist. Political scientists have moved from a general division between international security and international political economy to subfields focusing on traditional state-to-state security issues; transnational security issues (from terrorism to climate change); international trade, finance, and investment; international institutions and governance; and international development issues. The best way to knit these various specialized bodies of knowledge together in the service of advancing knowledge on a broader set of puzzles or subjects is to collaborate, which is one reason Abbott and Snidal have generated a rich stream of articles, or indeed, as evidenced by the collaboration between Dunoff and Pollack that led to this volume.

I. A DETOUR INTO FOREIGN POLICY AND GOVERNMENT SERVICE

My own professional trajectory has taken me in a different direction, first to a School of Public and International Affairs with faculty from ten different disciplines, ranging

from history to astrophysics, and then to the State Department for two years as the Director of Policy Planning. In answering the invariable question about the difference between academia and government, I laugh that never a day went by when I did not hear the word “academic” used as a synonym for “irrelevant.” The intellectual pedigree of many of the ideas under discussion, however, told a very different story. The “canonical” demonstration of the relevance of IR scholarship to foreign policy is the way in which empirical evidence of “the democratic peace” shaped foreign policy thinking in both the Clinton and the George W. Bush administrations. But I saw many more nuanced examples.

To begin with, as many government officials are as aware of Snyder and Mansfield’s work (Mansfield and Snyder 2005) showing that democratizing states are more likely to go to war than other states as they are of the original democratic peace findings. In other cases, my fellow officials were conscious of arguments for the effectiveness of institutions like the International Criminal Court that depend on the impact of the Court in shifting the balance of power in domestic politics toward groups that favor domestic prosecution of war criminals. In analyzing bilateral relations with China, everyone around the table, whether they knew it or not, typically proceeded from the assumption of the basic security dilemma first labeled by Robert Jervis (1978). And, in debating the value of pursuing a value-based international order and integrating rising nations into that order, many officials had internalized John Ikenberry’s arguments about the specifically liberal nature of the current international order (2011) as well as Robert Keohane’s institutionalist rationale for international institutions generally as providers of information and reducers of transaction costs (1984).

At the same time, following in the footsteps of countless government officials before me, I saw plenty of instances where international law helped guide policy choices. The most obvious example during the Obama administration was the continual resort to the United Nations (UN) Security Council to muster multilateral support for actions ranging from sanctions on North Korea and Iran to pressure on the Ivory Coast to airstrikes on Libya. Equally important was a focus on regional organizations such as the Organization of American States in trying to address the coup in Honduras, the African Union in addressing the coup in the Ivory Coast, and the Arab League and Gulf Cooperation Council in authorizing a no-fly zone in Libya and increasing sanctions on and human rights monitors in Syria. Moreover, the Obama administration focused intensively on the need to create institutions where the existing regime landscape was inadequate. The two most important items on this agenda were the transition for most purposes from the G-8 to the G-20 *as a leaders’ group* (the G-20 had previously met only as a group of finance ministers) and the establishment of the East Asia Summit as the premiere trans-Pacific institution to address security issues.

Theoreticians of every stripe will find evidence to support their preferred causal narratives. Realists can point to the obvious shift in attitudes toward international

rules and institutions as the United States moved from superpower in the 1990s and early 2000s to overstretched international debtor in a world of rising powers. As soon as the precedents the United States was setting looked as if they could credibly be applied to the benefit of other nations with divergent interests, both the Pentagon and the State Department found common cause in a grand strategy of building “an international order based upon rights and responsibilities.”¹ Far better to resolve boundary issues in the South China Sea multilaterally according to agreed-upon rules of the game than unilaterally by the strongest nation. And, far better to have an International Monetary Fund that accords a greater share of voting authority to China and South Korea than to risk the establishment of an Asian Monetary Fund with its own rules.² Even better to amend the supposedly unamendable UN Charter to change the membership of the UN Security Council than risk growing impatience with and disregard for the judgments of an institution established by the victors of a war won in the middle of the last century.³

But Institutionalists have plenty of evidence on their side as well. One of the key reasons for focusing on building or strengthening institutions in Asia was the difficulty of trying to address multiple issues through bilateral, trilateral, and quadrilateral diplomacy. The transaction costs of negotiating with tens of nations on scores of issues ranging from piracy to trafficking in women to nuclear nonproliferation are ever present and ever higher. Fear of misinformation and resulting crises that could spiral out of control was another factor, just as predicted. Moreover, government officials often began with analyses of the underlying convergence of state interests, even if such analyses were not described in those terms. Plenty of bureaucrats argued against the expansion of the G-8 into the G-20 on the grounds that the G-20 would never, due to a fundamental divergence of interests, be able to address a wide range of issues that the G-8 had routinely put on its agenda.

