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Constructivism and International Law

Jutta Brunnée and Stephen J. Toope

Over the last decade or so, a new dialogue has emerged between international relations (IR) theorists interested in the social creation of identity and who focus attention on the role of norms in international politics, and international law (IL) scholars for whom normative evolution is a stock-in-trade. These norm-interested IR thinkers have been labeled “constructivists.” Constructivists are interested in many questions, of which the social creation of norms is only one. However, because international law is, of its very nature, norm focused, it is a fascination with norm creation, evolution, and destruction that has proven to be the strongest bridging point between some IL theorists and the constructivists. This bridge will form the core of our analysis in this chapter.

Because we focus considerable attention on how international lawyers and constructivists understand and deal with norms, it is useful to specify at the outset that, in the most general terms, “norms” are standards of behavior created through mutual expectation in a social setting. Many social norms are never transformed into legal norms. Moreover, the category of “legal norm” is not fixed. What norms will be included in the category depends on one’s concept of law. For legal theorists called “pluralists,” there may be no significant distinction, for example, between “law” produced by state authorities and norms created by voluntary associations: each may or may not be effective in shaping behavior. For other international lawyers, often called “positivists,” legal norms can only exist when they are produced through fixed hierarchies, usually state hierarchies. It is their formal pedigree that creates legal norms, according to positivists; therefore law exists regardless of its link to “social norms.” As we will see, other theoretical perspectives fall between these two points, or draw upon elements of each, to produce competing explanations of how international law works.

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Our point for present purposes is that the connection between international law and IR theory should not be viewed as a one-way street, with the various IR approaches canvassed in this volume simply being mapped onto a static, and often caricatured, version of “law.” Unfortunately, that technique seems to have dominated the interdisciplinary literature, a point to which we will return. What interests us in the particular connections between constructivism and international legal theory is the possibility of genuine interplay. This interplay may be productive for legal theorists, who have often attempted to apply to international law the categories, concepts, and methods developed through the study of domestic legal systems. Insights from IR may help us correct, or at least identify, the shortcomings of this approach. For IR theorists, insights from IL can help to tease out how this specific kind of normative structure can shape actor identity and interests, and how legal norms are created, maintained, and destroyed.

Some leading international lawyers express great concern about interdisciplinary dialogue with IR. These lawyers articulate the need for legal autonomy. For them, law’s goal is to shape and judge behavior, and not primarily to explain or predict behavior, which they take to be the purpose of IR theorizing. It is feared that to draw the two fields together will inevitably result in a watering down of law’s ability to provide an external critique of social interaction. What is more, some international lawyers suggest that IR is so U.S. centric and bound up with projections of American power that the diversity of international society will be further undermined if international law, a bastion of “sovereign equality,” is diluted by IR approaches.

We are not unsympathetic to these concerns, considering the broad sweep of IR theories. As we will see from other contributions to this volume, some IR approaches do tend to undermine what we call the “relative autonomy” of international law. Realist approaches tend to devalue the role of norms in international society, leaving little space for the operation of law. Although “classical” realists such as Hans Morgenthau saw law as a means of addressing uncertainty in international relations, all realists believe law will inevitably be trumped by power and interest calculations. Neo-liberal institutionalists, who claim great interest in the role of norms, tend to treat international law instrumentally as a signaling device or a product of effective interest projection through explicit negotiation and formal adjudication. Classical or ideological liberal theories are open to norms, but tend to project a homogenous normativity that undermines the value diversity of international society.

Constructivists are different. Although we argue that they have yet to fully exploit the mutual learning that is possible in the interaction of constructivist IR thinking and international legal theorizing, there is a promising openness to dialogue. Constructivism helps explain how international law can exist and influence behavior, and international law can help inform a richer understanding of the particular roles of different categories of norms in international society. Constructivist work has so far focused on the building of social norms through interaction and on the pathways through which they come to influence actors. Overall, too little effort has been

expended in tracing out the distinctions between social and legal norms, but nothing in constructivism denigrates the distinction or resists such analysis, as some recent work has shown.

In this chapter, we will canvass the reasons underlying the emergence of constructivist thought in IR and will trace out its major preoccupations (in Section I). We will then highlight key themes in constructivist engagement with international law (in Section II), before detailing how international lawyers have deployed constructivist insights (in Section III). Next, we will canvass central themes in the interdisciplinary dialogue between constructivism and international law (in Section IV). Finally, in the Conclusion, we will evaluate the most salient insights and contributions of the literature to date and will identify gaps and productive directions for future work.

I. THE EMERGENCE OF CONSTRUCTIVIST THOUGHT IN INTERNATIONAL RELATIONS THEORY

Constructivist scholars reject the dominant assumption of contemporary IR theory that the interests of states and other actors are formed prior to social interaction. Instead, constructivists claim that identity formation is relational and occurs before, or at least concurrently with, interest formation (Hurd 2008). Interests are therefore defined both in material and nonmaterial terms. While acknowledging the importance of power and material interests, constructivists focus attention upon the role that culture, ideas, institutions, discourse, and social norms play in shaping identity and influencing behavior. For this reason, constructivist thought is especially compelling when seeking to explain the constitution of actors, institutions, and social structures, and their change over considerable periods of time (Ruggie 1986).

Constructivism emerged in IR scholarship as a reaction, as a means of incorporating learning from cognate disciplines, and as an expression of hope. It was a reaction to the powerful strains of neo-realism and neo-liberalism in American IR theory. According to John Ruggie, these two dominant strains share a commitment to neo-utilitarian explanations of behavior. For neo-utilitarians, “ideational factors, when they are examined at all, are rendered in strictly instrumental terms, useful or not to self-regarding individuals (units) in the pursuit of typically material interests, including efficiency concerns” (1998: 855). For constructivists, ideas and norms seemed to have more salience – and a different pattern of influence – than the neo-utilitarians would allow.

Contemporaneously, critical and postmodern scholars in international relations began to draw upon philosophical approaches and social theories that were influential in other social science disciplines. These included the language turn in philosophy (especially Foucault, Derrida, Rorty, and Searle) and structuration in sociology (especially Giddens). In an influential 1988 publication, Keohane grouped all adherents to critical and postmodern approaches together as “reflectivists” and contrasted them to “rationalists” (1988). However, at roughly the same time, Kratochwil and

Ruggie showed that neo-utilitarians themselves were incorporating idea-focused explanatory elements into their approaches. In particular, regime theory claimed that regimes were composed of principles, norms, rules, and decision-making procedures. Principles, norms, and rules are all ideas that must be shared, Kratochwil and Ruggie argued, and for IR to address them it had to incorporate, at least to some degree, a theory of how ideas exist and a methodology focused on interpretation (1986). Constructivists attempted to bridge the divide between neo-utilitarians and their critics and show in methodologically robust ways how ideas and identities matter in international politics.

