Interdisciplinary Perspectives on International Law and International Relations: The State of the Art brings together the most influential contemporary writers in the fields of international law and international relations to take stock of what we know about the making, interpretation, and enforcement of international law. The contributions to this volume critically explore what recent interdisciplinary work reveals about the design and workings of international institutions, the various roles played by international and domestic courts, and the factors that enhance compliance with international law. The volume also explores how interdisciplinary work has advanced theoretical understandings of the causes and consequences of the increased legalization of international affairs.

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Interdisciplinary Perspectives on International Law and International Relations

THE STATE OF THE ART

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A casual observer might expect that international lawyers and international relations scholars would share overlapping research interests and scholarly agendas. In fact, for several decades prior to the Second World War, practitioners in both fields pursued common interests in the making, interpretation, and enforcement of international law. As a matter of disciplinary history, however, World War II served as a watershed event, largely discrediting international law among political scientists as “realist” theorists rejected the notion that international law could serve as a meaningful constraint on states’ pursuit of the national interest. Over the next four decades, international relations (IR) and international law (IL) scholarship developed along separate and rarely intersecting tracks. Legal scholars sought to emphasize law’s autonomy from politics, and focused on identifying, criticizing, or justifying specific legal rules and decision-making processes. For their part, political scientists seldom referenced international law as such, even when their topics of interest, such as international cooperation and international regimes, overlapped in clear ways with international law.

The mutual neglect among international law and politics began to ebb only with the end of the Cold War and the increased salience of international rules and institutions. In 1989, legal scholar Kenneth Abbott published a manifesto calling for interdisciplinary scholarship on international law and encouraging legal scholars to draw upon recent political science scholarship. Over the next decade, a growing number of legal scholars began to ask new questions about the design and workings of international law, drawing on both theories of international relations and on qualitative and quantitative methods imported from political science. By the early 2000s, political scientists in turn “rediscovered” international law, a development marked most clearly by the publication of a special issue of International Organization, the leading journal in the field, devoted to understanding the causes and consequences of the “legalization” of international politics.
One decade later, we see a wealth of cross-disciplinary scholarship, in which political scientists are applying new tools to the study of legal phenomena, legal scholars continue to import insights from political scientists, and a growing number of scholars engage in genuinely interdisciplinary analysis. Yet, the interdisciplinary nature of this scholarship and its fragmentation by issue areas – such as trade, human rights, criminal, and humanitarian law – have meant that few scholars have paused to take stock of what we have learned over the past two decades, aggregate empirical findings across disciplines and issue areas, draw lessons, and chart an agenda for future research.

This volume aims to fill this scholarly void. Our goal is not to celebrate uncritically the rise of international law and international relations (IL/IR) as an approach, but to assess critically the value-added (if any) of IL/IR to our understanding of international law, as well as to identify IL/IR’s lacunae, biases, and blind spots. In doing so, we are particularly interested in two potential sources of value-added: conceptual and empirical. In conceptual terms, we detail the ways in which concepts from the various strands of international relations theory have been imported and adapted to the study of international law, and we explore whether they add analytical leverage to existing theories of IL. We also review and evaluate the “new empiricism,” a large body of scholarship that uses systematic qualitative and quantitative data about international law and state behavior to test propositions about the making, interpretation, and enforcement of international law. The contributions to this volume will highlight both of these developments, exploring not only how scholars have theorized international legal issues but also the empirical evidence that IL/IR scholarship has brought to bear on these questions over the past two decades.

The remainder of this introductory chapter sets the stage for these explorations. We begin with a brief overview of IL/IR’s emergence as an interdisciplinary field of study. In this context, we offer some reflections on the “terms of trade” between the two disciplines found in seminal IL/IR scholarship. We suggest that those terms have been largely unidirectional, with political science/IR providing much of the theoretical content and (to a lesser extent) epistemological and methodological guidance of IL/IR scholarship, and with IL as a discipline contributing primarily a deep knowledge of legal doctrine, institutional design and processes, and dispute settlement mechanisms.

We next examine some of the interdisciplinary tensions sparked by IL/IR scholarship. Like virtually all efforts to bridge distinct disciplinary traditions, IL/IR writings have sparked a sustained backlash, particularly among some international lawyers. We examine three sources of these disciplinary tensions: different substantive

1 Here, we distinguish IL as a discipline from individual legal scholars, many of whom have formal IR training and have been among the pioneers and leaders in the field. Our claim is not that the legal scholars have played a small role in IL/IR, but that both legal and political science scholars have drawn primarily upon the tools of IR in such scholarship.
theories and ideas about the nature and role of theory, different epistemologies, and different conceptions of international law associated with the two disciplines. Consideration of the issues that underlie disciplinary tensions sheds light on the promise and the limits of interdisciplinary work, and identifies key issues to be addressed in future research.

In the final part of this introduction, we provide an overview of the volume’s organization and contents.

I. THE RISE, FALL, AND REBIRTH OF IL/IR SCHOLARSHIP

As this volume takes stock of a large body of interdisciplinary IL/IR research, it is useful to begin with a brief discussion of the historic split and recent rapprochement between the disciplines of international law and international relations. Although some readers will be familiar with this trajectory, it provides a valuable backdrop to our discussion of the canonical calls for IL/IR research. Our analysis of these important works, in turn, sets the stage for our discussion of the disciplinary tensions associated with IL/IR writings.

A. The Birth of International Relations and the Disciplinary Break

Although the discipline of international law is hundreds of years old, the academic field of international relations is of much more recent vintage. The birth of IR as a distinct academic field is often linked to the establishment, in 1919, of the world’s first chair for the study of international politics at the University College of Wales, Aberystwyth (Schmidt 2002). At this time and into the inter-war era, the disciplines of international law and international relations overlapped substantially. Leading voices in both fields argued that the spread of democracy and development of international institutions could replace war and power politics with something akin to the rule of law. However, this era of disciplinary convergence ended with the cataclysm of World War II. The war prompted many leading political scientists to reject the “idealism” associated with inter-war scholarship (Kennan 1951: 95; Carr 2001). These so-called realists argued that, in the absence of centralized enforcement mechanisms, international agreements could not meaningfully constrain state action, particularly as states generally retained the ability to auto-interpret and apply treaty provisions (Morgenthau 1948).

Hence, during the early postwar years, political science was prominently marked by influential and sustained critiques of international law, resulting in the marginalization of the study of international law within the discipline, particularly in the United States.² These tendencies were reinforced by a “neorealists” (or “structural
realist”) literature that viewed international outcomes as a product of the distribution of capabilities and power across states (Waltz 1979). The neorealist approach was widely understood to leave “no room whatsoever for international law” (Slaughter Burley 1993: 217; but see Steinberg 2013) and strengthened the dominant realist claims that international law is inconsequential and epiphenomenal.

Realism’s hostility to international law had two important consequences. First, it led to a decades-long mutual estrangement between the two disciplines, as a generation or more of political scientists accepted and taught as conventional wisdom that international law could not significantly impact international affairs. Second, realism’s prominence would eventually spark a series of theoretical moves and empirical inquiries in both disciplines that had the effect of reconceptualizing the relationship between international politics and international law. These developments have been ably described elsewhere (Slaughter Burley 1993; Keohane 1997); for current purposes, a thumbnail history will suffice.

