

## **From International Law and International Relations to Law and World Politics**

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DRAFT: June 23, 2017

(Forthcoming in Oxford Research Encyclopedia of Politics: Oxford University Press, 2017)

### **Introduction**

In the early 1990s, political science scholarship on international law coalesced into an International Law/International Relations (IL/IR) research agenda focused primarily on one type of law (*public international law*) and one type of court (*international courts*), and on their relationship to states. Given the traditional state-centric emphasis of political science's international relations subfield, this focus was unsurprising. After all, public international law is the branch of international law aimed at governing state behavior, and the courts with which international relations scholars are most familiar—such as the International Court of Justice (ICJ) and the Court of Justice of the European Union (CJEU)—adjudicate disputes involving states.

IL/IR scholarship has paid relatively little attention to other areas of law and other types of courts which, while perhaps less familiar to some international relations scholars, are just as important to international relations—and perhaps more important—than public international law and international courts. Moreover, even as international relations scholars who conceive of their field as “world politics” are increasingly bringing non-state actors into their research, IL/IR has tended to neglect those areas of law that are most relevant to non-state actors, transnational relations, and private global governance. In addition, international relations scholars, applying the traditional distinction between anarchical international politics and hierarchical domestic politics, have sometimes treated international law and international courts as if they were categorically different from domestic law and domestic courts, even as that distinction is decreasingly influential in political science more generally.

But this is changing. There is now a move beyond IL/IR into a new stage of interdisciplinary scholarship that I will call Law and World Politics (L/WP). Moving beyond the “IL” in IL/IR scholarship, scholars are beginning to study the ways that domestic law and domestic courts play an indirect role in international relations by providing foundations for international law and international courts, and the ways that domestic law and domestic courts play a direct role in international relations. Moving beyond the “IR” in IR/IL scholarship, scholars are studying areas of law (such as conflict of laws and private international law) and types of dispute resolution bodies (such as arbitral tribunals) that regulate the activity of non-state actors and define the scope of state support for private forms of global governance. And moving beyond the domestic-international divide, scholars are increasingly rejecting “international law exceptionalism”—the notion that international law is categorically different from domestic law—and beginning to take advantage of theoretical convergence across the

domestic, comparative and international subfields of political science to develop a better general understanding of the relationship between law and politics.

This article's main goal is to map out L/WP scholarship by examining these three trends. It also aims to facilitate further L/WP research by describing several areas of law—including foreign relations law, conflict of laws, transnational commercial arbitration, and international investment law—that may be unfamiliar to some political scientists, and explaining why they are relevant to international relations and to world politics more broadly. The article proceeds in five sections. The first two sections provide background by (I) clarifying the definition of international law and (II) briefly surveying the historical evolution of interdisciplinary research on international law. The last three sections review more recent scholarship to illustrate how L/WP research is moving (III) beyond international law, (IV) beyond international relations, and (V) beyond international law exceptionalism.

## **I. International Law and Related Concepts**

IL/IR scholars have focused on international law and, more specifically, on one type of international law: public international law. They have not, however, always defined international law in the same way. Therefore, it may be helpful to begin by clarifying the definition of international law. International relations scholars often define international law in terms of the subjects to which it applies and the scope of activity it governs. Traditionally, this meant international law was the “law of nations,” the rules that apply to states (the subjects) in their relations with each other (the scope).

But there are two problems with this type of definition. First, definitions based on subjects and scope are unstable. International law's subjects and scope have varied historically. The subjects of international law have expanded to include non-state actors (e.g. individuals are subjects of international criminal law) and the scope of international law reaches beyond relations between states (e.g. international human rights law governs how states treat their citizens). Second, there are types of norms other than international law—including other legally binding norms such as domestic law (sometimes referred to by international lawyers as “municipal law”) and non-legally binding norms—that may also apply to states as subjects (e.g. many aspects of constitutional law) and govern the same activity as international law (e.g. the conduct of diplomacy and the use of military force). Therefore, definitions based solely on subjects and scope cannot effectively distinguish international law from other types of law or from non-legally binding norms.

It may be more useful to define international law in terms of its sources, which include treaties, customary international law, and general principles of law. This is what international lawyers and international courts ordinarily mean when they use the term “international law,” and it is how international law defines itself in its doctrine of sources, the most authoritative statement of which is Article 38(1) of the Statute of the International Court of Justice (ICJ) (Shaw, 2008). Article 38(1) provides as follows:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

A definition of international law in terms of its widely accepted sources builds on the comparatively stable practical understanding of what counts as binding international law, and can be agnostic about (and therefore accommodate) variability in subject and scope while distinguishing international law from other types of international norms.

Treaties (also commonly called “conventions”) are legally binding written agreements between two or more states, and can be either bilateral or multilateral. The rules governing treaties—including treaty making, entry into force of treaties, reservations, treaty validity, and the interpretation, amendment and termination of treaties—are codified in the Vienna Convention on the Law of Treaties, the so-called “treaty on treaties” (Aust, 2014). IL/IR scholarship has focused largely on treaties, including their design and their influence on state behavior.

Customary international law consists of rules that are derived from the conduct of states (“state practice”) and accepted by them as legally binding (a sense of legal obligation or “*opinio juris*”). Customary international law rules are often difficult to identify. However, it is generally understood that to establish that a rule is a customary international law rule, both state practice and *opinio juris* must be demonstrated. The greater the duration, consistency and generality of the practice, the stronger the evidence that the state practice requirement is fulfilled. As to *opinio juris*, international courts sometimes insist on rigorous evidence that states follow a rule out of a sense of legal obligation, and sometimes are willing to infer *opinio juris* from general practice. Once established, a customary international law rule is legally binding on all states, except states that persistently objected to the rule before its establishment and, for regional customary international law rules, states outside the relevant region (Crawford, 2012. IL/IR scholars have so far paid less attention to customary international law than to treaties (Dunoff & Pollack, 2013).

General principles of law are principles of law that are recognized by the world’s major legal systems (Cheng, 2006). There are two views, not necessarily mutually exclusive, about how to establish that a given principle is a legally binding general principle of law. One is to demonstrate that a principle is shared by all or a majority of the world’s domestic legal systems and to adapt the principle to the international context, while another is to demonstrate that it can be derived from the character of the international legal system itself (Crawford, 2012; Murphy, 2012; Thirlway, 2014). International lawyers and international courts ordinarily consider general principles of law as filling gaps left by treaties and customary international law, particularly in procedural matters (such as evidence and judicial process), and there is a tendency to view them as less important than the other two types of international law (Shaw, 2008).

The reference to “judicial decisions and the teachings of the most highly qualified publicists” does not mean that courts and scholars create international law. To the contrary, Article 38(1)(d) states that these sources are “subsidiary means for the determination of rules of law.” Thus, international lawyers and international courts often use domestic court decisions, international court decisions, and the research of scholars and institutions of international law (notably, the United Nations International Law Commission) as evidence that a given rule is or is not an international law rule, or to ascertain the content of a rule (Buergethal & Murphy, 2013). Article 38(1)(d) refers to Article 59 of the ICJ Statute, which states that “[t]he decision of the Court has no binding force except between the parties and in respect of that particular case.” Nevertheless, international courts often follow their own and each other’s conclusions about international law, even if they are not legally required to do so.

Another advantage of a definition of international law based on sources is that it is not limited to public international law. Although there is not consistent usage even among international legal scholars, public international law may be understood as international law that governs state behavior, including international relations and the treatment of individuals by states. Given international relations scholarship’s traditional state-centric focus, IL/IR scholarship has focused quite narrowly on this type of international law. But international law can also have important implications for non-state actors, including individuals and businesses. For example, there are many treaties governing matters ranging from adoption and child abduction to wills and contracts, many of which have been developed by the Hague Conference on Private International Law. There also are treaties and European Union regulations in the field of conflict of laws, the field which, in private matters with connections to two or more states, determines which state’s courts have jurisdiction, which state’s laws govern, and whether one state will enforce a judgment of another state’s court. These branches of international law are commonly referred to as *private* international law (Janis, 2008; Whytock, 2016). The boundaries between public and private international law are not always clear—for example, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards might be considered an example of hybrid public-private international law, as it is a treaty that supports a private form of dispute resolution (arbitration) by imposing on states obligations to enforce arbitration agreements and arbitral awards. And conflict-of-laws rules allocate governance authority among states, but are applied in private litigation. The point remains that an advantage of a sources-based definition of international law is that does not include or exclude international law based simply on whether it is categorized as public or private.

Although treaties, customary international law and general principles are the three well-established types of international law, there are theoretical debates about whether there are other sources of international law that currently or may one day exist (Thirlway, 2014). Moreover, international law does not include all international norms. To the contrary, non-legally binding norms are pervasive and important in world politics (Finnemore & Sikkink, 1998; Kratochwil 1989; Sandholtz & Stiles, 2009). Some scholars refer to these non-legally binding norms as “soft law” (Guzman & Meyer, 2010; Pollack & Shaffer, 2013). Without doubting the importance of these norms, others scholars find it analytically preferable to refer to them simply as “non-legally binding norms” to guard against conflating them with legally binding international law (Childress, Ramsey, & Whytock, 2015; Murphy, 2012; Raustiala, 2005). One of the most important questions for political scientists, legal scholars and policy makers is whether “legal

norms, as a type, operate differently from any other kinds of norms in world politics” (Finnemore, 2000; Slaughter Burley, 1993). This inquiry requires an analytical distinction between what is and is not law. Even if the law of sources does not always yield obvious answers to what is and is not international law, it offers a well-established point of departure that is consistent with how international law itself defines what is legally binding and with how international lawyers and international courts themselves analyze which norms are legally binding.