Even in early theoretical forays, leading constructivist scholars argued that no social theory could explain everything (Wendt 1999; Fearon and Wendt 2002). Jeffrey Checkel has produced some of the most influential explorations of the relationship between rationalism and constructivism. He contrasted constructivist mechanisms, such as persuasion and learning that lead to changes in identities and interests, with rationalist factors, such as the mobilization of domestic and international pressure. Checkel then identified *conditions* that could lead to persuasion and learning rather than the strategic adoption of norms (2001). He has also suggested that there are three generic mechanisms for socialization, which include strategic calculation, as well as role-playing and moral suasion (2005).

The hope associated with constructivism derives from its emergence just as the Cold War was ending and the future of East–West relationships was being reconsidered. Neither neo-realism nor institutionalism had been able to predict or explain the relatively peaceful dissolution of the Soviet bloc. Substantial systemic change occurred without a correspondingly significant change in the distribution of capabilities. As Price and Reus-Smit argue, “[t]hough critical theorists had been making their case well before, international change proved a more effective catalyst of theoretical change than the dialectical interplay of competing theoretical perspectives” (1998: 265). These events may have assisted constructivism’s rise, but we argue that constructivism is not uncritically hopeful, and that it has survived the pessimistic turn in world affairs linked to the events of September 11, 2001.

The term *constructivism* was coined by Nicholas Greenwood Onuf (1989), but some of the key tenets of the constructivist worldview were present as early as the 1950s, in the “security communities” work undertaken by Karl Deutsch and his students (1957). Constructivism also finds deep roots in broader social theory, especially in the work of Max Weber. From Weber, constructivists draw the insight that the social world is constructed by intersubjective understandings. These understandings are neither external to individuals (i.e., purely material) nor are they simply inside the heads of individuals (i.e., purely subjective). The work of John Searle, building on Weber, has also been influential. Searle argues that “facts” are not all material, instead distinguishing among brute facts, social facts, and institutional facts. For Searle “institutional facts exist only within systems of constitutive rules” (1995: 28). In a constitutive rule, a new status is assigned to something (e.g., paper

becomes money). Because the material features are insufficient to guarantee success in function – paper does not declare itself to be money – “there must be *continued* collective acceptance or recognition of the validity of the assigned function; otherwise the function cannot be successfully performed” (1995: 45). In society, Searle describes a “Background” that shapes all decision making. Constructivists sometimes call this Background “shared understandings” (Ruggie 1998), “habitus” (Kratochwil 1989), or “habits” (Hopf 2010).

The work of sociologist Anthony Giddens (1984) and other “structurationists” has been extremely influential (Bhaskar 1979). For structurationists, neither agents (meaning actors within a given setting) nor social structures are logically preexistent or determining; each is constituted through interaction with the other. Both structure and agency are created in large measure by ideas, not only by material facts. As argued by Alexander Wendt, all social structures “are inseparable from the reasons and self-understandings that agents bring to their actions” (1987: 359).

One of the major theoretical controversies within constructivism today relates to the power of shared understandings to shape the perceptions and decisions of social actors. How does one understand the balance between the explanatory power of structure, including structures of ideas and discourse, and of agency? Do people retain significant agency over their own behavior, or do they tend to replicate intersubjective habits, discursive patterns, or preexisting practices? Commonly in the literature, disagreements over these questions are phrased in terms of competing “logics.” At first, the contrast was made, borrowing from the work of March and Olsen (1998: 952), between logics of consequences (instrumentalism) and appropriateness (morality and ethics). More recently, scholars have described logics of arguing (rational oppositional discourse) (Risse 2000), of practicality (practice) (Pouliot 2008), of purposive role-playing (Checkel 2005), of habit (unreflective action) (Hopf 2010), and of emotion (Mercer 2010). The logic of arguing is one example of constructivist work that draws on the thinking of Jürgen Habermas. Constructivists have used Habermas’ concepts of “communicative action” and “discourse ethics” to test the existence of genuine persuasion and moral decision-making in international politics (see Deitelhoff and Müller 2005; Price 2008).

Although early contributions to constructivist thought focused primarily on the evolution of intersubjective understandings shaped by ideas, recent work has begun to emphasize more strongly the role of practice, what actors actually do. Early constructivist thinkers suggested that social structures cannot exist without instantiation in practices, but they did not explain what counts as practice or how we should study such practices (Wendt 1994). They suggested only that practice should encompass both material acts and rhetorical commitments (Onuf 1982; Kratochwil 1989). The focus on practice was influenced by American philosophical pragmatism (Dewey 1988; Rorty 1989) and by the work of social theorist Pierre Bourdieu, who argued against rational choice theory, suggesting instead that social agents act through implicit practical logic – a practical sense (1977). Bourdieu’s insights have been

pursued most systematically by Emanuel Adler, who focuses attention on “communities of practice” (2005: 15–27), furthering the work of social learning theorists Jean Lave and Etienne Wenger (Wenger 1998). For Adler, people’s understandings of the world and of themselves are produced and reproduced through continuous interactions and negotiation of meanings (2005: 52–53; Adler and Pouliot 2011). Inherent in this account is the proposition that it is through their participation in social practice that actors generate and maintain collective understandings (Adler 2005: 55–56).

Constructivists do not argue that culture, ideas, shared knowledge, and social norms operate as direct causes of action. Rather, social structures constrain, enable, and constitute actors in their choices, and thus help to shape world politics (Ruggie 1998: 875). The resistance to a direct “causal” explanation of behavior is one of the reasons that constructivists and other IR theorists sometimes engage in dialogues of the deaf. For realists and rational institutionalists, “cause” and hence prediction are the very points of theorizing. But constructivists are more inclined to describe social interactions that shape, mold, or constrain choice, rather than cause action. How does this shaping take place? The clearest attempts to address the “how” questions are found, not in the theory of constructivism, but in empirical work grounded in constructivist predispositions. Martha Finnemore and Kathryn Sikkink provide a thorough catalogue of first-generation constructivist explanations of normative influence, derived from a wide variety of empirical studies (1998: 892–912). More recent work by Autesserre (2009), Deitelhoff (2009), and Orchard (2010) furthers the attempt to show how norms evolve and gain traction. Some constructivist empiricists have focused on what they call the “norm cascade,” when norm entrepreneurs succeed in promoting normative evolution, and adoption reaches a “tipping point” at which norms become widely accepted and fully socialized (Finnemore and Sikkink 1998). Others focus on how norms can “entrap” actors (Keck and Sikkink 1998). Most recently, a new generation of empiricists has explored the constructivist political economy, examining cases that reveal how ideas and identities shape the global economy (Hall 2008; Weaver 2008; Abdelal, Blyth, and Parsons 2010).

