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Counter-disciplining the Dual Agenda: towards a (re-)assessment of the interdisciplinary study of International Law and International Relations

DOI: <http://dx.doi.org/10.1590/0034-7329201800113>

Rev. Bras. Polít. Int., 61(1): e013, 2018

Abstract

This article charts the trajectory of the interdisciplinary study of International Law (IL) and International Relations (IR), (re-)assessing how this interdisciplinarity has been framed within each discipline. It reflects on the different ways ahead that rise from these positions, suggesting an as yet little explored path which begins with a meta-theoretical conversation on the very terms of IR/IL interdisciplinarity.

Keywords: Counter-disciplinarity, Critical International Theory, Interdisciplinarity, International Law, International Relations.

Received: August 2, 2018

Accepted: October 6, 2018

Introduction: Why Talk (Again) about a 'Dual Agenda'?

Right at the end of the Cold War, Anne Marie Slaughter notoriously called off the long period of “mutual neglect” (Dunoff 2013, 320) in which the disciplines of International Relations (IR) and International Law (IL) had persisted for all but the entire post-War period (Slaughter Burley 1993). It was time, she argued, for a renewed engagement, a “dual agenda” of interdisciplinary IR/IL scholarship with the ultimate purpose of (re-)producing an international “law informed by politics [as] the best guarantee of [a] politics informed by law” (Slaughter Burley 1993, 239). This was, to her, an agenda of renewal rather than innovation, as the roots of such IR/IL interdisciplinarity harked back to the inter-War, or, indeed, pre-War period, during which a (more or less) explicitly liberal project of international law engendered an equally liberal reflection on the need for international organization (Hudson 1932, Miller and Bratspiess

2008). Writing during what, in the early 1990s, looked like the fuzzy transition from a bi to a unipolar world, Slaughter arguably sought to resurrect this specifically liberal variant of interdisciplinarity in order to buffer what, to a new liberal mainstream, appeared to be the end of history in the sense of realist power politics. Indeed, her main antagonist is political realism, both on account of its dominance of (North “American”) IR and its disdain for (international) law.

Yet, her interdisciplinary venture attracted a much more mixed reaction than, perhaps, she herself could have anticipated. While the realist IR community did not, by and large, take up the gauntlet, many international lawyers writing - like Slaughter herself - in the “American” tradition felt positively engaged by her call (Raustiala and Slaughter 2001, Helfer 2002, Helfer and Slaughter 2005, Guzman 2008, Slaughter 2013). However, the arguably fiercest reaction came from critical international lawyers such as David Kennedy (1999, 2013) and Martti Koskenniemi (2006, 2009b, 2012) who strongly objected to what they saw as a cooptation attempt by the (“American”) liberal mainstream of classical (“European”) international law.¹ On the face of it, their reaction concerned the particular form of liberalism with which the “dual agenda” was allegedly imbued, notably a liberalism which, on the structural level, represented an emerging triumphalism of the West over the rest, and all the baggage this carried, from market capitalism to liberal democracy, and which, methodologically, aimed to reduce (international) law to a positive (political) science, instrumental to the wider liberal endeavor (Koskenniemi 2009b). It is opposition to this purported colonization attempt that has motivated a significant part of especially Koskenniemi’s scholarship since then, not least his influential attempt to historically reconstruct international law as the disciplinary antonym to “international relations” (Koskenniemi 2001). Given that, at the time, the (“European”) IL mainstream would also not engage in any debate it viewed as (extra-doctrinally) theoretical, this stance by IL “crits” essentially confined the “dual agenda’s” reception to the “American” IL scene.

It is, of course, noteworthy that this particular reaction to the “dual agenda” ended up shaping the terms in which the IR/IL debate would be led henceforth. Most importantly, it defined as the IL mainstream the “European’ (pseudo-)positivist ‘practitioners’ approach” prevalent in IL textbooks and jurisprudence – more on which below - and not the various approaches derived from legal realism which exercised mainstream influence in “American” teaching and academic discussion. And it set up critical legal studies as the only other pole on the spectrum, thus (re-)branding all other IL approaches, including the “American” (realist) mainstream as IR, rather than IL, and, thus, as marred, in the eyes of the “crits,” by the same defects as genuine IR approaches.

Yet, there also lurked beneath Koskenniemi’s critique of liberal IR a broader point about disciplinarity itself, seen, essentially, as an ideological configuration permeated by power and “instrumental reason.” The issue is, hence, not just liberal ideology, but ideology as such, a position that resonates with the early Frankfurt School’s contention that knowledge and power are structurally intertwined and that their ideological mystification represents an essential characteristic of modernity

1 The “American”/“European” dichotomy is as embedded in the discussion on IR/IL interdisciplinarity as it is problematic, as academic geographies never entirely match physical, or, indeed, political geographies; however, as there are no clear-cut alternatives, the reference to “Europe” and “America” will here be retained, although apostrophized.