Political scientists have proposed concepts that are related to, but not the same as, international law. These include the concepts of “legalization,” which refers to “a particular set of characteristics that institutions may (or may not) possess,” namely obligation, precision, and delegation (Abbott et al., 2000), and “judicialization,” which is “the infusion of judicial decision-making and of courtlike procedures into political arenas where they did not previously reside” (Tate & Vallinder, 1995). These concepts have already proven to be valuable for improving understanding of certain aspects of world politics. Other political scientists and legal scholars, however, have criticized these concepts for being based on excessively narrow understandings of law (Finnemore & Toope, 2001). The essential point is that the concepts of legalization and judicialization are different from the concept of international law. Which concept to use depends on one’s research question.

## II. International Law and Political Science

Political scientists have been studying international law since the birth of political science as a discipline. In the United States, for example, when the American Political Science Association (APSA) was founded in 1903, its constitution defined the organization’s goal as “the encouragement of the scientific study of Politics, Public Law, Administration and Diplomacy,” and “international law and diplomacy” was one of its seven founding subfields (Schmidt, 1998).

Since then, political science research on international law has developed in five stages. First, during a pre-World War II *formalist stage*, political scientists—not unlike their colleagues in law schools—focused largely on analysis of international law’s jurisprudential underpinnings and historical development and on systematic description of its content (Fenwick, 1924; Gettell, 1910; Wright, 1922). Second, in a *realist stage*, political scientists challenged the formalist approach by insisting on the importance of international law’s social and political context, including the role of state power, in explaining the creation and impact of international law. One product of the realist stage was a deep skepticism about the role of international law in the realm of high politics, but without denying international law’s influence in less political fields of activity (Carr, 1939; Morgenthau, 1940, 1948; Niemeyer, 1941). In a third *theoretical stage*, political scientists moved beyond the realist critique of international law by using various theoretical approaches, including bureaucratic decision-making theory and systems theory, to develop accounts of how international law can play a role in world politics (Bull, 1977; Deutsch & Hoffman, 1968; Falk, 1970; Kaplan & Katzenbach, 1961). The fourth *international conflicts stage*, more empirical but driven by legal scholars more than by political scientists, moved from theory to case-study research on the role of international law in international conflicts—the very realm of international relations where realists had the most doubt about a significant role for

international law (Boyle, 1985; Bowie, 1974; Chayes, 1974; Ehrlich, 1974; Finnegan, Junn, & Wilson, 1979; Forsythe, 1990; Henkin, 1979).

The fifth and current *international law and international relations* (IL/IR) stage of research on international law is a joint enterprise of legal scholars and international relations scholars. The emergence and refinement of three paradigms of international relations as alternatives to realism contributed to the reinvigoration of political science scholarship on international law in this fifth phase: institutionalism (Keohane, 1984, 1997), constructivism (Kratowich, 1989; Onuf, 1989), and liberalism (Moravcsik, 1997; Slaughter, 1995). Among the seminal works of IL/IR scholarship are Abbott (1989) and Burley (1992). Although the research in this current phase is diverse, it has tended to emphasize the creation of international law, including the emergence and evolution of international legal norms and the design of treaties (e.g. Finnemore & Sikkink, 1998; Johns, 2014; Koremenos, 2005; Raustiala, 2005; Sandholtz, 2007); state compliance with international law (e.g. Simmons, 2000); and international courts (e.g. Alter, 2014; Cichowski, 2007; Helfer & Slaughter, 1997; Johns, 2015; Stone Sweet & Brunell, 1998). Substantively, IL/IR has focused largely on three areas of law: human rights (e.g. Hafner-Burton, 2009; Simmons, 2009), international economic law (e.g. Busch & Reinhardt, 2001; Simmons, 2000), and international conflict (e.g. Huth, Croco, & Appel, 2011). Methodologically, it complements the theoretical and case-study orientations of earlier stages of political science research with the frequent use of large-N statistical analysis to test hypotheses about the role of law in international relations (e.g. Kelley, 2007; Simmons, 2000).

There are already many excellent and comprehensive reviews of the IL/IR stage of interdisciplinary research on international law (e.g. Arend, Beck, & van der Lugt, 1996; Byers, 2008; Dunoff & Pollack, 2013; Hafner-Burton, Victor, & Lupu, 2012; Raustiala & Slaughter, 2002; Slaughter, 2004; Shaffer & Ginsburg, 2012; Simmons, 2012). It would make little sense to duplicate them here.

Therefore, the remainder of this article focuses on an emerging sixth stage of interdisciplinary research, which I call “Law and World Politics” (L/WP) to distinguish it from three tendencies in IL/IR scholarship: a focus on one type of law, international law (especially *public* international law), and one type of courts, international courts (the “IL” in IL/IR); a focus on state behavior (the “IR” in IL/IR); and the international law exceptionalism reflected by IR/IL’s tendency to treat international law and domestic law as different in kind. L/WP scholarship pushes against these implicit borders of IL/IR scholarship. First, pushing against “public international law-centrism” and “international court-centrism,” L/WP scholarship incorporates the role of not only private international law, but also domestic law, domestic courts and other domestic legal institutions, in international relations. Second, moving beyond IR, L/WP scholarship adopts the “world politics” paradigm that is increasingly influential in political science by incorporating law governing not only international relations, but also transnational relations. Third, L/WP scholarship rejects a conception of international law as *sui generis* or different in kind from domestic law. Challenging international law exceptionalism, L/WP scholarship is focusing on the similar structures and functions of international law and domestic law to theorize across the domestic-international divide with the goal of developing a deeper understanding of the relationship between law and politics.

Dunoff and Pollack (2014) argue that “IL/IR has not developed as a truly interdisciplinary field, but instead has primarily involved the application of IR theories and methods to the study of international legal phenomena.” For this reason, they argue, “IR scholarship is insufficiently attentive to the practical realities and theoretical complexities of the international legal order – a deficiency that can and should be addressed through greater attention to international legal scholarship, and through genuinely interdisciplinary research”—through “reversing field,” as they call it. As this article will show, L/WP “reverses field” by drawing on legal knowledge not only in international legal scholarship, but also other areas of legal scholarship that are generally less familiar to international relations scholars, such as foreign relations law, conflict of laws, international investment law, and private international law.

### **III. Beyond International Law: The Role of Domestic Law and Domestic Legal Institutions in International Relations**

As the “IL” in IL/IR suggests, IL/IR scholarship focuses primarily on one type of law, international law, and one type of court, international courts (Dunoff & Pollack, 2013). Two streams of L/WP scholarship are moving beyond international law and international courts—that is, beyond the “IL” in IL/IR scholarship—by incorporating domestic law and domestic legal institutions into the study of international relations. The first aims to improve accounts of the role of international law and international courts in international relations by incorporating into those accounts the domestic legal foundations of international law and international courts. The second stream breaks more sharply from the current IL/IR research agenda by focusing on the role of domestic law and domestic courts as independently significant actors in international relations, apart from their role as foundations for international law and international courts.

#### **A. The Domestic Legal Foundations of International Law**

The first stream of L/WP research retains IL/IR’s primary focus on the role of international law and international courts in international relations, but turns to domestic law and domestic legal institutions to help explain that role. While the role of international law and international courts in international relations remains the primary *explanandum* in this line of research, the domestic legal foundations of international law and international courts are increasingly part of the *explanans*. This line of research recognizes what international legal scholars have long understood: that domestic law and domestic courts are foundational to international law development, international law application, international law compliance, and the effectiveness of international courts (Shelton, 2011).

***International Law Development.*** First, domestic law and domestic courts are foundations of international law development. Domestic legal rules structure states’ internal processes for treaty making, determining, among other things, which domestic political actors participate in the treaty making process and which have a right to approve a treaty once it has been negotiated. These rules vary cross-nationally. In some states, at least some treaties may be made by the head of state or head of government alone. For example, in the United States, sole executive agreements may be made with other states on the authority of the president alone (Bradley, 2013). In other states, domestic law allows the head of state or government to take the initiative to negotiate treaties with other states, but requires legislative approval prior to ratification. Some

states with bicameral legislatures require both houses to approve, while others require only one (Shelton, 2011). For example, treaties made under Article II of the U.S. Constitution must be approved by two-thirds of the Senate, whereas executive-legislative agreements must be approved by a majority of both houses of Congress.

Interdisciplinary scholars have started to study how domestic legal rules regarding legislative approval of treaties influence states' treaty-making behavior. One stream of research focuses on how these rules affect the form of international agreements. In the U.S. context, for example, studies have examined how these rules interact with domestic and international political factors to influence the president's choice among sole executive agreements, executive-legislative agreements, and Article II treaties (Hathaway, 2008; Martin, 2005; Setear, 2002).

Another stream of research uses cross-national analysis to shed light on the domestic legal factors that influence treaty ratification. Treaties do not enter into force until the required number of states have expressed their consent to be bound by the treaty, and this consent is commonly indicated by ratification (Aust, 2010). Therefore, states' expression of consent to be bound—including by ratification—is a critical step in the treaty-making process. Simmons (2009) presents evidence that “the higher the ratification hurdle under domestic law, the less likely a government will be to ratify an international human rights agreement, even if it is sympathetic to its contents,” and Haftel & Thompson (2013) find that the stricter a state's domestic legal requirements for legislative approval of treaties, the longer it takes for the state to ratify bilateral investment treaties. As Cope (2017) explains, legislatures “are involved in nearly every stage of treaty creation...[and thus] meaningfully impact how their states influence...international law.”

