

## The Relative Autonomy of International Law or The Forgotten Politics of Interdisciplinarity

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### I

It goes without saying (but probably needs to be said) that the Foreign Office lawyer preparing a draft declaration on, say, the right to development, should have some understanding of development theory: she would be well-advised to know that there are various theories, not easily reconcilable with each other, on how development is best to be achieved. By the same token, it goes without saying (but might need to be said) that the practicing trade lawyer who does not have a grasp of the basic economics of international trade might not be best-placed to advise her clients. Likewise, it goes without saying (but perhaps needs to be said) that the practitioner at a Ministry of Defence contemplating whether or not to treat prisoners of war decently would enhance the quality of her decisions if she were to have an understanding of such things as game theory and reciprocity.

It is, in other words, reasonably self-evident that practitioners, in order to do their jobs properly, ought to have a basic understanding of the various academic disciplines and sub-disciplines surrounding their own discipline proper, be it general international law, trade law, humanitarian law, or any other branch of law. It can also safely be postulated that the same applies to academics: the academic human rights lawyer can, no doubt, learn a thing or two from such disciplines as political theory or social anthropology; the academic trade lawyer, likewise, can learn a thing or two from economics; the environmental law professor would naturally benefit from familiarity with environmental studies. In short, to be broad-minded will generally be an asset, both in legal practice and in academia.<sup>1</sup>

### II

It is a different thing, however, to consider more full-fledged interdisciplinary projects, be it law and economics, law and history, law and ethics, or the relationship between international law and

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<sup>1</sup> It is no coincidence (on the anecdotal level) that all four members of the close-knit circle of doctoral students of which I was a member in the early 1990s in Amsterdam had completed a master's degree in a discipline additional to law: one holds a degree in economics, one in philology, and one in philosophy, while my own background is in political science.

international relations,<sup>2</sup> so often advocated yet so rarely productively engaged in.<sup>3</sup> This is different for a variety of reasons, chief among them perhaps the circumstance that academics are supposed to specialize in, well, specialist knowledge, insight, and understanding. The academic international lawyer, after all, is paid to teach and research international law; she is not paid to teach and research international relations, or contemporary history, or Economics 101. And while the best international lawyers will have a working knowledge of neighbouring disciplines including international relations theory, they should guard against the risk of doing merely history, or economics, or ethics, or international relations, under a thin veneer of international law.

But there are more fundamental considerations that at least should cast some doubt on the received wisdom of advocating interdisciplinarity, both in general and with particular reference to international relations scholarship. In what follows, I will discuss a few of these, without claiming to be exhaustive, comprehensive, or even representative, let alone nuanced. My main point will be that somehow, appeals for interdisciplinarity, however laudable in the abstract, carry a serious risk of reproducing, or even strengthening, existing power configurations. For that reason alone, international lawyers should jealously guard the relative autonomy of their discipline. That is not to say that interdisciplinarity is flawed at the root; but it is to say that international lawyers should not immediately heed to the siren song of interdisciplinarity, for the simple reason that it will not always and automatically enable them to come to a better understanding of international law.

### III

Calls for interdisciplinarity between disciplines A and B usually assume

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<sup>2</sup> I will deliberately refrain from using the capitals IR, if only to prevent the unwarranted reification of what is, in reality, a rather incoherent, heterogenous body of scholarship. It will be clear that I will not address international political events, so there can be no confusion between the everyday use of international relations (as in Denmark engages in international relations with quite a few other states) and its more academic use.