B. International Law: Responding to the Realist Challenge

Realism posed a powerful challenge to international lawyers’ self-understanding of their field. In response, some scholars retreated to ever more technical analysis of legal texts and doctrines. But others addressed directly the realist challenge by seeking to demonstrate international law’s practical relevance to the world of international affairs. In so doing, these scholars reconceived, in various ways, the relationship between international law and politics. As Slaughter explains, these efforts involved three central analytic moves: “First, all [the efforts] sought to relate law more closely to politics. . . . Second, as part of this mission, all redefined the form of law, moving in some measure from rules to process. Third, all reassessed the primary functions of law. Whereas rules guide and constrain behavior, . . . processes perform a wider range of functions: communication, reassurance, monitoring and routinization” (Slaughter Burley 1993: 209).

One of the most influential and enduring of these responses was originally known as “policy oriented jurisprudence” but today is more commonly called the “New Haven School.” Pioneered by the interdisciplinary team of Myres McDougal and Harold Lasswell, the New Haven School understands law as an ongoing process of authoritative and controlling decision. Decisions are “authoritative” insofar as they are in conformity with community values and expectations; they are “controlling” insofar as they are supported by sufficient bases of power to secure consequential control. These scholars view international law as purposive: it is designed to promote a world public order dedicated to the promotion of human dignity. New Haven scholars shared the political realists’ insight that understanding state power is critical to understanding state behavior. However, they rejected claims that power was the only or predominant value that international actors pursue; they also seek wealth, enlightenment, well-being, skill, respect, affection, and rectitude. Hence, the New
Haven scholars emphasized the importance and efficacy of the international legal system, understood in terms of “the realization of values rather than the restraint of behavior” (Falk 1970).

Other international legal scholars similarly generated new understandings of international law that focused less on how or whether rules constrain states in the absence of coercive enforcement mechanisms and more on the various ways that law empowers states and facilitates pursuit of national and collective interests. For example, Louis Henkin (1979) argued that international law provides the “submerged” rules of international relations, creates “justified expectations,” and facilitates cooperation in the pursuit of common objectives, whereas Abram Chayes and others in the “international legal process” school produced materials demonstrating international law’s effects in specific circumstances, such as the Cuban Missile Crisis (Chayes 1974; Chayes, Ehrlich & Lowenfeld 1968). In these and other efforts, lawyers self-consciously responded to the realist critique of international law’s relevancy by attempting to demonstrate law’s connections to and influence on international affairs.

C. Political Science: Developing Alternatives to Realism

Realist claims also triggered a series of developments in political science. One important development came from political scientists who studied “international organizations.” As detailed by Kratochwil and Ruggie (1986: 755), scholars in this field shifted their attentions from the formal arrangements and objectives of international bodies to actual decision-making processes. Over time, this focus became more generalized to overall patterns of influence that shaped organizational outcomes. The next critical analytic move in this development was to reconceive the field of “international organizations” as the study of “international regimes,” understood as “principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area” (Krasner 1982: 185). In detailing the various ways that international regimes condition and constrain state behavior, this approach challenged important realist claims. Regime theory attracted a number of young scholars, and, by the 1970s and 1980s, it was “one of the most vibrant and exciting areas of general international relations theory” (Slaughter Burley 1993: 218).

Roughly contemporaneously, Robert Keohane and others began to draw on rational choice premises to develop a “functional” theory of international regimes that understood regimes as a product of states’ rational pursuit of their own self-interests (Keohane 1984). Keohane argued that regimes enhance the likelihood of state cooperation by reducing transaction costs, generating information, reducing uncertainty, and increasing expectations of compliance.

Another important perspective with roots in the early regimes literature came to be known as constructivism. Kratochwil and Ruggie’s (1986) focus on the intersubjective understandings associated with the rise and evolution of international regimes
invited approaches that were more sociological and contextual, and less materialistic and strategic. These authors, and other constructivists, view international law as a reflection of social purpose. International legal rules thus shape understandings of interests, perceptions of legitimate behavior, and the nature of justificatory discourse in international affairs (Ruggie 1998; Wendt 1999; Brunnée and Toope 2000; Reus-Smit 2004).

Finally, by the early 1990s, liberalism had emerged as a distinctive and coherent theory of international relations. Liberalism emphasizes the primacy of societal actors, argues that states represent a subset of domestic society, and claims that the configuration of independent state preferences determines state behavior (Moravcsik 1997). This approach focuses “on the demands of individual social groups, and their relative power in society, as a fundamental force driving state policy,” and, ultimately, world order (Moravcsik 2013).

Each of these theoretical approaches is analyzed in more detail in the individual contributions to Part II of the volume. For now, the critical point is that a series of analytic developments and intellectual dynamics internal to each field created the conceptual tools and scholarly space for researchers in each discipline to draw upon insights associated with the other. At roughly the same time, external events – in particular, the end of the Cold War and the apparent revitalization of many international legal norms and institutions – raised numerous research questions of interest to scholars from both fields, resulting in several high-visibility calls for interdisciplinary IL/IR research. As these seminal papers provide useful insights into the underlying assumptions, characteristic modes of thought, and dominant lines of inquiry of the newly emerging IL/IR field, we examine them in some detail.

D. The Canonical Calls for IL/IR Research

For current purposes, the rebirth of IL/IR scholarship begins with publication of Kenneth Abbott’s Modern International Relations Theory: A Prospectus (Abbott 1989). This seminal piece opens with a description of the “estrangement” between IL and IR, and argues that the ascendance of regime theory and related theories of international cooperation “offers a long-overdue opportunity to re-integrate IL and IR” (338). Abbott urges international lawyers to become “functionalists” rather than “formalists,” and argues that IR provides conceptual approaches and tools for doing so. Deliberately designed to “inform (and entice)” IL scholars, the article provides clear and concise explanations of key IR concepts, including a variety of collective action problems and theories of economic and political market failures.

Four years later, Anne-Marie Slaughter Burley published “International Law and International Relations Theory: A Dual Agenda” in the American Journal of International Law, perhaps the field’s preeminent journal. “Dual Agenda” reviews in considerable detail the postwar trajectory summarized above. The article then details an “institutionalist” agenda focused upon “the study of improved
institutional design for maximally effective international organizations, compliance with international obligations, and international ethics” (Slaughter Burley 1993: 206). Significantly, “Dual Agenda” then takes a step that Prospectus does not; it serves as both an introduction to, and a critique of, IR approaches. The paper argues that “[i]nstitutionalism, however formulated, remains theoretically inadequate in many ways” (225), including by its inability to analyze either domestic state–society relations or transnational relations among non-state actors. Given the rise of many areas where non-state actors are critical, including international human rights law, transnational litigation and arbitration, and the regulation of transnational business, Slaughter urges use of an alternative framework.

“Dual Agenda” argues that liberalism takes account of many factors excluded by institutionalism, including the role of non-state actors, and political and economic ideologies. The paper sets out the core assumptions of liberal theory and argues that liberal approaches can inform a rich IL/IR research agenda. Slaughter Burley optimistically concludes that “[t]he prospects for genuine interdisciplinary collaboration, to the benefit of both disciplines, have never been better” (1993: 238).

On the IR side, the key publication marking the arrival of IL/IR scholarship was a special symposium issue of International Organization devoted to “Legalization and World Politics.” The symposium was rooted in, and justified by, the empirical claim that international affairs were undergoing a strong, albeit uneven, “move to law,” and the contributions to this volume seek to generate “a better understanding of this variation in the use and consequences of law in international politics.” Unlike the seminal articles in legal journals, the Legalization symposium is not an explicit call for others to engage in interdisciplinary work. However, the prominence of the authors and journal clearly communicated the message that international legal phenomena were worthy of sustained scholarly attention by political scientists.