(Adorno and Horkheimer 2002, Hoffmann 2016). For Koskenniemi, in order to account for this mystification and resist it, a new “counter-disciplinarity” is necessary, which, can only be enacted by an autonomous and indeterminate – therefore inherently transgressive – discursive practice such as (international) law (Koskenniemi 2012, Klabbers 2013, Hoffmann 2016). Hence, interdisciplinarity, as conceived by liberal IR/IL scholars, is also ruled out on a meta-theoretical level, and the “dual agenda,” framed as a mere attempt at unifying IR/IL through a common (meta-theoretical) methodology and vocabulary, is excised a second time from the critical IL project.

To be sure, with this summary dismissal of both the complex disciplinary history of IR, and those IL perspectives – such as the “American” tradition - that fall outside the dichotomy between the “European” mainstream and critical legal approaches, Koskenniemi rides roughshod over the fact that IR – mainstream or otherwise - has had a long and critical engagement with its own disciplinarity (Hoffmann 1977, Keohane 1988, Ashley and Walker 1990, Waever 1996, Schmidt 1998, Katzenstein et al. 1999, Smith 2000). Indeed, even the discipline’s early preceptor and godfather of realism, Hans Morgenthau, expressed doubts about whether his analysis of the politics among nations could or should constitute a distinct (positivist, scientific) discipline of “international relations” (Morgenthau 2006, 1995, Guzzini 1998). Virtually all contemporary IR scholars are explicit about their resort to the established methodologies of, *inter alia*, political science, sociology, anthropology or philosophy, and many see the institutional confines of a separate disciplinarity at least with a degree of ambivalence. Hence, for many IR scholars, the setting up of IR and IL as hermetic and autonomous disciplinary regimes staked against each other amounts to a strawperson. The same cannot, however, be said about the (“European”) mainstream in IL, as will be explored below.

The liberal “dual agenda” went on, in any case, to embed the study of legalization and legal governance deeply within the IR mainstream, whilst engendering a non-formalist heterodox approach to international norms on the fringes of international legal scholarship. More recently, both critical IR and IL scholars have also sought to overcome this second “neglect” by exploring interdisciplinarity beyond the liberal paradigm. What is, therefore, clear is that IR and IL remain “significant others” to each other, that their respective disciplinaries remain contested by each other, and that their interdisciplinary entanglement remains of interest to scholars on either side of the disciplinary divide, despite all injunctions against it.

The following reflection will, thus, briefly chart the trajectory of IR/IL interdisciplinarity, it will then elaborate in more detail on how this interdisciplinarity has been framed within either discipline, and it will conclude with a short reflection on the different ways ahead that arise from these positions with regard to the interdisciplinary study of IL and IR.

Together yet separate: Ups and downs of IR/IL interdisciplinarity

Over the last three decades, the interdisciplinary study of the (inter)relation between international law and international relations (heretoforth denominated “IR/IL”) has seen significant

growth. Several edited volumes and collections dedicated to IR/IL have been published since the 1990s, and an appreciable number of monographs have sought to develop specific perspectives on IR/IL. Moreover, landmark special issues (American Journal of International Law 1999, International Organization 2000), thematic symposiums and forums (International Theory 2009, 2011, International Political Sociology 2010), and relevant editorials (Aalberts 2013) have been organized by and published in leading academic journals within either disciplinary fold, not to mention countless journal articles engaging in the IR/IL nexus.²

This steep growth curve in (published) interest in IR/IL is more of a surprise than one might expect, given both disciplines' common denominator, the "international," and their construction around the constitutive opposition of law/norms and politics/power. For rather than co-evolving as one "science of the international," IL and IR took different disciplinary paths (at least) since the epistemic fallout of the Second World War. Or this is at least what the commonly accepted narrative about IR/IL's post-War lack of interdisciplinarity would present. An influential, if (therefore) not uncontested, example of the latter is Jeffrey L. Dunoff and Mark A. Pollack's recent *Interdisciplinary Perspectives of International Law and International Relations*, which recounts how IR/IL's initial proximity during the first decade after the institutional establishment of the discipline of IR in the aftermath of the First World War gave way to mutual distancing after the Second World War (Dunoff and Pollack 2013b). Hence, from IR's perspective, the latter conflict was seen as the failure of liberal internationalism's legalist attempts to outlaw war and institutionally guarantee a peaceful world order. In turn, the failures of the League of Nations and the Kellogg-Briand Pact, and the critiques against the utopian idealism of liberal-legalist internationalism (see, for instance, Carr 2001) led to the rise of political realism to the hegemonic theoretical center of a (re-)constituted IR discipline (Dunoff and Pollack 2013b). Hans Morgenthau's *Politics Among Nations*, first published in 1948 and commonly considered as the foundational work of the new scientific discipline of IR, sought to affirm the autonomy of international *politics* against the apparently dysfunctional ideal of an international rule of law (Morgenthau 2006, Rajkovic et al. 2016b). International norms, rules and institutions, came, thus, to be seen as largely irrelevant to international politics and, therefore, to the latter's study in the discipline of IR. International law became a minor issue and a marginalized field of study in an IR-disciplinarity dominated by so-called classical realist thought.