An interesting substrain of “critical constructivism” has emerged in recent years. Some constructivists have argued that constructivism is inherently “critical” because it shares with critical social theory a rejection of positivist epistemology and value-neutral theorizing (Price and Reus-Smit 1998). Critical constructivists like Adriana Sinclair remain interested in the role of ideas and culture in shaping identity and behavior, but they suggest that mainstream constructivism is too focused on a narrative of liberal progress and too committed to agency, ignoring the structures of power that inhibit challenges to the status quo (Sinclair 2010). Kurki and Sinclair further argue that much constructivist research ignores these structures of power because of its focus on discourse, and its de-emphasis of material resources and unspoken assumptions (2010). A perceived constructivist failure to attend to structures of power has also prompted work by Amitav Acharya on norm localization. Acharya argues that

the conventional approach to norm diffusion treats Western norms as cosmopolitan and universal, and fails to recognize how local actors actively reconstruct foreign ideas, creating greater congruence with local beliefs and practices (2004; 2011). Antje Wiener, too, draws on critical constructivism to show that norms are not stable in their interpretation and use, but rather evolve through “interaction in context.” Hence, she argues, international norms are inevitably contested and may acquire different meanings in different national settings (2008).

In sum, there is vibrant debate within constructivism, with competing understandings of agency, structure, logics of interaction, areas of explanatory advantage, and normative implications. Constructivist research has therefore shifted its focus from skirmishes with rationalist approaches to explaining social phenomena and addressing its internal diversity.¹

II. CONSTRUCTIVIST SCHOLARSHIP AND INTERNATIONAL LAW

Constructivism, and its sophisticated understanding of norms, makes possible a sociologically rich and historically grounded understanding of international law. But such insights have been hampered to some extent by narrow understandings of law itself. In the 1990s, two of the most influential contributors to the emergent constructivist approach to IR focused attention on international law. Nicholas Onuf and Friedrich Kratochwil each posited an important role for international law in helping to construct the identities of sovereign states and in shaping their behavior. Yet, even such sympathetic readers of international law as Kratochwil and Onuf failed to allow full scope for the influence of law because they were constrained by their implicit adoption of the framework of analytical positivism.

In brief, Onuf argued that discourse and the social world are mutually constituted. Onuf defined “rules” as general, prescriptive statements. Speech acts become rules through repetition and social acceptance over time; in other words, through “practice.” Practices are not merely the application of preexisting rules; they are language and acts that take place in awareness of and reflecting on rules (Onuf 1989). Practices can therefore change rules, and individuals have significant capacity to shape the rules that make up their world, at least within national societies. For Onuf, the operation of law in international society was not straightforward. When Onuf applied his three criteria of “lowness” – formalization of rules, the institutionalization of external supports for rules, and the presence of enforcement officers – international law was found wanting.

Kratochwil was primarily interested in examining how norms and rules function to shape the decisions of actors in international society. He argued that action is

¹ Note that a recent survey by the Teaching, Research, and International Policy (TRIP) project found that nearly half (48 percent) of U.S. IR scholars reported that they use either a “constructivist” or “both rationalist and constructivist” approaches. Rates were higher still among IR scholars in Australia, Canada, and the United Kingdom.

generally rule governed. Rules and norms help to constitute individual autonomy by serving to solve problems. They “simplify choice-situations by drawing attention to factors which an actor has to take into account” (1989: 72). But rules and norms are not merely “guidance devices.” They are tools to pursue goals, to communicate, and to construct claims. Hence, Kratochwil’s focus on deliberative processes and interpretation (1989).

For Kratochwil, law is defined by its particular process of reasoning, which is highly dependent on the use of analogy. He criticized most IR accounts of law for undervaluing, or even ignoring, the process of argumentation that produces legal decisions. International law, in Kratochwil’s schema, is quite different from domestic law. Law in international society exists “simply by virtue of its role in defining the game of international relations. It informs the respective decision makers about the nature of their interaction and determines who is an actor; it sets the steps necessary to insure the validity of their official acts and assigns weight and priority to different claims” (1989: 251). Crucially, Kratochwil argued that international legal process is inextricably linked to politics. Therefore, the particular style of legal reasoning that pertains in domestic systems, marked in his view by impartiality, cannot exist in international society.

It may be surprising to suggest that Onuf and Kratochwil’s contributions to constructivism and law were shaped by an unconscious positivism, as both explicitly defined their positions in opposition to certain strands of the positivist tradition. Onuf rejected the state positivism of Hans Kelsen and the command paradigm of John Austin, preferring a view of law that treats rules as affected by principled norm use and rhetorical acceptance (1985: 395). Similarly, Kratochwil disputed any conception of law derived simply from the “imposition of superior will” (1989: 142). Further, he denied the identity between law and sanction, and between law and a hierarchical rule system (1989: 186). He also accepted that “formality” is not an appropriate test of the existence or nonexistence of law (1989: 200–01).

In different ways, both Onuf and Kratochwil revert to the assumption that law can only be understood in hierarchical forms associated with domestic legal systems. Kratochwil’s is the simpler case. Despite his commitment to a practice-focused, discursive understanding of rules, for Kratochwil, the ideal of rhetorical persuasion was the adversarial process of court adjudication, an ideal that will rarely be realized in the international milieu, where compulsory adjudicative jurisdiction is highly limited (1989: 209, 230).

Onuf’s positivist bias in reading international law is more pervasive than is Kratochwil’s. Onuf attempted to root the distinctiveness of legal rules in aspects of the rules themselves, but more important in the system that generates the rules. Relying expressly on H. L. A. Hart, Onuf suggested that law is a hierarchical ordering system. Primary rules rely on the existence of secondary rules, which in turn rely on the “validating rule,” which in the case of international law is simply “custom” (1982: 10–11). With this hierarchical understanding, Onuf came close to recognizing

a command paradigm of law (despite his purported rejection of Austin), because he thought legal rules were defined by their “performative sufficiency” (Onuf 1985: 407–08). Law, then, is inherently “declaratory,” the voice of authority speaking to the subject, whose role is to obey.