<sup>3</sup> The usual citations on this point are not products of interdisciplinarity as such, but rather appeals to conduct such research. See e.g. Anne-Marie Slaughter Burley, 'International Law and International Relations Theory: A Dual Agenda' (1993) 87 *Am. J. Int'l L.* 205; Kenneth W. Abbott, 'Modern International Relations Theory: A Prospectus for International Lawyers' (1989) 14 *Yale J. Int'l L.* 335. An overview of interdisciplinary research, broadly defined, is provided by Anne-Marie Slaughter, Andrew S. Tulumello & Stepan Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship' (1998) 92 *Am. J. Int'l L.* 367.

that both A and B (or at least one of them) are fully knowable and, what is more, rather homogeneous. To take an example: the lawyer calling for a more seriously 'historical' approach<sup>4</sup> often presumes that historians are unanimous as to the tools and methods of their trade; yet nothing could be further from the truth. Like lawyers, historians too have their debates on how best to conduct research, on whether it is possible to derive general conclusions from particular instances, and in particular on whether it is possible (let alone plausible) to speak of historical laws.<sup>5</sup> Interdisciplinarity often, in other words, presumes a flat, one-dimensional vision of the discipline-to-relate-with, yet such a one-dimensional view will rarely, if ever, be persuasive. And if such a flattened view is too blunt, then the question arises which particular historical method one ought to be interested in; and that, in turn, would mean that the lawyer would immerse herself into something of a *Historikerstreit* (I know, the term is more loaded than its use here suggests) which it might be difficult to get out of, and which will inevitably distract the lawyer from whatever it was that she was trying to achieve.<sup>6</sup>

This applies to all attempts at interdisciplinarity: law and history, law and economics, law and whatever. And it also applies to taking international relations on board. Doing so is bound to remain fruitless unless one opts for a specific version of international relations thought: the Realist? Idealist? Constructivist? Critical Realist? Neoliberal Institutionalist? Republican Institutionalist? Functionalist? Neo-functionalist?<sup>7</sup> In fact, there are about as many versions of interna-

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<sup>4</sup> The relationship between history and international law is increasingly being scrutinized, both in the form of monographs and in the form of academic conferences. An example of the latter, in which I was fortunate enough to participate, was the conference on Time, History, and International Law, organized by Matthew Craven and Malgosia Fitzmaurice at the University of London on 1 October 2004. Small bits and pieces of the discussion are reflected in this article.

<sup>5</sup> This is precisely, of course, why Foucault could have such an impact, proposing an entirely new way of conducting historical research. See Michel Foucault, *The Archaeology of Knowledge*, trans. by Sheridan Smith (London: Routledge Classics, 2002). A brief but useful overview of the various schools of thought is Keith Jenkins, *Re-thinking History* (London: Routledge, 2003).

<sup>6</sup> Incidentally, the insight that historians too have their theoretical and methodological battles dates back to at least the late nineteenth century. For a brief discussion, see Paul Franco, *Michael Oakeshott: An Introduction* (New Haven: Yale University Press, 2004) at 27-29. It was also at the heart of Pieter Geyl's biting collection of essays, mostly written in the 1940s and 1950s, *Debates with Historians*, where he takes issue in particular with the broad and sweeping views of the likes of Toynbee (London: Fontana, 1962).

<sup>7</sup> His (understandable) reluctance to make a choice among these is, to me, one of the reasons why Michael Byers' acclaimed study *Custom, Power and the*

tional relations scholarship as there are international relations scholars and, as will be discussed below, this is quite problematic.

That said, often calls for interdisciplinarity are premised on singling out a more or less realist version of international relations scholarship as the ideal companion, probably on the basis of the unarticulated thought that at least the realists know how the world works, how power politics operate, and how statesmen think.<sup>8</sup> If the law (or rather, the lawyer) has the aspiration to be taken seriously, it (or she) should aim to gain a foothold in this realist mode of thinking. Law will only be taken seriously if statesmen take it seriously, and they won't do so unless the law is made attractive to them, as something they can use as they see fit.<sup>9</sup> The culmination point hereof is perhaps Joel Trachtman's finding that the binding force of international law should simply be made subject to negotiations: law is about as binding as states can agree upon.<sup>10</sup>

Thus regarded, pleas for interdisciplinarity are often pleas for a single, and rather limited, apparition of interdisciplinarity, and therefore become (however unwittingly perhaps) the subjects of power politics themselves, with law being put to the service of those who field the strongest negotiators. And those are usually, of course, the strongest states.