IL, in turn, withdrew during this period to its own solipsistic view of a world of states bound together by contract and custom. Although more fragmented than IR by the legacies of different regional IL traditions (Roberts 2017), post-War IL nonetheless broadly converged on an unlikely hybrid approach that combined an unacknowledged (legal) realist focus on the practice of international legal institutions – most notably courts – with a (pseudo-)positivist doctrine that encompassed both positivist mainstays, such as the sources doctrine, or even naturalistic remnants, such as the idea of peremptory norms of international law (*jus cogens*) (Koh 1997,

2 The list of edited volumes, monographs, and journal articles is enormous and space limitations do not permit a more extensive referencing here.

Hoffmann 2014). This court-centric (pseudo-)positivism, which actually incorporated elements of “American” (legal) realism and “European” formalism went on to become what is now IL’s mainstream, defined by its adoption as the idiom and epistemic horizon of IL practitioners and its concomitant predominance in textbooks and jurisprudence. Although this mainstream always had “American” adherents as well, it came to be seen as “European” for its apparently greater proximity to the formalist tradition associated with the “old world” and its consequent distance from other “American” approaches, more closely derived from legal realism. While the latter can be said to have functioned as the mainstream in the teaching and academic discussion of IL in America, the “European” mainstream became the “practitioners’ approach,” and has been dominating legal procedure and jurisprudence – which is why it, and not the “American” mainstream, has tended to be the primary object of engagement for critical legal scholars.

It is, of course, this “European” mainstream that has refused to view international politics as a legitimate object of legal study, unlike the “American” mainstream, which sought to reconstruct international politics from the perspective of international norms (Hoffmann 2014). As a consequence, IL and IR developed as separate and parallel disciplines during the Cold War, rarely acknowledging, communicating, and exchanging with one another.

IR would, according to the mainstream narrative (see, in particular, Dunoff and Pollack 2013b, Abbott and Snidal 2013), only re-discover IL after the end of the Cold War, when the “New World Order” seemed initially to give renewed prominence to international norms, rules and institutions (Dunoff and Pollack 2013b). By this time, however, IR had long parted methodological and (meta-)theoretical ways with IL, with a behaviouralist turn towards (“scientific”) positivism in the 1950s and 1960s, and the structural neo-realism that emerged from it in the 1970s, seeking to firmly embed IR within the “science” part of the social sciences (Simmons 2013). One consequence of this positivist stranglehold was, of course, a studied disdain for international norms and institutions, which, from the Eurocentric perspective of the Cold War, seemed too ephemeral to be the object of serious studies on the workings of the “international.”

It was only in the 1970s and 1980s that IR “discovered” regimes, and with them a renewed interest in norms and the self-consciously interdisciplinary study of IR/IL (Abbott 1989, Slaughter Burley 1993, Goldstein et al. 2001, Dunoff and Pollack 2013b). Indeed, one might argue that it is this new interdisciplinary agenda that has shaped the way in which the mainstream IR theory landscape would be framed thereafter. Hence, for Dunoff and Pollack, three norm-sensitive perspectives emerge as theoretical alternatives to then dominant “structural” or “neorealism” as of the 1970s (Dunoff and Pollack 2013b). The first was functional “institutionalism,” based on rational choice theory, and identified, most famously, with the works of Robert O. Keohane. The second was “constructivism,” which proposed an intersubjective conception of understanding and meaning, and which is identified with the works of Alexander Wendt. The third was “liberalism,” which placed the focus on social groups and their respective powers within society, state policy and world order, and which is associated with the works of Andrew Moravcsik.

