



SCHOOL OF LAW
TEXAS A&M UNIVERSITY

Texas A&M University School of Law
Texas A&M Law Scholarship

Faculty Scholarship

8-2013

Bridging the International Law-International Relations Divide: Taking Stock of Progress

Adam Irish

Charlotte Ku

Texas A&M University School of Law, cku@law.tamu.edu

Paul F. Diehl

Follow this and additional works at: <https://scholarship.law.tamu.edu/facscholar>



Part of the [Law Commons](#)

Recommended Citation

Adam Irish, Charlotte Ku & Paul F. Diehl, *Bridging the International Law-International Relations Divide: Taking Stock of Progress*, 41 Ga. J. Int'l & Comp. L. 357 (2013).

Available at: <https://scholarship.law.tamu.edu/facscholar/491>

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Texas A&M Law Scholarship. For more information, please contact aretteen@law.tamu.edu.

BRIDGING THE INTERNATIONAL LAW-INTERNATIONAL
RELATIONS DIVIDE: TAKING STOCK OF PROGRESS

Adam Irish, Charlotte Ku,** and Paul F. Diehl****

TABLE OF CONTENTS

I. INTRODUCTION 359

II. DIVERGENCE AND CONVERGENCE IN DISCIPLINES 360

III. CALLING UPON DEAF EARS? RECONCILIATION AND
RAPPROACHEMENT? 363

IV. RECENT DEVELOPMENTS—TURNING THE CORNER? 365

V. RESEARCH METHODOLOGY 367

 A. *Who is Publishing Where and When?* 370

 B. *Which Topics are They Investigating and What are Their
 Research Goals?* 371

 C. *How are They Conducting Their Research?* 372

VI. THE BIG PICTURE: IL-IR SCHOLARSHIP IN BOTH POLITICAL
SCIENCE AND LAW JOURNALS 374

VII. STUDYING INTERNATIONAL LAW IN POLITICAL SCIENCE
JOURNALS 379

VIII. INTERNATIONAL RELATIONS IN INTERNATIONAL LAW
JOURNALS 381

IX. PATTERNS IN AN IL-IR INTERDISCIPLINARY JOURNAL..... 383

* Adam Irish is Mellon Post-Doctoral Teaching Fellow in the Department of Political Science at Wheaton College. The authors would like to thank Robert Pahre and the faculty at the University of Illinois Program in Law, Behavior, and Social Sciences for their comments and suggestions.

** Charlotte Ku is Professor of Law, Assistant Dean for Graduate and International Legal Studies, and Co-Director, Center on Law and Globalization at the University of Illinois School of Law.

*** Paul F. Diehl is Henning Larsen Professor of Political Science and Professor of Law at the University of Illinois at Urbana-Champaign.

X. CONCLUSIONS: IS THE GLASS HALF EMPTY OR HALF FULL?.....385

I. INTRODUCTION

International law (IL) and international relations (IR) have long been considered separate academic enterprises, with their own theoretical orientations, methodologies, and publishing outlets.¹ As the late Christopher Joyner noted:

Academicians who study either international law or international politics share a dirty little secret: both groups know that the presence of international law is critical for international relations to occur, and both know that the practice of international politics is essential for international law to evolve and function. But each is still reluctant to admit the necessity of the other.²

The net effect has been that the insights and research findings of one discipline have largely been unknown or ignored in the other. This has occurred despite the commonality of focusing on many of the same substantive interests, namely international cooperation in general, issues of war and peace, environmental regulation, and trade. This has led to numerous calls over the past two decades to bridge the international law and international relations divide.³ Yet one recent work claims that the frequency of such appeals have exceeded the number of efforts to fulfill those suggestions.⁴ Others have claimed that “there are large and growing intersections between the fields.”⁵ How much progress has been made in the

¹ For a discussion, see Chapter 1 of CHARLOTTE KU, *INTERNATIONAL LAW, INTERNATIONAL RELATIONS, AND GLOBAL GOVERNANCE* 17–36 (2012).

² Christopher C. Joyner, *International Law is, as International Theory Does?*, 100 AM. J. INT’L L. 248, 248 (2006) (book review).

³ See, e.g., Robert Beck, *International Law and International Relations: The Prospects for Interdisciplinary Collaboration*, in *INTERNATIONAL RULES: APPROACHES FROM INTERNATIONAL LAW AND INTERNATIONAL RELATIONS* 3 (Robert J. Beck, Anthony Clark Arend & Robert D. Vander Lugt eds., 1996) (calling for greater collaboration between the two disciplines); see also Anne-Marie Slaughter et al., *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT’L L. 367 (1998) (compiling literature in attempts to identify new avenues for interdisciplinary research); ACADEMIC COUNCIL OF THE UNITED NATIONS SYSTEM, *TOWARD UNDERSTANDING GLOBAL GOVERNANCE: THE INTERNATIONAL LAW AND INTERNATIONAL RELATIONS TOOLBOX* (Charlotte Ku & Thomas Weiss eds., 1998), available at <http://acuns.org/wp-content/uploads/2012/06/TowardUnderstandingGlobalGovernance.pdf>; see also Onuma Yasuaki, *International Law in and with International Politics: The Functions of International Law in International Society*, 14 EUR. J. INT’L L. 105 (2003) (analyzing the functions of each discipline).

⁴ PAUL F. DIEHL & CHARLOTTE KU, *THE DYNAMICS OF INTERNATIONAL LAW* 3 (2010).

⁵ Emilie M. Hafner-Burton, David G. Victor & Yonatan Lupu, *Political Science Research on International Law: The State of the Field*, 106 AM. J. INT’L L. 47, 49.

last two decades toward bridging the gap between international law and international relations? Various claims have been made, but little systematic evidence has been produced. In particular, the evidence offered has not necessarily been able to document the form and depth of the international relations-international law interface.

This study examines the progress, or perhaps the lack thereof, made over the last twenty years in bringing together the disciplines of international law and international relations. In doing so, we survey two leading journals in international law and five prominent journals in international relations over the period 1990–2010, searching for cross-pollination of ideas and approaches. We also examine an interdisciplinary journal, the primary purpose of which has been to facilitate collaboration across the two disciplines. When considering the international law journals, we look at the extent to which social science methods and objectives, as well as international relations subject matter, have been reflected in the articles. In international relations journals, we consider whether international law has become a subject matter of scholarly inquiry, given that it was largely ignored for many years.⁶ The goal is to track over time the intersection of the two disciplines and describe the extent and type of their interaction.

We begin with a discussion of how the two disciplines became separated after an early period of convergence, explain the fundamental bases that led to the divide, and characterize their contemporary differences. We then examine the various pleas for integration and how these might be accomplished. We note some recent trends toward reconciliation between IL and IR. These sections serve as a prelude to our empirical analysis of published articles, where we describe our choice of journals and the dimensions of analysis. We present our findings on whether and by how much the gap between international law and international relations has been bridged. This includes an overview of the international law articles studied, specific analyses of law and political science journals respectively, and a consideration of an interdisciplinary journal. Finally, we summarize our findings and discuss their implications for the future of IL-IR research.

II. DIVERGENCE AND CONVERGENCE IN DISCIPLINES

Serious scholarly interest in international law was a part of political science since it formed as an academic discipline distinct from history and economics in the early twentieth century.⁷ Indeed, Hans J. Morgenthau, a

⁶ Charlotte Ku et al., *Exploring International Law: Opportunities and Challenges for Political Science Research*, INT'L STUD. REV., Spring 2001, at 3, 3.

⁷ EDWARD H. CARR, *THE TWENTY YEARS CRISIS, 1919–1939* (1939); MICHAEL BYERS, *THE ROLE OF LAW IN INTERNATIONAL POLITICS: ESSAYS IN INTERNATIONAL POLITICS* (2000).

founding figure in the subfield of international relations, was by training a lawyer interested in the potential limiting role international law might play in the ongoing power struggles wrought by conflicting state interests, among other interests.⁸

Whatever synergy existed between international law and international relations, however, largely disappeared in the aftermath of World War II.⁹ Some of this reflected events in the political realm. The disenchantment with international law's normative agenda stemmed from the perceived inability of international law and international institutions to prevent World War II or to stop its brutal realities.¹⁰ Normative pronouncements or guidelines had no effect when confronted by a determined aggressor, and even leading theorists such as E.H. Carr and Morgenthau rejected international law and legal institutions as effective bases for world order.¹¹

The divorce with international law was furthered by two developments in the field of international relations. The first was the ascendancy (and later dominance) of realist thought, which viewed international law as largely epiphenomenal; merely a reflection of power interests and distribution.¹² If international law is regarded as irrelevant, there is no reason to study it, and there began a long period of study of international relations that ignored such phenomena. At the same time, international relations, and political science more generally, adopted a different epistemological basis for knowledge. As Harold Jacobson noted, disenchantment with international law coincided with the effort to move international relations away from the descriptive and prescriptive style of its early days to one more grounded in scientific rigor, with conclusions drawn from observation and empirical evidence.¹³ This not only moved international relations scholars away from international law, but also prevented legal scholars from taking part in various debates, as most had

⁸ See generally HANS J. MORGENTHAU, *POLITICS AMONG NATIONS* (1948). There are also works of other notable figures whose works merged international relations and international law. See, e.g., QUINCY WRIGHT, *THE ROLE OF INTERNATIONAL LAW IN THE ELIMINATION OF WAR* (1961); see also JOHN BASSETT MOORE, *AMERICAN DIPLOMACY* (1905). For general history of the international law field, see FREDERIC KIRGIS, *THE AMERICAN SOCIETY OF INTERNATIONAL LAW'S FIRST CENTURY: 1906–2006* (2006).