And, of course, these were only the first round of choices. Questions such as whether to create formal or informal institutions arose frequently. Consider the decision to establish the Global Counterterrorism Forum (GCTF), which was launched in September 2011 by Secretary Clinton and Turkish Foreign Minister Davutoglu, with foreign ministers and senior representatives of twenty-seven other countries and the European Union (EU) on the margins of the UN General Assembly. The GCTF is a classic government network, described as an “informal, multilateral body” bringing together national counterterrorism officials to “meet with their counterparts . . . to share counterterrorism experiences, expertise, strategies, capacity needs,

¹ National Security Strategy of the United States, May 2010, available at http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf, p. 3.

² Sandrine Rastello, “IMF Approves China as Third-Biggest Power, Weakening Influence of Europe,” Bloomberg, November 5, 2010, available at <http://www.bloomberg.com/news/2010-11-06/imf-approves-china-as-third-biggest-power-weakening-influence-of-europe.html>.

³ BBC News, “Obama Backs India on Permanent UN Security Council Seat,” November 8, 2010, available at <http://www.bbc.co.uk/news/world-south-asia-11711007>.

and capacity-building programs.”⁴ Its model was the Financial Action Task Force (FATF), which was established by the G-7 in 1989 as the Financial Action Task Force on Money-Laundering and was designed to bring government experts together to share best practices and make recommendations for a government plan of action. The UN already has an UN Office on Drugs and Crime (UNODC), which was established in 1997 to “assist Member States in their struggle against illicit drugs, crime and terrorism.”⁵ The decision whether to build up UNODC as opposed to establishing a new informal institution turned on various considerations well established in the institutionalist literature, such as the need for speed, flexibility, and selective membership versus legitimacy, legal authority, economy of institutions, and global reach.

Liberals could point to the shift in the administration’s foreign policy agenda after the mid-term elections of 2010, particularly the focus on getting the free-trade agreements with Colombia, Panama, and South Korea through the Senate, something that the Obama administration was able to do only when its party was relatively weaker and thus anti-free-trade groups in the Democratic party were more willing to follow or less able to obstruct the White House lead. Or, consider the fate of the President’s inaugural pledge to close the prison for terrorist detainees at Guantánamo Bay within one year, a move that was clearly in the foreign policy interests of the United States but was repeatedly and successfully blocked by Republicans and some Democrats manipulating domestic constituencies afraid of holding terrorists within the United States. More generally, I almost never participated in a foreign policy meeting at top levels where domestic political considerations were not an important factor.

Finally, Constructivists could find many places where officials who felt themselves to be custodians of the values and the vision that the Obama presidency stood for did battle with self-described Realists focusing on a much more instrumentalist calculation of U.S. interests. Diplomatic historians and political scientists will mine the papers of the Obama administration (or perhaps the e-mails) to recount the story of the U.S. response to the uprisings across the Arab world. That story is still unfolding as of this writing, but it is evident that those uprisings are likely to bring governments into power much less amenable to U.S. interests in Israeli security, steady oil production, counterterrorism, and regional stability, a fact not lost on the White House. Yet, President Obama announced in May 2011 that the United States would stand for a set of core principles in the region, including opposition to the use of violence and repression against the people of the region and support for a set of universal rights. Realists can argue that the United States is just choosing long-term over short-term interests, because the status quo of stability through repression

⁴ U.S. Department of State, Office of the Spokesperson, Global Counterterrorism Forum, Fact Sheet, Washington, DC, September 9, 2011, available at <http://www.state.gov/t/pa/prs/ps/2011/09/172010.htm>.