Ultimately, for both Kratochwil and Onuf, law is a unidirectional imposition of authority (implicit judge or implicit rule of recognition). They are not alone. Indeed, more than two decades after they offered their defining contributions, Kratochwil and Onuf present two of the most nuanced, instructive, and fully developed understandings of international law that one will find in the contemporary IR literature. More often, even IR scholars who stress the normative influences in international politics will articulate the potential interest of international law in ways that adopt an almost caricatured version of the positivist view of legal normativity (Bull 1977; Arend 1999). Most constructivist scholars have been preoccupied with norms and institutions but have not tried to investigate whether there is anything distinctive about *legal* norms and institutions (Barnett 1997). Although Martha Finnemore threw down the gauntlet directly in “Are Legal Norms Distinctive?” (2000), she merely traced out various possible responses, suggesting that useful research questions were buried under the umbrella question.

Christian Reus-Smit is one of the few constructivists who took up the challenge (2004). Starting from the proposition that international politics and international law are mutually constitutive, he nonetheless argues that international political actors behave as if there is a distinctly legal realm (p. 37). This realm is characterized by an institutionally autonomous, distinctive discourse that draws on a preexisting set of norms and practices of justification and that delegitimizes the raw pursuit of power and self-interest (p. 38). Reus-Smit rightly argues that, to understand the distinctiveness of law, it is crucial to understand its obligatory character. The obligatory effect of legal norms is rooted in the legal system’s legitimacy as a social institution (p. 42). In turn, the legitimacy of the international legal system is grounded in the deep constitutional structure of modern international society, which is bound up in “the prevailing liberal conception of legitimate statehood and attendant norms of procedural justice” (p. 43).

While describing a “legal realm” with some institutional autonomy, Reus-Smit, and the contributors to his edited volume (2004), nevertheless perceive a fluidity between this legal realm and international politics. Not only do international politics and international law constitute and interpenetrate one another, actors move back and forth between legal and nonlegal action and justification to advance their projects. Reus-Smit’s framework is promising, but it remains underspecified. As he admits, it is not a theory of international law but a suggestion of a “set of relationships between dimensions of international social life” (pp. 14–15).

With a few exceptions, then, constructivists have assumed a concept of law that is largely hierarchical and “authority” based. For this reason, many constructivists still tend to see law as a set of posited requirements, created through state institutions

or with the consent of states. For example, Thomas Risse and Kathryn Sikkink have explored in detail how international human rights norms evolve and socialize actors, particularly through “internalization” into the domestic sphere. Law is part of this dynamic, but Risse and Sikkink seem to assume that “law” comes into play when governments ratify relevant treaties and enshrine them in domestic law (1999: 29). What is more, in much constructivist scholarship, law is merely acknowledged as one type of social norm, and the focus is on how it “works” in society. For example, Ian Hurd has suggested that legal norms, like other types of norms, are constraining for states, but only through “socialization”; they are also “enabling” in that states are “strategic calculators that manipulate” norms (2007: 209). However, he does not appear to challenge the basic proposition that international law consists in rules that flow from formal sources of law, such as custom and United Nations Charter rules (2011). Overall, although some constructivists betray a sense that law has a special quality and that it may have a particular ability to convince, little extended analysis has yet been pursued as to how that ability is created or derived. In a response to a rationalist and materialist account of the “legalization of world affairs” (Abbott *et al.* 2000), Finnemore and Toope presented a brief description of how one might conceptualize legal obligation from a constructivist perspective, but this contribution was little more than a starting point (2001).

Although most constructivists have presented law as benign and as the endpoint in normative development, some critical constructivists have challenged this portrayal. For example, Adriana Sinclair emphasizes the need to develop a critical understanding of law and not merely to treat law as the end of a continuum from social norms to soft law to hard law. Sinclair suggests that scholars who assume that law is the positive endpoint of normative development have adopted a false “common sense idea of law” in which legal norms are imagined to be determinate, coherent, and – once enacted – separate from politics and power relations (2010; 2011). Sinclair argues specifically that Onuf and Kratochwil share three flaws in their approach to law. First, they claim that the success or failure of proposed norms depends on their fit with the existing context (i.e., with society). They therefore legitimize the status quo, even if unjust. Second, they emphasize discursive expressions and understanding of norms and rules, and thereby sideline deep-seated assumptions or practices that support existing power relations. Third, they assume that participation in the social determination of norms resembles a conversation among equals. In doing so, they overestimate *agency*, the possibility for individuals to contest and change shared understandings. Sinclair concludes that Onuf and Kratochwil offer “a picture of the world as viewed by its elite” (2010).

Sinclair’s criticisms of the “common sense” approach to law are drawn from well-developed critical traditions in legal theory. However, Sinclair does not engage deeply with scholars of *international* legal theory who have considered the tension between normativity and realism – or “utopia and apology,” in the powerful phrasing of Martti Koskenniemi (2005). Although Sinclair’s work challenges constructivist

scholars to reassess their approach to international law, she has not yet developed her own account of what international law is or how legal obligation works.

III. INTERNATIONAL LAW SCHOLARSHIP AND CONSTRUCTIVISM

Many international lawyers appear to have both rationalist and constructivist intuitions. That is, they seem to take for granted that interests and power predominate in shaping state conduct and that international law will often yield when states pursue the logic of consequences. At the same time, perhaps by professional disposition, international lawyers tend to assume that international law “matters” and that, following a logic of appropriateness, states and other international actors are guided by legal norms as well as interests. Thus, although international lawyers do not delve into theoretical debates that question the relative importance of norms and interests, they appear to be predisposed toward the integration of rationalist and normative processes that Abbott and Snidal insist is needed for a “more sophisticated generation of IR-IL scholarship” (2013).

Constructivism has made important contributions to understanding the operation of international law by showing how norms may constitute or even trump interests. Indeed, constructivism highlights that legal norms can actually help create specific categories of actors, such as refugees, or entities like international financial institutions (Barnett and Finnemore 2004).² However, its most important contributions arguably rest in revealing the centrality of social interaction and of international legal practices in making and giving effect to international law. Relatively few international lawyers have taken advantage of this contribution, perhaps because constructivism is a poor fit for those who see the legal status of a norm as exclusively connected to its provenance from a formal source. After all, constructivism can speak to international lawyers only to the extent that they are prepared to understand legal norms as social norms, and so as constituted and powered primarily by social practices.