*Power of Rules: International Relations and Customary International Law* (Cambridge: Cambridge University Press, 1999) is less than fully satisfactory. See in more detail my review of Byers in (1999) 10 Finnish Yearbook of International Law 451.

<sup>8</sup> As David Kennedy puts it, international relations experts nurse 'a distinctly internationalist understanding of the national interest.' See David Kennedy, 'The Disciplines of International Law and Policy' (1999) 12 *Leiden J. Int'l L.* 9 at 103. Lest Kennedy (and I) be misunderstood, the keywords here are 'national interest'.

<sup>9</sup> After all, the lawyer has to respond to the pivotal charge that the law only provides 'false promises', as Mearsheimer memorably put it. Thus, realism provides the proverbial 'hard case': if the lawyer can overcome realist objections, she can overcome any objections. See John J. Mearsheimer, 'The False Promise of International Institutions' (1994/95) 19 *International Security* 5.

<sup>10</sup> See Joel Trachtman, 'Bananas, Direct Effect and Compliance' (1999) 10 *Eur. J. Int'l L.* 655 at 677: what matters is that decision-makers are allowed the 'flexibility to design instruments with the right amount of binding effect for political circumstances.' An earlier, much-heralded contribution from an international relations scholar writing in a similar vein is Charles Lipson, 'Why Are Some International Agreements Informal?' (1991) 45 *Int'l Org.* 495. I take issue with such views in Jan Klabbers, *The Concept of Treaty in International Law* (The Hague: Kluwer, 1996).

#### IV

There is a second way in which interdisciplinarity can be seen to strengthen existing power relations, and that is by the way it may strengthen untenable, but politically expedient, assumptions. The key example here is probably the use of game theory in order to explain the law of treaties, as undertaken a few years ago by John Setear.<sup>11</sup> Not only did this result in, as Michael Byers helpfully put it, taking the law out of international law<sup>12</sup>—that alone would have been bad enough—but what is worse is that such a game theory approach ends up perpetuating the idea that treaties are, really, nothing but contracts between sovereign states, and therewith ends up not just ignoring much of present-day international law, but actually turning back the clock. The contractual perspective, after all, is the only understanding upon which a game-theoretic approach can possibly work: it works on the assumption that states are unitary actors that engage in rational decision-making with a keen eye to maximizing their individual interests.

Yet, as many international lawyers might testify, the more difficult problems (or interesting challenges, if you will) in the law of treaties stem precisely from the sort of situation where the contractual perspective has been cast aside as unworkable, or as being unable to do justice (quite literally so) to public order concerns—a problem already noted in 1930 by Lord McNair.<sup>13</sup> Reservations to treaties are but one example (although, ironically, here the contractual perspective may have its uses<sup>14</sup>); others would be the notion of material breach<sup>15</sup> or the ‘interim obligation’ between signature and ratification, or between

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<sup>11</sup> See John Setear, ‘An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law’ (1996) 37 *Harv. Int’l L.J.* 139. Some of the same type of thinking underlies Goodman’s analysis of reservations as being subject to negotiations and intense bargaining. See Ryan Goodman, ‘Human Rights Treaties, Invalid Reservations, and State Consent’ (2002) 96 *Am. J. Int’l L.* 531.

<sup>12</sup> See Michael Byers, ‘Taking the Law out of International Law: A Critique of the “Iterative Perspective”’ (1997) 38 *Harv. Int’l L.J.* 201.

<sup>13</sup> See Arnold Duncan McNair, ‘The Functions and Differing Legal Character of Treaties’ reproduced in Arnold Duncan McNair, *The Law of Treaties* (Oxford: Clarendon Press, 1961) 739.