⁹ For a more extended historical discussion than presented here, see Jeffrey L. Dunoff & Mark A. Pollack, *What Can International Relations Learn from International Law?* (Temple University Beasley School of Law, Legal Studies Research Paper No. 2012-14, 2012).

¹⁰ CARR, *supra* note 7.

¹¹ MORGENTHAU, *supra* note 8, at 209–42; CARR, *supra* note 7, at 207.

¹² See, e.g., John Mearsheimer, *The False Promise of International Institutions*, 19 INT'L SEC., Winter 1994/95, at 5 (explaining how international institutions are essential in promoting world peace from a realist perspective).

¹³ Harold Jacobson, *Studying Global Governance: A Behavioral Approach*, in *TOWARDS AN UNDERSTANDING OF GLOBAL GOVERNANCE: THE INTERNATIONAL LAW AND INTERNATIONAL RELATIONS TOOLBOX 13*, 15 (Charlotte Ku & Thomas G. Weiss eds., 1998).

little or no training beyond a law degree and certainly not in advanced social science methods.¹⁴

The split between international relations and international law was based on several fundamental disagreements or different orientations.¹⁵ First, unlike their international relations colleagues, the traditional objective of international legal scholars was not to explain the behavior of states.¹⁶ Rather, the primary objective of most international law scholarship historically was to determine which rules or standards have acquired the status of law. This is not to say that international lawyers were not interested in the behavior of states or their power, because both are crucial to the formation and development of legal norms. Another important legal approach was primarily prescriptive, undertaking critique and analysis as a basis for advocating what the law *should be* in light of perceived inadequacies or failures, rather than describing what it is.¹⁷ Such a normative stance was largely an anathema to international relations scholars who promoted a value-free, scientific approach. Robert Keohane saw these approaches as two different “optics” on similar phenomena; the IR optic is instrumentalist—directed to the pursuit of particular objectives, while the international law optic is normative.¹⁸

Second, and in a related fashion, a theoretical perspective is an essential component of a social science research project. Theories help to identify what scholars expect to find in the empirical evidence when it is available and analyzed. The possibility of deriving hypotheses from a theoretical position that can be tested against empirical evidence is essential. For the most part, international legal study has shied away from explicit theorizing and derivation of hypotheses. Indeed, there was a tendency to confuse theory and method, with theoretical ideas merely viewed as lenses on how to interpret legal phenomena.¹⁹

¹⁴ This point is made by Dorinda Dallmeyer. See generally Ku et al., *supra* note 6, at 12–14 (discussing the different education backgrounds of scholars in each field).

¹⁵ For a more thorough discussion, see KU, *supra* note 1.

¹⁶ Dunoff & Pollack, *supra* note 9, at 10.

¹⁷ *Id.*

¹⁸ See generally Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT'L L.J. 487 (1997) (outlining his view of the two “optics”).

¹⁹ Steven Ratner & Anne Marie Slaughter, *Appraising the Methods of International Law: A Prospectus for Readers*, 93 AM. J. INT'L L. 291–302 (1999). However, there is nothing on Ratner and Slaughter’s list of methodologies that would be recognizable as such by social scientists. Strangely enough, international relations is listed as one of the methodological approaches. As the authors admit, they did not intend their review to encompass research design or traditional social science methods; rather their methodologies are more akin to theoretical or analytical approaches, better for understanding contemporary issues than constructing explanatory models. *Id.* at 292.

Third, the methodology of carrying out research was dramatically different, reflecting the divergent objectives of IR and IL. International relations scholars increasingly relied on mathematical modeling and advanced statistical analysis using “large N” data sets. In contrast, the predominant mode of international legal analysis was descriptive and expositive. International legal scholars typically sought to uncover what rules of international law existed, with a view to suggesting where rules might need modification in order to be effective.²⁰

These fundamental differences made it difficult for international law scholars to enter the milieu of international relations as they lacked the orientation, analytical methods, and the like necessary to participate in the discourse. Yet, this raises the question of why international law was not the subject of more international relations inquiry, albeit from a social science perspective.²¹ The aforementioned dominance of realism is clearly one explanation, yet other factors have been at work as well. Few international relations scholars took classes in international law, and indeed these were rarely part of any graduate program curriculum.²² There was also the problem that even those international relations scholars inclined to consider international legal questions and processes were stymied by the lack of suitable data sets on which to conduct empirical analyses.²³

III. CALLING UPON DEAF EARS? RECONCILIATION AND RAPPROCHEMENT?

It is from the above setting that the political science and legal communities have received pleas from prominent and thoughtful scholars, on both sides of the scholarly aisle, to unite in their investigations of international law. Early efforts hoped that—despite the rise of political realism—there might be mutual contributions to the broader policy and

²⁰ Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT’L L. 1 (2012).

²¹ This is not to imply that there has been no attention to legal issues in international relations research. For example, the study of international political economy has included consideration of the General Agreements on Tariffs and Trade (GATT), the Most Favored Nation (MFN) principle, and other topics with some international legal component. See, e.g., BENJAMIN COHEN, *INTERNATIONAL POLITICAL ECONOMY: AN INTELLECTUAL HISTORY* (2008). Yet these works did not generally deal with the legal or legal process aspects of the subject matter.

²² Paul F. Diehl, *International Law: Stepchild in Social Science Research*, in Ku et al., *Exploring International Law: Opportunities and Challenges for Political Science Research: A Roundtable*, INT’L STUD. REV. Spring 2001, at 3, 5–7. For a rejoinder on this and subsequent arguments, see Beth Simmons, *International Law: Stepchild in Social Science Research? A Rejoinder to Paul Diehl*, in Ku et al., *Exploring International Law: Opportunities and Challenges for Political Science Research: A Roundtable*, INT’L STUD. REV. Spring 2001, at 3, 9–12. See also JOHN KING GAMBLE, *TEACHING INTERNATIONAL LAW IN THE 1990S* (1992).

²³ Diehl, *supra* note 22, at 8–9.

social science discussions.²⁴ In 1989, Kenneth Abbott offered a vision of cross-disciplinary cooperation based on methodological and conceptual advances in the field of political science.²⁵ Abbott's article was written to entice legal scholars to approach law in a more causally conscious manner, employing the concepts of regimes and institutions, as well as the methodology of game theory, to explain the role international law plays in state behavior. His hope was to produce a merging of the disciplines into one entitled "the study of organized international cooperation."²⁶ In some ways, his proposal is consistent with the logic that intellectual innovation and creativity can best be accomplished in areas where specialized disciplines or subfields overlap.²⁷

Abbott's extended explanation of basic game theory, "IR-isms," and the concept of regimes makes clear that he was seeking converts in one direction only—from law to political science. Legal scholar, Adriana Sinclair, inverts Abbott's unilateral appeal arguing that before political scientists presume to build theories, advance hypotheses, measure variables, gather data, or test claims, they must understand international law more thoroughly.²⁸ Sinclair makes this case by examining principles of law in the context of what she believes to be the most promising of IR theoretical paradigms: constructivism.²⁹

Other paradigms for legal and international relations synergy offer more balanced suggestions that do not assign blame or require action by scholars of only one discipline. Most often, these proposals rely on the use of theoretical orientations to provide the necessary bridge. David Armstrong and his colleagues offer the "lenses" of realism, liberalism, and constructivism as the ways to imbue international law with international relations and vice-versa.³⁰ Other approaches more explicitly advocate a particular set of theoretical ideas over others as a way of fostering

²⁴ See, e.g., RONALD S.J. MACDONALD & DOUGLAS JOHNSTON, *THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW* (1983).

²⁵ Kenneth W. Abbott, *Modern International Relations Theory: A Prospectus in Retrospect and Prospect*, 14 *YALE J. INT'L L.* 335 (1989).

²⁶ Kenneth Abbott, *Elements of a Joint Discipline*, 86 *AM. SOC'Y INT'L L. PROC.* 167 (1992).

²⁷ For an elaboration of this argument, see MATTEI DOGAN & ROBERT PAHRE, *CREATIVE MARGINALITY: INNOVATION AT THE INTERSECTIONS OF SOCIAL SCIENCES* (1990).

²⁸ ADRIANNA SINCLAIR, *INTERNATIONAL RELATIONS THEORY AND INTERNATIONAL LAW: A CRITICAL APPROACH* (2010).

