CONSORTIUM FOR STUDY AND ANALYSIS OF INTERNATIONAL LAW SCHOLARSHIP

FOREWORD

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The study of international law is thriving in many institutions of higher learning, although the discipline faces challenges, especially as international law has encountered renewed contests in practice. Certain of those challenges have emerged recently, but others are reflective of longstanding skepticism through which some in the legal academy and in the public sphere have viewed the field. While many international law scholars and practitioners arduously carry out their research and advocacy, fewer have scrutinized the institutional practices and constructs surrounding the discipline's generation of knowledge and ideas. We lack a thorough investigation of how international law scholarship is produced, published, read, and implemented into practice. What we have to date are partial glimpses and loosely formed perceptions about how concepts flow from the academic page to the policy brief, treaty, or courtroom.

A concentrated study of international law scholarship began to take shape around twenty-five years ago. The late David Bederman was perhaps the most influential and prolific on questions related to the past, present, and future of the subject. Bederman studied the intellectual content and scholarly character of two of the oldest and most highly reputed international law journals in the United States: the *Virginia Journal of International Law* and the *American Journal of International Law*.[1] In other work, he cataloged the pathologies of difficulties facing international law scholarship in its struggle for a place in the legal academy, in the councils of power, and in the public square.[2] Bederman had a propensity for offering thoughtful and consequential reviews of trends in international law scholarship that helped scholars better

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1. David J. Bederman, *Appraising a Century of Legal Scholarship in the* American Journal of International Law, 100 AM. J. INT'L L. 20 (2006); David J. Bederman & Jonathan C. Hamilton, *Agents of International Discourse: A Conspectus on the Future of International Law Journals*, 40 VA. J. INT'L L. 817 (2000).

2. David J. Bederman, *I Hate International Law Scholarship (Sort Of)*, 1 CHI. J. INT'L L. 75 (2000).

understand their discipline, and that confirmed the power as well as the limits of international law publishing practices.

Since Bederman's time, however, only occasional studies and collections reviewing discrete issues in international law scholarship have dotted the landscape.[3] During these same recent decades, leaders among international relations academics, international law academics' disciplinary siblings, have engaged in greater sustained internal retrospection. For example, for twenty years, and with intense and dedicated resources, the Teaching, Research, and International Policy Research Lab (TRIP) has grappled with the relationship between international relations scholarly outputs and national and international policymaking.[4] But international law scholars have not dedicated the same sort of attention to their craft.

Much remains to be explored to understand the contours and forces at work in the discipline of international law, especially what scholars write, where they publish that work, who reads international law scholarship, and scholarship's relationship to the policy world. For international lawyers, identifying answers to these questions and understanding the impact of our collective work is essential, particularly at a moment of profound political struggle in communities around the world. As certain principal tenets of international law have come under fire in the last half-decade, those with the strongest voices in the international legal discourse may influence global outcomes in very direct ways.

Recognizing the linkages between scholarly output and practice in international law is, of course, not new. Anne Orford and Annelies Riles are among those who have recently commented on the place of international law scholars operating between professional practice and the world of the university, noting how the "institutional context" of international law and comparative scholarship necessarily includes the

3. *See, e.g.*, Ignacio de la Rasilla, *A Very Short History of International Law Journals (1869–2018)*, 29 EUR. J. INT'L L. 137 (2018); James Thuo Gathii, *Studying Race in International Law Scholarship Using a Social Science Approach*, 22 CHI. J. INT'L L. 71 (2021); James Loeffler & Mila Versteeg, *The Future of Human Rights Scholarship*, 81 LAW & CONTEMP. PROBS. 2018; Carsten Stahn & Eric de Brabandere, *The Future of International Legal Scholarship: Some Thoughts on "Practice," "Growth," and "Dissemination,"* 27 LEIDEN J. INT'L L. 1 (2010); Yahli Shereshevsky & David Hughes, *State-Academic Lawmaking*, 64 HARV. INT'L L.J. 253 (2023). The SAILS website offers a bibliography of resources at https://coursesites.georgetown.domains/sails/.

4. *See, e.g.*, Teaching, Research, and International Policy (TRIP) Research Lab, https://trip.wm.edu/.

world of international legal practice.[5] Anthea Roberts, in her book posing questions about comparative differences in understandings of international law and teaching methods, also examined the links between academia and practice.[6] These authors and others in their important contributions have acknowledged the intimacy between and mutually reinforcing nature of the international law academy and the international law practice community.

Yet, little work has been done to unpack how scholarship about international, comparative, and foreign relations law influences the practice of international law, and even less has been done with special attention to what areas, regions, and individuals are left out. For instance, we have remarkably few data as to what topics, methodologies, and perspectives of international law scholarship journals and publishers print, by whom, in what languages, through what media, and subject to what parameters.