For current purposes, two elements of these groundbreaking contributions stand out. First, although virtually all of the early articles purport to call for a wide-ranging encounter between, if not synthesis of, IL and IR, in at least one important respect the papers misrepresent themselves. In fact, virtually all of the early papers emphasize some elements of modern IR theory and pointedly ignore or underplay others. Specifically, the canonical works reviewed above are, without exception, strongly rationalist in their orientation. This rationalist focus led to a corresponding underemphasis on alternative approaches, notably constructivism. The failure to meaningfully engage constructivist approaches represents a missed opportunity; these approaches would, in time, contribute significantly to the IR/IL literature. Moreover, the rationalist approaches largely rest on highly instrumental conceptions of international law that triggered a backlash among many international lawyers, as

3 Indeed, the authors of the canonical calls subsequently highlighted the contributions of constructivist approaches (Slaughter 2000; Abbott 2004–2005).
discussed more fully in Section II.C. below, which explores competing conceptions of international law at play in both disciplines.

Second, virtually all of the early IL/IR writings urge the application of methods or theoretical approaches from one discipline to questions posed by the other discipline. Although in principle either of the two disciplines could be the source of the theory or methods, in practice international law and international relations have not been similarly situated. Rather, the intellectual terms of trade have been highly asymmetrical, with most IL/IR writings involving the application of international relations theories and methods to the study of international legal phenomena.

For example, although Abbott’s *Prospectus* claims that “IL and IR have much to contribute to each other,” it quickly becomes clear that the two disciplines’ respective contributions are quite distinct: “The opportunity to integrate IL and IR stems . . . from the analytical approaches, insights and techniques of modern IR theory, which can readily be applied to a variety of legal norms and institutions. . . . For its part, IL can offer modern IR scholars an immense reservoir of information about legal rules and institutions, the raw material for growth and application of the theory” (1989: 339–40). Slaughter’s paper presents much the same argument. Although calling for a “dual agenda” might imply that each discipline should contribute to the other, Slaughter is clear that she is presenting a dual agenda for lawyers, based on both institutionalist and liberal IR theory (Slaughter 1993: 206–07).

The Legalization volume follows a similar path. The volume’s organizers claim that their framework is “able to unite perspectives developed by political scientists and international legal scholars and engage in a genuinely collaborative venture” (Abbott et al. 2000: 387). Yet, once again, to be “collaborative” is not necessarily to contribute equally. The Legalization issue’s introduction notes that international law has “chronicled and categorized th[e] ‘move to law’ but has largely failed to evaluate or challenge it.” The authors claim that “approaches from political science should be more helpful in explaining the puzzle of uneven legalization” (Abbott et al. 2000: 388), and the paper thereafter focuses on political science explanations of international legalization.

In short, in each of these canonical statements – and, to a large extent, in the subsequent literature – the intellectual terms of trade have been highly unequal, consisting primarily of the application of the theories and methods of political science as a *discipline* to the study of international law as a *subject*. The contributions to this volume can be read, in part, as an inquiry into whether better integration of the various contributions of IL and IR is desirable, or possible. For current purposes,

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4 For a recent example, see Hafner-Burton, Victor, and Lupu (2012), who argue that “[l]arge gains from collaboration are most likely where the research tools from political science can be combined with the important substantive and procedural expertise of international lawyers. . . .”
however, we note that the asymmetrical terms of trade have given rise to significant interdisciplinary tensions, the topic to which we now turn.

II. INTERDISCIPLINARY TENSIONS

Despite the contributions made by IL/IR research, efforts to bridge the disciplines have generated considerable frictions and some degree of backlash from legal scholars who fear an imperialist invasion of the legal realm by political scientists armed with theories, epistemologies, and conceptions of law that are fundamentally foreign to those of most legal scholars (see, e.g., Byers 1997; Koskenniemi 2000, 2009a, 2009b; Klabbers 2004–2005, 2009). This rejection of IR by legal scholars, in turn, is matched by a widespread ignorance of legal theory and epistemology among political science and IR scholars, who often proceed without any discussion of international legal theories or methods (Klabbers 2009: 122). These tensions have not only acted as a substantial barrier to genuinely interdisciplinary inquiry, but also limited the influence of IL/IR insights on mainstream scholarship in both professions.

In our view, each of these purported disciplinary divides is at the very least exaggerated, and each one masks considerable diversity within each discipline, as well as commonalities and points of tangency across disciplines. Nevertheless, each contains a kernel of truth, and we therefore devote this section to brief discussions of the substance and nature of theories, the epistemological commitments, and the conceptions of law that inform the work of scholars in each discipline. Critically examining the concerns that underlie disciplinary tensions can point the way toward more productive collaborations across the disciplines and permit a better understanding of the possibilities and limits of IL/IR work.

A. Theoretical Differences

Some of the tensions generated by IL/IR scholarship arise out of the different substantive theories that each discipline brings to bear on the study of international law. Theoretical differences, to the extent that they exist, can and often do provide an incentive for IL/IR scholarship; yet, these theoretical differences can also act as potential obstacles to interdisciplinary dialogue, particularly if and insofar as

5 This sentiment has been expressed most memorably by Jan Klabbers (2009: 120), for whom “[i]nterdisciplinary scholarship is always, and inevitably, about subjection. Interdisciplinary scholarship is, more often than not, about imposing the vocabulary, methods, theories and idiosyncracies of discipline A on the work of discipline B. Interdisciplinary scholarship, in a word, is about power, and when it comes to links between international legal scholarship and international relations scholarship, the power balance tilts strongly in favor of the latter.” Although we agree with Klabbers about the general direction of influence from IL to IR, we disagree about the extent or the inevitability of IL’s “subjection” to IR. See Section II.C below.
practitioners in each discipline are ignorant of or caricature the aims and the substance of theories from the other. Unfortunately, such mischaracterizations of both IR and IL theories have been commonplace.

In the legal discipline, a number of eminent scholars associate IR theory explicitly with realist, statist, and/or rationalist assumptions, and reject the entire IL/IR enterprise on that basis (see, e.g., Klabbers 2004–2005; Koskenniemi 2009a, 2009b). This association of IR theory with realism and rationalism is understandable, particularly insofar as some of the most influential and widely cited IL/IR writings associate IR theory with state-centric, rational choice approaches (e.g., Abbott 1989) or assert positions that draw on realist traditions that are deeply skeptical of the role of law in international politics (e.g., Goldsmith and Posner 2005). To associate IR exclusively with rationalism, statism, or realism, however, is misleading and ignores the increasing diversity of IR theory and its applications to IL in recent years. Indeed, much of the most influential scholarship in IL/IR has been institutionalist, open to and theorizing explicitly about the prospect that international norms, rules, and institutions can help states cooperate under anarchy (Keohane 1984; Abbott et al. 2000; Koremenos, Lipson, and Snidal 2001; Koremenos 2013). Furthermore, while much of this scholarship has indeed been statist in its assumptions, liberal IR theory has opened the “black box” of the state, analyzing both how domestic politics and law shape states’ preferences toward international law, as well as how international law is “internalized” within domestic legal and political orders (Moravcsik 2013; Trachtman 2013). Finally, constructivist scholars have increasingly broken the rationalist “lock” on IR approaches to international law, theorizing about alternative logics through which law can both express intersubjectively shared norms and influence states through processes of socialization and acculturation (Reus-Smit 2004; Goodman and Jinks 2004; Brunnée and Toope 2013).