<sup>14</sup> See Jan Klabbers, ‘On Human Rights Treaties, Contractual Conceptions and Reservations’ in Ineta Ziemele, ed., *Reservations to Human Rights Treaties and the Vienna Convention Regime: Conflict, Harmony or Reconciliation* (Leiden: Martinus Nijhoff, 2004) 149.

<sup>15</sup> See David Hutchinson’s classic article, ‘Solidarity and Breaches of Multilateral Treaties’ (1988) 59 *Brit. Y.B. Int’l L.* 151.

ratification and entry into force<sup>16</sup>—the list is not exhaustive.

All this is not to say that game theory is never illuminating; Robert Axelrod's treatment of the trench warfare of World War I, for example, provides a powerful explanation of the behaviour of soldiers engaged in combat, albeit in a highly specific set of circumstances.<sup>17</sup> The point is, however, that there is the risk that by relying on game theory, the baby is thrown out with the bathwater. The thing to explain in the law of treaties these days, many would suggest, is how treaties can function on the basis of something other than blunt state interests, and, more normatively, how treaties can come to serve the international public interest. While there is sufficient reason to be critical of such enterprises as well (whose interest, after all, will the international public interest come to stand for?), applying game theory to the law of treaties is at best a failed exercise in understanding the law of treaties, and at worst a politically retrograde step, perpetuating the idea that international law serves the (narrowly defined) interests of states and states alone.

And it is not just game theory work on the law of treaties that suffers from this problem. One can also think of recent attempts to somehow rethink customary international law through game theory.<sup>18</sup> This too results in static (not to say retrograde) work, strengthening assumptions of yesteryear and firmly locating law-making in the international community as the prerogative of states, and states alone: other actors (think civil society, think even international organizations) do not fit the model, and are thus radically excluded.

In short, game theory generally may have its uses in limited settings (illustrating the logic behind an arms race in which no more than two actors are involved, perhaps), but would seem to be fundamentally incapable of handling complexity. When applied to the making of international law, it tends to reproduce, and therewith strengthen, a very classical model of international law, a model that many would discard as being out of date or at least undesirable, insisting as it does on states being the only relevant actors. And stronger states are bound to benefit more from this bolstering of sovereignty and statehood than their weaker counterparts.

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<sup>16</sup> On this, see Jan Klabbers, 'How to Defeat a Treaty's Object and Purpose Pending Entry into Force: Toward Manifest Intent' (2001) 34 *Vand. J. Transnat'l L.* 283.

<sup>17</sup> See Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

<sup>18</sup> See e.g. Jack L. Goldsmith & Eric A. Posner, 'A Theory of Customary International Law' (1999) 66 *U. Chi. L. Rev.* 1113.

## V

The third problem with interdisciplinarity, already touched upon, is that it often implies, to put it somewhat impolitely perhaps, a selling out: the lawyer will have to become attractive to the realist, and will only become attractive if the realist can take the lawyer's words and insert them into a realist worldview. And that, in turn, can only happen if the lawyer subjects herself to her neighbouring discipline, suggesting, for example, that the binding force of the law is dependent on what states themselves want.<sup>19</sup>

The tragedy of it all is perhaps precisely the eagerness with which the lawyer is willing to abdicate: the desire to be taken seriously by the powers that be is an almost natural by-product of international legal training. The international lawyer grows up—academically, that is—with a serious inferiority complex: international law is often said to be neither law (and thus inferior to domestic law) nor influential (and thus inferior to the policy sciences). It might be the case, in Louis Henkin's deservedly famous phrase, that 'almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time,'<sup>20</sup> but there is always the nagging suspicion that states do so not out of respect for the law, but simply because it is often enough expedient to adhere to the law. The will to overcome this inferiority complex helps explain the immense popularity of conceptually implausible, but politically convenient notions such as soft law: not softer than most of international law, yet sensitive to the wishes of our political masters.<sup>21</sup>