The SAILS project—the Consortium for the Study and Analysis of International Law Scholarship—seeks to fill this gap. SAILS is an effort by a committed group of international law scholar-practitioners to cultivate this sustained attention to international law scholarship, and its interaction with practice.[7] The purpose of the consortium of doctrinal, clinical, and library faculty from around the world is to elucidate answers to these many lingering questions to help us understand our own discipline as well as the forces behind it and that it unleashes. SAILS investigates the relationship among theory, research, and practice to address international law's twenty-first century challenges.

This symposium comprises a collection of works by some SAILS participants on topics that each author brought when asked, "what international law and comparative law scholarship questions ought international law scholar-practitioners be examining today?" That exercise produced a lengthy list of possible research inquiries, only some of which could be addressed in the essays that follow this foreword.

Because the work of understanding trends and impacts of international law scholarship is a collective endeavor, and the SAILS project likewise, the SAILS Steering Committee sought to bring together three leading international journals to publish these essays: the *Georgetown*

5. *See* ANNE ORFORD, INTERNATIONAL LAW AND THE POLITICS OF HISTORY 185 (Cambridge 2021); Annelise Riles, *Legal Amateurism*, *in* SEARCHING FOR CONTEMPORARY LEGAL THOUGHT 499 (Cambridge 2017).

6. ANTHEA ROBERTS, IS INTERNATIONAL LAW INTERNATIONAL? (Oxford 2017).

7. Participants in the SAILS project do not take a common position on the enduring question about international law scholarship as constituting part of international law practice; the project takes the two as analytically distinct in some studies and as necessarily overlapping in others.

Journal of International Law, the *Virginia Journal of International Law*, and the *Yale Journal of International Law*. We remain grateful for their collaboration. The student editors who have worked tirelessly on these essays have been partners in the effort, participating in the authors' workshop in April 2023 and commenting on the substance of the work.

SAILS also has found it important to bring together colleagues teaching and writing about international law in multiple capacities in U.S. law schools and abroad. Some SAILS essays are co-authored between librarian and doctrinal faculty, and others have involved the close collaboration between those groups. Future work commissioned by SAILS seeks to engage clinical faculty, as well.

The nine essays showcased here are intended to be read together, but each provides a unique contribution to the enterprise. Six of the nine essays focus closely on journals dedicated to the publication of international and comparative law scholarship. The other three take up crucial interdisciplinary and dialogical issues.

Among the historical accounts, Harlan Cohen provides a "short history of the early history," as he titles it, of student-edited international law journals in the United States.[8] There are more than six dozen journals dedicated to the publication of international and comparative law scholarship based in the United States for which the selection of the articles, the editing of those articles, and their publication are managed by law students. These journals are well known and serve as the home for hundreds of articles each year. But their history is far less well known. Cohen undertakes to unearth that story and analyze its contours. He identifies the origins of these journals in student societies and clubs in the middle and late part of the twentieth century, especially at elite law schools, and he traces their evolution in those early years. What emerges, surprisingly, is a social venture that became a serious scholarly undertaking in a short period, quite different from what one suspects is the origin story of other types of legal academic journals.

A different essay in the collection, for which I serve as the primary author, broadens the aperture, drawing from Cohen's meticulous archival research. This essay, entitled "The World of International and Comparative Law Journals," maps the international and comparative law terrain today, covering those many student-edited journals as well as peer-reviewed journals both inside the United States and beyond.[9] It

8. Harlan Grant Cohen, *A Short History of the Early History of American Student-Edited International Law Journals*, 64 VA. J. INT'L L. 357 (2024).

9. Kathleen Claussen, *The World of International & Comparative Law Journals*, 55 GEO. J. INT'L L. 61 (2024).

identifies several hundred academic journals devoted to international and comparative law scholarship from across the globe. From this bird's eye perspective, one finds a burst of new journal activity in the 1990s and 2000s. I break down the universe into general international journals and more specialized journals, examine the features of their publishing practices, and highlight the demographics of their editors and publishers. I also review several ranking methodologies and reputational metrics that have developed into hierarchies for university promotion purposes, and I contrast those computed indices with the social and citation relationships one can identify among these many journals—a prelude to some of the work carried out by Niccolò Ridi and Thomas Schultz elsewhere in this collection.