Of course, this theoretical diversity can give rise to what David Lake (2011) has recently called the “ism wars,” in which gladiatorial combat among would-be hegemonic theoretical approaches impedes rather than advances our understanding of concrete empirical phenomena, including the making, interpretation of, and compliance with international law. Increasingly, however, IR and IL scholars have called for approaches that are more problem-driven, less theory-driven, and more open to considering that the realities of international law and international politics may reflect power-politics considerations associated with realism, functional concerns associated with institutionalism, domestic/international interactions associated with liberalism, and normative or ideational processes emphasized by constructivists. This realization has led to influential calls for “eclectic theorizing,” so that we might better “understand inherently complex social and political processes” (Katzenstein and Okawara 2001: 167; see also Katzenstein and Sil 2008; Sil and Katzenstein 2011; and

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6 On the latter point, however, see Hathaway and Lavinbuk (2006), arguing that a commitment to rationalism need not entail a rejection of the causal impact, or the moral force, of international law.
Nau 2011). Reflecting the same thinking, Abbott (2004–2005), whose 1989 manifesto associated IL/IR with the rational choice institutionalism of that era, has called for a “richer institutionalism” capable of incorporating insights from all four theoretical traditions.

In both structure and content, this volume similarly emphasizes the theoretical diversity of contemporary IR, as well as the possibility for dialogue among theoretical traditions, each of which may identify causal factors and processes through which international law is made, interpreted, and implemented (or not implemented) by states. In any event, the diversity of contemporary IR theory – and the increased use of eclectic theorizing – fatally undermines the notion that using IR theory commits legal scholars to a single, alien theoretical perspective that is uniformly hostile to international law.

On the IR side, caricature and ignorance of international legal scholarship is, if anything, more widespread. It appears that many political scientists are concerned that legal scholarship is overtly normative and fails to generate predictive, testable hypotheses; is highly formalistic, overly technical, and inaccessible to those who lack legal training; and ignores issues of fundamental interest to IR scholars, such as the role of power asymmetries in producing international outcomes. In this view, the discipline of international law may appear as a sort of theoretical tabula rasa, waiting to be written on by IR scholars.

However, just as some international lawyers hold outdated views of IR theory, many IR scholars hold a mistaken and outmoded view of contemporary IL theory. To be sure, during the late nineteenth and early twentieth centuries, legal scholarship did indeed focus primarily on the identification, analysis, and critique of legal doctrine. At the turn of the century, the distinguished international law jurist Lassa Oppenheim could confidently declare that “the first and chief task [of the science of international law] is the exposition of the existing rules of international law” (Oppenheim 1908). In both its domestic and international law versions, this classic form of scholarship is characterized by careful and sustained attention to constitutions, statutes, judicial opinions, and other legal texts.

In addition to its descriptive goals, classic doctrinal scholarship typically has a prescriptive dimension. Thus, doctrinal description is often accompanied by doctrinal critique and proposed reforms addressed to judges, legislators, and other legal actors. The prescriptive dimension is perhaps accentuated in international legal scholarship, as international law treats “the teachings of the most highly qualified publicists” as a means of determining the content of the law.7 Thus, international lawyers have tended to self-identify as part of an “invisible college” dedicated to advancing an international order governed by the rule of law (Schachter 1977).

Although doctrinal scholars do indeed engage in a very different type of theory than do their IR counterparts, the reality is that legal scholars are no longer centrally

7 ICJ Statute, art. 38.
preoccupied with doctrinal analysis. As early as the 1920s and 1930s, the legal realists powerfully challenged the view that legal doctrine could generate determinative outcomes in specific legal disputes (Schlegel 1995). By the 1940s and 1950s, the realist challenge prompted the rise of a legal process school that viewed the legal system primarily as a structure of decision-making processes and only secondarily as a collection of substantive rules, rights, and duties. Doctrinal scholarship in international law came under pressure as well, from both the legal realists and, as explained earlier, the political science realists. The postwar era saw international legal theorists move away from conceptions of international law as a set of rules and toward conceptualizing international law in terms of process rather than doctrine (Nourse and Shaffer 2009; Dunoff and Pollack 2012). This strong interest in questions of process still marks contemporary international law.

Moreover, the past few decades, in particular, have seen dramatic changes in the nature and substance of international legal theory. In the 1970s and 1980s, in particular, new forms of interdisciplinary scholarship began to emerge in the leading law schools. By the 1990s, international law was characterized by a variety of theoretical approaches, including legal positivism, the New Haven School, international legal process, critical legal studies, feminist, and law and economics, in addition to IL/IR (Dunoff and Pollack 2012). More recent approaches, such as global administrative law, international constitutionalism, and global legal pluralism, further complicate – and enrich – the theoretical landscape of IL scholarship (Dunoff 2010).

For these reasons, we reject efforts to construct or reify a disciplinary divide between IR and IL theories, depicting the former as purely realist, statist, or rationalist and the latter as formal, doctrinal, and lacking insight into the basic features of international politics. This is not to say, of course, that the constellations of IR and IL theories are symmetrical or address identical questions. Ceteris paribus, international relations theories are more likely to problematize the problem of cooperation under anarchy, highlight the role of state power and the substantial difficulties of securing compliance with international law, and question the effectiveness of international norms and institutions. Similarly, international legal theories are generally more attentive to questions of legal process, the interpretive methodologies used by judges and other actors, the allocation of decision-making authority among different institutions, and the normative underpinnings and consequences of international law. However, both IR and IL are theoretically plural – and increasingly so – thus raising points of tangency and the prospect of theoretical dialogue across disciplinary boundaries. Furthermore, the asymmetries we do observe between IL and IR theories raise the prospect that theories from one discipline can and should inform those from the other, prompting IL theorists to focus on collective action problems, distributive conflicts, and compliance mechanisms, and challenging IR theorists to think more systematically about legal processes, argumentative strategies, and normative commitments that are not reducible to instrumental political action (Dunoff and Pollack 2012).
A more serious potential divide between political science and law, already hinted at in the previous section, is epistemological, relating to the aims of scholarship and the means whereby scholars establish the validity of their theories and learn about the empirical world. The term epistemology itself, Colin Wight argues, has been subject to multiple different uses in IR alone, but “[t]he main problems with which epistemology is concerned include: the definition of knowledge and related concepts; the sources and criteria of knowledge; [and] the kinds of knowledge [that are] possible” (Wight 2002: 35). As such, epistemological questions are logically prior to the more frequently discussed issue of research methodology, such as the contentious debate over the use of qualitative and quantitative methods.

Within IR, and political science more broadly, it has become common to argue that the modal approach is positivist, in the scientific rather than the legal sense of that term. Although definitions of positivism have also proliferated in political science, we would follow Hollis and Smith (1990: 12), who associate positivism with “the stress...on experience (on observation and testing) as the only way to justify claims to knowledge of the world, and hence on methods of verification as the key to the meaning of scientific statements.”