Other research reveals a relationship between states' legal traditions (such as common law or civil law) and treaty-making behavior. Simmons (2009) finds that states with domestic legal traditions based on common law are less likely than other states to ratify human rights treaties and more likely to make reservations to those treaties that they do ratify. Zartner (2014) finds that states with a civil law tradition are more likely than states with other legal traditions to ratify human rights treaties and environmental treaties. In contrast, in the context of bilateral investment treaties, Haftel & Thompson (2013) find that countries with common law systems are faster to ratify than countries with other legal traditions, and suggest “that the effect of common law on international agreements is more complex than was initially thought.”

Far more could be learned about the domestic legal foundations of treaty-based cooperation by using more sophisticated comparative data on domestic legal rules. An impressive dataset created by Verdier and Versteeg (2015, 2017) promises to open new avenues for such research. Their data includes detailed information about domestic legal rules governing treaty-making procedures for more than 100 countries from 1815 to 2013.

Beyond treaties, domestic law can also influence the creation and evolution of two other types of international law: customary international law and general principles of law. As noted above, the two required elements of a rule of customary international law are state practice and *opinio juris* (a sense of legal obligation). Domestic law might serve as evidence of either or both of these elements (Shaw, 2008). Domestic law also contributes to general principles, insofar as determining whether a putative general principle of law exists involves an exercise in

comparative legal analysis to determine whether it is indeed common to the world's major legal systems (Janis, 2008). In these ways, domestic law can be understood as at least partially constitutive of these two types of international law.

Domestic courts also contribute to the development of international law. For example, domestic courts examine evidence of state practice and *opinio juris* to determine whether a putative rule of customary international law exists. These domestic court determinations may then be used as evidence of international law in later situations (Crawford, 2012). This is one sense in which judicial decisions are, as Article 38(1)(d) of the ICJ Statute provides, a “subsidiary means for the determination of rules of [international] law.” In this way, domestic courts “help mold rules through the collection of evidence of customary international law or the general principles of law” (Janis, 2008). Domestic courts also contribute to the development of international law insofar as their decisions constitute state practice, which, along with a sense of legal obligation, is necessary for the establishment of customary international law (Conforti, 1993; Shaw, 2008). According to one recent study, the number of domestic court decisions on matters of international law “easily outnumbers the decisions of international courts and tribunals” (Nollkaemper, 2012). It would therefore seem that political scientists interested in the development of international law should focus as closely—if not even more closely—on domestic courts as on international courts.

***Domestic Implementation and Application of International Law.*** Domestic law and domestic courts also play a fundamental role in determining whether and how international law will be implemented and applied domestically. For example, domestic legal rules govern the circumstances in which international law has domestic legal effect within states. These rules vary cross-nationally. Often this variation is described in a very rough binary fashion, with “monist” states in which international law is automatically deemed part of and perhaps supreme to domestic law, and “dualist” states in which domestic legal systems and the international legal system are considered separate, with international law being part of domestic law only when domestic law itself permits that (Shaw, 2008).

In fact, these rules vary in more complex ways than the monist/dualist distinction suggests (Crawford, 2012). One dimension of variation is the required steps for international law to have domestic effect, ranging from automatic effect to a requirement that international law be implemented through domestic legislation before it has domestic legal effect. To give one example, under U.S. law, a distinction is made between self-executing treaties (which have automatic domestic effect as judicially enforceable federal law upon ratification) and non-self-executing treaties (which are binding on the United States on the international plane, but require implementing legislation in order for them to be judicially enforceable) (Bradley, 2013). Another dimension of variation is the extent to which international law takes priority over domestic law. For example, domestic law—often domestic constitutional law—may or may not make treaties superior to legislation and may or may not make customary international law directly applicable in the domestic legal system (Ginsburg, Chernykh, & Elkins, 2008). In states that give treaties and legislation equal status, conflicts are generally resolved with a later-in-time rule, whereby the more recent of the two rules prevails (Shelton, 2011). Suggesting yet another dimension, in their study of international law in U.S. courts, Sloss and Van Alstine (2017) find that “the willingness of national courts to view an international issue as one of law—and thus within their

realm of authority notwithstanding the political implications—depends heavily on the subject matter of the legal rule involved,” namely on “whether an international legal rule regulates the ‘horizontal’ relations between states, the cross-border ‘transnational’ relations between private actors, or the ‘vertical’ relations between states and private actors.”

The rules governing domestic implementation and application are different for treaties and for customary international law. The Verdier and Versteeg dataset mentioned above includes extensive cross-national data on the domestic rules governing the domestic legal status of treaties and customary international law. Importantly, the data is based not only on constitutional rules, but also rules found in statutes and case law. As the authors put it, their approach allows them “to move beyond traditional monist-dualist classifications and provide a more nuanced exploration of how countries address international law in their domestic legal systems” (Verdier & Versteeg, 2015). This data will help interdisciplinary scholars better understand the domestic legal microfoundations of domestic implementation and application of international law and how they interact with political factors.

Domestic legal rules and domestic courts also play a foundational role in the domestic implementation and application of international law through the processes of treaty interpretation (Aust & Nolte, 2016). Treaty interpretation is an important function because the meaning of treaties (like other types of law) is often ambiguous. Different states may have different interpretations of the rights and obligations created by the same treaty. This means that the domestic implementation and application of the same treaty by different states may, in effect, lead to the internalization of different norms in those states. As discussed below, these interpretive processes also have implications for state compliance with international law.

The Vienna Convention on the Law of Treaties (VCLT) contains principles of treaty interpretation. However, states may have rules of treaty interpretation that are not necessarily consistent with the VCLT, and domestic courts and other domestic legal actors may interpret and apply the VCLT’s principles in different ways (Bradley, 2013). A sophisticated understanding of treaty interpretation by states thus depends on understanding the domestic rules and domestic legal actors that are part of the treaty interpretation process. Domestic law also allocates states’ internal international law interpretation authority. In most states, domestic courts are understood to be the principal interpreters of treaties (Shelton, 2011). But in other states—including the United States—domestic courts give considerable deference to the executive branch’s views on the proper interpretation of a treaty (Bradley, 2013). Domestic courts may also give weight to the interpretive decisions of the domestic courts of other treaty signatories, giving rise to “a corpus of national court decisions . . . that implements, refines, and develops international law” (Murphy, 2012). For these and other reasons, domestic courts likely have “a more profound effect for the actual application of international law . . . than do the decisions of international courts and tribunals” (Nollkaemper, 2012).

Greater attention to cross-national variation in how states interpret treaties would allow scholars to develop a better understanding of how those rules interact with international legal rules of treaty interpretation to influence domestic implementation and application of treaties. Conant (2013) takes an important step in this direction by developing a theoretical account of the factors that influence how domestic courts interpret international law.

Interdisciplinary scholars are also beginning to study the role of legislatures in domestic implementation and application of international law. As Cope (2017) convincingly argues, legislatures “are involved in nearly every stage of treaty...operation, including their...interpretation, implementation, and application. In playing these multiple roles, legislatures meaningfully impact how their states influence and respond to international law.”

***International Law Compliance.*** Domestic courts and other domestic legal actors can contribute to (or inhibit) state compliance with international law. As Conforti (1993) notes, “compliance with international law relies not so much on enforcement mechanisms available at the international level, but rather on the resolve of domestic legal operators such as public servants and judges to use to their limits the mechanisms provided by municipal law to ensure compliance with international norms.” Two mechanisms of state compliance with international law depend heavily on domestic courts: enforcement and internalization.

Technically, neither domestic courts nor international courts can enforce international law (or any law) by themselves because they lack the tools of force to do so. However, they can and often do contribute to enforcement by applying international law, finding conduct in violation of international law, and then ordering compliance or requesting enforcement measures by other bodies (such as the executive branch of a government). Moreover, by interpreting treaties, domestic courts—especially those that enjoy a degree of judicial independence—may limit the ability of other domestic actors to engage in self-serving auto-interpretation of international legal rules, thereby contributing to compliance.

According to transnational legal process theory, an even more fundamental process leading to compliance is internalization. As Koh argues, the key to compliance—or, as he calls it, “obedience”—is a process of “interaction and interpretation whereby international norms become domesticated and internalized into domestic law” (Koh, 1997). One of the principal forms of internalization is judicial internalization, whereby “litigation in domestic courts provokes judicial incorporation of international law norms into domestic law, statutes, or constitutional norms” (Koh, 1997). Similarly, litigation in domestic courts is a process consistent with the spiral model of human rights change proposed by Risse, Ropp and Sikkink (2013).

Building on these insights, interdisciplinary scholars have started to analyze how cross-national variation in domestic law and domestic legal institutions affect compliance with international law. Sandholtz (2012) finds that states have better human rights performance when they have constitutional rules making treaties directly applicable in domestic courts. Verdier and Versteeg’s (2015, 2017) detailed cross-national data on the legal rules governing the status of treaties in domestic law promises to facilitate further studies of the impact of those rules on compliance.

Regarding domestic courts, numerous studies reveal a relationship between domestic judicial independence and international law compliance, including Keith (2002; 2011), Simmons (2009), Lupu (2013), and Crabtree and Nelson (2017). Hafner-Burton, Helfer and Fariss (2011) find that states where domestic courts exercise strong oversight of the executive are more likely to derogate from human rights commitments than other states. Powell and Staton (2011) find that

the less effective a state's domestic judiciary, the more likely it is to both ratify and violate the Convention Against Torture. Helfer and Voeten (2014) find that the impact of European Court of Human Rights judgments on LGBT policies depends on factors including whether a state's courts have the authority to review whether domestic laws and policies violate civil and political rights (including rights protected by the European Convention on Human Rights). Baumgartner (2011) finds that states with certain domestic court access rights perform better in at least some fields of human rights.