⁵ United Nations Office on Drugs and Crime, “About UNODC,” available at <http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>.

cannot be maintained, but Constructivists will find plenty of evidence that, even absent that argument, many in the White House – indeed the President himself – could not bring themselves to stand with Middle East governments against their people “because that is simply *not who we are*.”

II. AN IL/IR AGENDA LOOKING FORWARD

Based on my government experience, if I were to sit down today to revise *A Dual Agenda* for the next decade, I would focus on a very different set of issues. Interestingly, as I will address further below, these are issues that at least initially fall much more within the traditional domain of legal scholars than of their IR colleagues.

A. *Humanity Law*

First is the definition and delimitation of an entire new legal domain that draws together the many different ways that individuals are now direct subjects of international law, both as subjects of protection and bearers of obligation. States have long taken on obligations to foreign individuals within their territories or jurisdiction under international law, from providing immunity to the diplomats of other nations to guaranteeing specific tax treatment to foreign investors. In the twentieth century, states took on obligations to their own people through international human rights treaties, meaning that individuals had direct rights under international law against their governments. In the late twentieth century, individual government officials accepted direct obligations under international criminal law not to commit genocide, crimes against humanity, grave and systematic war crimes, or ethnic cleansing against their own people. Thus, the leader of a country can negotiate as the head of state with other states with regard to a cross-border conflict and simultaneously be the target of an international criminal investigation, as Sudanese President Omer al-Bashir has demonstrated.

From another perspective, states are increasingly declaring war on individuals who can simultaneously be prosecuted in national courts subject to domestic criminal law. A member of al Qaeda can plot a terrorist attack on the United States and be arrested and tried in U.S. federal court. Such is the case of Umar Farouk Abdulmutallab, the Nigerian who tried to detonate explosives in his underwear on an in-bound flight to Detroit. Alternatively, a member of al Qaeda can plot against the United States and be killed in a drone attack, which the United States justifies on the grounds that it is at war with al Qaeda, even in countries such as Yemen and Pakistan, where U.S. ground troops are not otherwise engaged. Finally, prisoners who have been captured in the context of a military conflict, such as the prisoners held at Guantánamo Bay who were captured by U.S. troops on the ground in Afghanistan are being treated *neither* as prisoners of war under the Geneva Conventions nor as criminals under U.S. law.

What are the unifying principles that draw these different categories of cases together under a common body of law? Alternatively, if each category is to be treated as the extension of an existing body of law, such as humanitarian law or domestic criminal law, how do we justify the differential treatment in each category? Ruti Teitel has taken on this task in her brilliant new book *Humanity's Law* (2011), in which she argues that the “law of humanity” is a framework that spans the law of war, human rights law, and international criminal law. In a less theoretical vein, legal adviser Harold Koh tackled some of the same issues in his speech to the American Society of International Law in 2010, in which he addressed what he called “the law of 9/11: detentions, use of force, and prosecutions.”⁶

Looking forward, these breaks and eddies in traditional legal domains will gradually build into waves that will sweep away existing boundaries of doctrine and establish new ones. The interpretation of these mounting trends should also encompass popular writing about globalization, where pundits such as Thomas Friedman have been arguing for over a decade that the twenty-first century is the era of “super-empowered individuals,” whereby individuals can exercise the same kind of power that once only states could muster (Friedman 1999: 14–15). Osama bin Laden is the example that jumps most readily to mind, but Bill Gates and Warren Buffett also fit this category. If global rules regulate individuals, corporations, foundations, nongovernmental organizations (NGOs), and other social actors, as well as states, does the category of “international law,” whether public or private, make any sense? Perhaps we are moving toward intergovernmental law (regulating relations between governments) and global law (regulating all nongovernmental actors acting across borders)? Remember that the term and the contemporary concept of “international law” is barely 150 years old; it grew out of the era when national identities and state identities were becoming coterminous, and it can disappear just as quickly as globalization create multiple global identities.

B. *Private Actors, Public Purpose*

A second category of issues that needs careful examination and hard thinking revolves around public–private partnerships (PPPs) and the notion of government as a platform for convening and connecting public to private actors and private actors to one another. Multisector partnerships are a natural trend in an era not only of constrained government resources but also of a growing awareness of the limits of government, corporate, or civic expertise with regard to complex multidisciplinary problems. Public–private partnerships offer at least a theoretical way out.