Explicit engagement by international lawyers with constructivist insights is a relatively recent phenomenon. But international lawyers have long undertaken work that resonates with constructivist intuitions, even if this work was not self-consciously “constructivist” but rather drew on compatible social science insights, running parallel to constructivism’s antecedents in sociology, social psychology, or pragmatist philosophy.

A. *Early Points of Convergence of International Law Scholarship and Constructivism*

An early stream of international law theory whose social science underpinnings connect to constructivism was the “New Haven School,” pioneered by Harold Lasswell

² We thank Chris Tenove for reminding us of this point.

and Myres McDougal (1966). The New Haven School had roots in American legal realism of the early twentieth century, which represented the first sustained effort to integrate social science insights and methodology into law (Tipson 1973–74: 542; Karber 1990: 192). McDougal and Lasswell were also influenced by John Dewey and George Mead, both of whom were prominent figures in the pragmatist school that emerged at the University of Chicago during Lasswell's tenure as a student there (Tipson 1973–74: 539). In developing their “world public order” framework, McDougal and Lasswell built on the proposition that norms typically grow from the interaction of various actors and increasingly fixed patterns of expectations about appropriate behavior. McDougal and Michael Reisman later developed a model that envisaged international law-making as a continuous communicative process (1980). This model aimed to show how normative expectations are maintained and changed through “communication about the authority and credible control intentions of those whose support is needed for the norms' efficacy” (Reisman 1981: 113). The New Haven School's description of legal expectations as emerging from continuing processes of authoritative decision making provided a groundbreaking account of the foundations of international law. However, the New Haven School has not been especially focused on distinguishing among material capabilities, interests, and normativity. It has also been frankly instrumentalist, understanding international law as serving certain policy purposes, notably the promotion of “human dignity” (Toope 1990).

The American legal process school, which also has roots in legal realism, rose to prominence in the 1950s and 1960s (Hart and Sacks 1994). It spawned an international legal process school that examined how international law, through formal and informal processes of decision-making and justification, enables, constrains, and influences international actors (O'Connell 1999). One of the most prominent outgrowths of this perspective on international law was Abram Chayes and Antonia Handler Chayes' “managerial” account of compliance with international law (1995). The parallels between this account and contemporary constructivist explanations of state conduct are evident in managerialism's emphasis on continuous processes of argument and persuasion – “justificatory discourse” that ultimately “jawbones” states into compliance (1995: 25–26). International law is said to frame that discourse because states' explanations for their conduct tend to be more compelling when in conformity with a legal rule and because “good legal argument can generally be distinguished from bad” (1995: 119). The Chayesean explanation of compliance, then, also resonates with the constructivist notion of the logic of appropriateness (Raustiala and Slaughter 2002: 548). But the managerial account only goes so far in teasing out the distinctive influence of legal norms. It neither details *how* good legal argument is distinguished from bad, nor does it explain how treaty parties' “general sense of obligation to comply with a legally binding prescription” (Chayes and Chayes 1995: 110), upon which the Chayesean framework rests, is generated. Indeed, managerialism ultimately rests on a rationalist logic of consequences. States

are amenable to managerial strategies due to their growing interdependence and enmeshment in a “complex web of international arrangements” (p. 27). Simply put, it is in their interest to maintain orderly international relations and to remain respected and influential players.

Thomas Franck, in his work on legitimacy, attempted to explain how international law influences international actors. Although Franck’s account of the “compliance pull” exerted by legitimate rules did not rely on IR theory (1990: 26), it certainly resonates with constructivism. Franck’s theory sets itself apart by identifying specific qualities in law itself (rather than factors external to law) that account for compliance, thereby also highlighting features that distinguish law’s influence from that of other social norms. According to Franck, legitimate legal rules have four distinctive traits: determinacy (or clarity), symbolic validation (the communication of authority through ritual or stable practice), coherence (or consistency with other rules), and adherence (vertical nexus of a rule to a pyramid of secondary rules) (1995: 30–46). Legitimacy, then, is something that can be cultivated internally, within legal rules. Franck’s theory remains explicitly positivist, emphasizing state consent and relying upon a rule of recognition to explain the source of international legal obligation. His account of international law and legal legitimacy nonetheless contains an important intersubjective anchor point. In his later work, Franck was most explicit that the rule of recognition was the general belief in the binding effect of law and, hence, was a “social construct” (2006: 91).

Harold Koh’s transnational legal process theory also focuses on the dynamics that promote compliance with international law. For Koh, the key to explaining why states obey international law lies in the internalization of international norms into the domestic sphere (1997: 2603). Koh identifies several stages in the internalization process. First, states, international organizations, nongovernmental organizations (NGOs), business entities, and other norm entrepreneurs provoke interactions with one another in an international arena (1996: 184). These interactions “force an interpretation or enunciation of the global norm applicable to the situation” (1997: 2646) and eventually produce a legal rule that guides future interactions. According to Koh, “repeated participation in the process will help to reconstitute the interests and even the identities of the participants in the process” (1997: 2646). Koh distinguishes social (the legitimacy of a norm results in widespread obedience), political (elites adopt an international norm as government policy), and legal (incorporation of the norm into the domestic legal system) internalization processes (1997: 2656–57).

Koh’s framework reinforces some of the central constructivist claims about international norms, both in its focus on repeated interactions and its explicit sensitivity to “identity” (1997: 2646). His account of norm internalization also overlaps with the work on norm entrepreneurship and norm cycles undertaken by constructivist IR scholars such as Finnemore and Sikkink. Koh’s central contribution to the literature has been his effort to look beyond a monolithic understanding of the state and to

identify the processes that “bring international law home” (1998a). At the same time, his *transnational* legal process framework highlights the involvement of both states and non-state actors in promoting norms and compliance.

Koh justifiably critiques constructivist approaches to international law that neglect the specific pathways through which international norms shape the identity of states (2005: 977). However, although Koh has advanced a detailed account of the salient dynamics, it is not clear that his empirical examples fully support his sweeping claims regarding the purchase of transnational legal process. Although his case studies have been drawn primarily from the human rights field, Koh asserts that transnational legal process can promote compliance with international legal rules “of any kind” (1998b: 1399, 1401). He does not specify the circumstances under which certain types of norms may be internalized or whether international norms are more or less likely to persuade actors in different types of states (Hathaway 2002: 1962).