What lawyers should do, of course, instead of bowing to the demands of a coy and flirtatious realism, is play hard to get. Lawyers, academic lawyers at least, should refuse to give up the 'simplifying rigor'<sup>22</sup> that characterizes law, and should be ready to defend its values

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<sup>19</sup> Note in this connection that the notion of legalization, as used in the Summer 2000 issue of the journal *International Organization*, seems to treat law as a policy option among policy options. That is a far cry from the lawyerly creed that wherever there is a society, there will be law. See Judith Goldstein *et al.*, eds., *Special Issue: Legalization and World Politics* (2000) 54 *Int'l Org.*

<sup>20</sup> See Louis Henkin, *How Nations Behave: Law and Foreign Policy*, 2nd ed. (New York: Columbia University Press, 1979) at 47.

<sup>21</sup> While I would be perfectly willing to accept that many states engage in soft law, I am not convinced that it is conceptually feasible, nor politically desirable. Moreover, courts are not in the habit of applying it either, at least not as soft law. See my 'The Redundancy of Soft Law' (1996) 65 *Nordic J. Int'l L.* 167, and 'The Undesirability of Soft Law' (1998) 67 *Nordic J. Int'l L.* 381.

<sup>22</sup> This is arguably the most useful insight of Weil's seminal piece: that law is at its most useful when holding on to its simplifying rigor. Otherwise, it becomes indistinguishable from politics or morality. See Prosper Weil, 'Towards

and its modesty, its purity, if you will, with a wink and a nod to Kelsen. The main challenge for the lawyer is not so much, on this score, to aim at influencing behaviour; rather it is to cherish and preserve the relative autonomy of the law, for a law that has lost its autonomy ceases to be law.

## VI

Many of the pitfalls sketched above apply equally to all attempts to hook up international law with some other discipline, be it history, economics, or international relations. Still, as suggested earlier, with respect to international relations, there is a separate, additional problem with interdisciplinarity, and that is the circumstance that international relations, as a discipline, does not exist and cannot exist, and that its most enlightened practitioners are fully aware of this (without of course, understandably, telling anyone).<sup>23</sup>

In the mid-1950s, Hannah Arendt could write that international affairs still contained the most pure version of politics, because the sympathies and enmities amongst states were not always reducible to simple material interests.<sup>24</sup> Where Arendt generally deplored the way politics had become tainted with concern for social and economic issues (therewith becoming interest-based politics rather than politics in the sense of people debating competing visions of the good life unhindered by their own interests<sup>25</sup>), international relations were still more or less pure politics. As a result, it seemed justifiable to have a separate

Relative Normativity in International Law?' (1983) 77 Am. J. Int'l L. 413. Politics and morality, of course, are precisely the two prisms (with morality disguised as legitimacy) often utilized to gauge international behaviour, with law falling through the crack. See Robert O. Keohane, 'International Relations and International Law: Two Optics' (1997) 38 Harv. Int'l L.J. 487. And for an incisive critique of legitimacy, see Martti Koskenniemi, 'Legitimacy, Rights, and Ideology: Notes Towards a Critique of the New Moral Internationalism' (2003) 7 Associations: Journal for Legal and Social Theory 349.

<sup>23</sup> An indication is that some are aiming to connect international developments to domestic concerns. For an example, see Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54 Int'l Org. 217.

<sup>24</sup> See Hannah Arendt, 'What is Freedom?' reproduced in Hannah Arendt, *Between Past and Future* (London: Penguin, 1993) at 155: 'Only foreign affairs, because the relationships between nations still harbor hostilities and sympathies which cannot be reduced to economic factors, seem to be left as a purely political domain.'

<sup>25</sup> It is no coincidence that Rawls would later use a hypothetical veil of ignorance to conceptualize politics in a similar manner: as soon as concrete interests enter the picture, politics ceases to be concerned with the good life and collapses into power struggles. See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1973) esp. 136-42.

academic discipline for the study of this peculiar form of politics.