In a similar vein, though more than ten years earlier, Kenneth W. Abbott, had already identified, under the label of “methods of contemporary international law,” “realism,” “institutionalism,” “liberalism” and “constructivism” as the four principal IR theories (Abbott 2006). Likewise, Anne-Marie Slaughter offered a notorious prospect of IL and IR theory a few years later, delineating three main “families of theories” or “paradigms,” notably “realism,” “institutionalism” and “liberalism” (Ratner and Slaughter 2006). These theory “families” were, in turn, informed by either rationalist or constructivist ontologies (or meta-theories), which endowed the different theoretical paradigms with distinct ways or “logics” (respectively, of “consequences” or of “appropriateness”) to describe how actors behaved and how international relations took place. Accordingly, different combinations of ontological-theoretical frameworks could be designed, and IR theory could, thus, function as a “valuable technology” that could serve international lawyers in their various professional, problem-solving roles (Slaughter 2004, 20) – a take on IR/IL inter-disciplinarity notoriously described by one of its critics as a liberalist and epistemologically positivist, “shopping-mall approach” (Koskeniemi 2006, 110).

(E)Strange(d) Bedfellows(?): IR and IL on (each other’s) Interdisciplinarity

However, despite this (supposedly) common (meta)theoretical background, interdisciplinary studies of IR/IL developed quite unevenly in each discipline. The problem, Dunoff and Pollack contend, was that interdisciplinarity commonly meant the unilateral application of the theories and methods of IR, conceived of as a subarea of the (North-“American”) political science, to the study of international law, conceived of as a mere object of study (Dunoff and Pollack 2013b). Consequently, the interdisciplinary study of IR/IL was accompanied by skepticism and criticism in both IR and IL (Finnemore and Toope 2001, International Political Sociology 2010, Koskeniemi 2007, 2009b, 2012). Indeed, even those involved in and programmatically supporting IR/IL interdisciplinarity have pointed to its inherent problems and tensions (Abbott and Snidal 2013). One often cited reason for this is, of course, that both IL and IR scholars have tended to construct and reinforce reciprocal caricatures of each other, with IR commonly being reduced to political realism by international lawyers, and IL generally conceived as a theoretical “tabula rasa” to be occupied by IR scholars. While this mutual caricaturing may also have to do with the usual institutional bickering for spheres of influence and interpretive authority, it has its roots in deeper epistemological differences, which have set IL and IR on divergent paths (Dunoff and Pollack 2013b).

In part, IR/IL’s mutual incomprehension is due to fundamentally different perspectives on their own disciplinary epistemes – that is, they do not merely differ in their (theoretical) accounts of the “international” but they arguably represent divergent approaches to theorizing the “international” itself. The divide is, thus, situated on the meta-theoretical level on which IL and IR are seen to occupy opposite sides. On one extreme, IR embodies a self-conscious social science “discipline,” the *raison d’être* of which is the production of knowledge about a (more or less) clearly defined

set of social phenomena delimited by its terms of reference, namely “international relations.” With this epistemic identity, and like all other disciplines that emerged within the paradigm of Western “science” as of the eighteenth century, its evolution (since its emergence as a distinct (university-taught) discipline in 1919) is marked by the fundamental questions of “scientific” method that have been controversially – and so far inconclusively – discussed at least since the opening up, in the nineteenth century, of the meta-theoretical dichotomy between “scientific” positivism and what in IR would later be termed “reflectivism.” While it is not possible to go any deeper into this (ongoing) debate in this article, what is important here is the fact that IR is, thus, an inherently theoretical endeavor in which (meta-theoretical) questions about the nature of the object of knowledge (ontology), about the nature of knowledge (epistemology) – implying, in turn, questions about the relationship between theoretical generalization and empirical concreteness –, as well as about the purpose of knowledge in relation to human conduct (axiology) form the basis of all inquiry (Hoffmann 2016).

By contrast, IL was, at least in its canonical post-World War II incarnation, largely defined as a field of practice conducted by a professional community – international lawyers – trained in the hermeneutic enunciation of a historically evolved body of rules in relation to concrete legal cases. Such legal practice involves background theories at least on rules of interpretation (doctrinal analysis) and on the process of translating the complex empirical reality into tightly-limited legal cases (jurisprudence). However, IL’s self-understanding has generally not admitted that explicit theorizing aimed at knowledge production, in the sense of the (social) sciences, is part of its disciplinary identity (Orford and Hoffmann 2016). Instead, (mainstream) IL scholar-practitioners have tended to be averse to making their unacknowledged background assumptions explicit through theorizing, or to situate their account of practice in a broader meta-theoretical landscape. From this perspective, IL does not merely differ from IR in its specific (theoretical) account of the “international,” but represents an entirely different and, indeed, incommensurable episteme. Genuine IR/IL interdisciplinarity would, thus, have no foundation beyond crude epistemic colonization, which is exactly what later “progressive formalists” such as Martti Koskenniemi have accused the interdisciplinary (IR) agenda of seeking to accomplish (Koskenniemi 2009b).