Beyond domestic courts, another domestic legal institution may play a supporting role in international law compliance: legislatures. Hillebrecht (2012) emphasizes not only domestic courts but also legislative actors in her study of compliance with human rights treaties. Lupu (2015) finds that the positive impact of human rights treaties increases when a state has more legislative veto players. Cope (2017) shows how legislatures can bring states in (or out of) compliance with treaty obligations—for example, by adopting legislation that conforms to (or violates) those obligations.

Beyond domestic courts and legislatures, interdisciplinary scholars have found that domestic law and states' domestic legal traditions affect compliance. Dancy and Michel (2016) find that states with private prosecution rights in their criminal procedure codes (which allow a victim and/or their relatives to initiate and participate in the criminal investigation and prosecution of a crime) have, on average, 42% more trials of state agents in any given year, and 38.6% more convictions, for human rights violations, even after controlling for various other factors including judicial independence. Jo and Simmons (2016) find that the deterrent effect of the International Criminal Court (ICC) on intentional civilian killing by state actors depends in part on whether states have ICC-consistent domestic criminal statutes. In an in-depth comparative analysis, Zartner (2014) provides evidence that a state's legal tradition (common law, civil law, Islamic law, East Asian law, or mixed) influences its policy toward international law by facilitating or hindering internalization of international law.

The role of domestic law and domestic legal institutions in compliance raises other research questions for empirical examination. Under what circumstances will domestic courts order enforcement when they find that there has been a violation of international law? Under what circumstances will enforcement bodies themselves comply with judicial enforcement orders? Under what circumstances do parties comply with domestic court decisions ordering compliance, even in the absence of an enforcement order? Under what circumstances do courts internalize international law by incorporating it into common law or using international law as an aid in interpreting domestic law, and under what circumstances do legislators internalize international law by implementing it through legislation? Answering these questions will require drawing on political science theories of domestic and comparative politics—including judicial decision-making theory and theories of legislative behavior—to shed light on the factors influencing the behavior of these domestic actors on matters of international law.

***International Courts.*** Like international law, international courts have domestic legal foundations. These foundations are twofold. First, domestic legal institutions affect the creation of international courts. For example, Mitchell and Powell (2011) find that states' legal traditions (civil law, common law, or Islamic law) influence how they design new international courts (as

well as which pre-existing international courts they join and the durability of their commitments to international courts).

Second, domestic legal institutions contribute to the caseload of international courts. Whether a state consents or declines to consent to the jurisdiction of an international court is a foreign policy decision made through a process governed by domestic law. Moreover, domestic courts can also contribute (or not) to the caseload of international courts such as the Court of Justice of the European Union (CJEU) by referring to them disputes about the meaning of international law (Helfer & Alter, 2009; Stone Sweet & Brunell, 1998).

Third, and closely related, domestic law and domestic courts play a crucial role in determining the effectiveness and influence of international courts (Alter, 2014; Slaughter Burley, 1993). Studies have found this to be the case for the CJEU and its predecessor, the European Court of Justice (Alter, 2001; Burley & Mattli, 1993; Helfer & Slaughter, 1997; Stone Sweet & Brunell, 1998). For example, when an international court asserts jurisdiction and decides a dispute, domestic courts may either recognize—and perhaps also order enforcement of—the international court’s decision (again supporting the international court’s claim to authority), or it may decline to do so (thus impeding the exercise of the international court’s authority) (Whytock, 2009a). Domestic court recognition of an international court decision may increase the likelihood of compliance because “governments find it much harder to disobey their own courts compared to international tribunals” (Weiler, 1994). As political scientists have noted, however, domestic court support for international courts is not inevitable (Alter, 2001). Further research could inquire into the factors that determine levels of domestic court support.

## **B. The Direct Role: Domestic Law and Domestic Courts in International Relations**

The second stream of L/WP research that is moving beyond the “IL” in IL/IR scholarship focuses on the direct role of domestic law, domestic courts, and other domestic legal institutions in international relations, separately from their role in supporting international law and international courts. This line of research has, for example, examined the relationship between domestic law and international conflict and on the political and legal determinants of domestic court decisionmaking in cases with implications for international relations. In legal studies, the domestic laws and legal institutions that are relevant to these lines of inquiry are part of the subfield known as “foreign relations law,” which is related to but distinct from international law. (Bradley, 2013; Henkin, 1996; Ramsey, 2007).

***Domestic Law and International Conflict.*** International relations scholars have long been interested in the causes of international peace and conflict (Levy, 2002). They have already incorporated international law into their research on international peace and conflict (e.g. Huth, Croco, & Appel, 2011; Simmons, 2002). Because international law is familiar to many international law scholars, and because international law contains rules governing the use of force (e.g. Article 2(4) of the United Nations Charter), this focus is unsurprising.

There is, however, another type of law that is directly relevant to international peace and conflict: the domestic constitutional rules of states governing their use of force (Slaughter Burley, 1993). As one legal expert on constitutions and use-of-force decision-making

summarizes, “[n]ational constitutional law may have a constraining effect on the external behavior of states, both by restricting the circumstances in which military force may lawfully be deployed and by establishing the procedural framework for taking decisions to use force” (Damrosch, 2003).

A leading political science theory of the “democratic peace”—that is, the observation that armed conflict is less likely between democracies than between a democracy and an autocracy or between autocracies—emphasizes the institutional constraints that democracies place on executive decision-making (Russett & Oneal, 2001). However, the data used to measure those constraints—such as the Polity scale (e.g. Schultz, 1999) and legislative veto points data (e.g. Choi, 2010)—do not capture constraints on use-of-force decisionmaking specifically, which are often different from executive constraints in other policy areas. As a result, they are not ideal measures of theoretically relevant institutional constraints.

Jacobson and Ku (2002), Mello (2014) and Ginsburg (2012a, 2014b) are among the interdisciplinary scholars who have built on this work by specifically investigating the relationship between domestic constitutional rules governing the use of force and use-of-force decisionmaking. Jacobson and Ku (2002) provide a comparative analysis of the domestic processes for approving the use of military force under the auspices of international organizations (such as the United Nations and NATO) in Canada, France, Germany, India, Japan, Norway, Russia, the United Kingdom, and the United States and evaluate them from the perspective of democratic accountability. They find that “[d]ecisions about the use of military forces in international operations have been shaped by national constitutions,” including requirements for legislative approval (Jacobson & Ku, 2002).

Mello (2014) uses fuzzy-set qualitative comparative analysis of the constitutional and political features of 30 democracies to investigate the conditions under which they participated (or not) in the Kosovo War, Operation Enduring Freedom in Afghanistan, and Operation Iraqi Freedom. He examined two constitutional features: “constitutional restrictions” (measuring cross-national variation in constitutional limitations on the types of military operations that are legally permitted or prohibited) and “parliamentary veto rights” (measuring cross-national variation in constitutional rules regarding legislative involvement in use-of-force decisions). He finds that constitutional restrictions on the use of force are a “structural veto to military deployments, irrespective of political preferences or systemic influences” and that “[t]he absence of constitutional restrictions is a necessary condition for military participation in all three cases and across 30 democracies.” But he also finds that parliamentary veto rights do not have a discernible effect on the likelihood of participation (Mello, 2014).

Ginsburg (2014b) examines cross-national data on constitutional rules governing legislative involvement in use-of-force decision-making. He theorizes that legislative involvement “implicates a bargaining process between the executive and legislature” that can affect the likelihood of the use of force. Using data on 893 constitutions (from the Comparative Constitutions Project) and militarized interstate disputes (using data from the Correlates of War project), he presents evidence suggesting that constitutional rules involving the legislature in decisions to declare war reduces the likelihood that a state will initiate conflict (Ginsburg, 2014b).

Other aspects of domestic law may also affect the onset and resolution of international conflict. For example, Powell (2015) focuses on the relationship between cross-national variation in the domestic legal features of Islamic law states and these states' choices of dispute resolution methods in territorial disputes. She finds that "[s]ecular legal features...have the power to attract Islamic law states to the most formal international venues—arbitration and adjudication. On the other hand, states that embed holy oath in their constitution are unlikely to attempt resolution via international courts or arbitral tribunals, preferring instead less-formalized venues." (Powell, 2015).

***Judicial Foreign Policy.*** Beyond international conflict, political scientists have long had a more general interest in foreign policy (Carlsnaes, 2013). Legal scholars have long studied the role of domestic courts in foreign policy processes (Henkin, 1996). As noted by Stephen Breyer, an associate justice of the U.S. Supreme Court, domestic courts are increasingly called upon "to consider foreign persons and activities, foreign commerce...and foreign threats to national security" (Breyer, 2015). Legal scholars call this "judicial foreign policy" (Dunfee & Freidman, 1984; Garvey, 1993; Sloss, 2008).

There are three types of judicial foreign policy: judicial review of foreign policy, judicial implementation of foreign policy, and direct judicial foreign policy. A state's domestic courts engage in judicial review of foreign policy when they determine whether another branch's foreign policy decision complies with the requirements of law, such as constitutionally protected individual rights and separation-of-powers principles (Sunstein, 2008).

Domestic courts also participate in the implementation of foreign policy. For example, domestic courts in some states implement legislative policy regarding the scope of foreign sovereign immunity. According to the doctrine of foreign sovereign immunity, a state is immune from being sued in the domestic courts of other states, subject to certain exceptions. A number of states—including Australia, Canada, the United Kingdom, and the United States—have legislation embodying the general rule of immunity and defining the exceptions. Domestic courts in those states implement policies regarding foreign sovereign immunity by applying this legislation to determine whether or not to grant immunity to foreign states in particular cases. Domestic courts may also implement foreign policy when they take into account the views of the executive branch of government when deciding cases involving foreign relations. In the United States, for example, the executive branch may submit statements of interest or amicus briefs expressing its policy regarding particular cases.