To be sure, political science is not monolithic in its commitment to positivism, either today or in the past. Looking back at the development of the field, Wight (2002: 26) refers to early IR as “a science with no philosophy,” that is to say, a field characterized by a vague commitment to international relations as a “science,” but without a clear set of epistemological standards for what constituted scientific study. With the behavioral revolution of the 1950s and the 1960s, however, IR in the United States embraced a positivist epistemology in which the empirical testing of general causal claims became the central aim of most of the leading scholars in the field. Perhaps the strongest statement of this position came with the publication of King, Keohane, and Verba’s Designing Social Inquiry (1994), which put forward a single, unified logic of inference to guide both quantitative and qualitative work in the social sciences.

This embrace of positivism has not, of course, been universal, but has met “sustained resistance” within IR, first in the 1960s from scholars like Hedley Bull (1969) and Stanley Hoffmann (1961), who argued for a more humanistic, classical approach, and later from a wide range of “postpositivist” scholars from critical theory, feminist theory, and postmodernism (Lapid 1989; Wight 2002: 33–35). These scholars challenged mainstream claims about IR as a neutral science, in favor of a critical approach devoted not to theory testing but to deconstructing existing theories and promoting human emancipation (Cox 1981; Ashley 1984; Hollis and Smith 1990; Wyn Jones 2001).

The field of international relations, then, is not epistemologically monolithic, yet there is a more widespread epistemological consensus within the field on positivism,
broadly construed, than on any substantive theory of international politics. The field’s mainstream, including most of the key journals in the United States, accepts the key tenets of positivism, as do many leading constructivists, who follow Alexander Wendt’s embrace of positivism and of a scientific constructivism committed to testing theoretical propositions systematically against empirical evidence (Wendt 1999; Fearon and Wendt 2002; Checkel 2003; Risse 2004: 160).

By contrast with political science, legal scholarship appears both more diverse and less systematically self-aware on the question of epistemology. In a provocative essay, comparative law scholar Geoffrey Samuel (2009: 432) asks, “Should social scientists take law, as it has been constructed by history, seriously as a modern intellectual discipline?” Samuel generally argues that we should not do so, largely on epistemological grounds. The social sciences, Samuel argues, generally pursue a broadly positivist “enquiry paradigm,” which judges the validity of scientific claims against “external” sources of evidence, and such an approach has made some degree of headway in the legal community in the form of legal realism and sociolegal scholarship, particularly in the Anglo-Saxon world. By contrast, he continues, much legal scholarship – particularly but not only in countries with a civil law tradition – adopts an “authority” paradigm, in which the legal text is taken as authoritative and the study of law is explicitly “internal” to these legal sources. By contrast with the “externalist” epistemology of the social sciences, Samuel argues, doctrinal, formalist, or “black-letter” legal approaches determine the validity of legal claims internally, with respect to the law itself.

To his credit, Samuel does not present a monolithic view of law as a uniformly internalist discipline. “Nevertheless,” he argues, “if one looks at the current literature on bookshop and library shelves, in both the civil law and common law countries, a considerable proportion is devoted largely to descriptive work on various areas of the law” (Samuel 2009: 433), and this internalist scholarship, he continues, has little to offer to empirically oriented social scientists. In part for this reason, some scholars claim that, although law is a powerful professional discipline, it has historically been a relatively weak academic discipline (Balkin 1996; Ulen 2004).

Some legal scholars respond that the criticism of legal scholarship as being insufficiently positivist misses the mark because this critique misunderstands the purpose of legal scholarship. They argue that legal scholarship’s purpose is not to generate empirically testable causal claims. As Jack Goldsmith and Adrian Vermeule (2002: 153–154) note, positivist critics overlook that legal scholarship frequently pursues doctrinal, interpretive, and normative purposes rather than empirical ones. Legal scholars often are just playing a different game than the empiricists play, which means that no amount of insistence on the empiricists’ rules can indict legal scholarship – any more than strict adherence to the rules of baseball supports an indictment of cricket. [Positivist critics] miss this point because their empirical methodology blinds them to legal scholarship’s internal perspective. [The critics’] external perspective – if valid – might
cause legal scholars to see their practices in a new and interesting light. But in many
domains of legal scholarship, it provides no basis for persuading insiders to accept
[the critics’] methodological counsels.

We should not accept too readily Goldsmith and Vermeule’s critique of social
scientific, positivist epistemology. Although Goldsmith and Vermeule are clearly
correct that it would be inappropriate to apply a positivist or “externalist” epistemol-
ogy and methodology to a purely doctrinal or normative legal analysis that relies
exclusively on a reading of sources internal to the law, social science critics are
also correct that legal scholars may and sometimes do smuggle empirical claims
into normative or doctrinal analyses, and to the extent that they do so, these claims
should not escape systematic empirical testing. In the IL/IR literature, for exam-
ple, Goldsmith and Posner (2005) combine the use of game theory, empirical case
studies, and normative arguments about the moral force (or lack of force) of inter-
national law in innovative and provocative ways; however, insofar as these authors
make empirical claims about the causal force (or lack of force) of international
law, their empirical analysis arguably falls short from the perspective of positivist
epistemology, with little effort to explain and justify case selection, document data
collection and sources, or control for competing explanations of their data. Our
point here is not that IL/IR scholarship is methodologically lacking, or that it must
all embrace positivist epistemological standards, but rather that legal scholars, to
the extent that they do make empirical claims, should not receive an epistemolog-
ical “pass” by virtue of their professional affiliation. And, indeed, as the chapters
of this book demonstrate, IL/IR scholarship by legal scholars has demonstrated an
impressive and increasing methodological rigor over time, even according to the
demanding and contentious standards of inference put forward by positivist social
scientists (see also the excellent review of empirical IL scholarship in Ginsburg and
Shaffer 2012).

However we may assess individual works of scholarship, it does seem clear that
some part of the opposition to IL/IR on the part of legal scholars results from a
resistance to the imposition of positivist, “externalist” social science epistemology
on legal scholarship that arguably pursues different aims and adopts a different,
“internalist” epistemology. Here again, however, it is important not to reify disci-
plinary boundaries, for two reasons. First, the positivist/postpositivist and inter-
nalist/externalist divides do not map neatly onto monolithic political science and
legal disciplines. Rather, there exists a sizable group of positivists, broadly con-
ceived, on both sides of the purported disciplinary divide, thus raising the prospect
of a common explanatory project and common epistemological standards for such
scholars. Indeed, as the chapters in Parts III, IV, and V of this volume demonstrate,
international lawyers increasingly address questions of institutional design, interna-
tional judicial behavior, and enforcement and compliance, generating empirical
findings and conceptual analyses that can be used to inform and enrich research in
these areas. By the same token, scholars of a critical or postpositivist bent similarly straddle disciplinary boundaries, asking similar questions about the implicit norms and hidden power relations to be found in the corpus of international law. This phenomenon has led Klabbers (2009: 124) to claim that, “interdisciplinary work owes more to background sensibilities than to common objects of study, because only those background sensibilities (the methodological and epistemological assumptions) facilitate communications between people trained and well versed in distinct disciplines.”

Second, even assuming that a sharp distinction can be drawn between positivist and postpositivist, internalist and externalist, and positive and normative scholarship, scholars with different epistemological commitments might yet have something to teach each other. As Beth Simmons and Andrew Breidenbach point out, “lawyers and legal scholars can focus [empirical social scientists] on questions that actually need answering, can help us understand why things are the way they are and what possibilities there are for the future, and are the conduits by which data and doctrine are translated into policy” (Simmons and Breidenbach 2011: 221). More generally, we would argue, even internalist doctrinal scholarship can serve as an important corrective to rational choice scholarship that fails to recognize the constraining effects of legal process and discourse on international judges (see, e.g., Mattli and Slaughter 1995) and other actors, or to constructivist scholarship that emphasizes norms without interrogating the specifically legal aspects of those norms (Finnemore 2000; Brunnée and Toope 2000, 2010).