The Obama National Security Strategy mentions PPPs more than thirty times. Over the past three years, both the White House and the State Department have set

⁶ Harold Koh, “The Obama Administration and International Law,” speech at the Annual Meeting of the American Society of International Law, March 25, 2010, available at <http://www.state.gov/s/l/releases/remarks/139119.htm>.

up offices to reach out to the private sector. Notable successes include the Global Clean Cookstove Alliance, which brings together more than 175 government agencies, corporations, NGOs, and foundations around the world to secure the adoption of 100 million clean cook-stoves by 2020, thereby reducing carbon emissions, improving the health of tens of millions of families, and increasing the security of millions of women. Another notable initiative has been the Partners for a New Beginning (PNB), a collaboration created after President Obama's speech in Cairo between the State Department, the Aspen Institute, and scores of corporations, foundations, and universities in the United States, Algeria, Egypt, Indonesia, Morocco, Pakistan, the Palestinian Territories, Tunisia, and Turkey. In barely over a year, the PNB has supported more than seventy projects connected with science and technology, economic opportunity, and education.⁷

The political argument for PPPs is that they stretch scarce government resources and ensure that they leverage other contributions of money, expertise, and other in-kind resources. The initial emphasis on PPPs came from the Reinventing Government initiative under the Clinton administration, but the George W. Bush administration was also enthusiastic. Equally important is the effectiveness argument: these alliances are better at taking advantage of local knowledge in developing countries and at pooling and learning from the experience of many diverse actors. And the energy, innovation, and capacity in the private sector, both corporate and civic, are a vital foreign policy resource.

Finally, the kinds of global problems we face – proliferation of nuclear weapons, global terrorist and criminal networks, climate change, global pandemics, fragile states, resource scarcity (water, oil, minerals), civil conflict – cannot be solved by governments alone, much less by governments increasingly strapped for funds. Governments will be in the business of negotiating agreements, resolving crises, and solving problems with one another for a long time to come, but top-down efforts cannot stimulate the widespread behavioral change that is required to address social and economic challenges. Those changes are most effectively motivated from the bottom up, through many different initiatives that come from individuals determined to improve their health, water and energy usage, education, and security.⁸

For the moment, government rhetoric on PPPs still exceeds the reality. A particular problem is that the federal government is still badly set up to engage corporations. A recent Center for Strategic and International Studies report on PPPs points out a number of operational problems due to government rules and multiple instances

⁷ PNB, Partners for A New Beginning, *Status Report: A Year of Impact through Partnership*, September 2011, available at <http://www.aspeninstitute.org/publications/partners-new-beginning-2011-status-report>.

⁸ Former Army Colonel Richard Holshek has written persuasively on this score; see http://www.huffingtonpost.com/christopher-holshek/the-power-of-both_b_864645.html.

when the right government hand did not know what the left was doing.⁹ One consumer products company reports being approached by six different parts of the government, including parts of the same agency, to join in the same partnership. Another is the fundamental difficulty of genuinely aligning the corporate, public, and civic interests. All participants love the veneer of “partnership,” but what does it actually mean? Glossy brochures with intertwined logos? Or a corporation willing to accept a lower profit margin for the sake of a public health campaign? Or governments more willing to be held to account by NGOs monitoring their compliance with an agreed set of international obligations?

Government in these contexts is acting as a partner and a platform rather than as a single and independent agent in international affairs. What is its liability for the consequences of a PPP that produces defective products? That causes environmental damage? Or that simply does not deliver on its promises? Are there contractual arrangements? In a PPP that has local chapters, what happens if some members of those local chapters turn out to have affiliations with terrorist groups or drug traffickers or sexual exploitation rings? The State Department is required to do due diligence on all prospective partnerships, but mistakes happen and partners are often not what they seem to be. Equally important, what is the responsibility and liability of corporations and civic organizations who join specific partnerships or broader collaborative networks? And, is there a way to treat broad networks, such as the Global Alliance for Vaccination and Immunization (GAVI) as international “persons” or subjects of international law? Are they a kind of international actor? A kind of institution? The overall point is that we will be seeing more and more hybrid actors in the international system, coalitions of individuals and institutions from the private, public, and civic sectors, and we need to conceptualize their identities and the space they will operate in.