Even in cases that do not entail review of the validity of, or the implementation of, another branch's foreign policy decisions, domestic courts frequently make decisions that affect the interests of foreign states (Buxbaum, 2016). In those cases, domestic courts make judgments about whether and how to consider foreign state interests and how to weigh those interests along with other legal, political and policy considerations. When they do so, domestic courts can be understood as engaging in direct judicial foreign policy.

Judicial foreign policy often entails direct interactions between domestic courts and foreign states. Those interactions are often involuntary on the part of the foreign state—for

example, if it is a defendant in a lawsuit and objects to the court's jurisdiction on foreign sovereign immunity grounds, but the court finds that an exception to immunity applies and allows the suit to proceed. As Buxbaum (2016) puts it, such cases “invoke[] a narrative in which the involvement of U.S. courts creates conflict—or potential conflict—with the interests of foreign governments, which in turn seek to fend off the intervention of U.S. courts to preserve their own sovereign autonomy.” Less widely recognized is that foreign states often initiate interactions with domestic courts voluntarily by filing lawsuits as plaintiffs. In these cases, foreign states choose to engage with domestic courts and “deploy the resources of that system to attain certain objectives” (Buxbaum, 2016). Even when a foreign state is neither a defendant nor a plaintiff, its interests may be affected, and for that reason foreign states routinely submit amicus briefs conveying their positions in lawsuits to which they are not a party (Eichensehr, 2016). Domestic courts also engage in direct judicial foreign policy when they cooperate with foreign courts to resolve specific cross-border disputes, provide mutual legal assistance, or avoid duplicative litigation that could lead to conflicting judgments (Slaughter, 2004b). The line between implementation and direct judicial foreign policy is not always clear. Even when there are legislative foreign policy directives (such as legislation regarding foreign sovereign immunity), domestic courts often have considerable discretion on how to interpret such directives and apply them in particular situations. By exercising that discretion, domestic courts not only implement, but also contribute to the definition of foreign policy through processes of interpretation.

Political scientists in the discipline's domestic politics branch have long treated courts as important actors in policymaking processes (Barnes, 2007; Dahl, 1957; Shapiro, 1981), and one significant work from an earlier stage of political science research on international law analyzed one aspect of judicial foreign policy: the review by domestic courts of the legality of the acts of foreign states (Falk, 1964). Moreover, the virtues and drawbacks of judicial foreign policy are regularly debated in both legal and foreign affairs circles (Bork, 2003; Cabranas, 2015; Franck, 1991, 1992; Koh, 1990; Leval, 2013; Slaughter, 1997; Slaughter & Bosco, 2000). Meanwhile, practical political and economic realities are giving domestic courts an increasingly important role in states' responses to global problems (Breyer, 2015). As Michaels (2011) puts it: “We face an increasing number of problems that are essentially global in nature because they affect the world in its entirety: global cartels, climate change, crimes against humanity; to name a few. These problems require world courts, yet world courts in the institutional sense are largely lacking. Hence, domestic courts must function, effectively, as world courts. Given the unlikelihood of effective world courts in the future, our challenge is to establish under what conditions domestic courts can play this role of world courts effectively and legitimately.”

Yet even though political scientists are, as noted above, increasingly studying the role of domestic courts in supporting international law and international courts, political scientists have devoted relatively little attention to domestic courts as independent actors directly involved in foreign policy. This is starting to change. Isaac Unah (1998), Jeffrey Davis (2006), Cass Sunstein (2008), Kirk Randazzo (2004, 2006, 2010), and Adam Chilton and Christopher Whytock (2015), are among the interdisciplinary scholars who are empirically investigating the determinants of various aspects of judicial foreign policy, and each of them has drawn on theory and methods from the judicial politics branch of political science to do so. In a book-length study, Unah (1998) analyzes the role of the United States Court of International Trade and the U.S. Court of

Appeals for the Federal Circuit in the implementation of U.S. trade policy and identifies legal, political and economic factors that influence the likelihood that courts will reverse agency action and the likelihood that their decisions will be protectionist.

In an empirical analysis of U.S. District Court and U.S. Court of Appeals decisions in international human rights cases, Davis (2006) finds that the likelihood of a pro-human rights ruling is greater when the alleged violation is a personal integrity violation such as torture, when an interest group is representing the alleged victim, and when there is legal precedent in the relevant judicial circuit that is favorable to human rights rulings. In contrast, he does not find that the ideology of judges significantly affects these decisions. In an empirical analysis of U.S. Court of Appeals decisions on national security matters, Sunstein (2008) finds that Republican appointees are less likely than Democratic appointees to invalidate executive and legislative action, and that invalidation rates did not significantly change after the 9/11 attacks.

Randazzo (2010), building on his earlier work (Randazzo, 2004, 2006), combines theories of international relations and judicial decisionmaking with empirical analysis to analyze the legal and political factors that influence the decisions of U.S. federal court decisions in foreign policy matters, with a focus on the balance struck by the courts between liberty interests and national security interests. He finds that after the September 11 attacks, the effect of the judges' ideologies on their national security decisions became more pronounced, with liberal judges more likely to support civil liberties challenges to government policy than conservative judges (Randazzo, 2010).

Drawing on both international relations theory and judicial decisionmaking theory, Chilton and Whytock (2015) empirically analyze the political and legal factors that influence foreign sovereign immunity decisionmaking by the U.S. District Courts. They find that those courts are more likely to grant immunity to a foreign state that is sued in a U.S. court if the foreign state is a democracy. They also find that liberal judges are more likely to grant immunity than conservative judges, and that two factors that are legally relevant according to the law of foreign sovereign immunity—the commercial nature of the foreign state's activity and the connections between that activity and U.S. territory—affect the likelihood of immunity in the direction one would expect from the law.

Taken together, these studies provide preliminary insights into the determinants of judicial foreign policy. However, they are limited by their focus on a relatively small range of judicial foreign policy issues and by their nearly exclusive focus on U.S. courts. This line of research could be advanced with studies of other examples of judicial foreign policy, and by cross-national empirical research, to help develop more generalizable findings.

#### **IV. Beyond International Relations: Law, Transnational Relations and Private Governance**

IL/IR scholarship has focused not simply on international law, but on one type of international law: *public* international law. As Simmons (2008) notes, the “overwhelming share” of political science research on international law has been on public international law. On the one hand, this emphasis on public international law is understandable: Given the international

relations subfield's traditionally state-centric orientation, public international law—which is the branch of international law aimed at governing state behavior—is a natural focus.

On the other hand, IL/IR's focus on public international law creates a mismatch with broader trends in political science. It has been decades since Nye and Keohane (1971) called for “a broader world politics paradigm”—one that encompasses not only international relations, but also transgovernmental relations (cross-border relations between governmental subunits such as administrative agencies, courts, legislatures) and transnational relations (cross-border relations among private actors)—a call prominently renewed and refined by Risse-Kappen (1995). Although much international relations scholarship continues to focus on states, the broader world politics approach is by now well established (Keohane & Nye, 2001; Pollack & Shaffer, 2001a), and much of it focuses on the behavior of private actors, including the role of private actors in governing transnational relations and the global economy (Büthe, 2004; Büthe & Mattli, 2011; Cutler, Haufler, & Porter, 1999; Cutler & Dietz, 2017; Graz & Nölke, 2008; Hall & Biersteker, 2002). Moreover, liberal theories of international relations and international law provide theoretical foundations for attentiveness to non-state actors (Moravcsik, 2013; Slaughter Burley, 1993).

Consistent with this broader world politics trend in political science, L/WP research moves beyond the “IR” in IL/IR. So far it has done so by examining five areas of law that govern transnational relations and affect private governance: (1) the law of extraterritoriality, (2) conflict of laws, (3) private international law, (4) transnational commercial arbitration, and (5) international investment law.

### **A. Extraterritoriality**

Much and probably most transnational activity remains ungoverned (or only partially governed) by international law and international courts, and states find it politically difficult to create new international law and international courts. Therefore, states often to use their own domestic law and domestic courts to govern transnational activity (Putnam, 2009). As Kaczmarek and Newman (2011) put it, “[d]omestic law increasingly serves as an important element of global governance.” Because transnational activity by definition transcends any given state's territory, this form of governance requires a state to assert authority to apply its law (“prescriptive authority”) or adjudicate disputes in its courts (“adjudicative authority”) extraterritorially.

Kal Raustiala (2009), Tonya Putnam (2009), and Sarah Kaczmarek and Abraham Newman (2011) are among the interdisciplinary scholars who are empirically studying the causes and effects of extraterritoriality. In an in-depth historical analysis, Raustiala (2009) finds that assertions of extraterritorial authority by the United States have been influenced by its relative power in the international system, as well as by other changes in world politics and the global economy. For example, as a relatively weak state in its early history, the United States preferred a Westphalian territorial approach that might help protect it from other states' assertions of extraterritorial authority; but as the United States grew stronger, it became more willing to assert jurisdiction over actors and activity within the territory of other states and less committed to territoriality.

In path-breaking research, Putnam (2009, 2016) analyzes an original dataset of 659 transnational disputes in the U.S. federal courts between 1945 and 2010, in which they decided whether to assert extraterritorial jurisdiction. Her data includes disputes involving 120 different states in issue areas ranging from antitrust, tax, intellectual property rights and labor, to racial and gender discrimination, torture, and other human rights violations. She finds that U.S. courts tend to apply U.S. law extraterritorially in two situations: “when extraterritorial conduct poses a threat to the functioning of U.S. law inside U.S. territory” and “when U.S. citizens and others with close U.S. ties are accused of violating a short list of rights at the core of American political identity...[including] the rights not to be subjected to torture, extrajudicial killing and other crimes against humanity, or forced labor” (Putnam, 2016). In addition, she explores how a state’s extraterritorial assertions of governance authority can influence international regulatory competition by exerting pressure on other states to change their own domestic law.

