



—
INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES

Call for Papers

Knowledge Production and International Law

7-8 September 2018

International Law Department
Graduate Institute of International and Development Studies, Geneva

Knowledge Production and International Law

International law knows the world. It uses a stock of knowledge to make judgements about the world. International law produces the world: it is itself a way of knowing the world that in turn performs and organizes it.¹ And international law knows international law itself, producing its own orthodoxies and heterodoxies for the world to see.² How international law is made, interpreted, and applied is thus dependent on what knowledge is produced, and how it is produced and deployed. In today's world of 'post-truth' and 'fake news', seeking to uncover how knowledge is produced and how the production of knowledge affects law and policies at the global level is an important exercise.

Yet, knowledge production has rarely attracted sustained theoretical interest in the literature of international law. While sociologists have long noticed the role of the *communis opinio doctorum* in the production, reproduction and shaping of the legal order,³ international legal academics and professionals have traditionally operated on the

¹ See e.g. Jean d'Aspremont, 'The Control Over Knowledge by International Courts and Arbitral Tribunals', in OXFORD HANDBOOK OF INTERNATIONAL ARBITRATION, Schultz, Thomas and Ortino, Federico (eds.), Oxford University Press, 2018, Forthcoming.

² Pierre Schlag, 'The Knowledge Bubble — Something Amiss in Expertopia', in SEARCHING FOR CONTEMPORARY LEGAL THOUGHT, Desautels-Stein, Justin, and Tomlins, Christopher (eds.), Cambridge University Press, 2017, pp. 428-453.

³ Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', 31 THE HASTINGS LAW JOURNAL (1987), p. 819.

assumption that international law is an objective reality existing out there, with their own role being limited to providing an accurate representation of that reality.

The expectation that this state of affairs could change with the advent of what is called “new approaches to international law” still remains an expectation: despite the emphasis placed by several prominent representatives of such approaches on the central role of international lawyers in the perception of what international law is and what it is for,⁴ no systematic attempt has been made to analyze the actors by whom or the mechanisms, channels and politics through which knowledge is produced, disseminated, performed, and reproduced in international law.

This conference aims to contribute to filling this gap by initiating a discussion on knowledge production and international law through four thematic panels. Selected contributions will be included in a publication.

Thematic panels

1. International law as a field of knowledge

Michel Foucault famously observed that “knowledge is not made for understanding; it is made for cutting.”⁵ Through their successful claims to autonomy and their monopoly over expertise and cultural capital, disciplines have become the sites where this symbiotic relationship between power and knowledge unfolds and where the forces having “their hand upon the knife”⁶ operate while any sign of betrayal of the ideal of disinterested pursuit of knowledge is actively repressed. This panel considers international law and its specialized branches as separate fields of knowledge/discursive spaces⁷ and invites

⁴ Martti Koskenniemi, ‘Between Commitment and Cynicism. Outline for a Theory of International Law as Practice’, in UNITED NATIONS, COLLECTION OF ESSAYS BY LEGAL ADVISERS OF STATES, LEGAL ADVISERS OF INTERNATIONAL ORGANIZATIONS AND PRACTITIONERS IN THE FIELD OF INTERNATIONAL LAW, 1999, p. 523 (stating that ‘International law is what international lawyers do and how they think.’); David Kennedy, ‘One, Two, Three, Many Legal Orders’, 31 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 641 (2007), p. 650 (‘International law is a group of *people* pursuing projects in a common professional language’).

⁵ Michel Foucault, ‘Nietzsche, Genealogy, History’, in ESSENTIAL WORKS OF FOUCAULT, 1954-1984, AESTHETICS, METHOD, AND EPISTEMOLOGY, The New Press, 1998, p. 380.

⁶ Todd May, BETWEEN GENEALOGY AND EPISTEMOLOGY, The Pennsylvania State University, 1993, p. 76.

⁷ Pierre Bourdieu, ‘The Specificity of the Scientific Field and the Social Conditions of the Progress of Reason’ 14(6) Social Science Information (1975), pp. 19-47; Pierre Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’, *ibid* (n 3); Michel Foucault, ‘The Order of Discourse’, in Young, Robert (ed.), UNTYING THE TEXT, London, Routledge, 1981, pp. 51-78.

reflections on politics of knowledge at work in international law and their implications for how international law frames and enframes the world.

Contributions may focus on the social construction of international law and its branches as autonomous fields of knowledge, the role of the discipline in controlling and delimiting international legal discourse and the place of, and resistance to, interdisciplinarity in international law.

2. Ignorance and the limits of knowledge in international law

International lawyers assert knowledge. Sometimes, this is legal knowledge, both about international law and about the world. At other times, this is policy knowledge, mediated by other disciplines, from the hard to the social sciences (and sometimes history and the humanities). If international law is a field of knowledge, its participants can be said to be in the game of making their assertions more authoritative than their colleagues.⁸

Knowledge, however, is necessarily finite. There are more things we ignore than things we know.⁹ Some things we choose to ignore, some we simply cannot know.¹⁰ In any field of knowledge there are vast oceans of ignorance around small islands of knowledge.