²⁹ As an example of such scholarship, she cites FRIEDRICH KRATOCHWIL, *RULES, NORMS, AND DECISIONS: ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS* (1989). This is also the theme of Dunoff & Pollack, *supra* note 9.

³⁰ DAVID ARMSTRONG, THEO FARRELL & HELENE LAMBERT, *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS* 286–91 (2007).

disciplinary cross-pollination. Anne-Marie Slaughter produced a series of articles that takes the concerns of both fields seriously and describes the state of IL-IR affairs at various intervals.³¹ Substantively she advances an analytical framework for international law rooted in both the institutionalist and liberal schools of IR theory.³² Slaughter wants to build a framework for producing theories that result in predictions that diverge from both the traditional realist and institutionalist scholarship, not a system of interpreting the status of law or its origin. She does this by placing causal primacy on transnational networks, domestic actors and their political context as captured by shifting state preferences found in liberalism.³³

Alternatives to a purely theory-based strategy focus on other bridges to bring the two fields together. Robert Beck classified international relations and law approaches along two dimensions: method (empiricist vs. critical) and objective (explanatory vs. prescriptive).³⁴ He sees the greatest prospects for collaboration among those scholars who share the same methods and objectives, and indeed he argues that some commonalities exist among scholars in the two disciplines.³⁵ Thus, this approach doesn't require shifts in general orientation, but advocates collaboration where some common ground already exists. Commonality might also be found in certain phenomena of shared interest between international law and international relations scholars; a notable example is the focus on compliance with international agreements, a subject that has attracted research interest from both sides of the divide.³⁶

IV. RECENT DEVELOPMENTS—TURNING THE CORNER?

With a plethora of scholars from both sides of the aisle calling for the merger of international law and international relations, has this been

³¹ Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205 (1993); Anne-Marie Slaughter, *Liberal International Relations Theory and International Economic Law*, 10 AM. U. J. INT'L L. & POL'Y 1 (1995) [hereinafter Slaughter, *Liberal International Relations Theory*]; Slaughter et al., *supra* note 3.

³² In particular, note Robert Keohane's *AFTER HEGEMONY* (1985).

³³ Slaughter, *Liberal International Relations Theory*, *supra* note 31; see also ANNE MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004). For a critique, see MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960* (2001). This critique effectively calls into question Slaughter's argument that networks are necessarily normatively desirable, a meaningful difference for legal scholars. In addition, he argues that Slaughter's approach, if adopted, would undo the central activity of legal scholars: finding "valid" law.

³⁴ Beck, *supra* note 3, at 7.

³⁵ *Id.* at 19.

³⁶ This agenda item is also discussed by Hafner-Burton, Victor & Lupu, *supra* note 5, at 90–91. For an early review of some of this work, both legal and international relations, see Beth A. Simmons, *Compliance with International Agreements*, 1 ANN. REV. POL. SCI. 75 (1998).

manifested in the kind of research that has been advocated in these works? Our empirical analyses in the next sections are designed to provide a systematic answer to that question. Nevertheless, there are some notable signs that change has occurred.

First, a number of books on international law in the past decade have been explicitly theoretical and designed to offer grand theory explanations of international law. These have adopted theories from international relations, including those that heretofore had been seen as largely incompatible with international legal analysis, including realist treatments³⁷ and those that rely on rational choice theory.³⁸ Other works on international law draw upon constructivism³⁹ and evolutionary models of behavior⁴⁰ that are prominent parts of international relations scholarship. Thus, the theory-based path to disciplinary integration has been used by a number of scholars. It is noteworthy that the American Society of International Law gave its 2010 award for "Preeminent Contribution to Creative Scholarship" to an international relations scholar, Beth Simmons, for her book on human rights.⁴¹

Second, while the study of international law has undertaken a more theoretical bent, one of the barriers to social science inquiry, the problem of data availability, has been redressed in a number of ways. The increase in the number of documents and treaties online has made systematic analysis much easier for scholars interested in international law.⁴² Databases have also been created on various legal phenomena that now permit analysis with advanced statistical methods.⁴³ Consistent with this occurrence is the fact that many law schools are now hiring faculty who have advanced training and/or degrees in another discipline, including the social sciences, and thus are more apt to collect data on international law as well as have the skills to analyze such information.

Third, and concordant with the previous trend, is the so-called "empirical turn" in international legal scholarship. Gregory Shaffer and Tom Ginsburg have documented this trend.⁴⁴ Such research is explicitly concerned with the

³⁷ JACK GOLDSMITH & ERIC POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005).

³⁸ ANDREW GUZMAN, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2008).

³⁹ JUTTA BRUNÉE & STEPHEN J. TOOPE, *LEGITIMACY AND LEGALITY IN INTERNATIONAL LAW* (2010).

⁴⁰ DIEHL & KU, *supra* note 4.

⁴¹ BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009).

⁴² This effect was foreseen over a decade ago by Dallmeyer. See Ku et al., *supra* note 6, at 14.

⁴³ For example, see the International Environmental Agreements Database Project (Apr. 28, 2013), <http://iea.uoregon.edu/page.php?file=home.htm&query=static>.

⁴⁴ See generally Shaffer & Ginsburg, *supra* note 20.

conditions under which international law is formed and how it affects the behavior of actors.⁴⁵ In this sense, the work has adopted the scientific objective of explanation, what was originally a source of the schism with international relations in the 1950s when it experienced the behavioral revolution. Shaffer and Ginsburg document that such research is occurring across a wide variety of subject areas, such as trade, the environment, and international criminal law to name a few.⁴⁶ Notably, the literature that they cite comes both from international law and international relations authors.⁴⁷ The above signs are anecdotal evidence that some progress has been made in bringing international law and international relations together. Yet we do not know the extent or depth of this collaboration. Our analysis below is designed to assess just how much of such scholarship, on an absolute and relative basis, exists in the past two decades. The above is also suggestive that much of the interdisciplinary work has come from legal scholars adopting the theories, objectives, and methodological tools of international relations scholars, and not the other way around or even that it has been a two-way street. Whether this is broadly representative of what has and is occurring can be addressed in our analysis as we consider both scholarship appearing in international law and international relations publication outlets.

V. RESEARCH METHODOLOGY

We employ a quantitative approach to analyzing the literature surrounding international legal phenomena. Having reviewed past calls for bridging the gap in the previous section, we have identified a set of prominent publication outlets where scholars from both disciplines have attempted to communicate. In this section, we lay out our research design, review the journals we analyze, and explain which aspects of the articles that we sample are coded into our data.

We surveyed twenty years of scholarship (1990–2010) in a sample of law and political science journals, the latter of which include significant international relations scholarship. This time frame uses Kenneth Abbott's seminal work⁴⁸ as its starting point, as other calls for integration occurred shortly thereafter. In addition, this period includes some of the best intellectual opportunities for cross-pollination that have developed in both disciplines over the last two decades such as regime theory, game theory, constructivism, and institutionalism.⁴⁹

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Abbott, *supra* note 25.

⁴⁹ Also note that one of the journals selected for analysis below, the *European Journal of*

To examine scholarship on international law within international relations, we selected five journals in political science and international relations: *American Journal of Political Science* (AJPS); *American Political Science Review* (APSR); *International Organization* (IO); *Journal of Conflict Resolution* (JCR); and *Journal of Peace Research* (JPR). The selected journals possess high disciplinary status as all are ranked within the top twelve of most influential journals in international relations according to a recent survey,⁵⁰ and each has a vetting system (e.g., peer-review) to ensure that high-quality, innovative work is published in their pages. More particularly, the journals are those whose contents and missions potentially include the study of international law, something not true of other journals in political science and international relations.

To understand the influence of international relations on legal scholarship, we focused on two law journals: *American Journal of International Law* (AJIL) and the *European Journal of International Law* (EJIL). These are among the most prominent law journals for international legal scholarship, and most importantly for our purposes are receptive to interdisciplinary scholarship.⁵¹ If international relations has had any impact, it should be reflected first and most obviously in these outlets.⁵² Articles in the *JPR* and *EJIL* (and to a lesser extent the other journals) frequently come from authors outside of North America and thus we can protect against uncovering any patterns that are purely a phenomenon of American scholarship.

In theory, these general journals in the disciplines of international law and international relations are suitable outlets for interdisciplinary work; the extent to which this occurs is the subject of our analysis below. Yet in the last decade a new journal arose with the explicit mission that “fosters

International Law, did not begin publishing until 1990.

⁵⁰ DANIEL MALINIAK ET AL., TRIP AROUND THE WORLD: TEACHING, RESEARCH, AND POLICY VIEWS OF INTERNATIONAL RELATIONS FACULTY IN 20 COUNTRIES (2012), available at [http://irthe.oryandpractice.wm.edu/projects/trip/TRIP%202011%20RESULTS%20US%20RESPONDENT S.pdf](http://irthe.oryandpractice.wm.edu/projects/trip/TRIP%202011%20RESULTS%20US%20RESPONDENT%20S.pdf).