Kaczmarek and Newman (2011) examine the relationship between the extraterritorial application of U.S. law and policy change in other states. Their empirical focus is on anti-bribery laws. Their dependent variable is whether a given state has prosecuted a case under its foreign bribery rules, and their key explanatory variable is whether the United States has previously brought bribery cases against that state’s firms or citizens. They find that U.S. application of its anti-bribery laws in the territory of other states was associated with increased domestic enforcement of anti-bribery standards in those other states, suggesting that the extraterritorial “application of domestic law can have significant international consequences” (Kaczmarek & Newman, 2011).

Together, these studies provide some initial empirical evidence of the causes and consequences of extraterritorial assertions of prescriptive and adjudicative authority by states to govern transnational activity. Together, the Putnam (2016) and Kaczmarek and Newman (2011) studies draw attention to the direct role that domestic legal institutions can play in world politics. However, these studies have so far focused on U.S. assertions of extraterritorial governance authority and on particular issue areas. Cross-national analysis of extraterritoriality across a broader range of issue areas would help provide an empirical basis for more generalizable findings. One example of the promise of a comparative approach is Langer’s (2011) cross-national study of assertions of universal jurisdiction by states in international criminal cases.

## **B. Conflict of Laws**

Extraterritoriality decisions are decisions by a given state about *whether* it will assert governance authority over particular transnational activity. But because transnational activity by definition has connections with more than one state’s citizens or territory, more than one state may have a legitimate claim to assert its authority. These potential overlaps of authority often make it necessary for courts to make decisions about *which* state’s domestic courts or domestic laws should govern transnational activity. The body of law that governs these decisions is called “conflict of laws” (Fawcett & Carruthers, 2008; Hay, Borchers, & Symeonides, 2010; Richman, Reynolds, & Whytock, 2013; Symeonides, 2014).

In many legal systems outside the United States, conflict of laws is considered part of a broader field called “private international law.” However, the term private international law can be misleading because even though conflict-of-laws problems are transnational problems, most conflict-of-laws rules are part of the domestic law of states and vary cross-nationally, rather than embodied in treaties or other types of international law. For this reason, this article discusses conflict of laws and private international law separately.

Conflict of laws is generally understood as having three branches: jurisdiction, choice of law, and recognition and enforcement of foreign judgments (Hay, Borchers, & Symeonides 2010). A domestic court applies the rules of jurisdiction to determine whether to assert authority to adjudicate a dispute arising from transnational activity, or to instead defer to the adjudicatory authority of another state by declining to adjudicate. A domestic court applies choice-of-law rules to determine whether to apply its own domestic law or a foreign state’s law to transnational activity. And a domestic court applies the rules governing foreign judgments to determine whether to recognize or enforce the decisions of the courts of foreign states. These three branches correspond to three dimensions of global governance authority: authority to adjudicate, authority to prescribe, and authority to enforce (Kjaer, 2004; Whytock, 2009a).

Conflict-of-laws rules help allocate governance authority among states by guiding domestic courts when they are required to decide whether to assert domestic governance authority or defer to a foreign state’s governance authority over transnational activity. Thus, conflict-of-laws scholars increasingly view conflict of laws as a distinctive approach to global governance (Knop, Michaels, & Riles, 2012; Muir Watt & Fernández Arroyo, 2014; Whytock, 2009b, 2016). International law tries to transcend national legal systems by creating a single body of international legal rules and a system of international courts to adjudicate disputes, and harmonization seeks convergence and ultimately uniformity of national laws. Conflict of laws, in contrast, accepts the leading role of domestic legal institutions in governing transnational activity (unlike international law’s impulse), and it accepts cross-national legal diversity (unlike harmonization’s impulse). Instead, conflict of laws responds by providing rules to help nations allocate governance authority among themselves (Whytock, 2014). Thus, conflict-of-laws rules can be understood as “structural rules” that help “determine the effectiveness of transnational regulation” (Dodge, 2002), and as an attempt to mitigate “clashes between sovereigns, each attempting to impose its own regulatory scheme in furtherance of its own policies” (Roosevelt, 1999).

More than two decades ago, Anne-Marie Slaughter pointed out the relevance of conflict of laws from the perspective of liberal international relations theory (Slaughter Burley, 1993). IL/IR scholarship has, however, neglected this field of law, notwithstanding its importance to transnational relations and global governance. L/WP scholarship promises to contribute to understanding world politics by shedding light on the legal and political determinants of conflict-of-laws decisions and the impact of conflict-of-laws rules on transnational activity and economic welfare.

Some steps have already been taken in this direction. Whytock (2011) explores these questions in the context of the *forum non conveniens* doctrine. The *forum non conveniens* doctrine is a common law doctrine that gives a court in one state the discretion to defer to the

adjudicative authority of another state by dismissing the case in favor of that state instead of asserting adjudicative authority itself, and it provides a set of legal factors to guide the exercise of this discretion. In the U.S. version of the doctrine, for example, the legal factors include the citizenship of the plaintiff (if the plaintiff is a foreign citizen, this factor weighs in favor of dismissal) and various other factors that relate to the territorial locus of the alleged conduct and injury giving rise to the dispute (if the territorial locus is in another state's territory, this factor weighs in favor of dismissal). Analyzing more than 200 forum non conveniens decisions in the U.S. federal district courts in transnational cases between 1990 and 2005, he finds that dismissal is more likely when the plaintiff is a non-U.S. citizen and when the territorial locus is in another state, suggesting that legal factors influence decisions to defer (or not) to other states. He also finds that the courts are more likely to dismiss when the other state is a liberal democracy, suggesting, consistent with liberal international law theory (Slaughter, 1995), that legal relations between democracies may be different than between other states.

Whytock (2009b) explores the determinants of another type of conflict-of-laws decision: choice-of-law decisions. Analyzing a dataset of more than 200 international choice-of-law decisions by U.S. federal district courts in transnational disputes between 1990 and 2005, he finds that these courts apply non-U.S. law (foreign law) rather than domestic U.S. law in well over 50% of cases, suggesting that U.S. courts are frequently willing to defer to the authority of other states to prescribe the rules governing transnational activity. Then, taking advantage of variation of choice-of-law rules across U.S. states, he finds that these rules are a significant determinant of the likelihood that foreign law will be applied. He also finds that territorial connections between a transnational dispute and a foreign state increase the likelihood that a U.S. court will apply that state's law rather than domestic law, suggesting that territorial connections influence these decisions, and he finds evidence that conservative judges are somewhat less likely to apply domestic law, perhaps to deter efforts of transnational litigants to "forum shop" into U.S. courts in search of more favorable U.S. law.

Even if these studies shed preliminary light on the legal and political determinants of conflict-of-laws decisionmaking by domestic courts, they are limited by their focus on U.S. courts and on certain types of conflict-of-laws decisions. Next steps include comparative research and research on other types of conflict-of-laws decisions, including the recognition and enforcement of foreign judgments. Moreover, legal scholars and law-and-economics scholars have developed theories about the impact of conflict-of-laws rules and decisions on the ability of states to achieve transnational regulatory objectives (Trachtman, 1994; Wai, 2002), on bargaining and forum shopping by transnational actors (Whytock, 2009b), and on global economic welfare (Carbonara & Parisi, 2007; Guzman, 2002; Muir Watt, 2003; O'Hara & Ribstein, 1999; Parisi & Ribstein, 1998; Whincop & Keys, 2001). Empirical research on the consequences of conflict-of-laws rules and decisions is needed to evaluate these theories—and could create a fruitful avenue for collaboration between conflict of laws scholars in law and global political economy scholars in political science.

### **C. Private International Law**

Private international law consists of rules that govern private transnational activity, such as cross-border commercial transactions and family relationships (as noted above, outside the

United States, conflict of laws is often considered to be part of private international law). A brief look at the projects of the Hague Conference on Private International Law and UNCITRAL (the United Nations Commission on International Trade Law) provides a sense of the wide range of transnational problems governed by private international law, ranging from child abduction, adoption, and access to justice, to contracts, corporate securities, electronic commerce, insolvency, and arbitration.

Some private international law takes the form of treaties, and to that extent it is properly understood as international law. Private international law treaties include the United Nations Convention on Contracts for the International Sale of Goods (CISG), which provides rules governing contracts for the cross-border sales of goods between private businesses, including rules of contract formation, the obligations of buyers and sellers, and remedies for breach of contract, and the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (“Hague Rules”), which governs the carriage of goods by sea, and specifies the rights and obligations of shippers and carriers.

However, the use of the phrase “international law” in the term “private international law” can be misleading, because large portions of private international law take the form of domestic law, some of it based on “model” laws developed transnationally. Transnational model laws are negotiated by states or drafted by international organizations (often with the involvement of private actors), not for adoption as treaties but as templates for domestic legislation. One of the leading bodies for the development of transnational model laws is UNCITRAL, which aims to modernize and harmonize the rules governing transnational business. For example, in the realm of transnational electronic commerce, the Model Law on Electronic Signatures was adopted by UNCITRAL in 2001 and has so far been adopted as domestic law by 29 states. Cohen (2013), for example, argues that UNCITRAL is an important site where legal norms, principles, and standards for the global political economy are articulated.

More than two decades ago, Martin Shapiro (1993) and Anne-Marie Slaughter (Slaughter Burley, 1993) called on political scientists to pay more attention to private international law, arguing that this area of legal doctrine was highly relevant to the study of the global political economy. Yet IL/IR scholars have so far paid relatively little attention to private international law.