In any case, we suggest that it is not enough to examine, as legal process scholars tend to do, “the social mechanisms that help *make* international law matter” (Koh 2005: 977). Some of the potential of a constructivist approach to international law is lost unless we pay attention to both legal process *and* norm properties.

B. *Explicitly Constructivist Accounts of International Law*

Over the last decade, some international law scholars have engaged in explicitly interdisciplinary work, drawing on constructivist theory to illuminate issues in international law. Some of this work is informed by sociological theory; other work is grounded in IR theory.

Ian Johnstone’s examination of the role of legal argumentation in international affairs draws on Habermas’ theory of communicative action and on Stanley Fish’s concept of interpretive community (2011: 4, 35). According to Johnstone, the logic of communicative action is related to the constructivist logic of appropriateness, but assumes that what is appropriate is not fixed but determined through deliberation. Legal discourse, suggests Johnstone, is a “distinctly powerful form of argumentation” that has a manifest impact on state conduct (2011: 3). He ascribes this influence to the nature of legal argumentation and the existence of interpretive communities that distinguish good arguments from unpersuasive claims (2011: 33). Johnstone also sees “justificatory discourse” as an important aspect of legal discourse (p. 6). He augments the Chaysean account by showing that the reasons why states feel compelled to provide legal justifications for their actions are both interest and identity related. States do value the longer term cooperation and predictability that is promoted by appearing to be law-abiding. But their participation in international regimes also leads them to develop a sense of obligation: law becomes internalized or habit. At the very least, posits Johnstone, the persuasive burden rests on those actors who seek to deviate from collective understandings of the law (2011: 33–34). Furthermore, since legal discourse is an intersubjective practice that operates on the basis of common

understandings about the meaning of relevant rules, interpretive communities play an important role in maintaining and shifting legal rules (p. 40).

Johnstone's most important contribution to constructivist engagement with international law is his finely grained explanation of how legal discourse comes to be influential. However, like Koh and the Chayeses, he focuses on the *process* of legal justification and neglects the distinctiveness of law itself, which flows in important part from the *properties* of legal norms. These properties, arguably, account for the specificity of legal argumentation and legal practice. Johnstone hints at this dimension when he suggests that "international legal discourse is a highly specialized form of argumentation, the standard techniques of which are widely recognized" (p. 21). But he asserts rather than explains law's distinctiveness.

Ryan Goodman and Derek Jinks have articulated a "state socialization" framework that resonates with constructivism but is anchored primarily in sociology rather than IR theory. Goodman and Jinks argue that states' identities, interests, or organizational structures are all shaped in part by global regimes (2003: 1752). Although Goodman and Jinks note that debates about regime design "inadequately attend to the ways in which law influences state behavior," their focus is on "the social mechanisms of law's influence" (2005: 983). They do not inquire into the distinctive nature and effects of law itself.

Goodman and Jinks argue that neither persuasion nor coercion fully explain the influence of international norms and regimes. They posit that "acculturation" is an important third mechanism for bringing about state conformity with international norms (2004). This approach seems to run parallel to the work of constructivists on socialization and norm internalization (Finnemore and Sikkink 1998; Checkel 2005). Goodman and Jinks distinguish acculturation from coercion by arguing that the latter involves social sanctions, which entail material costs, whereas the former only entails social costs (2004: 645). The social pressure that drives acculturation also serves to distinguish it from persuasion, which involves social learning, and hence acculturation produces "outward conformity . . . without private acceptance" (2004: 643).

Because acculturation is driven by social pressure rather than persuasion, it does not seem central to Goodman and Jinks' account whether the "culture" into which actors are socialized involves legal norms. They note that "[a]cculturation depends less on the properties of the rule than on the properties of the relationship of the actor to the community" (2004: 643). Goodman and Jinks' approach, then, appears to assume that actors are motivated by social costs and benefits rather than a sense of legal obligation.

Moshe Hirsch also examines international law from a sociological standpoint (2005). His "symbolic-interactionist" account resonates with many core assumptions in constructivism. Its emphasis is firmly on the role of individuals in society; social structures and, indeed, society itself are constituted and shaped by interactions among individuals. Over time, patterns of interaction emerge, as do rules that govern

social interaction (2005: 902). However, although the stability of social interactions rests on shared understandings of certain background norms, the meanings assigned to social patterns and rules will also remain contested and negotiated (2005: 903). Hence, for Hirsch, international law is not composed of fully autonomous, external rules to which actors may or may not adhere. Rather, international law is generated through international social interaction, and actors' conduct is influenced by the meanings they attribute to the resultant patterns within international institutions or individual states (2005: 921–23). Hirsch is not concerned with distinguishing the influence of legal norms from that of other social norms. But he does stress that the standard, formal conception of international law is insufficient to understand normative change in international society (2005: 938).

A complementary, interactional account has been articulated by Jutta Brunnée and Stephen Toope. Their work is explicitly interdisciplinary, and it aims to tackle head-on the challenge of identifying the distinctive features of international legal norms. By drawing together insights from constructivism and the legal theory of Lon Fuller, Brunnée and Toope have developed a comprehensive theory of international legal obligation (2000; 2010; 2011*a*, *c*). First, building on constructivist insights, their theory assumes that legal norms can only arise in the context of social norms based on shared understandings. Second, what distinguishes law from other types of social ordering is not form, but adherence to specific criteria of legality posited by Fuller: generality, promulgation, nonretroactivity, clarity, noncontradiction, not asking the impossible, constancy, and congruence between rules and official action (Fuller 1969: 39, 46–90). When norm creation meets these criteria, and when there exists what Brunnée and Toope call a “practice of legality” (norm application that also satisfies the legality requirements), actors can pursue their purposes and organize their interactions through law. These features and practices of legality are crucial to generating a distinctive legal legitimacy and a sense of commitment – “fidelity” in Fuller’s terms – among those to whom law is addressed. Together, they create legal obligation (Brunnée and Toope 2010: 20–33).