⁵¹ We recognize that this bypasses some potentially relevant scholarship in more specialized international legal journals (e.g., university law reviews), although almost all of the content there is traditional legal research, some of it written by law students.

⁵² Collaboration between legal scholars and political scientists has occurred outside of the journals as well. There are a number of books, many cited earlier, that analyze the legal phenomena found in the international community. There are a number of edited volumes with multiple authors—for example Beck, Arend & Vander Lugt, *supra* note 3. The chapters within these books, however, do not fully capture the developing collaboration between the disciplines (or lack thereof) because there are fewer of them, they are less representative of the broader scholarly community, and they tend to be constrained by the book’s central project. In contrast journal articles exist in greater numbers, are authored by a broader swath of both communities, and are written without constraint of a larger research project.

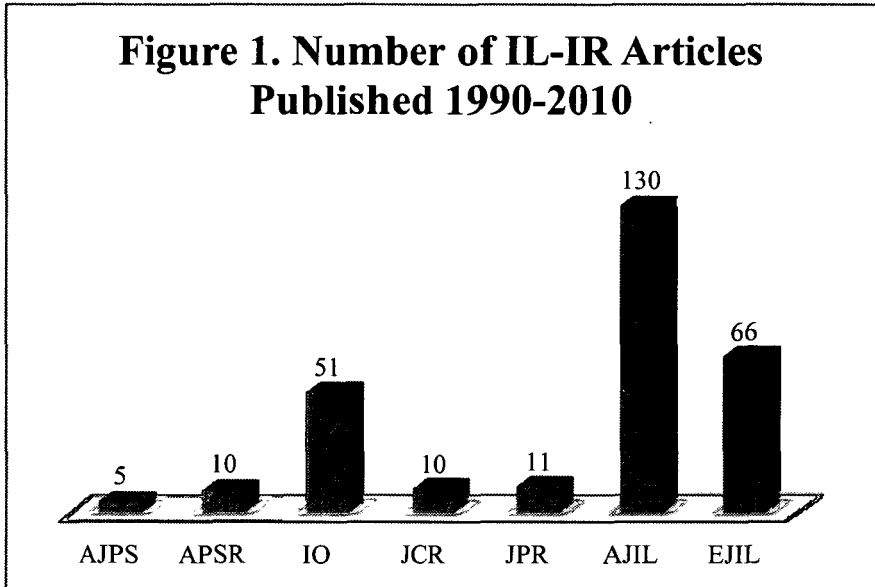
interdisciplinary discourse at the nexus of international law and international relations”—the *Journal of International Law and International Relations*. We also examine articles published over the life of that journal (2005–2011) to see if interdisciplinary work is found more frequently there, and whether by implication the patterns evident in the international relations and international law journals respectively are mirrored or enhanced in a journal specifically devoted to the kinds of work in which we are interested.

Within these journals, our search for relevant work concentrated on articles whose *primary* focus was the examination of international law within a broader IL-IR framework. This criterion of an IL-IR focus excludes many discipline-specific works; indeed, almost all the articles in the law journals noted above by definition dealt with international law in some fashion. Within political science journals, simply mentioning law did not merit inclusion nor did including an international law explanatory variable among many others. The investigative thrust of an article had to be focused on international law, most obviously by seeking to explain behavior dealing with international legal processes such as treaty ratification and compliance.⁵³ Similarly, within law journals, we focused on articles in the main content sections, only including works with broad interpretive or explanatory goals. We thereby excluded book reviews, editorial commentaries, and most symposia writing, unless an exceptional case merited inclusion.

Using the above criteria, we identified eighty-seven scholarly articles (out of the more than 2000 published in the period of study) in the political science journals for further analysis. We also coded 196 articles in the period of study from the two law journals. The sample of articles drawn from these journals includes research by a diversity of scholars (both American and international, lawyers, political scientists, and policy makers)

⁵³ Some international relations articles (especially in the area of political economy) focus on national laws and political processes as they impact international negotiations. If the primary focus (the dependent variable) was concerning the treaty produced by the negotiations and U.S. or other state domestic legal constraints were part/main part of the explanation, then the article is included. If there was just an exposition on U.S. or other national legal constraints in negotiation, without specific reference to specific international laws produced or the international legal behavior, then the article is not included in the sample.

representative of modern IL-IR scholars. Figure 1 displays the distribution of articles by journal.



Our interest in the substance of each article centers on three primary questions about the scholarly divide between law and international relations: (1) Who is publishing where and when? (2) Which topics are they investigating and what are their research goals? and (3) How are they conducting their research?

A. Who is Publishing Where and When?

We expected that law journals with an international focus (e.g., the *American Journal of International Law*) would publish a greater quantity of “law-focused” articles than an international relations journal (e.g., *International Organization*). More important is whether publications investigating legal phenomena have varied over time. Has the frequency of political science journals publishing articles on international law increased? Moreover, knowing who is publishing those articles will help clarify the extent to which collaboration or cross-pollination across the disciplines has occurred.

To these ends, we looked at two sets of articles, coding their authorship. Specifically, we are interested in discovering whether political scientists are actually publishing in law journals and vice versa. Additionally, by recording the discipline and academic rank of the authors we can also

determine whether cross-disciplinary co-authoring is occurring and to what extent.

B. Which Topics are They Investigating and What are Their Research Goals?

Beyond recording the quantity and origins of articles sampled, we also want to assess the objectives and methods present within IL-IR work. We adopt the aforementioned Beck categorical schema that differentiates articles based on the methodological orientation and broader objective.⁵⁴ The first distinction is methodological, based on how the analysis was conducted. An article that focuses on some set of empirical evidence from the historical record is coded as “empirical” in orientation. If the primary investigative tool is deconstruction or critical theory, however, an article is classified as “critical.” We also review each article for its objective. When an article attempts to explain why or how something occurred it is coded as “explanatory.” Meanwhile, if the intention is to offer a recommendation of how law should be changed or what the law “ought to be,” it is coded as “prescriptive.”

We used a majority rule in assessing whether an article was empirical or critical, and explanatory or prescriptive. Simply put, the methodological or objective orientation of the majority of the analysis is coded. For example, when an article deconstructed the historical use of a legal concept in an effort to argue for how it ought to be used by an international court, that case is coded as both critical (because it used deconstruction) and prescriptive (because it dealt with how the concept ought to be used). Although there are certainly cases in which articles do some of both, we are most interested in the primary motivations of the scholarship, and the articles we collected all possessed identifiable primary motivations.

Similarly, within law journals, we focused on articles in the main content sections, including works with broad interpretive or explanatory goals. One qualifying criterion for inclusion was that the article dealt with a substantive international legal issue that went beyond a single legal case. Additionally, we sought out articles directed toward the relations of states rather than the analysis of contending legal doctrines.

Scholars relate to the phenomena they study in different ways. “Some scholars set out to describe the world; others to explain.”⁵⁵ Putting this observation into practice, we sub-divide articles coded as “explanatory” into “descriptive or causal” categories. Our primary criterion for distinguishing

⁵⁴ Beck, *supra* note 3, at 7.

⁵⁵ GARY KING, ROBERT O. KEOHANE & SIDNEY VERBA, *DESIGNING SOCIAL INQUIRY* 34 (1994).

“causal” explanations from “descriptive” ones is the presence or absence of explicit hypotheses, conjectures, or predictions. For example, an article classified as “explanatory” that accounts for how the International Court of Justice’s mutual consent requirement functions and how it has been used (or abused) is likely to be coded as “descriptive.” If, on the other hand, that article were to advance predictions about when unilateral withdrawal is more likely or hypothesize about the effect that mutual withdrawal has on the court’s reputation and future cases, then it would be coded as “causal.”

In addition to arguments within a text, an article’s abstract and introductory paragraphs are the primary venues through which an author can signal his or her intention. Thus, we also record the presence of the words “theory” and “testing” in the abstracts and introduction of articles.⁵⁶ When we observe agreement in the presence of hypotheses in the text and theory in the abstract, it reinforces the “causal” and “descriptive” distinction mentioned above. Additionally, any discrepancies highlight instances in which the language of science is used without the actual practice.

We also examine substantive issue areas investigated within each of the sampled articles, which allows us to evaluate whether the “empirical turn” in international legal scholarship has been systemic or constrained to particular topics. Only when an issue constitutes a primary part of the research question, the proposed theory, or the cases discussed, can an article be said to have addressed it. We divide the population of possible topics into the following issue areas: “War/Security”; “Economic/Trade/Financial”; “European Union”; “European Court of Justice”; “Human Rights”; “Environment”; “International Organizations”; “International Courts”; and the “Legal Operating System.”⁵⁷ Most of these represent either particular institutions that have been focal points of scholarly inquiry or normative systems of laws governing the behavior of states within particular issue areas.⁵⁸

C. *How are They Conducting Their Research?*

We also assess the specific research methods employed by legal scholars and political scientists studying international law. Because so much of the scholarly divide is rooted in differences in the means of examining legal-

⁵⁶ We also count synonyms when the intent is clearly to convey the idea of evaluating an explanation against evidence.