L/WP scholars are starting to change this state of affairs. For example, Cutler (2003) examines various aspects of private international law and its role in the global economy, including global commercial law unification projects and the modern law merchant. Cohen (2008) argues that private international law rules “create the essential legal framework through which markets and corporations are constructed, and within (and around) which they operate in international transactions” and that “[t]he increasing impact of private international law in shaping relationships between states, markets and citizens requires closer attention.” He empirically traces global efforts to harmonize the law of secured credit, and finds that the leading role was played by a “transnational harmonization coalition” in which “a set of powerful political and economic actors [concluded] that secured transaction law harmonization could advance their agendas for the reconstruction of the role of states in the global economy” (Cohen, 2008). Efrat and Newman (2016) examine the 1980 Hague Convention on the Civil Aspects of International

Child Abduction, which requires a state where an abducted child is found to secure the return of the child to the child's state of origin without resolving the custody dispute under its own law and in its own courts, but instead deferring to the authority of the state of origin to resolve the dispute under its law and in its courts. Using event-history analysis of the decisions of existing parties to the convention to defer to new members by accepting their accession to the convention, they find that the bigger the gap between the accepting state's rule of law and the acceding state's rule of law, and the greater the gap in women's parliamentary membership between the two states, the lower the likelihood of acceptance. Their findings suggest that deference in private international law arrangements depends significantly on the parties' perceptions of each other's procedural and substantive fairness. Efrat (2016) conducts a cross-national analysis of state adoption of model commercial laws produced by UNCITRAL in the fields of electronic commerce, cross-border insolvency, and transnational commercial arbitration. He finds that common law countries are more likely to adopt them than civil law countries.

Under what circumstances do private international law rule-making initiatives succeed in producing private international law treaties and transnational model laws, and what political and legal factors determine which states adopt them? And what are the global economic consequences of private international law? These are among the questions that could be the focus of fruitful theoretical and empirical investigation.

#### **D. Transnational Commercial Arbitration**

A fourth stream of L/WP scholarship is moving beyond the "IR" in IL/IR: scholarship on transnational commercial arbitration (see generally Blackaby & Partasides, 2009; Born, 2009; Moses, 2008). Transnational commercial arbitration is a method whereby two or more parties agree to have a dispute between them resolved by a private arbitrator (or arbitrators) in accordance with rules selected by the parties, and to abide by the arbitrators' decision, which is called an "award." It is a widely-used alternative to litigation as a method for transnational dispute resolution.

Although it is a private form of dispute resolution, transnational commercial arbitration depends largely on law and domestic courts for its effectiveness (Kerr, 1997; Reisman, 1992). This is because transnational commercial arbitration faces two fundamental enforcement problems: enforcement of ex ante arbitration agreements and enforcement of arbitral awards. Privately imposed reputational sanctions can help mitigate these problems, but they are likely to be effective only under certain conditions (such as the existence of a functioning mechanism for disseminating information about parties' behavior and a relatively high likelihood of repeat interactions). Domestic courts can support transnational commercial arbitration by ordering enforcement of arbitration agreements and arbitral awards, or hinder transnational commercial arbitration by declining to provide that support. Empirical evidence indicates that, in fact, private parties frequently seek enforcement of arbitration agreements and arbitral awards in domestic courts (Whytock, 2010), and there is an entire field of law that governs how domestic courts decide these cases (Blackaby & Partasides, 2009; Born, 2009; Moses, 2008).

The relevant law is a mix of treaties, such as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the New York

Convention)—which one expert (Kerr, 1997) calls “the foundation on which the whole of the edifice of international arbitration rests.” The New York Convention establishes a general rule (subject to enumerated exceptions) that signatory states shall, through their domestic courts, recognize and enforce arbitration agreements and arbitral awards when requested by a party. In addition, individual states have enacted domestic laws providing for domestic judicial enforcement of transnational commercial arbitration agreements and arbitral awards, some of which are based on UNCITRAL’s Model Law on International Commercial Arbitration.

Formal state support for transnational commercial arbitration has varied cross-nationally and over time (Hale, 2015). For example, the number of state parties to the New York Convention increased from nine in 1960, to fifty-five in 1980, to 124 in 2000. As of 2009, the New York Convention had entered into force in 144 of the 192 members of the United Nations. Similarly, the number of states that have adopted domestic legislation based on the UNCITRAL Model Law has increased steadily from one in 1986, to thirty-five in 2000, to a total of sixty-one as of 2008 (Whytock, 2010). These figures suggest broad and steadily increasing state support for the rules favoring enforcement of arbitration agreements and arbitral awards.

L/WP research on transnational commercial arbitration is driven largely by the understanding that arbitration is an important and increasingly widespread form of private global governance (Gal-Or, 2008; Stone Sweet, 2006; Whytock, 2010). By offering a mechanism for third-party interpretation and enforcement of contracts, it provides a means by which transnational actors can enhance the credibility of their commitments to each other. By providing a process for filling gaps in contracts, arbitration can mitigate the incomplete contracting problems routinely faced by transnational commercial actors. Transnational commercial arbitration can help transnational actors manage the costs of conflict in commercial relationships. And, like litigation, arbitration involves disputes over the allocation of rights and resources. Thus, arbitral awards are part of the answer to one of the central framing questions of political science: “Who gets what?” (Lasswell, 1936; Caporaso et al., 2008). This interest has led to a growing amount of interdisciplinary scholarship. Hale (2015) presents a theoretical and empirical account of institutional variation in transnational commercial arbitration. In an edited volume, Mattli and Dietz (2014) collect recent interdisciplinary research on the evolution, consequences and legitimacy of transnational commercial arbitration as a system of private global governance. Stone Sweet and Grisel (2017) develop and apply a theory of judicialization to explain the evolution of international arbitration as a system of governance.

What are the legal and political determinants of judicial enforcement of transnational commercial arbitration agreements and arbitral awards? What are the characteristics of disputants, and what are the characteristics of arbitral institutions and processes, that determine whether a disputant will comply with an arbitration agreement or arbitral award without judicial enforcement? How do different types and varying levels of state support for transnational commercial arbitration affect its processes, outcomes, effectiveness and legitimacy as a form of private governance? These are among the questions calling for theoretical and empirical investigation by political scientists. Understanding the role of law in transnational commercial arbitration promises to shed light not only on this particular form of governance, but on private-public interaction in global governance more generally (Whytock, 2010).

## **E. International Investment Law**

L/WP's move beyond the "IR" in IL/IR is also evident in the growth of interdisciplinary research on international investment law. International investment law is the branch of international law that governs the rights of foreign investors in host states and the resolution of investor-state disputes. The sources of international investment law include treaties—most prominently, bilateral investment treaties—as well as customary international law and general principles. International investment law governs how states treat foreign investors and their investments, and to that extent it can be considered public international law. However, it is perhaps more accurately considered to be a hybrid form of international law, insofar as it governs relationships between states and private actors, focuses on protecting the rights of those private actors, and relies primarily on private arbitrators for dispute resolution. This stream of L/WP research has so far focused primarily on three aspects of international investment law. First, it has focused on the design and diffusion of bilateral investment treaties (BITs) (e.g. Allee & Peinhardt, 2010; Elkins, Guzman, & Simons, 2006). Second, it has evaluated the effect of BITs on foreign investment (e.g. Büthe & Milner, 2009; Yackee, 2008). Third, it has examined investor-state arbitration (e.g. Cohen, 2017; Hafner-Burton, Steinert-Threlkeld, & Victor, 2016; Pelc, 2017; Puig, 2017; Stone Sweet & Grisel, 2017).

## **V. Beyond International Law Exceptionalism: Theorizing Across the Domestic-International Divide**

A third trend is underway as well, one that pushes against the view that international law is different in kind from domestic law because international politics is different in kind from domestic politics. Sometimes this "international law exceptionalism" is explicit and sometimes it is implicit in IL/IR's tendency to draw primarily on international relations theory and less frequently on theories about law developed in the domestic politics and comparative politics subfields of political science. In contrast, L/WP scholarship emphasizes the similarities between international law and domestic law, and attempts to leverage those similarities to develop a more general understanding of the ways that law can influence the behavior of both states and private actors.

### **A. Hierarchy and Anarchy**

The principal basis for international law exceptionalism is the traditional structural distinction in international relations theory between hierarchical domestic politics, with centralized enforcement of law, and anarchical international politics, in which there is at best decentralized enforcement. As Morgenthau (1978) puts it, "The decentralized nature of international law is the inevitable result of the decentralized structure of international society. Domestic law can be imposed by the group that holds the monopoly of organized force; that is, the officials of the state. It is an essential characteristic of international society, composed of sovereign states, which by definition are the supreme legal authorities within their respective territories, that no such central lawgiving and law-enforcing authority can exist there." Bull (2002) explains that "international law...differs from municipal law in one central respect: whereas law within the modern state is backed up by the authority of a government, including its power to use or threaten force, international law is without this kind of prop." International

lawyers have embraced this distinction, too. Higgins (1994) argues that “there are important differences arising from the fact that domestic law operates in a vertical legal order, and international law in a horizontal legal order.” Shaw (2008) explains that “[w]hile the legal structure within all but the most primitive societies is hierarchical and authority is vertical, the international system is horizontal, consisting of over 190 independent states, all equal in legal theory...and recognizing no one in authority over them. The law is above individuals in domestic systems, but international law only exists as between the states.” As Hoffman (1961) puts it, “[i]nternational law is one of the aspects of international politics which reflect most sharply the essential differences between domestic and world affairs....International law...remains a crystallization of all that keeps world politics *sui generis*.”