The authors organized in the symposium approach the study of international and comparative law scholarship largely from North American and European perspectives. But Jorge Contesse helps us understand the place of international law scholarship in Latin America.[10] Contesse also offers a historical perspective with a focus on the rise of certain leading law journals in Mexico and in South America. A comparison of Contesse's deeply researched review with Cohen's reveals meaningful differences in the intellectual pedigree of journals that are otherwise committed to the same exercise. Contesse's study highlights the Latin American journals' "implicit purpose of bringing international law and global discussions closer to the region and the attempt to achieve that purpose 'from Latin America'."[11] Unlike the student-edited journals in the United States, international law journals from Argentina, Brazil, Chile, Colombia, Mexico, and Peru are closely linked to trends in legal education in those countries. Contesse also zooms in on the experiences of the editors of those pioneering journals.

This particular symposium does not purport to cover all regions of the world—indeed, such an undertaking far exceeds its scope, and that work remains for other projects commissioned by SAILS—but Pierre-Hugues Verdier investigates journals that expressly name themselves regional international law journals.[12] Using a comparative international law perspective, Verdier draws on new quantitative data on the authors and topics published in five prominent journals from 2005–2020: the *American Journal of International Law*, the *European Journal of International Law*, the *African Journal of International and Comparative Law*, the *Chinese*

10. Jorge Contesse, *International Law Scholarship in Latin America*, 64 VA. J. INT'L L. 373 (2024).

11. *Id.* at 375.

12. Pierre-Hugues Verdier, *Comparative International Law and the Rise of Regional Journals*, 49 YALE J. INT'L L. _ (2024).

Journal of International Law, and the *Asian Journal of International Law*. He also analyzes the geographical distribution of their submissions, subscriptions, and downloads. Verdier concludes that the five journals fulfill significantly different roles in the international law scholarly ecosystem: some serve to broadcast views, while others serve a primarily localized role, and still others publish a mix of regional and outside authors in dialogue.

Bianca Anderson and I take a similar approach in our empirical study of what journals print.[13] Using a hand-coded data set of more than 1,500 articles published by four leading international law journals (the *American Journal of International Law*, the *European Journal of International Law*, the *Yale Journal of International Law*, and the *Harvard International Law Journal*) over a 15-year period, we show how these generalist international law journals publish articles on diverse sub-topics, more than 30, from across the field from year to year. However, in the *American Journal* and the *European Journal*, a small handful of topics receive disproportionately high attention. Those stand-out topics do not appear linked to any external developments in the law, but they may reflect the interests of the jurisdictions in which the journal is published. More important is our comparison with so-called mainline or generalist law journals. We demonstrate how the *Yale Law Journal* and *Harvard Law Review* published almost no works on international law in the same time period—a perception shared widely among international law scholars. We cannot draw conclusions from the numbers about selectivity as we do not (yet) have information about submissions, but the comparison is illustrative in demonstrating how few international law-related articles reach a generalist audience. In separate, forthcoming work, we broaden the set with additional journals and submissions data, as well as machine-classified data taught by our hand-coding, to build out this analysis still further.

Data collection is a challenge for each of these empirical studies, although much work can be done through expert review of the metadata offered by subscription services. Anderson and other librarians who have contributed to this project have resourcefully analyzed much of the below-the-surface information available through large-scale databases. Those databases also carry out their own categorizations that are ripe for review and analysis, and studying their labels is important for understanding how scholars may carry out their research more effectively. John Bowers and Oona Hathaway present data from HeinOnline

13. Bianca Anderson & Kathleen Claussen, *International Law Publishing Trends: What Journals Print*, 55 GEO. J. INT'L L. 11 (2024).

to highlight some of these large-scale research issues, and to analyze trends using that data.[14] By analyzing the bulk metadata on more than 170,000 articles in Hein's collection, they conclude that, among the articles Hein has labeled as international law, citations are heavily concentrated among certain journals, and among certain authors. Student-edited journals fare far better in their set than peer-reviewed journals, for example. Bowers and Hathaway also use the Hein data to identify the most cited authors in the field. Their important study also reveals some of the intricacies—and the limitations—of how Hein carries out its coding. These takeaways are critical for scholars and practitioners in the field who rely on database labeling, and the issue is no doubt not unique to just one database.

The study of scholarship impact and the "footprints of scholarship within scholarship" are the specialties of Ridi and Schultz.[15] In their essay, they identify what they deem as "turning points" in the development of international legal scholarship through a network analysis of scholarly articles. Using scientometrics and other forms of data mining, Ridi and Schultz reveal pathways of ideas among international law scholars—their distribution, dissemination, and proliferation. Critically, they evaluate the responsiveness of legal decision-makers to developments in scholarship. Ridi and Schultz provide insight into what type of scholarship is used by states, international organizations, and other stakeholders.