Fuller’s work was focused on domestic law, and he may even have been skeptical that international society was sufficiently developed to enable a rule of law (Knop 2010: 61). Nonetheless, by directing our attention to markers of legality that are internal to law, Fuller’s theory provides an illuminating perspective on international law. It reveals that the formal and hierarchical manifestations that are generally associated with domestic law, such as tests of “validity” or centralized enforcement, do not suffice to characterize “law,” whether domestic or international, and may not actually be required (Fuller 1969). Fuller’s work shows that law does not depend on hierarchy between law-makers and subjects of law, but on reciprocity between the participants in a legal system. For Brunnée and Toope, “reciprocity” is central to understanding the nature of legal obligation and hence to the interactional account of international law. It encapsulates the proposition that law is not a one-way street, but requires that actors collaborate to build

shared understandings and uphold a practice of legality (Brunnée and Toope 2010: 33–42).

The interactional framework instructs, then, that the distinctiveness of law rests not in form or in enforcement but in the creation and effects of legal obligation. But Brunnée and Toope do not dismiss state consent, “sources” of international law, the creation of courts and tribunals, or better enforcement mechanisms as unimportant. Rather, they argue that these elements must be understood in the broader context of the international legal enterprise, so as to better appreciate the roles they play, their potential, and their limitations. The interactional framework also reveals that building and maintaining the reciprocity that grounds legal obligation requires sustained effort. Their work is closely tied to the logic of practice articulated by Adler and other constructivists. Whether a treaty is adopted or brought into force, when a case is decided by an international court, or when the Security Council enforces a resolution through military force – in Brunnée and Toope’s constructivist framework, each of these examples represents but a step in the continuing interactions that make, remake, or unmake international law.

IV. KEY THEMES IN THE ENGAGEMENT BETWEEN CONSTRUCTIVISM AND INTERNATIONAL LAW (AND VICE VERSA)

A striking feature of the growing body of constructivist scholarship on international law – or international law scholarship that resonates with constructivism – is the lack of attention to how legal norms (as opposed to norms more broadly speaking) are generated and the absence of an articulated theory of law itself. Instead, most of this scholarship focuses on processes and practices of actors’ engagement with international law. For example, among the international law scholars surveyed in the preceding section, adherents to the New Haven School, Chayes and Chayes, Koh, Johnstone, and Goodman and Jinks focus almost exclusively on processes of legal interaction. What is surprising is that, like many of their constructivist colleagues in IR, all of the above-mentioned international lawyers, except the members of the New Haven School, rely on an unarticulated, purely formal, and generally hierarchical concept of international law. Notwithstanding their interest in argumentative, interpretative, or justificatory practices, for these authors, law itself is not primarily a “practice” nor is it generated by practices. Rather, law is the “product” of formal sources, such as custom and treaty, a product that is then implemented through legal practice.³ This separation of practice from the underlying concept of law is found even in the work of IR scholars or legal scholars who explicitly draw on

³ We draw here on the helpful distinction between “law as practice” and “law as product” that has been articulated by the legal philosopher Wibren van der Burgh in “Two Models of Law and Morality,” *Associations*, Vol. 3 (1999), p. 61; and “Essentially Ambiguous Concepts and the Fuller-Hart-Dworkin Debate,” *Archives for Philosophy of Law and Social Philosophy*, Vol. 95 (2009), p. 305.

constructivism (Risse and Sikkink 1999; Goodman and Jinks 2004; Hurd 2011; Johnstone 2011). Conceptually, it seems difficult to reconcile constructivism's premise of the *interplay* between actors and norms or institutions with the proposition that the validity of law can be separated from social practice.⁴ And yet, in much of this scholarship, legal norms are assumed to operate like social norms, while it appears that "law" itself is assumed to be a formal category rather than a social construct.

The common assumption that "law" is identified through formal validity criteria likely accounts for the fact that very few scholars explore the properties that might distinguish legal norms from other norms. Franck's concept of legitimacy does focus on norm properties, without, however, engaging in any detail with legal processes. Furthermore, Franck did not view his legitimacy factors as constitutive of law but as something that could be promoted in otherwise valid rules to enhance their compliance pull. Brunnée and Toope's international law framework is the only one that emphasizes both norm properties and legal practices and sees them, in keeping with their constructivist premises, as inextricably linked to one another. By tracing out distinctive features of legality, they can conceive of international law as a social practice while also positing its relative autonomy from politics (2011b: 354).

When considered against the backdrop of this pattern, it also becomes easier to appreciate why the bulk of the scholarship explored in this chapter is preoccupied with compliance issues. After all, if the category of law itself is taken for granted, there is little reason for engagement with underlying questions of what law is and how it may be distinctive from other forms of social normativity. Hence, relatively little direct attention is paid to how actors turn social norms into law. Of course, as our survey of the salient literature has illustrated, constructivists are interested in the emergence of international norms in general. And yet, when it comes to international law, even the emergence of customary law has received relatively little close attention (Price 2004) – which is odd, given its strong connection to practice. To be fair, even fewer international lawyers have mined constructivism to shed light on customary law. Instead, much of the literature focuses on why existing legal rules do or do not have compliance pull, or on the social processes (argumentation, interpretation, justification, social pressure) through which law comes to matter or can be promoted by various actors. Some of the frameworks considered in this chapter appear to imply a continuous interplay between law-making, implementation, and compliance. But few are explicit that, seen through a constructivist lens, compliance promotion and, indeed, compliance itself, cannot be separated from the processes that create, maintain, reshape, or even destroy international law.

In terms of subject matter, most of the work seeking to draw together the insights of constructivism and international legal theory has focused on examples drawn from

⁴ Wiener (2008: 65, 124) seeks to address this issue by distinguishing formal validity, social recognition, and cultural validation. And see Reus-Smit (2004), explaining how the mutual constitution of law and politics can be reconciled with international law's institutional autonomy.

international environmental law (Nagtzaam 2009; Akhtarkhvari 2010; Brunnée and Toope 2010; Methmann 2010; Stevenson 2011), human rights (Risse and Sikkink 1999; Lutz and Sikkink 2001a, b; Krebs and Jackson 2007; Walldorf 2010), international criminal law (Deitelhoff 2009; Sagan 2010), and discussions of the role of international institutions, especially courts (Johnston 2001; Barnett and Finnemore 2004; Deitelhoff 2009; Avant, Finnemore, and Sell 2010). This has led some critics to suggest that constructivist-legal interdisciplinary work is overly optimistic, even idealist. We disagree.