⁵⁷ The last category is taken from DIEHL & KU, *supra* note 4, at 28–42 to capture the discussion of structural legal issues that exist outside any single institution or topical area (e.g., the sources of law).

⁵⁸ For a discussion of the issue specific “normative system” of international law, see *id.* at 42–48.

political phenomena, we are interested in the extent to which there has been sharing of methodological techniques following calls for unity. We define “methods” simply as the means by which authors examine or test their arguments.

Unlike the earlier classification based broadly on methodological orientation, which captures how a scholar approaches a problem, our focus here is on the precise tools used regardless of the approach. It is possible that an article classified as “critical” might employ a series of case studies as it deconstructs a legal process. Similarly, an “empirical” article might use game theory or legal research as a primary method of assessing the historical record, only bringing in statistics after the fact to illuminate trends. We do expect some correlation between the types of methods adopted and the methodological orientation of the article, but one does not necessarily imply the other.

To capture the possibility of mixed-method approaches we examine each article for its primary and secondary method using the following list of methods: (1) Quantitative Analysis; (2) Qualitative Defined Case Studies; (3) Qualitative Undefined Case Studies; (4) Formal/Game Theory; (5) Legal Research; (6) None.⁵⁹

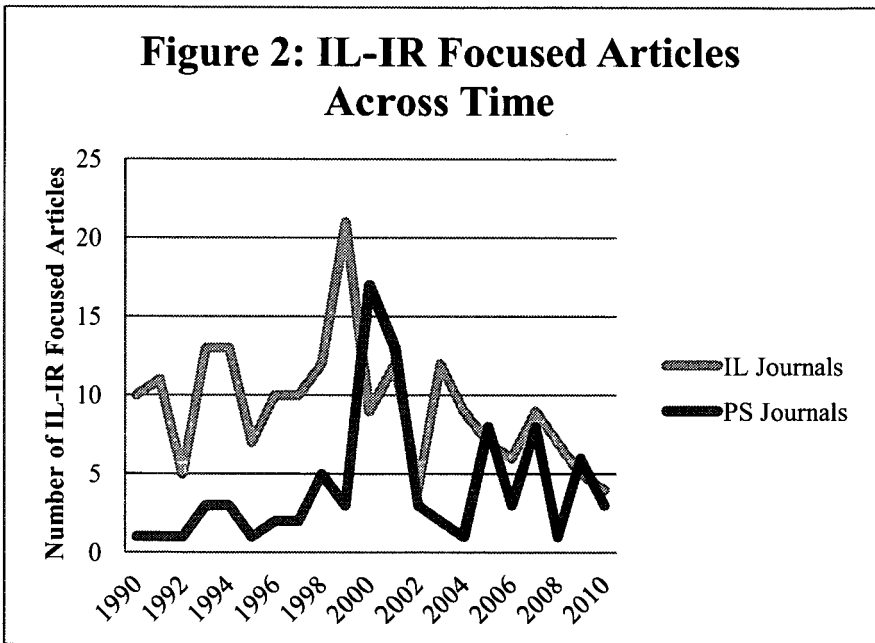
We identify the presence of “Quantitative Analysis” and “Formal/Game Theory or Legal Research” within an article as indicated by the use of statistical tables, game theoretic formulations, or legal case histories and citations respectively. Categorizing the use of case studies, however, poses a different problem. Case studies are ubiquitous across both law and political science research and serve many purposes. For the sake of clarity, we distinguish between two types of case studies based on their function within the piece. In a “Defined Case Study,” an author explicitly discusses the case as serving some evaluative role for the theory, argument, proposal, or critique.⁶⁰ “Undefined case studies” are either expressly illustrative or not claimed to possess evaluative weight. Our objective in this analysis is to examine which articles are employing which research techniques, not to chart the rise or fall in popularity of a given statistical technique, model, or series of cases.

⁵⁹ Because we are coding for presence of a primary and secondary method, we use the final category “none” to indicate that there is either no secondary method or, in the event of articles concerned only with theory or introducing a larger research project, no method employed at all.

⁶⁰ The evaluative character of a case does not have to take the form of a predictive test as is most likely for an “empiricist-explanatory” article. For “prescriptive” or “critical” articles, specific cases might offer informative analogies regarding policy changes or crucial examples of a concept formation. In such instances, the cases selected are helping to evaluate the central argument of the article and are thus “defined case studies.”

VI. THE BIG PICTURE: IL-IR SCHOLARSHIP IN BOTH POLITICAL SCIENCE AND LAW JOURNALS

Among the 283 articles identified in the twenty year period, perhaps most striking is the relative rarity of research into legal issues within political science journals, constituting less than 5% of the total articles published and concentrated disproportionately in a single journal outlet: *International Organization*. Most studies of international law still appear in legal outlets. Those numbers alone demonstrate that the previous calls for unity have yielded limited results. Figure 2 looks at the trends in IL-IR publishing over time.



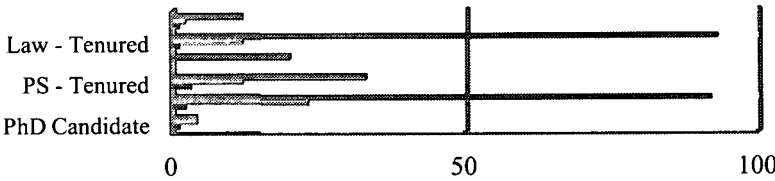
The late 1990s and early twenty-first century were peak times for publications dealing with IL-IR issues in both law and political science. There has been an increase in international law articles in political science journals, but the spike around the turn of the century is a little misleading. Special issues in *International Organization* on the legalization of international relations and the rational design of international institutions⁶¹ sparked the imagination of many scholars, but that fire failed to ignite and in

⁶¹ *Legalization and World Politics: An Introduction*, 54 INT'L ORG. 385-419 (2000); *The Rational Design of International Institutions*, 55 INT'L ORG. 761-1082 (2001).

the years that followed only a few follow-up pieces were generated. One conclusion that we can draw from this spike or dissipation of interest is that special issues or new approaches to IL-IR phenomena might be necessary to promote collaboration, but these alone are not sufficient. In many cases, the ongoing scholarly collaborations and debates following such publications are informed by, but do not necessarily fundamentally increase or alter, IL-IR collaborative work, as evidenced by the paucity of articles continuing to build on the rational design project or the legalization project.⁶²

It is less obvious why IR-IL articles peak in law reviews around the same period as occurs in political science outlets, although a special journal symposium on the International Criminal Court in 1999 accounts for part of the increase in this period.⁶³ Yet there is a decline in such articles after the peak that returns the frequency count to levels at or even below those in the early 1990s. In general then, there is no linear trend toward increased cross-pollination of international law and international relations scholarship.

**Figure 3: Authorship by Affiliation and Rank
(All PS and Law Journal Articles)**



	PhD Candidate	Other	PS - Tenured	PS - Untenured	Law - Tenured	Law - Untenured
▣ 1st Author	4	92	33	20	93	12
□ 2nd Author	4	23	12		12	2
■ 3rd Author	1	2	3		1	1

⁶² For example, the lead, introductory articles of these special issues, rather than the subsequent substantive ones, have been the most cited articles. Barbara Koremenos, Charles Lipson & Duncan Snidal, *The Rational Design of International Institutions*, 55 INT'L ORG. 761 (2001) has been cited 193 times, and Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000) has been cited 146 times. These indicate that both articles have had wide impact on other research, but not necessarily in research at the IR-IL interface. Both citation counts were retrieved from ISI's Web of Science, <http://apps.webofknowledge.com> (last visited Jan. 18, 2012).

⁶³ Seven articles in this symposium are coded here. See generally Symposium, *Developments in International Criminal Law*, 93 AM. J. INT'L L. 1-123 (1999).

Figure 3, which considers the characteristics of article authors, paints an even dimmer picture of the gap between scholars of law and politics. Tenured faculty members do the majority of the publishing on IL-IR topics. This is not necessarily problematic as tenured faculty are more likely, on average, to have time to study beyond their discipline and form professional networks across the gap, as well as encountering less risk to their careers in doing so.⁶⁴ It is also the case that the majority of regular faculty in law schools and social science departments are tenured, and because of this baseline, one would expect more articles from this group.⁶⁵

What is an issue for those who would advocate more collaboration in the future is that untenured (presumably younger scholars) remain primarily confined to their disciplinary journals. Of the sampled articles, untenured law faculty did not appear as first, second, or third authors in political science journal articles and untenured political scientists appeared in law journals only once. Similarly, international relations doctoral candidates rarely publish in legal journals. It might be that it simply takes time for scholars to establish themselves in their own fields before branching out into other disciplines. Nevertheless, given the number and diversity of publications by untenured faculty within their respective disciplines and the rather stark contrast in tenured and untenured publications here, it stands to reason that some driving forces are the tenure requirements and incentive structures they face in their home academic units and not a paucity of new ideas. This, of course, raises the bigger logistical issue of how different academic institutions choose to reward interdisciplinary or cross-disciplinary work, an issue to which we can only call attention here.