The essay by Ridi and Schultz lays the groundwork for future investigations to be carried out by SAILS participants. As others before us have noted, scholars and practitioners often disagree over the proper form of relationship between scholarship and practice in international law. Elaborating those views and continuing that dialogue is central to the work of the SAILS project. For this reason, this symposium will serve as the basis for a panel at the American Society of International Law Annual Meeting—one of several gatherings of collegiate societies that endeavor to bring together practitioners and scholars. More than in other fields, international lawyers often move back and forth between the academy and service or other forms of international law practice.[16] Upcoming SAILS work digs into the implications of this special quality of the legal academy in greater detail: how is research produced by

14. Oona Hathaway & John Bowers, *International Legal Scholarship: An Empirical Study*, 49 YALE J. INT'L L. _ (2024).

15. Niccolò Ridi & Thomas Schultz, *Tracing the Footprints of International Law Ideas: A Scientometric Analysis*, 64 VA. J. INT'L L. 405 (2024) (emphasis omitted).

16. *See generally* Harold Hongju Koh, *The State Department Legal Adviser's Office: Eight Decades in Peace and War*, 100 GEO. L.J. 1747, 1749 (2012).

scholars of international law relevant to contemporary policy, and is it useful to policymakers?

The utility of research and the gatekeeping surrounding research projects is at the heart of the essay offered by Daniel Peat and Cecily Rose. Peat and Rose review twenty years of data from the Dutch Research Council and the European Research Council to examine whether scholars make choices about what to research in light of the stated preferences of funding bodies and the composition of the panels that evaluate grant proposals.[17] Their findings reveal an increase in the use of non-doctrinal international law research methods among funded projects over the last 15 years, and they draw a correlation to the presence of political science and international relations experts on review panels. Their work paves the way for a closer look at how other funding bodies, such as the U.S. National Science Foundation, offer support to international law research.

While Peat and Rose study the drivers toward interdisciplinarity in international law scholarship, Elena Chachko problematizes the resulting cross-field studies.[18] Chachko argues that there is a "methodological chasm between [international law and political science] that hinders collaboration."[19] Looking to make those collaborations more productive, she considers strategies for enhancing the accessibility particularly of empirical political science work within mainstream international law scholarship. Her essay reviews the courtship between the two fields and their growing intersections up to the present pivotal juncture for international law scholarship across both disciplines.

Together, these nine essays provide a glimpse into some of the data and the discourse surrounding widely shared queries about international and comparative law scholarship. They likewise point to the value of collaboration across methodologies, disciplines, and approaches to understanding the intersections between international law and international legal practice.

The nine essays are distributed across the three participating journals, and this foreword appears at the commencement of all three parts. As noted above, they are intended to be read as a collection, though each no doubt stands alone. Thus, the reader may begin at any convenient point of interest and will find many cross-references as the essays are in regular conversation with one another. The Anderson-

17. Daniel Peat & Cecily Rose, *The Changing Landscape of International Law Scholarship: Do Funding Bodies Influence What We Research?*, 49 YALE J. INT'L L. _ (2024).

18. Elena Chachko, *International Law and Political Science in Twilight*, 55 GEO. J. INT'L L. 37 (2024).

19. *Id.* (manuscript at 5).

Claussen essay was the original concept note for this collection, setting out early hypotheses about topical trends and how international law scholarship differs from other legal scholarship. From there, the dialogue grew as each author brought his, her, or their own research question to the project.

An undertaking of this magnitude takes widespread support. Thanks are due to the several contributors to this project for their willingness to explore questions that many have asked but not been able to answer. Likewise, student editors past and present who contributed to the work, including editors-in-chief Nicolas Friedlich (Georgetown), Ali Hakim (Yale), and Mishan Kara (Virginia) were instrumental in bringing this first SAILS symposium to fruition. Early SAILS workshops included authors and commentators who remain close to the project, including James Feinerman, Jean Galbraith, David Isom, Chimène Keitner, Steve Koh, Neysun Mahboubi, Fernanda Nicola, and Jason Yackee. The members of the SAILS Steering Committee have generously supported this endeavor from its earliest days.[20]

Finally, this collection is only the first of the SAILS collections dedicated to this work. More are on the way. SAILS workshops at the Peace Palace Library, European University Institute, and Singapore Management University have continued and will continue the conversation, with additional gatherings elsewhere in the world to follow. SAILS and its website also will serve as the home for qualitative and quantitative empirical research on these questions and as the hub for gatherings of scholars and practitioners exploring these matters through diverse methodologies and exercises. We hope that the SAILS project will encourage these indispensable explorations.

20. A list of Steering Committee members is available on the SAILS website, https://coursesites.georgetown.domains/sails/.