C. Liberty and Security in Virtual Space

On February 15, 2011, Secretary of State Hillary Clinton gave her second speech on Internet freedom. In her words:

The Internet has become the public space of the 21st century – the world’s town square, classroom, marketplace, coffeehouse, and nightclub. We all shape and are shaped by what happens there, all 2 billion of us and counting. And that presents a challenge. To maintain an Internet that delivers the greatest possible benefits to the world, we need to have a serious conversation about the principles that will guide us, what rules exist and should not exist and why, what behaviors should be encouraged or discouraged and how (Clinton 2011).

⁹ “Seizing the Opportunity in Public–Private Partnerships,” available at <http://esis.org/publication/seizing-opportunity-public-private-partnerships>.

Her challenge is a profound one. How can the United States and other nations develop rules and principles that will prohibit governments from shutting down political opposition through a combination of Internet monitoring and censorship while simultaneously allowing governments to protect their people from terrorist attacks and criminal violence of all kinds through Internet monitoring and data-mining? Is it legal and legitimate for a government to send a ship to anchor just outside another nation's territorial waters to provide servers and other electronic assistance to protesters battling their government in the name of universal human rights?

Within one country, can a government shut down the Internet in its own territory if it chooses to? In her first Internet speech in January 2010, Secretary Clinton declared that the "freedom to connect" was a fundamental human right, an extension of the basic rights of freedom of speech and assembly in the Internet age.¹⁰ The declaration of such a right by the U.S. Secretary of State would constitute one possible indicator of *opinion juris* under customary international law, but hardly makes it so as a matter of general international law. Is the freedom to connect an inherent part of the universally recognized freedom of speech? Or does it need to be established as a twenty-first-century human right?

Yet another cluster of issues concerns the liability of corporations and their governments for making technology that citizens can use to communicate but that governments can equally use to spy on those citizens and shut down their communication. A body of international rules has been developed to govern such liabilities in the context of the manufacture of nuclear fuel and equipment, but not for electronic communications and interception technology. Criminalization of such manufacture and export is a matter first of domestic law, but it could also have implications for international human rights law.

III. ENTER THE LAWYERS

The issues raised above are, in the first instance, more questions for lawyers than for political scientists, questions that lawyers will have to answer using the traditional tools of the legal trade: analogy, precedent, categorization, recategorization, rupture, and reconceptualization. When an individual should be treated as a criminal, an unlawful combatant, or a lawful combatant is a classic legal question. Empirically, the individual in question is a person who kills some number of other people, both civilians and military. What to call that person and what consequences to attach to his behavior is a function of some combination of existing law, policy, politics, and social and moral values. Similarly, when a state should be treated like an abstract legal entity with special protections and when it should be treated like an individual participant in a market; when state leaders are entitled to the legal immunities

¹⁰ Hillary Rodham Clinton, "Remarks on Internet Freedom," available at <http://www.state.gov/secretary/rm/2010/01/135519.htm>.

of their office; and what liabilities attach to “hosting,” “convening,” “connecting,” or “partnering” functions that involve both public and private actors are all legal questions to be answered based on different combinations of the same grounds. Different lawyers will also come up with different answers, as will politicians and, ultimately, judges.

It is quite possible, in the process, that the lawyers, legislators, and judges will turn to empirical studies to answer a question or bolster an argument. A cross-national and cross-temporal study showing that treating terrorists as “combatants” rather than “criminals,” subjecting them to military rather than criminal law, helped make them martyrs in their communities and aided terrorist groups in their recruitment efforts, for instance, would be very useful in helping lawyers determine what impact different legal categorizations might have on the policy goal of fighting terrorism. Empirical evidence with regard to the deterrent effect of international indictments and/or prosecutions would be similarly helpful in analyzing the policy impact of deciding that a UN Security Council resolution invoking the responsibility to protect as justification for taking action within a country should trigger a request to the International Criminal Court to investigate the conduct of that country’s leaders.