Yet, whilst the propagators of such counter-disciplinarity have shored up IL’s defenses against IR-led overtures of interdisciplinary correlation (Koskenniemi 2012, Klabbers 2013), IR has increasingly embraced that agenda as a consequence of its own (meta-)theoretical evolution. For the well-established disciplinary division of labor between “rationalist” and “reflective” approaches to the study of international institutions (Keohane 1988) has given way to a more general calling for the convergence between “rationalism” and “constructivism” in the theoretical mainstream of IR (Katzenstein et al. 1999, see also Waever 1996); a trend of (or call for) convergence or complementarity that, to different degrees and in various forms, is evidenced in a whole strand of the theoretical background literature and the thematic sections of relevant chapters on IL in prestigious IR manuals and handbooks (Byers 2008, Simmons 2013, Reus-Smit 2014). A number of IR scholars have, thus, taken to celebrating the (supposed) overcoming of epistemological and

meta-theoretical divides, setting the “next” generation of IR/IL scholars up for a new empiricist research “agenda” focusing on “genuine puzzles” rather than on meta-theoretical delimitation and epistemological quarrelling (Abbott and Snidal 2013, Simmons 2013).

However, this rationalist mainstream (North-“American”) IR story of celebration is, of course, only one among many narratives about the interdisciplinary study of IR/IL (see, for instance, again Koskenniemi 2001, Byers 2008, Reus-Smit 2004a, 2014, Hoffmann 2016, Leander and Werner 2016), not least as it relies on fairly unidimensional accounts of both IL and IR. Yet, neither IL nor IR are ontologically, epistemologically, or methodologically monolithic. They are not homogenized disciplines (Rajkovic et al. 2016b). This is not to say that IL and IR do not have their own disciplinary hegemonic centers and practices, which, in disciplining their disciplines, also discipline the interdisciplinary study of IR/IL. For instance, IR’s disciplinary centers/margins, origins, and identity have been questioned and disputed many times (Hoffmann 1977, Keohane 1988, Ashley and Walker 1990, Wæver 1996, Schmidt 1998, Katzenstein et al. 1999, Smith 2000).

In IR, “realism,” “liberalism” and “constructivism” are identified as the mainstream theoretical perspectives - or “lenses” - through which to understand the role of international law in world politics (Armstrong et al. 2012). While maintaining “realism” and “constructivism” as the two central perspectives on IL in IR theory, some authors have conceived “liberalism” differently, either as “rationalism” or as “neoliberal institutionalism” (Reus-Smit 2004a), or have differentiated “liberalism” from “institutionalism” (Dunoff and Pollack 2013a), or “neo-liberal institutionalism” from a “new liberalism” (Reus-Smit 2014). Others, expanding the theoretical landscape (a little), point to the so-called “English School” (Byers 1999), to Marxism, feminism, or to critical theory (Adamson and Sriram 2010). Some authors also include (a few) theoretical perspectives from IL, such as “critical legal studies” (Simmons 2013), while others point to new theoretical developments, such as the so-called “practice turn” (Reus-Smit 2014, Rajkovic et al 2016b). Yet, if one looks at the sections on “major theoretical perspectives” of the *Oxford Handbook of International Relations* (Reus-Smit and Snidal 2008) and “approaches” of the *Oxford Handbook of the Theory of International Law* (Orford and Hoffmann 2016), one realizes how much is foreclosed when limiting the interdisciplinary study of IR/IL to those (three or four) mainstream theories. In other words, one realizes how difficult it is to move away from caricatured, theoretically impoverished constructions of IR/IL and their interdisciplinary study. Today, mainstream IR theories are complemented by several no longer merely “peripheral” approaches, such as the “English School,” “Marxism,” “critical theory,” “feminism,” “post structuralism,” “post colonialism,” and “international political sociology,” among others (see, for instance, Reus-Smit and Snidal 2008, Burchill and Linklater 2013, Dunne et al. 2013).

This also explains the appeal of Michael Byers’s invitation for “an ‘eclectic’ approach to theory that is interdisciplinary both across *and* within disciplines’ (Byers 2008, 628). In Simmons’ mainstream, rationalist research agenda, for instance, this “eclectic” position could be (positively) read as pointing to a “declining respect for sharp theoretical boundaries,” that is, to theoretical synthesis, which would (approvingly) reflect the muting of “meta-theoretical” debates in the interest

of “genuine puzzles” and “problem driven” empirical research (Simmons 2013, 359). Differently, in the language of the (old) Frankfurt School, as famously brought to IR by Robert W. Cox, this “post-epistemological” research agenda, and its (supposedly) a-political problem-solving theories and empirical interdisciplinary studies of IR/IL, can also be (critically) read as an ideological façade meant to corroborate the *status quo* of the (neo)liberal world order (Cox 1996).