Tenure alone though does not a collaborator make. Looking through the cases in which affiliation could be determined, the actual rate of collaboration across the disciplines was remarkably low. In the sample, fifty-seven articles were co-authored; the overwhelming majority (thirty-seven) of those occurred within a discipline (e.g., a political scientist working with a political scientist). Of the seventeen mixed co-authored articles, half took place in law journals between law professors and "other" scholars (sometimes a member of the Board of Editors, but just as often those collaborations occurred with diplomats, business professors, or directors of research centers) and the other half took place in political science journals between international relations scholars and "other" scholars or

⁶⁴ Note that the "Other" category contains scholars identified in law journals as on the Board of Editors. We chose not to track down the affiliation and rank of these scholars, but it is safe to assume that the majority of them are tenured faculty at law schools.

⁶⁵ There are large numbers of adjuncts, visiting, and other non-tenure-track faculty who teach classes, but are not active researchers who publish regularly in journals.

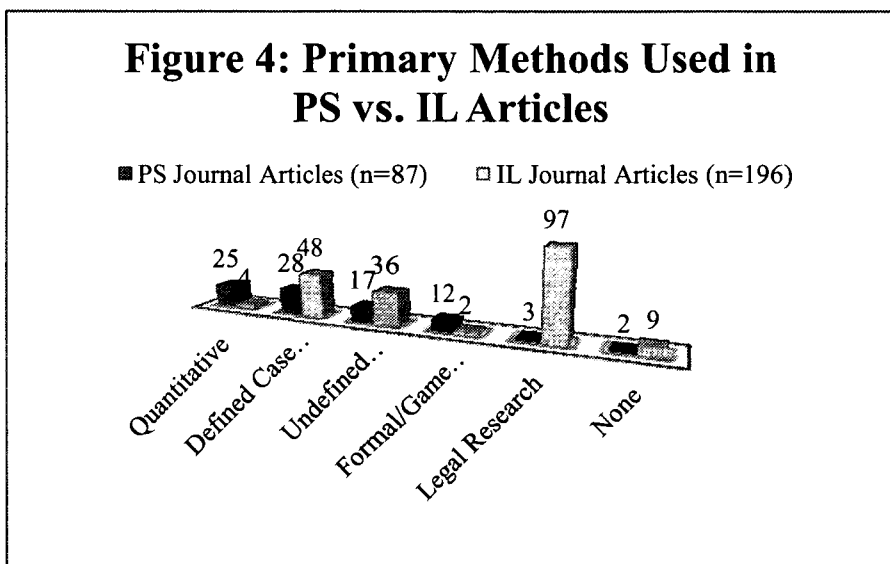
graduate students. Only four of the cases sampled were co-authored across the gap.⁶⁶ Even among the collaborators, many appear as single authors of other articles in the dataset. There appears to be a hardy core of scholars willing to tackle the IL-IR divide, but their relatively small number indicates that we have yet to witness the rush to collaboration that has at times been advocated.

The final general pattern concerns the methodology used to study international law. Perhaps the single biggest difference in legal and social scientific training is the acquisition of quantitative and rigorous qualitative methods skills. Although law students are taught to reason well, analyze texts, and build sound logical arguments, there is less emphasis placed on statistical methods and much less concern with the sort of scientific causality at the heart of most international relations training.

Our study suggests that despite careful specification of empirical work in legal journals elsewhere,⁶⁷ the “empirical turn” might be overstated. Although legal scholarship has employed a diversity of methods to investigate the form and functions of international law, Figure 4 demonstrates that most of the empirical work concerning law is being done in political science journals, most of it by international relations scholars. A sizeable portion (over 40%) of articles in political science journals uses statistical methods or game theoretic methods, whereas those methods are found in barely 3% of articles in law journals. Nevertheless, case studies are commonly found in both journal types.

⁶⁶ Abbott & Snidal, *supra* note 62; Walter Mattli & Anne-Marie Slaughter, *Revisiting the European Court of Justice*, 52 INT’L ORG. 177 (1998); Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter & Duncan Snidal, *The Concept of Legalization*, 54 INT’L ORG. 401 (2000); Laurence R. Helfer, Karen J. Alter & M. Florencia Guenzovich, *Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community*, 103 AM. J. INT’L L. 1 (2009). We do not count introductory essays in journal special issues or co-authored articles in which the co-authors have institutional affiliations in different fields (e.g., law and political science), but were trained in one discipline (e.g., political science or international relations), such as Paul F. Diehl, Charlotte Ku & Daniel Zamora, *The Dynamics of International Law: The Interaction of Normative and Operating Systems*, 57 INT’L ORG. 43 (2003).

⁶⁷ Shaffer & Ginsburg, *supra* note 20.



These results also reveal that legal scholarship remains primarily reliant on legal research (i.e., carefully examining cases, rulings and documents to ascertain the law's meaning) not on advanced social science analysis. Of the articles cited by Shaffer and Ginsburg, only one effectively makes use of statistics to help discover a truth useful to legal scholars.⁶⁸ A majority of the other articles cited were either published more than twenty years ago or spend much of their energies laying out the advantages to using social science methods rather than actually employing said methods.

The use of data as empirical evidence and the statistical analysis of such data are still not widely accepted in legal circles. An instructive example of the disciplinary disjuncture in actual use of quantitative methods is Oona Hathaway's exchange with Ryan Goodman and Derek Jinks over her use of statistical inference to determine if human rights treaties make a difference in human rights practice.⁶⁹ Goodman and Jinks question the various measurements used by Hathaway, not understanding the inherent limitations of data and asking for data that does not exist or cannot easily be collected.⁷⁰ As Hathaway counters, "[t]heir critique... amounts to a declaration that a

⁶⁸ *Id.* That article is Richard H. Steinberg, *Trade-Environment Negotiations in the EU, NAFTA, and WTO: Regional Trajectories of Rule Development*, 91 AM. J. INT'L L. 231 (1997).

⁶⁹ Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002); Oona A. Hathaway, *Testing Conventional Wisdom*, 13 EUR. J. INT'L L. 185 (2003) [hereinafter Hathaway, *Testing Conventional Wisdom*]; Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 13 EUR. J. INT'L L. 171 (2003).

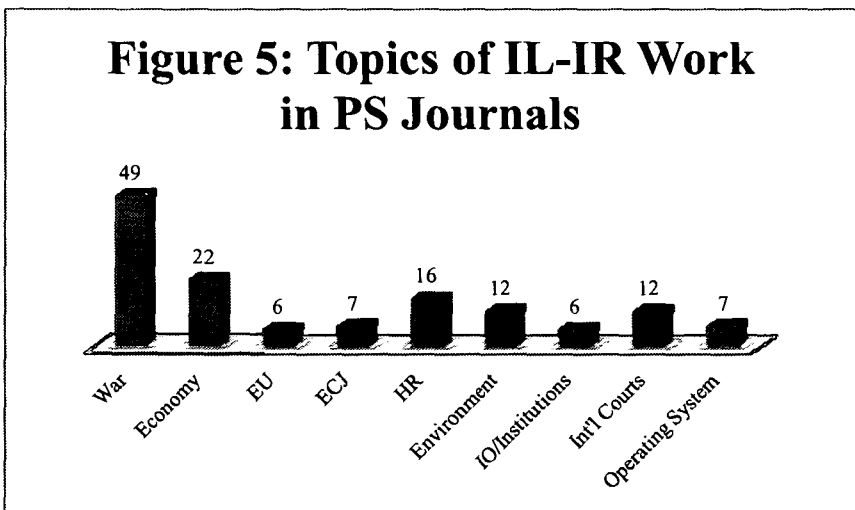
⁷⁰ Goodman & Jinks, *supra* note 69, at 175.

quantitative analysis of these issues ought not to be carried out at all,” and then cites Goodman and Jinks’s only recommendation that “[p]erhaps the answer is to discard this type of statistical modeling and adopt a softer kind of empiricism, something more sociological than economic.”⁷¹ Looking beyond the fracas of this exchange, this example of methodological borrowing demonstrates that calls for incorporating empirical analysis into law articles might need to reassess what types of methods will be most useful to legal scholars. Although statistical analysis is a useful tool and helps greatly in answering questions of causality and the effects of international law, often legal scholars are most concerned with process questions of how laws change and existential questions of what a law implies—detail-oriented or interpretive questions beyond the reach of many current data sets. For these scholars, there can be no bridge that can connect to most international relations scholars.

In the next two sections we examine each set of disciplinary journals separately. Our primary objectives are to assess what aspects of international law each is researching and with what intention.

VII. STUDYING INTERNATIONAL LAW IN POLITICAL SCIENCE JOURNALS

Within political science journals, scholars have tended to focus on legal issues related to the core areas of international relations research: war and political economy, as indicated in Figure 5. Also receiving significant attention are analyses of human rights, international courts (most frequently the International Criminal Court), and environmental issues.