Those days are, we may well presume, over: in a globalized world, it has become increasingly clear that social and economic processes, and indeed political processes even in a purer, Arendtian definition of politics, do not stop at national boundaries. This is where it becomes clear that there is a big void (call it a black hole, if you will) at the very heart of the discipline of international relations. It is precisely the awareness that there is no such thing as international relations that plagues the discipline and makes its value as a source of information and understanding about what is happening in the world rather limited, and it is this black hole that renders the discipline subject to a multitude of methodological squabbles.

It may be anecdotal evidence, but I have noticed that whenever I wish to learn something about the world around me, no matter how international the topic, I rarely grasp for international relations scholarship.<sup>26</sup> If I want to find out what goes on, I read Bauman, Beck, Sennett, or other sociologists. If I wish to think about making the world a better place, I read political theory: Arendt, Habermas, Oakeshott, or others. The main (only?) reason I have for reading international relations scholarship is when I am asked to write about it. This body of work does little to help my understanding of the world around me; all it does is help my understanding of the various methodological quibbles its practitioners engage in. There is no such thing as international relations in isolation from general political, social, or economic processes;<sup>27</sup> there cannot be such a discipline (not anymore, at any rate), and least of all should lawyers be persuaded to try and find their way through the methodological debates. For if it does not help our understanding of the world around us, why bother?

## VII

That is not to say, of course, that nothing good comes out of scholarship studying international political processes. It is not uncommon for authors working in the field to provide some useful insights in the chapters that are wedged in between the methodological or semi-theoretical ones at the beginning and the end. Thus, Gary Bass's *Stay the*

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<sup>26</sup> This does not just apply to me. It is also highly visible in German international law scholarship (and probably does not stop there). On German scholarship, see my review of Ulla Hingst 'Auswirkungen der Globalisierung auf das Recht der völkerrechtlichen Verträge' (2003) 16 *Leiden J. Int'l L.* 201.

<sup>27</sup> Which is not to say that political science itself would be beyond debate. For a useful analysis of some of its ailments, see Ian Shapiro, 'Problems, Methods, and Theories in the Study of Politics, Or What's Wrong With Political Science and What To Do About It' (2002) 30 *Political Theory* 596.

*Hand of Vengeance*<sup>28</sup> is a useful overview of the development of war crimes tribunals, although it does little to support its liberal thesis—in fact, most of his analysis suggests that the liberal thesis cannot be upheld except as an article of faith. Downright excellent is Susan Sell's treatment of how the World Trade Organization came to occupy itself with intellectual property rights:<sup>29</sup> the book makes clear how politics came to influence the development of the law not by using substantive issues to score methodological points, but by doing actual, sensible, research and, most importantly, by taking the legal bits seriously.

For this is a curious aspect of the call for interdisciplinarity: lawyers are asked to take international relations seriously, while the international relations people refuse, more often than not, to dig into legal thought. A fairly representative illustration is Andrew Linklater's heralded study *The Transformation of Political Community*,<sup>30</sup> which in effect aims to re-conceptualize international law but without consulting the work of international lawyers to any great extent. Typically, international law, however central to his study, is treated as an afterthought, with his knowledge and understanding of it being traceable to a few outdated textbooks. As a result, his rendition of international law, characterized by an almost absolute sovereignty, is a rendition few international lawyers would recognize, which also means that much of his argument boils down to fighting straw men: trying to overcome an incarnation of international law that does not have much support to begin with.

And this attitude is fairly typical. The typical international relations study, no matter how closely bordering on international law, will list but a handful of legal studies. Usually, these are either the classics (Grotius, of course, Vattel and Pufendorf to a lesser extent) or some standard textbook in an old edition (an early edition of Oppenheim's, or at best the 1963 edition of Brierly's), thus raising the suspicion that the international relations scholar has merely browsed the bookshelf of an uncle or grandfather who may have read law once upon a time—forty or sixty years ago. As a result, much international relations scholarship is singularly ill-informed when it comes to matters of international law, and tends to assume that international law today is really still as it was in 1928, or 1944 or, why not, 1648. The whole world has changed, so it seems, except international law.<sup>31</sup> If nothing else, this

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<sup>28</sup> See Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000).