C. Competing Conceptions of International Law

A final set of interdisciplinary tensions arise out of the different conceptions of international law that are implicit or explicit in IL and IR scholarship. To be sure, neither all IR nor all IL scholars utilize the same conception of law. However, in the dominant rationalist strands of IR theory, law is frequently understood in highly instrumental terms. Thus, realism, institutionalism, and liberalism all assume that international actors behave purposively, pursuing their interests and goals via means–ends rationality, subject to limitations in decision-making ability and external constraints. Under these rationalist perspectives, law is understood as a set of rules used to alter behavior by modifying the costs and benefits associated with different actions. Rationalist approaches highlight the material, reputational, and other “sanctions” associated with noncompliance – and, in particular, on how these sanctions influence behavior – and predict that states will contract into and comply with international law when, and only when, the benefits exceed the costs (Goldsmith and Posner 2005; Thompson 2013).

Not surprisingly, legal theorists have long debated the necessity and centrality of sanctions in legal systems. The nineteenth-century theorist John Austin famously defined law as the command of a sovereign, backed by the threat of coercive force.
For Austin, the concept of sanctions was “the key to the science[] of jurisprudence,” and, until the 1960s, the notion of sanctions was central to virtually every other theory of law as well (Shapiro 2006). Contemporary legal theory, however, largely rejects sanctions-centered accounts of law. H. L. A. Hart famously criticized such accounts for being unable to distinguish “law” from an outlaw’s commands – both are “orders backed by threats.” Hart argued that “law” has not only an external, but also an internal aspect, which he called “the internal point of view.” From this internal perspective, “law is not simply sanction-threatening, -directing, or -predicting, but is obligation-imposing” (Shapiro 2006). Building on Hart’s insight, many legal theorists argue that law’s impact on behavior cannot be satisfactorily described in purely behavioral terms. In short, modern jurisprudence has generally coalesced around the claim that descriptions and explanations that fail to account for the obligation-creating aspect of law – its normativity – are seriously deficient.

In a move that evokes Hart’s critique of Austin, a number of international lawyers have criticized rationalist IR approaches to international law for overemphasizing the role of sanctions and ignoring “the very essence of law,” its normativity (Byers 1997: 205). One version of this critique comes from international lawyers who identify IR with “a more or less realist version of international relations scholarship” (Klabbers 2004–2005: 38), which is often associated with claims that, given the lack of coercive enforcement mechanisms, much international law has little independent impact on behavior. It follows that law is largely powerless to resolve collective action problems, and, more controversially, that states do not – and should not – feel any legal or moral obligation to follow international law when instrumental calculations reveal that noncompliance would better advance state interests (Goldsmith and Posner, 2005). Some lawyers complain that this IR perspective reduces “law” to “an irrelevant decoration” (Koskenniemi 2009b: 410). Moreover, even IR approaches that allow a greater role for international law, such as institutionalism and liberalism, are similarly viewed as denying law’s autonomy and normative significance. Koskenniemi, for example, argues that IR approaches entail a form of “managerialism” that views formal legal doctrine “as an obstacle [to] effective action” (Koskenniemi 2009a: 15) and urges formalized norms and processes designed to maximize actor utility. Hence, critics charge that the “dual agenda” threatens to produce a “thoroughly function-dependent, non-autonomous law” (Koskenniemi 2001: 487).

A stronger version of this critique goes even further and stresses not simply that IR approaches deny law’s normativity, but that they substitute another form of normativity in its place – with undesirable political consequences. Draining law of its normative force and viewing it as entirely instrumental is understood as undermining law’s ability to restrain powerful international actors. In thus “liberat[ing]”

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8 Note that the meaning of the term “internal” in Hart’s analysis differs from the meaning of the term as used in the context of contrasting doctrinal scholarship with positivist scholarship above.
governments “from whatever constraints (valid) legal rules might exert over them,” critics argue that IR approaches serve to reinforce, rather than address, existing power asymmetries. The status quo bias built into IR’s technocratic conceptualization of the international legal order has even led some to go so far as to suggest, in an unfortunate turn of phrase, that IL/IR is “an American crusade,” an academic project promoted by U.S.-based academics that “cannot but buttress the justification of American hegemony in the world” (Koskenniemi 2000: 30).

Several of these criticisms fall well wide of the mark. As we have already argued, Klabbers misstates the degree of theoretical and epistemological uniformity, and the influence of realism, in contemporary IR. Indeed, the IL/IR literature that is the subject of this volume often focuses on identifying the causal mechanisms through which international norms and processes influence (or fail to influence) state behavior. Second, some rationalist IR approaches do acknowledge law’s normativity. For example, the canonical Legalization volume identifies “obligation” as one of the three hallmarks of “legalization,” and follows Hart in claiming that “[l]egal obligations are different in kind from obligations resulting from coercion, comity, or morality alone” (Abbott et al. 2000: 408). Moreover, as we discuss below, many of the contributions to this volume suggest ways that IR approaches can account for law’s normativity. Finally, nothing in IL/IR approaches necessarily legitimates or reinforces existing power asymmetries or entails a commitment to U.S. hegemony. To the contrary, IL/IR approaches are better understood as raising a set of questions and a process of inquiry regarding international legal phenomena than as offering a list of settled conclusions – and, in any event, a number of IL/IR works are explicitly or implicitly critical of U.S. policies across a variety of issue areas.

Nevertheless, the tensions that critics identify between instrumentalist conceptions of international law and those that emphasize law’s normativity highlight an exceedingly important fault line – even if it has received surprisingly little attention in the literature. Given the trajectories of both disciplines outlined above, it should not surprise us that scholars from different traditions rely upon competing conceptions of international law. A central question facing IL/IR scholars is how to navigate this fault line. The critics’ writings suggest that, at a minimum, the competing conceptions of international law that characterize the two disciplines have limited the audience for, and the influence of, IL/IR work, at least among the “invisible college of international lawyers.” More important, to the extent that the lawyers’ critique is accurate, then dominant IR approaches have failed to account adequately for a central feature of law. Thus, both for strategic and conceptual reasons, addressing the tensions associated with the competing conceptions of international law remains a critical undertaking.

Significantly, a number of the chapters in this volume attempt precisely this task. Some attempt to do so by generating new understandings of international law that draw from both traditions. So, by way of example, Kenneth Abbott and Duncan Snidal’s chapter attempts to build a theoretical account of legalization that explicitly
takes account of both “the interest-based mechanisms so prominent in rationalist analyses” and “the normative channels more prominent in legal and constructivist approaches.” The chapter conceptualizes legalization as “a distinct form of politics” that is characterized by “the interaction of positive and normative factors – interests and values – over time.” Other chapters attempt to bridge disciplinary divides by building positive models that account for law’s normative dimensions. For example, Steven Ratner’s chapter (Chapter 23) constructs a theoretical model identifying a series of independent variables that bear on whether and when a “normative intermediary” invokes legal arguments when attempting to persuade an actor to comply with international norms, and Joost Pauwelyn and Manfred Elsig’s chapter (Chapter 18) attempts to identify the causal factors that drive variation in interpretative strategies across international courts. These chapters, along with other contributions to the volume, impressively demonstrate that creative scholars can employ a variety of conceptual and methodological moves designed to address the disciplinary tensions associated with competing conceptions of international law in play in IL and IR scholarship.