⁷¹ Hathaway, *Testing Conventional Wisdom*, *supra* note 69, at 193 & n.45.

The focus on war-related legal phenomena might seem surprising at first blush, given that this area of law (at least *jus ad bello*) is relatively underdeveloped. Nevertheless, topics such as alliances, prisoner of war treaties, and legal constraints on the use of force make regular appearances in political science journals. These are popular topics to consider as *least likely* tests of the power of law, because law is thought to exercise fewer constraints on behavior with respect to the use of military force according to realist and other theoretical paradigms that expect national interests to trump international norms in the "high politics" of national security. The law and political economy concentration corresponds to the recent increase in trade agreements, including bilateral investment treaties (BITs).

How these scholars are approaching these topics can be summarized directly by comparison of their stated objectives—whether explanatory or prescriptive—and their methodological orientation—explanatory or critical—in Beck's taxonomy.⁷² Figure 4 above clearly shows a divergence in the specific methods employed by each set of scholars. By employing Beck's typology, as indicated in Table 1 below, we can capture a snapshot of the goals and orientations of authors in political science journals.

TABLE 1: ORIENTATION AND OBJECTIVE OF ARTICLES IN POLITICAL SCIENCE JOURNALS

	Explanatory	Prescriptive
Empirical	80.5% (70)	2.3% (2)
Critical	6.8% (6)	10.3% (9)

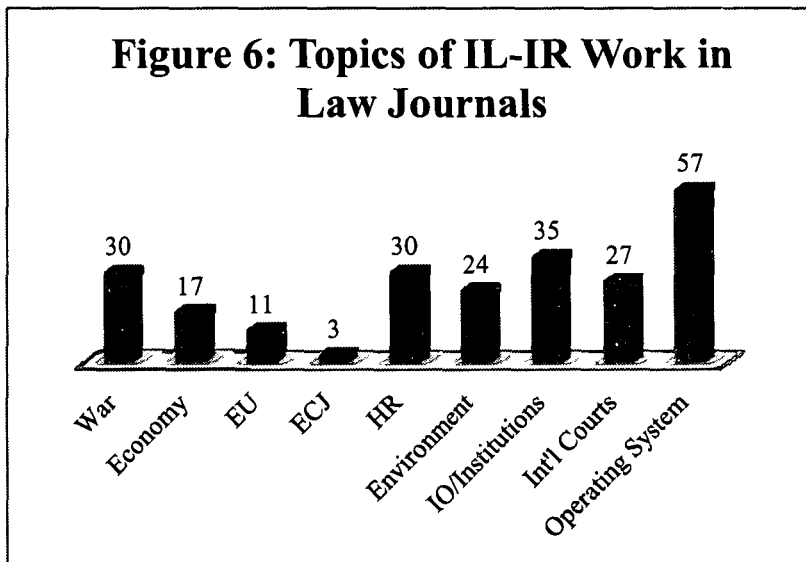
The overwhelming majority of the articles in political science journals that focused on international law set out to explain *and* empirically assess the causes behind law-making as well as the effects that law has had on international behavior. This finding is further buttressed by the fact that 56% of the abstracts sampled explicitly mention a theory, testing procedure, or both. Of the seventy-six articles coded as explanatory, three-quarters were

⁷² Beck, *supra* note 3, at 7.

focused on causality not description. From these simple descriptive statistics, legal phenomena in political science journals are treated as events to be dissected and explained, similar to political and economic phenomena.

VIII. INTERNATIONAL RELATIONS IN INTERNATIONAL LAW JOURNALS

Authors in law journals have tended to focus their analysis on issues within international law in which measurements and conceptual clarity are less readily apparent. In doing so, legal scholars have most frequently tried to link behavior to one or more legal doctrines, or evaluate such behavior in light of those doctrines. Figure 6 shows that on no other topic has this analytical trend found more purchase than the basic foundation of the international legal system, what we call here the “legal operating system.”



Unlike domestic law, international law does not have either a central genesis or a common repository for the entirety of its rules, regulations, norms, legal processes, or procedures—the constituent parts of the “legal operating system.” Neither U.N. General Assembly resolutions nor a registry of treaties (conventional subjects of data collection and analysis in political science journals) capture customary laws or new legal cases. Yet a good deal of scholarly production in law journals has centered on explaining those novel phenomena.⁷³

⁷³ Our design called for us to code the topic(s) of each article and there are instances of a single article addressing two topics. Frequently, the second topic addressed was the role a

As we compare the objectives and the methodological orientation of the authors publishing in law journals, periodically those journals publish very lengthy descriptive pieces that lay out this historical background of a particular legal issue, case, or innovation. Although technically explanatory, this type of scholarship makes no pretense about providing an account of causality required to publish in most of the political science journals we sampled.

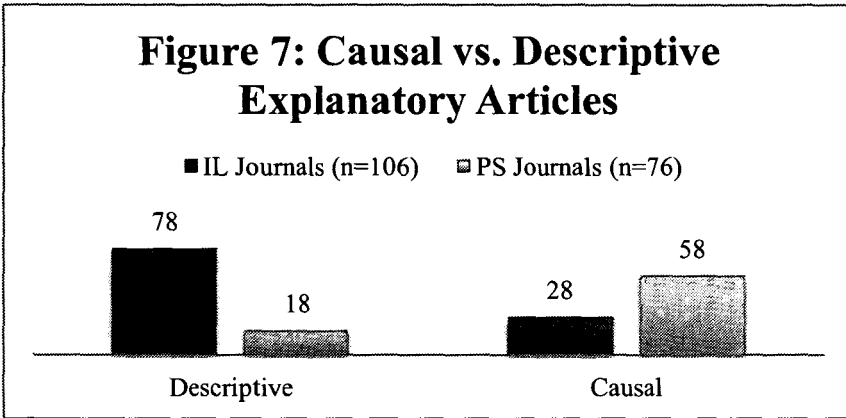
TABLE 2: ORIENTATION AND OBJECTIVE OF ARTICLES IN LAW JOURNALS

	36.7%	8.1%
Empirical	(72)	(16)
	17.3%	37.8%
Critical	(34)	(74)

The clearest difference between Tables 1 and 2 is the shift away from empirical inquiry toward critical analysis. This displacement is reflected in the relative scarcity of theory or testing language in the introductory sections of most articles in law journals. Just twenty-eight articles in the law journals sampled ($n=196$) used theory or testing related language to frame their article, and of those only seventeen went on to explore a causal story. From these findings, it would appear that more authors in law journals are interested in explaining what happened (and frequently its implications for law and the legal system) rather than exploring the causal processes behind certain events.

These findings indicate that although there has clearly been some progress—after all there are some forms of every argument being made in both types of journals—disciplines exist for a reason, frequently because the members of the field share a common concern about the world. Figure 7 reveals the contrast in how each side of the gap approaches explanation of legal phenomena.

specific event (e.g., efforts to limit pollution) to an operating system principle (e.g., common but differentiated responsibility). This occurred in political science journals as well but it was distributed across a wider array of topics.



Descriptive explanations remain the province of legal journals, although causal explanations are not unknown. The latter represents a little more than a quarter of the empirical studies that appear in their pages. The reverse is true of international law analyses in political science journals; three-quarters of the articles contain causal explanations. Thus, there is considerable divergence, albeit not complete polarization, across the journals in how explanations in empirical articles are constructed.

IX. PATTERNS IN AN IL-IR INTERDISCIPLINARY JOURNAL

One might expect that a journal specifically devoted to interdisciplinary work would reflect more cross-fertilization of methods and ideas than research in traditional disciplinary journals. Yet our examination of sixty-seven articles published in the *Journal of International Law and International Relations (JILIR)* does not reveal this to be the case. In this section, we use the same coding scheme on those articles and compare the patterns found in the seven disciplinary journals above.

By definition, all sixty-seven articles are about international relations and international law, so there can be no cross-temporal frequency. Given that many issues of the journal are “special issues,” and therefore solicited by guest or journal editors, a topical analysis is oversampled on some subjects and does not necessarily represent the areas of research on which scholars are concentrating. Nevertheless, there are distinct patterns in terms of authorship, method, and orientation of the articles published in the journal.

Similar to the patterns noted above, a significant portion of the articles (44%) were published by tenured faculty in law and in political science/international relations respectively. Publications by doctoral candidates and untenured faculty were also relatively infrequent (20%), although perhaps more common than in disciplinary journals. Viewed from

another light, this is an impressive percentage given that *JILIR* has had many special issues and senior scholars are most often the targets of solicited articles for those venues. *JILIR* did attract a significant number of non-faculty authors (almost 35%); these were largely practitioners or research fellows, the vast majority of which were trained in international law rather than the social sciences.