The classic realist claim is that the anarchic structure of international relations means that one should not expect an important degree of effective international cooperation or international law. Much of the last decades’ international relations scholarship has been aimed at responding to this claim by showing how there can be effective international cooperation even in the structurally anarchic environment of international relations (Keohane, 1984). Others have challenged the hierarchy/anarchy distinction altogether, instead proposing a continuum between hierarchy and anarchy (Milner, 1991, 1998) or a regime continuum (Stone, 1994). Sandholtz and Stone Sweet (2004) “deny any inherent, theoretically significant, distinction between how international and domestic regimes operate. Put simply, the range of variation is as great within categories of domestic and international as between these categories....” Sandholtz and Whytock (2017a) argue that “the intuitive distinction between domestic and international politico-legal systems breaks down under scrutiny.”

## **B. A Category Mistake**

There is, however, another critique of the hierarchy/anarchy distinction as it is applied to international law. The basic point is that it is based on a category mistake: the comparison is made, incorrectly, between international law governing states (international public law) and domestic law governing individuals (for example, domestic criminal law). A more apt comparison would be between international law governing states (international public law) and domestic law governing states (domestic public law), which includes much of domestic constitutional law (Fisher, 1961; Fisher, 1981; Fried, 1968; Whytock, 2004). For example, domestic public law governs separation of powers among the executive, legislative, and judicial branches of government; it limits state power vis-à-vis individuals by specifying constitutional rights; and in federal systems, it limits federal power vis-à-vis the state’s constituent subunits (such as cantons, provinces, or states). Yet there is no higher domestic governmental authority that sits above the state, or above the executive, legislative and judicial branches, able to enforce domestic public law against the state. In this sense, international public law and domestic public law are similar—they both operate outside the structurally hierarchical setting imagined by international relations and international law scholars who use the hierarchy/anarchy distinction to treat international law as different in kind from domestic law (Whytock, 2004).

### C. A Unified Concept of Public Law

For this reason, a unified concept of public law might be more fruitful for political scientists, one that defines public law as law that prescribes appropriate state behavior (Whytock, 2004). The concept thus includes those areas of both international law and domestic law (perhaps most importantly, domestic constitutional law) that govern states as subjects. Whytock argues that there are three advantages to the unified concept. First, he shows that when applied across the political science subfields of international relations, domestic politics, and comparative politics, the concept reveals a high degree of theoretical convergence across these subfields: on both sides of the domestic-international divide, scholars have identified similar causal mechanisms whereby law can influence state behavior. This suggests that the theoretical foundations for political science research on public law are therefore already largely in place. Second, by rejecting the claim that there is a difference in kind between domestic public law and international public law, the unified concept of public law opens the door for potentially fruitful research on differences in degree across different settings of public law—not only across domestic and international settings, but also across time or cross-nationally across different domestic political settings and different regional or international political settings. Third, the unified concept of public law reveals a basic function shared by both domestic public law and international public law. In both domestic and international politics, institutions have power that allows them to provide public goods, but they may also abuse that power, thus raising the perennial question: who guards the guardians (Keohane, 2001)? Public law is one tool, as imperfect as it is pervasive in both domestic and international politics, that attempts to mitigate this fundamental problem of governance.

Goldsmith and Levinson (2009) argue that there are additional fundamental similarities between domestic public law and international public law. Both types of law have made progress toward reducing legal uncertainty, but not as much progress as has been made in domestic law governing private individuals; and they are plagued by similar normative problems. On these grounds, they agree that there are “constructive implications of assimilating international and constitutional law into a more unified vision of public law” (Goldsmith & Levinson, 2009). Some scholars go even further, taking a unified approach to not only public law, but to law (or norms) in general (Kratochwil, 1989; Young, 1979). Scholars are also thinking beyond the domestic-international divide in studying judicialization. Stone Sweet (1999) uses the concept of the triad, which he defines as “two contracting parties and a dispute resolver,” and applies it to an international case (the General Agreement on Tariffs and Trade) and a domestic case (the French Fifth Republic) to test his theory of the emergence of the triad as a mode of governance. Reviewing recent work on domestic courts and international courts, Staton and Moore (2011) argue that a unified approach that relaxes the hierarchy/anarchy distinction will allow scholars to learn more about judicial power in domestic and international politics, an approach endorsed and further developed by Roisman (2015). In a similar spirit, Hathaway and Shapiro (2011) develop a theory of “outcasting” as a method of enforcement that applies to both domestic law and international law.

More generally, Sandholtz and Whytock (2017a) propose a framework for analyzing the relationship between law and politics that focuses on “governance systems” as a unit of analysis. They posit that in any given governance system this relationship may vary across the stages of

the governance process (which include rulemaking, interpretation, decisionmaking, implementation, and legal change). They argue that a promising path toward theory building about the relationship between law and politics is comparative analysis of this relationship across governance systems and across different stages of governance, without regarding to the domestic/international distinction. Contributors to Sandholtz and Whytock (2017b) apply this framework to analyze the relationship between law and politics in governance systems in fields ranging from human rights and global finance, to international trade and intellectual property.

## VI. Conclusion

This article has highlighted three qualities that distinguish the Law and World Politics (L/WP) stage of interdisciplinary scholarship from the earlier International Law and International Relations (IL/IR) stage. Moving beyond the “IL” in IL/IR scholarship, political scientists are studying domestic law, domestic courts and other domestic legal institutions—not only their foundational role in supporting international law and international courts, but also their direct role in international relations, including international conflict and foreign policy. Moving beyond the “IR” in IL/IR scholarship, political scientists are bringing research on law up to speed with the broader world politics trend in political science by studying types of law—including extraterritoriality, conflict of laws, private international law, transnational commercial arbitration, and international investment law—that affect transnational activity of private actors. And moving beyond the domestic-international divide, political scientists are increasingly rejecting international law exceptionalism, and beginning to take advantage of theoretical convergence across the domestic, comparative and international relations subfields to improve understanding of the relationship between law and politics generally.

L/WP scholarship promises to open up new opportunities for collaboration across the fields of law and political science. Interdisciplinary collaboration in IL/IR scholarship has primarily involved public international scholars and international relations scholars. But L/WP implies the involvement of scholars of domestic and comparative politics, including judicial decisionmaking scholars in both subfields, given the growing attention being paid to domestic legal institutions such as domestic courts and legislatures in the study of world politics.

On the legal side, as I have tried to demonstrate throughout this article, there are fields of law which may be less familiar to international relations scholars than public international law, but which are equally if not more important to understand for scholars interested in world politics. For this reason, applying legal knowledge to inquiries about world politics, rather than simply applying international relations theory and methods to legal phenomena—“reversing field,” as Dunoff and Pollack (2014) call it—will be especially important in L/WP scholarship. And it will go beyond applying knowledge of public international law. For example, there is great potential for fruitful collaboration between political scientists interested in world politics and legal scholars in the fields of foreign relations law (e.g. Bradley, 2013; McLachlan, 2014; Ramsey, 2007; Sloss, Ramsey, & Dodge, 2011; Swaine, 2012), conflict of laws (e.g. Briggs, 2014; Coyle Cuniberti, 2017; Felix & Whitten, 2011; Hay, Borchers, & Symeonides, 2010; Michaels, 2009; Richman, Reynolds, & Whytock, 2013; Roosevelt, 2015; Weintraub, 2010), transnational commercial arbitration (e.g. Blackaby, Partasides, Redfern, & Hunter, 2009; Born, 2009; Coe, Bermann, Drahozal, & Rogers, 2009), and international investment law and investor-

state arbitration (e.g. Dolzer & Schreuer, 2012; Douglas, Pauwelyn, & Viñuales, 2014; Franck, 2015; Puig, 2014).

Beyond becoming familiar with these and other types of law and legal institutions, L/WP scholars would benefit from the insights of two broader streams of interdisciplinary legal research. One is global legal pluralism, which focuses on and analyzes diverse and overlapping domestic, international and private sources of legal authority to govern transnational activity (Berman, 2012; Michaels, 2009; Zumbansen, 2010). The other is the concept of transnational legal orders (TLOs). A TLO is “a collection of formalized legal norms and associated organizations and actors that authoritatively order the understanding and practice of law across national jurisdictions” (Halliday & Shaffer, 2015). TLO scholarship studies how TLOs rise and fall, where they compete and cooperate, and how they settle and unsettle. Even if L/WP’s research questions are rooted primarily in political science, L/WP scholarship can benefit from the concepts, theory and methods of global legal pluralism and TLO research.

To be sure, many of the possibilities being pursued in L/WP scholarship were raised at the beginning of the IL/IR stage of interdisciplinary scholarship. Drawing on liberal international relations theory, Anne-Marie Slaughter argued more than two decades ago that comparative constitutional law, conflict of laws, and private international law play an important role in world politics, and she called on political scientists interested in the relationship between law and world politics to become more knowledgeable of these and other less familiar areas of law (Slaughter Burley, 1993; Slaughter, 1995). For the most part, IL/IR scholarship has not heeded that call. One way that L/WP scholarship distinguishes itself from the earlier stages of interdisciplinary research is by taking these areas of law as seriously as IL/IR scholarship has taken public international law.

Some may worry that moving beyond the IL/IR research agenda will result in a loss of focus. But L/WP’s move beyond public international law does not require a broadening of the core questions of international relations as a discipline. Instead, it simply reflects a growing understanding that domestic law, domestic courts and other domestic legal institutions are an important part of answering those core questions and, in some contexts, even more fundamental than international law and international courts. And L/WP’s move beyond international relations merely brings the research agenda up to speed with political science’s broader shift from an international relations paradigm toward a world politics paradigm. The wager is that with a richer understanding of the diverse types of law and legal institutions that are relevant to world politics, political scientists and legal scholars will together develop a better understanding of both law and world politics, as well as the complex relationships between them.

## **Acknowledgements**

For helpful comments on drafts of this article, the author thanks Edward Cohen, Jeffrey Dunoff, Leslie Johns, Wayne Sandholtz, and two anonymous reviewers.

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