Indeed, despite the plurality of perspectives on IR/IL in IR, there is a general liberal-rationalist spin to most of them, based, purportedly, on the meta-theoretical consensus on positivism. Dunoff and Pollack, observe that:

[...] the field of international relations, then, is not epistemologically monolithic, yet there is a more widespread epistemological consensus within the field on positivism, broadly construed, than on any substantive theory of international politics. The field’s mainstream, including most of the key journals in the United States, accepts the key tenets of positivism, as do many leading constructivists, who follow Alexander Wendt’s embrace of positivism and of a scientific constructivism committed to testing theoretical propositions systematically against empirical evidence (Dunoff and Pollack 2013b, 15-16)

They, thus, construct epistemological positivism as the (supposedly) consensual gravitational center around which IR’s theoretical mainstream, “most of the key journals in the United States,” and “many leading constructivists” gravitate. In so doing, they also construct Alexander Wendt’s positivist, “scientific constructivism” as the proper representative of constructivism in IR and in the interdisciplinary study of IR/IL. Hence, Dunoff and Pollack seem to share Simmons’ diagnosis that meta-theoretical debates have been muted in the interest of problem-solving, empirical research of IR/IL (Simmons 2013) – along positivist lines. Moreover, Dunoff and Pollack, like Simmons, seem to echo the disciplinary practice of boundary drawing inaugurated by the (mainstream) “classics,” such as Peter J. Katzenstein, Robert O. Keohane and Stephen D. Krasner, who, in a celebrated contribution, distinguish a “conventional constructivism” from a “critical constructivism.” For them, while the former, springing from Wendt’s positivist-scientific constructivism, is aligned with the epistemological-theoretical, “rationalist” mainstream, the latter, associated with Kratochwil (1995)’s and Onuf (1989)’s constructivism, was more closely identified with what, to these authors, is but the “postmodern” margin (Katzenstein et al. 1999), that is, to what Waever had called the “boundary of negativity” (Waever 1996). This disciplining, gatekeeping practice has, of course, (had) significant consequences for the (critical) interdisciplinary study of IR/IL, most especially considering the work of both Kratochwil (1995, 2014) and Onuf (1989, 2008) on norms, rules and international law in international relations and world society (see, for instance, Sinclair 2010). Therefore, even if unintended, Dunoff and Pollack, as Simmons, Slaughter, and Abbott, reinforce a certain politics of epistemology, their “consensus,” “complementarity,” or “muting” narratives participating in a (political and normative) depoliticization of theory, metatheory, and (inter)disciplinarity.

It is in this context, thus, that one should read the (explicitly) programmatic – and disciplining – nature of Kenneth W. Abbott and Duncan Snidal’s (2013) contribution to the volume edited by Dunoff and Pollack (2013a). In their contribution, Abbott and Snidal offer “an agenda to the new generation of academics of IR/IL,” proposing a synthesis-oriented, “conciliatory” approach that aims to pacify the conflicts (or “ism wars”) inherent to the “(false) dichotomies” that used to poison the interdisciplinary study of IR/IL. They aim to develop and sophisticate a “science of IR/IL” grounded on “rationalist/positivist analyses of IR.” Having reconceived the concept of “legalization,” first introduced in *International Organization’s* 2000 special issue, and originally defined along the formalistic dimensions of “obligation,” “precision,” and “delegation” characterizing particular sets of (more or less) legalized rules and institutions (Abbott et al. 2000), Abbott and Snidal go on to propose a much more nuanced conception of “law,” “legalization,” and “politics,” and of their mutually constitutive relations. Here, the dynamic process through which law is continuously (re)constructed (*legalization*) is seen to be dialectically entangled with the temporally static conception of the rules and institutions resulting from legalization (*law*) (Abbott and Snidal 2013). Thus, they incorporate important aspects of the constructivist critiques to the original (too) formalistic conception of legalization (see Finnemore and Toope 2001, Reus-Smit 2004b). Moreover, they proposed a differentiation between the conception of “ordinary politics” and a more nuanced conception of “legalized politics” (Abbott and Snidal 2013):

In sum, although law (at a point in time) is significantly insulated from ordinary politics, it is never (except in its idealization) completely separate from politics; law remains subject to distinctive forms of legalized politics and can always be changed by politics over time. Although legalization (over time) is always political, it always occurs in the context of, and is shaped by, the existing body of law. Thus, law provides boundaries for politics yet is itself bounded by politics; politics changes those boundaries, yet is itself bounded by law (Abbott and Snidal 2013, 36)