III. AN OVERVIEW OF THE VOLUME

Previous surveys of IL/IR scholarship have been organized primarily by issue area (Biersteker et al. 2006; Armstrong, Farrell, and Lambert 2007). This can be a constructive approach, as it permits us to identify concrete contributions that IL/IR writings have made to our understanding of specific topics, such as human rights or international trade. Yet, in our view, one cost of pigeonholing research into issue-specific academic silos has been a failure to aggregate findings across issue areas so as to gain a “big picture” of the contribution of IL/IR as a whole. For this reason, we adopt a different approach. In keeping with our aspiration to overcome the divisions of the literature along disciplinary and issue area boundaries, this introductory section is followed by four cross-cutting thematic sections on theorizing international law (Part II), the making or designing of international law (Part III), interpretation and adjudication (Part IV), and compliance and enforcement (Part V). As we shall see, each of these four thematic areas has been the subject of significant developments over the past two decades.

In addition to this introductory chapter, the first section includes a chapter by Kenneth Abbott and Duncan Snidal (Chapter 2) that explores the processes of international legalization. Their essay conceptualizes legalization as “a distinct form of politics, because it is shaped and often constrained by the existing body of law.” As noted above, this chapter seeks to bring together the rationalist perspectives associated with IR and the normative perspective associated with IL to develop a rich and nuanced account of the dynamics of legalization. Part II of the volume focuses on theory and, in particular, on the development and application to international law of four leading theoretical traditions in IR:
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realism, institutionalism/rational design, liberalism, and constructivism. Richard Steinberg’s chapter (Chapter 6) memorably describes why realism is the theoretical approach that international lawyers love to hate. More important, Steinberg explains how lawyers, in particular, have often misunderstood realist claims and why realism remains a useful tool for positive analysis of international law. His chapter describes how realist premises can be combined with insights from other approaches to constitute a research program in international law with substantial explanatory and predictive power.

Barbara Korememos’s chapter (Chapter 3) provides a synoptic overview of rational choice institutionalism, with a particular focus on the question of rational design. As Koremenos notes, the theoretical framework of rational design draws from institutionalist theories of IR, but shares with international legal scholarship a desire to catalogue and explain states’ choices about the design of international legal agreements and institutions.

Andrew Moravcsik’s chapter (Chapter 4) provides both a distillation and an extension of liberal approaches to international relations. Departing from past descriptions of this approach, this chapter highlights liberalism’s utility in understanding all stages of the international legal process, not simply preference formation, and it theorizes a liberal approach to the dynamic aspects of international legal development. Jutta Brunnée and Stephen Toope (Chapter 5) discuss the fourth great theoretical tradition, constructivism. As the authors note, constructivists’ study of intersubjectively shared norms and of the potentially constitutive role they can play in socializing states theorizes an aspect of international law about which other IR theories are largely silent, and one that finds resonance in many strands of international legal theory. In each case, our authors clearly set out key assumptions underlying their theory, candidly assess the strengths and weaknesses of their approach, and evaluate how the encounter with international law has influenced theoretical developments in IR and enriched our understanding of IL.

Part III addresses the making of international law. International legal scholars have long been concerned with the question – simultaneously analytical, empirical, and normative – of how to design international law to maximize its effectiveness, however defined. In recent years, IL/IR scholars have addressed the same question, bringing to bear the theoretical and methodological tools of political science on the related question of institutional design. International law-making, therefore, is an area where research agendas at least partially overlap, and in which IR methods fruitfully address issues of long-standing concern to international lawyers.

This section opens with a chapter by Larry Helfer (Chapter 7) that provides a useful typology of flexibility mechanisms, an overview of IL/IR research into these mechanisms, and a detailed discussion of “exit” and “escape” clauses, two of the most important and interesting flexibility mechanisms states use when designing international rules and institutions. Helfer’s chapter highlights the various ways that states use institutional design to achieve joint gains, addresses whether flexibilities
help or hinder cooperation, and emphasizes the interplay between formal and informal flexibility mechanisms. Gregory Shaffer and Mark Pollack’s chapter (Chapter 8) on the limits of formality in international law-making addresses similar themes, exploring why states might choose to adopt hard or soft legal provisions, the advantages and disadvantages of each in terms of law-making and subsequent compliance and effectiveness, and the interaction of hard and soft law in practice.

Three of the chapters in this section address important shifts in international affairs and the international legal order that impact the actors and the fora involved in international law-making. Peter Spiro’s chapter (Chapter 9) addresses the rise of non-governmental (NGO) actors as participants in the law-making process. Spiro argues that both IL and IR scholars have emphasized NGO activity vis-à-vis the state and have undertheorized the exercise of NGO power through and against other actors, including international organizations, firms, and other NGOs. Abraham Newman and David Zaring’s chapter (Chapter 10) focuses on regulatory networks. Their chapter reviews how IL and IR scholarship on networks has diverged in recent years, with IR scholars often focusing on the power relationships embedded in network architectures, and IL scholars focusing on variation in legal structures and implementation strategies, and on issues of legitimacy. The chapter outlines a research agenda that integrates both perspectives and that systematically explores how networks induce domestic actors to comply with their mandates and thereby serve as an innovative international governance mechanism. Ian Johnstone’s contribution (Chapter 11) explores the important but understudied phenomenon of law-making by international organizations. This chapter examines the complexities embedded in the concepts of “delegation” and “law-making,” and develops a pluralist account of the different types of law that IOs produce. Johnstone then explores how well various strands of IL/IR theory explain the phenomena of delegated law-making by IOs.

The proliferation of law-making fora and international regimes have given rise in recent years to widespread concerns over “forum shopping” and significant theoretical work analyzing the phenomenon of “legal fragmentation” or “regime complexity.” Kal Raustiala’s chapter (Chapter 12) provides an overview of IL and IR literature exploring how the increased density of international norms and institutions creates both conflict and cooperation among legal regimes. The chapter describes how complexity and fragmentation impact world politics and explores the distributional implications of fragmentation.

The increasing reach, density, and salience of international norms has given rise to concerns over international law’s legitimacy. Daniel Bodansky’s chapter (Chapter 13) surveys IL/IR scholarship and distinguishes between normative and descriptive conceptions of legitimacy that are often conflated in the literature. Bodansky argues that the treatment of legitimacy contrasts sharply with many of the other topics considered in the volume, where IL has been the consumer of theoretical approaches produced by IR scholars. In the case of legitimacy, IL has been the more theoretically
active of the two disciplines, developing theories of legitimacy based on different conceptions of law, including the concept of “interactional law,” global constitutionalism, and global administrative law.

Part IV addresses the interpretation and application of international law. The significant increase in and/or strengthening of a growing number of international courts and tribunals – and the dramatic growth in international adjudication – have greatly increased the frequency and salience of legal interpretation. At the same time, international law is interpreted and applied in a variety of nonjudicial settings, including innovative “noncompliance” mechanisms, administrative fora, and a variety of overtly political settings.