Most significant was the pattern in co-authorship. One might have hope that an interdisciplinary journal would foster more collaboration between legal and social science scholars, but this has not occurred. Co-authorship in general was less common, even rare (just under 12%) in the pages of *JILIR*. Furthermore, there was only one instance of collaboration across law and political science.⁷⁴

An analysis of methodology also suggests that borrowing of methods from the social sciences did not occur with much frequency, mirroring the patterns found in law journals. A plurality (37%) had no identifiable method; these were either overview articles (appearing in the inaugural issue of the journal) or articles that offered a critique or new argument without systematic reference to cases, legal or empirical. Most notably, none used game theory or formal methods such as mathematical models, which have become a staple in social science. Only three (less than 5%) articles used large N analyses of data. Even that number, however, is a little misleading. First, all those articles appeared in the same themed issue.⁷⁵ Second, in each case, the statistical methodology exhibited was primitive, consistently of summary descriptive statistics presented in graphs and charts rather than more advanced techniques such as regression. Legal research and case studies were often used in *JILIR*, much as they are in law journals; the selection of cases tended not to be done for systematic evaluation or testing of arguments, but rather designed specifically to validate those arguments. Thus, from a methodology point of view, this journal appears as another outlet for law articles that might otherwise be published in law reviews.

The limited concern with social science orientations is further evident in the purposes and content of the journal. *JILIR* articles have fewer explanatory aspirations (less than 20%) than law reviews (54%) and political science journals (over 87%); similarly, causal relationships were not often examined in the interdisciplinary journal. In general, articles appearing in this interdisciplinary journal tended to be just as likely to be critical as empirical and often were prescriptive in orientation. Often, the modal article

⁷⁴ A lawyer and a political scientist collaborated in Wojtek Mackiewicz Wolfe & Annette S. Leung Evans, *China's Energy Investments and the Corporate Social Responsibility Imperative*, 6 J. INT'L L. & INT'L REL. 83 (2011).

⁷⁵ *Engagement and Escape: International Legal Institutions and Public Political Contestation*, 6 J. INT'L L. & INT'L REL. 1 (2010).

used a given theoretical perspective(s) to examine law in a given area. The strongest evidence of interdisciplinarity came with respect to the frequent use and citation of international relations theories as the schematics to understand international law; constructivist frameworks seemed to be especially popular. Yet this borrowing of ideas stands in contrast to the limited adoption of social science methods and orientations that are frequently used in the social science to test propositions generated from those theoretical frameworks.

X. CONCLUSIONS: IS THE GLASS HALF EMPTY OR HALF FULL?

Our study began by recalling the mid-twentieth century skepticism of the relevance and effectiveness of international law in international politics that led to a general lack of interest among international relations scholars in international law. In the meantime, international lawyers were not conversant with the social scientific methods and language that became the standard for political science in the United States and the two fields developed with little or no reference to the other. The sources of this divergence were both theoretical (an emphasis on power and realism in IR bolstered by a positivist inclination in IL) and methodological (the need for hypothesis and empirical observation). The break, however, may not have been absolute with ongoing shared interests in the development of the post-World War II international institutions and bodies of law such as those dealing with human rights and trade.

From the perspective of the international lawyer, the findings of the social science testing that Simmons did revealing the influence of human rights treaties in domestic politics seemed only to state the obvious—that international obligations are implemented.⁷⁶ Such a conclusion, however, would deny the international lawyer significant information about the reasons *why* international obligations are implemented (and why they are not). To ignore the possibility that some of these findings are generalizable and thereby applicable to other IL subjects also misses an opportunity to understand IL as a system. For IL, this understanding comes at a time when there is concern about fragmentation within IL because of the number of subspecialties and actors. Therefore, there is good reason for international lawyers to use social science to deepen their own understanding of how IL works.

For the social scientist dedicated to scientific rigor, denying the relevance of international law may have caused the overlooking of a key factor in actor behavior because the right question was not asked or observed to reveal IL's

⁷⁶ SIMMONS, *supra* note 41.

influence. Some of this may be the result of the lack of an adequately sized sample of behaviors to observe and datasets to analyze. Intensified international and cross border activity over the last 150 years has changed that. From both these perspectives, our review of the past twenty years of collaboration has shown progress. International law scholars are employing social science techniques and political scientists are asking the questions that examine the issues of relevance and effectiveness rather than simply assuming that it is epiphenomenal.

Have we advanced towards the development of a merged discipline of the kind Abbott urged in the late 1980s—the study of organized international cooperation?⁷⁷ There is not enough evidence to suggest such a bold conclusion. Yet, such an assessment should not detract from the collaboration that we have found. The degree of integration is greater between IL and IR than in other areas (e.g., labor/industrial relations and labor law), but still lags behind well-developed communities that combine law with economics and philosophy respectively. It also appears that international relations has made greater strides in the direction of studying international law than the reverse; nevertheless, the collaboration of individual scholars across disciplines is still very limited, even as there has been some borrowing of ideas and methods from the other side. Furthermore, our conclusion captures a point in time in this collaboration. What we find twenty years into this effort to foster collaboration is that this form of inquiry has not yet become the primary focus for either IL or IR research but is rather a secondary focus. As such, existing publishing vehicles in the respective fields may be adequate for the research that is undertaken. The founding of the *Journal of International Relations and International Law* dedicated to interdisciplinary research has produced disappointing results, indicating the mere existence of a dedicated journal is not sufficient to bridge the gap between the two fields.

We can anticipate both increased interest and effort to develop this collaboration because future research questions that will engage us will likely nudge us along further. Global actions and activities now directly affect individuals, but the channels that facilitate and govern these activities exist in isolated segments and are not fully connected either as a matter of policy-making or of academic theorizing and testing. For example, we can see that the relationship between public authority and individuals is changing with a much more active individual voice now present in national and international decision-making and implementation of programs and initiatives. Public power and authority have become more diffuse as state functions and responsibilities have migrated to international organizations

⁷⁷ Abbott, *supra* note 25.

and non-state actors. Twenty-first century international politics has given us a governing environment that is more open and participatory, with access to information, regular reporting and review, and monitoring as part of international activity, but we do not yet fully understand how it all works.

Has globalization therefore created the moment when the nexus of IR and IL becomes a primary focus? Because globalization is challenging accepted institutions of authority, this environment has made the exercise of power more difficult and transferred power to individuals, groups, and entities in unprecedented ways. Understanding the operation of this new environment will put a premium on the ability to aggregate individual and complex actions to test their effects on existing structures and capabilities. For lawyers and policy makers, the ability to test propositions including normative propositions to predict outcomes may be useful when making policy choices. The scale (both larger and deeper) and speed (faster) of international activity today may therefore provide both the opportunity and the need for closer collaboration as we seek tools to help us understand the accumulated implications of the many individual actions taken around the world. We can anticipate a growing need for lawyers to know how to produce and to consume the findings of scientific studies.

For social scientists, studying the present political environment will necessitate a deeper understanding of the complex phenomena they encounter (for example, the significance of court rulings) so that there is neither over-simplification nor over-generalization. As with all research and academic pursuit, we seek ongoing knowledge and insight and the means for achieving that will always be dynamic.

With the additive weight of the different publishing incentives, different methods, different topical interests, and different objectives, bridging the gap needs to be done in a more strategic manner than calling for cooperation. Given the differences revealed by our survey, it seems unlikely that adopting a single theoretical paradigm or method will produce the kind of excitement similar to other interdisciplinary success stories (i.e., behavioral economics, biochemistry). Scholars of law and politics face a disciplinary gap. Beyond providing them a logistical bridge, we need to find and provide reasons for crossing over. Without intellectual or policy incentives to collaborate the differences in knowledge production and disciplinary goals will surely keep us apart. This is not a wholly undesirable outcome. Indeed, there is good reason not to sacrifice key disciplinary questions and research in the pursuit of greater collaboration between international relations and international law scholarship.

At the risk of offering yet another plea for collaboration, however, there seem to be several fruitful paths to collaboration that might be pursued that do not require the creation of a new integrated field nor jeopardize valuable

extant, albeit more narrowly drawn, research.⁷⁸ The first step would be in formulating questions that would produce new insights. These might focus on the processes of how law is created and changes over time. This brings the causal and dynamic aspects of international relations research together with contextual opportunities and rule-based restrictions that are fundamental to purely legal analyses.

Another promising area is investigating how norms spread, and there is already an emerging focus on how supranational institutions (e.g., the E.U.) affect the domestic laws of states. As international and domestic legal systems become further intertwined, new areas of inquiry will arise, ones that appear well-suited to investigation by a combination of knowledge about legal systems and knowledge of political processes. Furthermore, the impact of law (concerns with court decisions, compliance, and the like) also provides a bridge between the legal and the political as scholars seek not just to uncover law but assess its effectiveness; this is important not only for theory and hypothesis testing, but also for providing guidance as to what changes in the law might be necessary to maximize the achievement of international community values. The IR-IL collaboration on these and other matters is likely to require data gathering as a second step. Yet as noted above, there are already some trends in this direction that are likely to be expanded in the future. The expectation is that valuable research questions and programs will spawn the necessary data collection in their wake.

⁷⁸ A number of areas of fruitful collaboration, at least from the political science perspective, are elucidated in Hafner-Burton, Victor & Lupu, *supra* note 5, at 94–96.