The scholarly focus on the above-mentioned fields should not be surprising, for they happen to be areas that, during the last part of the twentieth century and the beginning of the twenty-first, saw extraordinary normative evolution. For people interested in the social construction of norms, including legal norms, it would be foolish not to examine the dramatic changes in human rights after World War II or the explosion of international environmental law after the Brundtland Report. In any event, a number of interdisciplinary studies have focused on international security, the use of force, and arms control (Price 1995; Gheciu 2005; Adler 2008; Heinze 2011), which are hardly fields that engender naïve optimism. It is true that scholars of constructivism and international law should do more work in economic law and trade law, to show how their approaches do or do not yield helpful perspectives in areas that seem so clearly interest and not norm driven. However, recent empirical work on the role of international institutions in the context of international political economy and international finance has begun to fill this gap (Blyth 2002; Abdelal 2007; Hall 2008; Abdelal, Blyth, and Parsons 2010).

What is more, a constructivist analysis can show how power relations and even violence can be hidden or justified by new norms, including new legal norms. As we have suggested, a growing group of “critical” constructivists argues that constructivism should further develop such an analysis, even though constructivist research has not focused deeply on this issue so far. Our own work has revealed that constructivist analysis can lead to conclusions that are far from optimistic, even in areas where we, as international lawyers, would very much want to show normative progress. For example, we show how continual discursive challenges and state noncompliance has undermined the *jus cogens* norm prohibiting torture (Brunnée and Toope 2010).

V. CONCLUSION: CONTRIBUTIONS, GAPS, AND FUTURE DIRECTIONS

The most important contributions of constructivist scholarship, in both IR and IL, are related to the insights it offers into the social processes that drive the creation and operation of international law. At the most general level, constructivist scholarship has provided alternative and richer explanations of behavior than neo-utilitarian models. More specifically, because of its focus on discursive and other practices, constructivism is able to speak about legal reasoning and legal justification, and

their relationship to legitimacy, in a way that other IR approaches cannot. Hence, constructivist scholarship has added greatly to our understanding of compliance with international law. Some strands in the growing body of constructivist work have laid the foundations for deeper engagement with the distinctiveness of law itself. Beyond opening up avenues for exploring the social dynamics that might produce and maintain a sense of legal obligation, some scholars have begun to tease out the markers of legal legitimacy and legality. Finally, through its emphasis on the intersubjective nature of shared understandings, norms, and practices, constructivism provides new explanations for the expanding category of “participants” that international law has seen over the last fifty years or so.

We have already alluded to some of the main gaps in the current literature. Most notably, much of the existing constructivist scholarship on international law continues to employ, by default, an uncritical positivist account of international law. As we suggested in the preceding section, although some scholars have sought to fill this particular gap, the vast majority of the literature does not connect the constructivist emphasis on social processes to the concept of international law itself. As a result, constructivist insight into distinctions between legal and nonlegal international norms remains undeveloped. Further, although constructivism has the potential to illuminate how various non-state actors can help shape international law and promote compliance with it, much more work is needed to tease out the varying roles played by states and other actors. This latter observation points to a broader gap in constructivist scholarship on international law. As we outlined in the preceding section, constructivist scholarship has moved beyond meta-theory to explorations of specific issue areas and application of theoretical insights to concrete case studies. However, more systematic empirical work remains to be done to bolster constructivist claims concerning the emergence of shared understandings, the emergence and functioning of legal regimes, and the impact of factors such as legitimacy and legality.

Our observations about gaps in the existing scholarship lead directly to a number of suggestions for a future research agenda. First, at the most basic level, even after some fifteen years of engagement between the two disciplines, more work is required to inform international lawyers about normative or ideas-centered approaches in IR that might shed light on the unique role of international law. Relatively few IL scholars have yet taken up the insights offered by constructivism, and it is unknown whether constructivist theory has influenced the practice of international law. Realist and utilitarian accounts of international society seem to be assumed by many international lawyers, even though they are deeply uncongenial to law. At the same time, IR scholars need to delve more deeply into theories of international law that challenge the dominant positivist account. This dominant account tends to reinforce rationalist assumptions about the role and potential of law in international society, and to undercut constructivist claims concerning the emergence and influence of international norms.

Second, constructivist IR scholars and legal scholars alike must recognize and grapple with the apparent disconnect between constructivist social theory and an implicit positivist legal theory, which assumes a strictly formal, generally hierarchical concept of legal validity. To begin to address this issue, legal scholars and IR scholars need to be more explicit about the concept of law that underpins their work. We believe that many fundamental insights into international law can be gained if interdisciplinary scholarship pursues this path. For example, constructivism can help provide a more coherent account of customary international law, especially the concepts of *opinio juris* and *jus cogens*, than other IR theories and even than international law itself.

A third item for a future research agenda concerns the need to focus more attention on empirical studies that illustrate the distinctiveness of law (according to whatever concept of law a given author adopts) and that explore how that distinctiveness plays out in specific contexts and issue areas. We highlighted some of the issue areas and conceptual questions that warrant increased empirical inquiry.

Fourth, constructivism can contribute to a more integrated exploration of compliance with international law. In particular, it can help to build a richer understanding of the interplay between material power and interests on the one hand, and identity, culture, and norms on the other. Steven Ratner's recent work on "law promotion" and "law talk" by the Red Cross is one example of such work (Ratner 2011, 2013). Ratner's approach is eclectic and illustrates the value of constructivist and rationalist insights in exploring the role of international law, legal argumentation, and various efforts to promote compliance with international law.

Finally, because one strand of constructivism examines how norms and background understandings vary between cultures and over long periods of time (Ruggie 1992; Reus-Smit 2004), constructivism could shed light on possible changes in the nature and practices of the international legal system that purely interest-driven accounts may miss. Interests tend to be more short term than identities. At the same time, through a more in-depth and critical exploration of shared understandings in a deeply diverse international society, future scholarship could help address more systematically the critique that constructivist approaches – and the international legal theory now connected to those approaches – is inherently liberal and Western in bias. It is also important for constructivists to tackle head-on the internal critique of critical theorists and the external critique of realists that constructivism may privilege agency and neglect the constraints of power relationships.

Constructivism and IL have begun a useful conversation, and some insights have been gained. However, a fair evaluation would suggest that the full potential of interdisciplinary scholarship has yet to be seized. For that to happen, IR scholars will have to question their received understanding of law and challenge conceptions that are hierarchical and rooted in formal validity. International lawyers will have to open their minds to conceptions of international politics that do not assume the exclusive explanatory weight of power and material interests. Strangely, only a few

scholars on either side of the “divide” have managed to apply insights from within their own discipline that make reaching out to the other both congenial and fruitful. We hope that this review might reveal productive ways in which constructivists and international law scholars can learn from and actually reinforce each other’s work.

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