This panel asks: How do international lawyers deal with this fact? How do they encounter ignorance in their work, and at the same time, how is their work shaped by ignorance? What strategies and practices do they use to 'fill in the blanks' of knowledge about international law and of knowledge about the world for international law? What is the place in the labours of international law of 'practices of ignorance', such as bracketing, deferral, and fiction? What is the place of ignorance in the very structure of the international legal field?

This panel invites contributions considering these questions relating to ignorance and the limits of knowledge to international law.

⁸ See, e.g. Yves Dezalay and Bryant G. Garth, 'Marketing and Selling Transnational 'Judges' and Global 'Experts': Building the Credibility of (Quasi)Judicial Regulation', 8 SOCIO-ECONOMIC REVIEW 113 (2010); Akbar Rasulov, 'What is critique? Towards a sociology of disciplinary heterodoxy in contemporary international law', in d'Aspremont, Jean *et al* (eds.), INTERNATIONAL LAW AS A PROFESSION, Cambridge University Press, 2017, pp. 189-221.

⁹ Karin Knorr-Cetina, EPISTEMIC CULTURES: HOW THE SCIENCES MAKE KNOWLEDGE, Harvard University Press, 1999; Gross, Mathias and McGoey, Linsey (eds.), ROUTLEDGE INTERNATIONAL HANDBOOK OF IGNORANCE STUDIES, Routledge, 2015.

¹⁰ Proctor, Robert and Schiebinger, Londa (eds.), AGNOTOLOGY: THE MAKING AND UNMAKING OF IGNORANCE, Stanford University Press, 2008; Mathias Gross, 'The Unknown in Process: Dynamic Connections of Ignorance, Non-Knowledge and Related Concepts', 55 CURRENT SOCIOLOGY 742 (2007).

3. Determinants of international law scholarship

International law scholarship purportedly produces knowledge, or at least does something to, and with, knowledge. What then makes international lawyers produce such scholarship? And what should?

What structures and guides, incentivizes and constrains, shapes and distorts, pushes and pulls the production of international legal scholarship? Are we permitted to say what we believe? Do we permit ourselves to do so? Does anyone or anything force us into a compromise with our freedom to think? Do we tend to choose values to live by which force us into such a compromise? Do we sometimes shill for someone? Should we accept to promote a position we have been paid to advise about, or consult upon? Who do we work for anyway?

Surely we can never quite be scholar-saints in pure altruistic pursuit of better knowledge, but that doesn't mean that part of our determinants doesn't indeed point that way. If we zoom in on that part, what should it aim for? Can we and should we 'scientifize' international legal scholarship? Identify and follow our own moral convictions? What are the respective values of systematization, rationalization, simplification, elucidation, compilation, conceptual ground clearing and news reporting?

This panel invites contributions on any of these aspects of the determinants of international law scholarship.

4. Emotions and international law

Law, including international law, is traditionally grounded on rationalist assumptions. The prevailing idea is that the knowledge that informs the making, interpretation, and application of international law is predicated on scientific facts and evidence. Knowledge, however, is not only produced by scientific facts and evidence, and it goes beyond rationality. Emotions, whether individual or collective, also impact our perception of the world which consequently influences the making, interpretation, and application of international law.

There is a growing field of law and emotions scholarship in the US, and more recently in the UK.¹¹ Law and emotions scholars have challenged the idea that emotions should be

¹¹ Terry Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field', 30(2) LAW AND HUMAN BEHAVIOR 119 (2006); Eric Posner, 'Law and the Emotions', 89 GEORGETOWN LAW JOURNAL (2001); Karen Abrams and Hila Keren, 'Who's Afraid of Law and the Emotions?' 94 MISSOURI LAW REVIEW (2010); Bandes,

kept outside of the law. Work has done been done to study emotions in different areas of law, such as criminal and family law, and the impact of emotions on legal actors, such as judges.¹² Despite the growing attention for the study of emotions in domestic law, international law has remained largely silent on the role of emotions.

This panel invites consideration of the role of emotions in international law. Particular issues of focus may include the relationship between reason and emotion, the role of emotion in cognition, and the functions of emotion in international law. Contributions may focus on particular emotions in particular areas of international law, or a broader consideration of emotions and international law.

Abstract submissions:

- Abstracts of maximum 500 words and a CV should be submitted to knowledge-production-IL@graduateinstitute.ch by 14 May 2018. Please indicate in your abstract which panel you are submitting to.
- Decisions regarding abstracts will be communicated by 28 May 2018.
- Draft discussion papers of no more than 8,000 words are due by 31 July 2018.

Conveners:

International Law Department, The Graduate Institute of international and Development Studies:

- Anne SAAB – Assistant professor
Thomas SCHULTZ – SNF ‘Professeur boursier’ (also Professor, King’s College London)
Aliko SEMERTZI – PhD candidate and research assistant
Fuad ZARBIYEV – Assistant professor
- & Deval DESAI – Post-doctoral fellow, Albert Hirschman Centre on Democracy

Susan (ed.) THE PASSIONS OF LAW, NYU Press, 1999; Conway, Heather and Stannard, John (eds.), THE EMOTIONAL DYNAMICS OF LAW AND LEGAL DISCOURSE, Hart Publishing, 2016.

¹² Renata Grossi, ‘Understanding Law and Emotion’, 7(1) EMOTION REVIEW (2015), pp. 56-57.