IL/IR scholarship has used multiple theoretical lenses, and both quantitative and qualitative case study analyses, to study the delegation of authority to international courts and tribunals, as well as the judicial behavior of those bodies. The contributions to Part IV survey and extend this rich body of writings. This section opens with a chapter by Karen Alter (Chapter 14) that details the multiple roles that international courts and tribunals play in the global legal and political system, which she labels as dispute resolution, enforcement, administrative review, and constitutional review. By carefully disentangling and analyzing these various roles, Alter’s chapter enables scholars to more precisely identify and evaluate the utility of international courts in contemporary international affairs. Barbara Koremenos and Timm Betz’s chapter (Chapter 15) on the design of international courts builds upon and extends earlier work in rational design. Koremenos and Betz start from the premise that the inclusion of dispute settlement provisions is a deliberate design feature intended to address specific cooperation problems. They demonstrate that international treaties vary dramatically in their dispute settlement systems, and seek to explain states’ design choices in terms of variables such as commitment problems, enforcement problems, and uncertainty. They argue further that, even when rarely invoked, dispute settlement provisions can facilitate cooperation, both by screening states at the stage of treaty ratification and by providing potential enforcement, which will limit cases of defection.

Lisa Conant’s chapter (Chapter 16) reviews the literature on domestic courts’ use of international law. The chapter identifies points of tangency between IL scholarship, which often revolves around the normative question of whether domestic courts should act as agents of the international legal order or whether they should prioritize domestic values and constituencies, and IR scholarship, which develops positive theories designed to explain and predict the actions of national courts. She examines different theoretical accounts, including socialization theories, liberal theories that emphasize domestic institutions, and realist accounts, in exploring whether we should expect to see greater convergence or divergence in domestic courts’ use and interpretation of international law. In the next chapter (Chapter 17), Erik Voeten surveys the IL/IR literature on judicial independence. Are international judges simply “diplomats in robes”? And, if not, what are the institutional and
ideational factors that provide judges with greater or lesser degrees of independence? His chapter reviews how rational institutionalism and neofunctionalist approaches treat various potential control mechanisms that states can use to constrain judicial behavior, and underlines the challenges of empirical testing of such propositions. Voeten explores whether there is an optimal level of judicial independence, and thoughtfully examines whether “the judicialization of politics is met by an increased politicization of the judiciary.”

All of these chapters fit comfortably into the dominant strand of IL/IR scholarship on international tribunals, which generally emphasizes causal explanations of judicial behavior with respect to state interests, but devotes far less attention to the practice of legal interpretation as a deliberative, norm-driven enterprise. Joost Pauwelyn and Manfred Elsig’s chapter (Chapter 18) represents an important extension of this dominant strand of scholarship. Their chapter categorizes and analyzes the interpretive approaches employed by different international tribunals and is an important example of how IL/IR scholars can use political science methods in ways that take seriously questions of interpretative strategy that preoccupy international lawyers.

Part V groups together a set of chapters that examines the compliance with, and enforcement and effectiveness of, international law. Until recently, state compliance with international law was a neglected subject, with legal scholars largely assuming the efficacy of international law and political scientists assuming its ineffectiveness. Early contributions to the IL/IR literature were structured around the so-called management/enforcement debate, which was itself structured largely along disciplinary lines, with legal scholars emphasizing the significance of management as an ongoing legal process and political scientists emphasizing the importance of enforcement in an anarchical, collective action setting. Since then, scholarly inquiry has largely moved on from this overarching debate to more fine-grained questions about the measurement and determinants of state compliance with international law.

This part opens with Jana von Stein’s sweeping overview of the compliance literature (Chapter 19). Building on her previous work on the topic, von Stein’s chapter identifies a number of hypothesized instrumental or normative mechanisms that might serve as “the engines of compliance” and surveys the empirical literature, noting what she calls the quantification of compliance studies, with its attendant strengths and weaknesses. Next, a series of chapters focus on particular mechanisms that might explain the variable propensity of states to honor their international commitments. Rachel Brewster’s chapter (Chapter 21) focuses on reputation as a potential cause of compliance, noting the often unrecognized scope conditions under which a concern for reputation does – or does not – promote compliance with international law. In addition to reviewing the literature, Brewster develops a counterintuitive account of how the addition of formal dispute settlement systems might reduce the reputational costs associated with noncompliance. Alexander Thompson (Chapter 20) similarly points out the challenges of enforcing international
law through military, economic, and diplomatic sanctions, underlining the collective action problems associated with the application of sanctions for noncompliance and exploring mechanisms whereby this “sanctioners’ dilemma” might be mitigated. Joel Trachtman (Chapter 22) addresses the ways that domestic political and legal processes may induce compliance with international legal norms. Building upon “second image reversed” theories, Trachtman develops an innovative model of adherence to, and compliance with, international law that focuses on the causal influence of domestic voting and lobbying patterns.

Another underexplored and undertheorized area, in both literatures, is the role of persuasion in securing compliance with international law. Most efforts to persuade actors to comply with international law, like most efforts to persuade actors to persuade with domestic law, are made outside of courthouses and formal legal processes and take place among national governments, transnational and transgovernmental networks, subsidiary treaty bodies, and in various bilateral and multilateral fora that are widely studied by IR scholars. This is an arena in which political scientists might indeed have a comparative advantage, yet the IL/IR literature to date has focused little attention to legal persuasion, perhaps because it involves difficult methodological and empirical questions. However, Steve Ratner’s contribution to this volume (Chapter 23) illustrates one way that IL/IR research can engage these issues. Drawing on his work with the Organization for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities and the International Committee of the Red Cross, Ratner constructs a theoretical model designed to explain the persuasive and rhetorical strategies that international actors use in nonjudicial settings to promote legal compliance. The chapter implicitly invites scholars to apply Ratner’s model to other international organizations that devote substantial energies to promoting compliance with international legal norms.

In the final contribution to this section of the volume, Lisa Martin (Chapter 24) provocatively asks whether political scientists, in the pursuit of an interdisciplinary dialogue with international lawyers, have mistakenly focused on compliance, rather than effectiveness, as the object of their studies. The chapter explores whether the focus on compliance has led scholars to mistakenly overestimate the impact of institutional participation on state behavior and to underestimate the impact of international institutions on states that are not in compliance with international norms. Martin concludes by making a case for a research program that focuses on analyzing the effectiveness of international law in addressing problems of international cooperation.

The final section includes two chapters. In the first, Anne-Marie Slaughter (Chapter 25) looks back on the development of IL/IR scholarship in the two decades since her seminal article, reflects on the utility of IL/IR insights from the perspective of a practicing government official, and identifies a series of pressing topics in the development of international law, noting that, in each of these areas, the distinctive insights of international lawyers will be vital to a complete understanding.
In the final chapter of the volume (Chapter 26), we attempt to distill lessons from our authors’ analyses, identifying for each of our four themes the theoretical and empirical advances of the past two decades and the lessons learned, as well as the systematic weaknesses and blind spots of the IL/IR literature, and we identify a promising agenda, or agendas, for future research.

Taken as a whole, the essays in this volume provide a comprehensive overview of IL/IR’s distinctive contributions and address the central questions of contemporary IL/IR research. Despite differences in subject matter and analytical approach, our contributors share a deep interest in mining interdisciplinary work to better understand the workings of contemporary international law. Collectively and separately, the chapters highlight current research frontiers concerning the making, interpretation and enforcement of international law. Our hope is that this volume will advance an ongoing research project that has already done much to expand and deepen our understanding of the role of international law in international relations.

REFERENCES


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