<sup>29</sup> See Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge: Cambridge University Press, 2003).

<sup>30</sup> See Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Cambridge: Polity Press, 1998).

<sup>31</sup> It is not just international relations scholars who labour under this

seriously underestimates, and therewith undermines, the emancipatory potential of international law.<sup>32</sup>

### VIII

All this is not to suggest that there is no value in interdisciplinarity, for there is. As noted at the outset, the practicing lawyer who is unaware of neighbouring disciplines is bound to do a bad job, from whichever perspective. And the same applies to the academic: the international lawyer who engages in political naivety or silliness is not doing good academic work—even though the technicalities may be supremely crafted. But it is doubtful whether interdisciplinary research can be properly done by bringing two or more people from the neighbouring disciplines together. As the saying goes, few good things have ever come out of committees. What might just work, though, is to stimulate interdisciplinary cross-fertilization by means of joint seminars, interdisciplinary discussion groups, and that sort of thing.

The best work in international law tends to be individual work that is well-informed about neighbouring disciplines, and would be readable and understandable to those neighbouring disciplines, and perhaps even contribute something to those disciplines, without however losing its distinctively legal character. Good scholarship often is good precisely because it takes insights from elsewhere on board while retaining its own disciplinary character.<sup>33</sup> The lawyer should not strive to ‘practice social science without license,’ for the result is usually disastrous. Instead, the international lawyer has quite a bit going for her. It is the lawyer’s unique selling point to have an understanding of the language in which international affairs are conducted (the language of law and legal argument); for that reason alone it is inexcusable that international relations scholars, as a group, tend to ignore legal studies.<sup>34</sup> What is worse yet is that trying to get the lawyer to part with

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misapprehension: it also affects others writing about international law from neighbouring disciplines. A useful illustration is provided by the constitutional theorist Neil Walker, ‘Flexibility Within a Metaconstitutional Frame: Reflections on the Future of Legal Authority in Europe’ in Gráinne de Búrca & Joanne Scott, eds., *Constitutional Change in the EU: From Uniformity to Flexibility?* (Oxford: Hart, 2000) 9.

<sup>32</sup> For an illuminating demonstration of this emancipatory potential, see Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge: Cambridge University Press, 2002).

<sup>33</sup> A good example (if starting from the other end, so to speak: a literary theorist taking on law) is the work done by Stanley Fish on interpretation, fruitfully combining literary studies with law. See e.g. Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Oxford: Clarendon Press, 1989).

<sup>34</sup> So do economists, but then again, they usually do not advocate

this unique knowledge and submit to international relations theorizing is bound to result in obfuscation. In the end, then, the lawyer can justifiably ask political science's most popular question: who gets what, when, and how out of interdisciplinarity?

#### POST-SCRIPT

If I counted correctly, the above article has benefited from the attention of no less than four reviewers: two (at least) internal ones, and two external reviewers. Many of their useful comments have been incorporated, to the extent possible or practicable, in the above. But one comment calls for separate attention.

This has to do, somehow, with defining what interdisciplinarity stands for. The point is made that while my critique of mainstream interdisciplinarity is generally well-founded (if, understandably given the format, a bit on the surface), I tend to ignore the work of others working outside the mainstream, and those others would cover in particular many names associated with critical legal studies.