In IL, in turn, the IR/IL interdisciplinarity story has been much less of an agenda promotion or celebration, even if its theory landscape has also been diversifying beyond the hermetics of the mainstream. Indeed, even during the period of mutually enforced separation, there were sustained theoretical endeavors on or beyond the margin of the (pseudo-)positivist mainstream which took part of their cues from different strands of IR theory. These new approaches were nearly all developed in North “American” academic settings and by scholars who would often qualify themselves as disciplinary hybrids between IL and IR, a fact that should not surprise, given that the quintessentially “American” tradition of legal realism formed an early dissidence to the dominant (“European”) formalism. Hence, with “American” IL scholars being generally (much) more open to the epistemic framework of the wider social sciences, a number of approaches developed at the interface between IL and IR scholarship, with the earliest being the (so called) New Haven School of “policy science” and the “international legal process” school, both of which emphasize the transactional elements of IL and explicitly employ IR-related vocabulary (Laswell and McDougal

1992, Chayes et al. 1968, Koh 1997). In their wake, legal pluralist approaches such as Global Administrative Law (GAL) (Kingsbury et al. 2005) and Autopoietic (Regime) Theory (Teubner 1997), as well as, to a certain extent, the “post-positivist” hermeneutics of Global Constitutionalism (Bogdandy 2006) have emerged, as of the 1990s, as alternative IL approaches that can be seen as epistemically closer to different strands of IR than the IL mainstream. Parallely, both Slaughter’s liberal transnationalism and rationalism, in form of the (rational-choice) economic analysis of law (“law and economics”) (Goldsmith and Posner 2005, Posner 2009) have always styled themselves as integrated IR/IL approaches. Lastly, the emergence of “critical legal studies” (CLS) in the 1970s and its fanning out into IL, beginning with the New Approaches to International Law (NAIL) in the 1980s and up to the now influential Third World Approach to International Law (TWAIL), have opened legal scholarship to a *bricolage* of social science and humanities perspectives (see Ratner and Slaughter 2006, Singh and Mayer 2014, Orford and Hoffmann 2016). Although these “crits” have, on the whole, remained distant to or openly skeptical of IR as a discipline, many of the literatures they have drawn on for critical (IL) analysis, from Marxism and political economy to feminist, queer, and post/decolonial frameworks, have long featured in IR scholarship, critical or otherwise.

However, whereas in IR the different propositions on IR/IL have developed in a dialectical process typical of theory formation in the social sciences and have, arguably, cut across the whole meta-theoretical spectrum, from the (rationalist) mainstream to the (reflectivist) critical periphery, in IL, none of the presumptive IR/IL perspectives have really infiltrated the mainstream in more than marginal ways (Carty 2007). In part, this is due to the predominance of international legal practice in the mainstream’s epistemic horizon, and the resulting structural closure to “external” reconstructions of that practice. The totalizing and solipsistic “internal” perspective this implies must necessarily be blind to the alternative vision of the “international” represented by IR and must militantly reject any form of hybridity (Hoffmann 2016). Hence, while (a certain) IR/IL agenda has become quite deeply embedded in IR discourse across the board, it has remained on the margins of mainstream IL and is contested even in most critical or otherwise “peripheral” approaches.

Conclusion: From the “Dual Agenda” to Counter-disciplinarity and Beyond: New Paths for IR/IL Interdisciplinarity

The contemporary landscape of IR/IL interdisciplinarity is still fluid and diffuse, with there being in fact several “dual agendas” of interdisciplinary scholarship. On one level, there is the question of the status of IR/IL interdisciplinarity in each of the two disciplines. As was seen, in IR, there is an increasingly well pronounced interest in IL by both the contemporary mainstream and by critical approaches. Indeed, to the extent that this interest corresponds to a particular (meta-) theoretical trend within IR, notably an empiricist turn to concrete “problems and puzzles” in the (rationalist) mainstream and an ethnographic turn to “practices” in (some) critical approaches,

there is clearly an interdisciplinary agenda. It remains to be seen, however, to what extent this is actually a “dual agenda” in which IL features as a distinct episteme, or whether it remains, in fact, reduced to the status of empirical raw material, a mere set of norms, practices and institutions amenable to being reconstructed through the established vocabularies of IR. In other words, it is yet unclear whether, for instance, Abbott and Snidal’s attempt to correlate the analysis of political and legal logics will be able to deal with their epistemic incommensurability, not least as their empiricist framework precludes a meta-theoretical discussion thereon.