But when the legal dust settles, the landscape of international relations will be altered in ways that will have a direct impact on IR scholars. In the first place, the lawyers will be deconstructing Waltz’s classic distinguishing of man, the state, and war (2001). If the behavior of individual leaders against their own people becomes grounds for the international use of force under the responsibility to protect doctrine, as happened in Libya, what does that mean for structural realist theories of power politics? When will it make sense to treat governments as unitary agents for their states and when as individual agents directly responsible for their actions? If individual leaders are aware of and are deterred by international criminal liability, how does that affect balance of power calculations, an assessment of the desirability of institutions, or responses to domestic constituencies? Alternatively, can current theories of interstate war account for decisions to target individuals? Can deterrence work in that context?

Second, how should IR scholars think about states that are self-consciously transforming themselves into “platforms” for partnerships between different parts of the state – different agencies, parts of agencies, and subnational governments – and non-state actors? Is the state an agent or principal in these interactions? More fundamentally, is the state the actor worth studying? The categories that the lawyers construct, and the resulting responsibilities and liabilities, will bear on the social scientists’ answer to this question.

Third, the extent to which the law chooses to merge physical and virtual space has enormous implications for whether IR scholars choose to study state action in virtual space (cyber war, cyber espionage, censorship, spreading false information and assuming false identities, etc.) the same way that they study state action on the high seas or in space. If the lawyers determine that cyberspace is not a global

commons but rather “created” space that depends on the physical location of servers within the territorial boundaries of sovereign nations, then it becomes very difficult to conceptualize states acting “within” space that they, in fact, create and can shut down at any moment. On the other hand, a legal determination that rights and freedoms in virtual space are an inherent outgrowth of those same rights and freedoms in physical space will be a determination that virtual space is an unalterable extension of physical space. Obviously, legal categories do not necessarily change the way computer scientists, terrorist networks, and political activists think about cyberspace, but they certainly shape the thinking of government actors, from soldiers to diplomats to telecommunications regulators. The actions of those governments are, in turn, the subject of empirical and theoretical work in IR.

The deeper point flows from law’s character as a “professional” as well as academic discipline. What legal scholars think and write can directly shape the field that they study; academic writings in law can become law and thus then shape the future study and practice of law. That reality also inevitably shapes the world that IR scholars study as well. All of which means that IR scholars need to know much more about how law is in fact made and what their international legal colleagues are doing not as IL/IR experts but as legal scholars.

Finally, law is also inescapably normative. Many of the critics of IL/IR scholarship accuse it of seeking to erase the normative dimension of international law, but in my view, it is precisely the contrast *between* IL and the empirical discipline of IR that brings out law’s normative character. IL/IR scholars have to cross the empirical/normative boundary all the time, understanding how both theoretical and empirical scholarship in IR can inform law but never replace it. Indeed, both legal theorists and doctrinal scholars must be constantly aware of how their normative precommitments inform their scholarship, whether or not they are being explicitly normative. There, too, they have something to teach their IR colleagues, many of whom are far less conscious of the inevitable influence of their normative biases.

In sum, twenty years on, I remain committed to the intellectual and practical intersection and even integration of IL and IR scholarship and practice. But I am less starry-eyed about the intellectual hegemony of IR scholarship; much of it has become narrower and narrower and obsessed with methodological questions that often seem to ignore the poor quality of the data in the first place. Yet, at its best, as practiced by many of the contributors to this volume, the study of the politics of the international system still has much to contribute to the study of the law that both reflects and regulates those politics. At the same time, I have a greater appreciation for the role of international law, or perhaps I should say the different categories of global law, in shaping international reality, and for the normative and conceptual core of the legal discipline. Above all, given the expansion of human knowledge and the relentless march of specialization, I am deeply encouraged by the many younger scholars who choose to pursue degrees in both IR and IL and thus to understand

not only the scholarship but also the deep habits of mind and mindsets of both disciplines.

A volume like this one could not have been assembled twenty years ago. Twenty years from now, I hope that it will no longer be necessary to take stock of IL/IR scholarship as a particular strand of work in both disciplines. May it become an integral part of all efforts both to understand the world and to make it a better place.

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