The simple truth is that I never thought of the work of, say, David Kennedy, Anne Orford, Tony Anghie, or Hilary Charlesworth as interdisciplinary, at least not interdisciplinary in the sense of self-consciously trying to build a bridge between distinct disciplines. Tony Anghie, as far as I can tell, is not trying to create a new discipline (post-colonial socio-legal historical studies would, after all, be quite a mouthful, and may not even be an accurate description of his work at any rate), nor aiming to forge close connections between history and law or post-colonialists and lawyers, but simply using insights from elsewhere (from history to however one pigeonholes the writings of Edward Said and others) in what remains distinctly legal work. Hilary Charlesworth may well be Derrida-inspired, but is nonetheless (and fortunately) still capable of doing excellent legal work—recognizably legal work. And the same holds true, *mutatis mutandis*, of Nathaniel Berman, Karen Knop, Karen Engle, Susan Marks, James Thuo Gathii, and others.

In short, I would agree with the reviewers that those they mentioned often do excellent work—it just never occurred to me that it would somehow not be 'legal' but something else. Indeed, to my mind, works like this demonstrate the 'good scholarship' I refer to above, work that is 'good precisely because it takes insights from elsewhere on board while retaining its legal character.'<sup>35</sup>

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interdisciplinarity with international lawyers to begin with. Historians, by contrast, tend to take their international law seriously; more seriously, at any rate, than international relations scholars.

<sup>35</sup> On a personal note, this may well be the first time that I quote my own words.

Why then do I feel the need to somehow respond? It struck me, upon seeing those names, that if their work is to be considered as interdisciplinary (which I would be reluctant to accept), then this signifies not just the potential of interdisciplinary work (engaged in by individuals, mind you, not by committees), but also the limits of interdisciplinarity. And it once again underlines what may well be my central point: that interdisciplinarity is a politically charged activity in itself.

Many of those critical international lawyers mentioned above make a point of studying the links between law and power, and more in particular how law comes to structure power. There is nothing wrong with this, obviously (and as noted, I have the highest regard for much of the work done in this 'counter-hegemonic' tradition), but it does have its limits. To refer to this sort of work as interdisciplinary is to highlight its political nature, and that is once again to somehow succumb to the position that political science is, somehow, more insightful than the science of law. Why not accept the circumstance that Martti Koskenniemi, David Kennedy, Susan Marks, Karen Knop, and Gerry Simpson are lawyers, studying legal arguments, and addressing audiences made up, predominantly, of lawyers? Why this need to somehow elevate their work beyond the legal? Why this urge to have it represent something else than good legal work?

There is a second pertinent observation here: to the extent that lawyers end up doing political science, they also end up reflecting the limits of political science. The main limit then is that, like the mainstream, they are somehow conceptualizing politics as being about power, and power alone. They may be inspired by Foucault rather than Waltz or Easton, but still: their focus rests squarely on power, and it rests squarely on power because the analysis of power is how political science (also in its Foucauldian guise) tends to see its main task.<sup>36</sup>

Yet, there is more to politics than the somewhat vulgar 'who gets what, when, how' question. Politics is not just about power and about distributing values; it is also about figuring out which values are (or could be, or should be) of importance to begin with.<sup>37</sup> Taking on board a conception of interdisciplinarity as reaching its peak in critical legal studies on power is to ignore, perhaps undermine, more normative work—or more overtly normative work perhaps.

Perhaps it is time for the lawyer to embrace the circumstance

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It feels a bit awkward, but seems justified under the circumstances.

<sup>36</sup> A useful collection (in Dutch) is Meindert Fennema & Ries van der Wouden, eds., *Het politicologen-debat: wat is politiek?* (Amsterdam: Van Gennep, 1982).

<sup>37</sup> Which, of course, is not to say that the analysis of power is not interesting, or useless, or whatever—indeed, the present piece belies that position at any rate.

that there are many ways of doing legal work, and that there is no reason to be ashamed of being an international lawyer. This is what I wanted to convey when celebrating the relative autonomy of international law: while the good lawyer has an open mind to influences and insights coming from other disciplines, it would be a mistake to give up the law's own discipline and submit to others. And as much as it is not for Anne-Marie Slaughter to set my research agenda (dual or otherwise) and define interdisciplinarity, neither would I entrust any other individual with that task: for to define what interdisciplinarity stands for is to exercise power.