In any case, the “dual agenda” looks rather different from the contemporary IL side. For the “European” mainstream, there is simply none, whereas the theory-sensitive periphery has largely split over the question of interdisciplinarity. As seen before, the now dominant section of the “crits” is decidedly outspoken against the “dual agenda” that broadly aligns with critical formalism (Koskenniemi 2012, Klabbers 2013). It has endorsed a critically reconstructed version of the mainstream’s “internal” perspective of canonical IL (aka the “European” mainstream) as a factual and indeterminate language game, whose practice is deemed to lie entirely outside of the conventional logic of “scientific” disciplinarity; it is, instead, reconstructed as a counter-discipline that represents a form of *phronesis*, practical, as opposed to theoretical or aesthetic, reason. This allows law(yers) to advance (progressive) political ends beyond or, in fact, contrary to, established political processes (or ideologies). It purports to do so through the performative elucidation and questioning of historically constituted (in)justice in and through the legal process (Koskenniemi 2012). As a consequence, only the hermeneutic (aka reflective, in IR) reconstruction of the language and (especially) history of canonical IL is deemed to be part of its disciplinarity, whereas both “philosophical” (aka post-/structuralist) and “sociological” (aka functionalist) narratives are not only outside of that disciplinarity – as they are for IL’s (pseudo)positivist mainstream – but are seen as attempts of IL colonization and, thus, as threatening to its relative autonomy. The discourse of counter-disciplinarity is, thus, not framed as a meta-theoretical position – which it rejects – but as a form of militancy against a “dual agenda” it considers to be a thinly veiled attempt by IR to functionally subvert IL – IR’s functionality being, of course, seen as consonant with the neoliberal world order.

In this fundamental critique of IR/IL interdisciplinarity, critical formalism could, in theory, join hands with those IR approaches critical of that discipline’s own rational/liberal mainstream, but it has precluded itself from doing so by adopting an extremely reductive liberal realist “caricature” of IR as a discipline. As a consequence, it has also refused to critically review the nuances in both the (IR) mainstream’s attempt to ground interdisciplinarity and the manifold critiques from the discipline’s edges. Other less prominent critical (IL) approaches, such as those working within a Marxist framework, could, of course, connect to certain (theoretical) discourses within IR, as could those not self-consciously “crit” perspectives, such as GAL, that seek to broaden mainstream IL’s epistemic framework in order to produce a more detailed and accurate map of global normativity. Yet, besides being marginal even within the marginality of IL theory, these approaches have tended

to avoid overt identification with either IR or with any “dual agenda,” even when they have used the same descriptive vocabulary or engaged with the same theoretical literature.

Hence, for better or worse, the IR/IL interdisciplinarity project seems to face a three-way junction: straight ahead lies (1) the IR mainstream’s “dual agenda” itself, with its consolidated theoretical premises and its delimited objectives, but with little direct resonance in IL. Then, forking off to one side is (2) critical IL’s counter-disciplinarity project, which seeks to actively resist that “dual agenda” by essentially removing IL from the remit conventional disciplinarity as such; it, instead, frames IL as a formalized performative practice, which brings (procedural) justice to bear against the “disciplining” power of functional regimes (IR, which is the neoliberal world order); as such, it excludes any and all IR scholars from the conversation.

On the other side lies (3), an as yet little explored path which begins with a necessarily meta-theoretical conversation on the nature of the respective disciplinarity of IL and IR. This conversation needs to cover (at least) three fundamental dimensions that define disciplinarity and set out the stakes for interdisciplinarity: firstly, an ontological dimension that thematises the relative autonomy or heteronomy of IR/IL’s terms of reference, namely (international) law and politics; are they *sui generis* and have to be conceived as irreducible to – and, thus autonomous from – the respective other or not? And what would be the foundations of their respective autonomy? Secondly, an epistemological dimension that covers the “methodological” debate between positivist/ “scientific” and post-positivist/hermeneutic/reflective perspectives on law and politics; this involves, *inter alia*, questions about the relationship between (micro- and macro-) levels of analysis, about (nomothetic or idiographic) types of theorizing, and about the (immanent or transcendent) nature of critique. And, thirdly, an axiological dimension that looks at the value schemes underlying (international) legal and political analysis; deeply entangled with the ontological aspects of interdisciplinarity, the questions of value that derive from the former are here thematised, such as, for instance, whether the “rule of law” is deemed as desirable in and of itself – as the “European” mainstream and, arguably and in a different way, the counter-disciplinarians would contend-, or whether it is only (and only possibly) instrumentally related to political values such as the realization of national interest, peace, democracy, or human rights.

Structured by these dimensions, this post-disciplinary conversation might eventually be able to constructively engage with the incommensurability that lies at the heart of the IR/IL interdisciplinarity predicament and it might, thereby, reveal a wholly new quality of “the international.” It is a path worth exploring!

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