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# 1. Introduction

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Why a research handbook on ‘sociological’ approaches to international law – and why now? To some extent, of course, the drivers of a project like this are partly personal: both of the editors of this volume have been inspired and excited by international legal scholarship with a sociological bent, and have equally found different traditions of sociological thinking to be valuable in their own lines of international legal inquiry. In addition, however, the appearance of this volume reflects our view that we may be in the middle of a particularly fertile, and potentially important, period of creative borrowing between the disciplines of international law and sociology, one which is worth marking.

This borrowing no doubt partly reflects a broader and more general turn towards interdisciplinary work in international law, a turn which has its roots in the changing character of the international legal academy, as well as the newly problematized place of legal knowledge as a privileged expertise of international governance. But it also reflects, in our view, the fact that quite profound social and political changes to the international order over the last decades have led international lawyers to consider again some fundamental questions which had appeared settled – or had at least been provisionally bracketed – for some time. What is the state? What motivates international actors to behave as they do? How are states’ interests formed, and how do they change? What is ‘culture’, and how does it relate to international law? Who interprets the world for international actors, how, and to what effect? How are (global) markets made and unmade? What dynamics drive the messy processes by which international law is formed, interpreted, and implemented? While it would be absurd to say that ‘sociology’ provides answers to such questions, it is fair to say that international lawyers interested in these questions have been attracted to various different traditions of social thought. International lawyers who draw on such traditions of thought have found them useful in creating spaces in which the constraints of what has become orthodox international legal thinking have been consciously cast off in pursuit of new kinds of thinking, more suitable for the rapidly transforming social and political landscape in which contemporary international lawyering is done.

Putting together a handbook such as this entails choices about what does and does not count as ‘sociological’, and it is worth saying a few words about how we approached this task. It will be immediately apparent from the contents page of this volume that we have eschewed a programmatic approach. We have not sought in any didactic manner to define in advance the core theoretical or methodological approaches which are shared by our contributors, though of course such shared features exist and are worth exploring. Still less was it our intention to situate sociological approaches in direct contrast to, or in tension with, other interdisciplinary approaches in international law. We especially did not want to situate sociological approaches exclusively within the rather familiar debate between rationalist and constructivist approaches, as relevant as that framework remains. Instead, we have always tried to keep uppermost in mind that what counts as ‘sociological’, and where the sociological sits in relation to other kinds of scholarship, is part of

what is at stake in contemporary practices of interdisciplinarity in international law. A volume such as this works best, in our view, when it allows its contributors to play out such debates on their own terms, and as far as possible to define for themselves the stakes of their own interventions.

With this in mind, we asked our authors to do two things in their chapters: first, to situate their intervention within a particular tradition of sociological or social theoretic thinking; and second, to explain and illustrate how and why they find this tradition useful in thinking about some contemporary development, or problem, within the domain of international law and governance. The result is, we think, a wonderfully diverse and exciting set of contributions, which lay out clearly a variety of paths down which future international legal scholarship may choose to travel, or indeed which it may contest. In the remainder of this brief introduction, then, we will simply set the scene a little with a high-level account of some major theoretical conversations within sociology which will help to locate some of the contributions which follow. We then provide brief summaries of each chapter.

## FROM HUBER TO POSTSTRUCTURALISM

Contemporary sociological theory is marked by theoretical diversity, and no single theory dominates the discipline. Textbook introductions to sociological theory typically map the field in terms of a small number of overarching approaches or schools, supplemented by a more loosely defined range of variations and combinations of such approaches which arose as a result of revolutions in social theory over the last decades of the twentieth century. Notwithstanding the undoubted inadequacies of such maps, it is worth beginning by setting them out in relatively stark terms for analytical clarity. We begin by presenting the three core approaches which are most commonly identified, namely structural-functionalism, symbolic-interactionism, and social conflict perspectives.

*Structural-functionalism* was for many years the dominant sociological theory. Even if its importance has declined dramatically over the past few decades, the concepts and terms developed by structural-functional theorists still influence many contemporary sociologists.<sup>1</sup> The structural character of this perspective arises from its holist methodological contention that scientific knowledge cannot be grounded in individuals or their personal history. According to this view, the dynamics of a society cannot be understood each part in isolation. Rather, the various parts of society should be explained through their relationships with other constituent parts of the social system. This perspective conceives society as a system that is all-pervasive and the typical units of analysis are an entire society, large groups, or certain social patterns (such as norms or collective memories) within a society. Furthermore, this approach is 'functionalist' in the sense that every social pattern is analysed as performing some function in order to preserve the existing society. As with other macro-sociological approaches, the structural-functional perspective tends to emphasize the constraining power of social structures on individual

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<sup>1</sup> With regard to 'neo-functionalism' and current analyses of the global system, *see, for example*, Kenneth Allan, *The Social Lens: An Invitation to Social and Sociological Theory* (Sage 2011) 36–7.

choices.<sup>2</sup> Structural-functionalists tend to emphasize the significance of social control<sup>3</sup> and socialization, and the value of such processes to the reproduction of society and social ordering. This perspective also underlines the interdependence of the various components of society and the ensuing tendency of societies to enhance cooperation and integration. Consequently, this approach also attaches particular significance to social stability and equilibrium, and highlights the threatening consequences of social disintegration.<sup>4</sup>

Structural-functional conceptions of *international law* invite scholars to explore the manifest and latent functions of international legal rules and institutions, and highlight, for example, the role of diverse international forums as international social control mechanisms (e.g., non-legally binding General Assembly resolutions expressing condemnation or praise of certain behaviour). The underlying tendency of the structural-functional perspectives to valorise social integration on a global scale goes along with a preference for the universality of international legal rules: international regimes, that is to say, should be composed of a unified set of legal rules that binds all members, with minimal variations or exceptions. Thus, special provisions that are applied to particular parties or groups of states are generally disfavoured in this tradition.<sup>5</sup> Many of the contributions to this volume share certain features with structural-functionalism, including, for example, the chapters addressing social networks,<sup>6</sup> language,<sup>7</sup> or structuration theory.<sup>8</sup>

*Symbolic-interactionist perspectives* belong to the category of micro-sociological theories, and emerged primarily by way of counterpoint to structural-functionalism. Like other micro-sociological theories, they emphasize the interactions between individuals in society, and are primarily concerned with the behaviour of individuals and small groups (rather than large-scale units or social patterns). Symbolic-interactionism places particular stress on providing descriptions and explanations of everyday social experiences, frequently from the point of view of certain individuals or types of individuals. This approach also underlines the inter-subjective aspects of individuals' interactions, that is to say, the meaning that humans attribute to social phenomena.<sup>9</sup> From this perspective, social structures emerge and are maintained 'from below', through a complex process of

<sup>2</sup> See, for example, George Ritzer and Jeffrey Stepnisky, *Sociological Theory* (9th edn., McGraw Hill 2013) 239–46; Jonathan H. Turner, *Contemporary Sociological Theory* (Sage 2013) 51, 55–8; George Ritzer, *Introduction to Sociology* (Sage 2015) 49–53; Malcolm Waters, *Modern Sociological Theory* (Sage 1994), 131–2; Manuela Boatca, 'Macrosociology' in George Ritzer and J. Michael Ryan (eds), *The Concise Encyclopedia of Sociology* (Wiley-Blackwell 2011) 362; John J. Macionis, *Sociology* (Pearson 2012) 12–13.

<sup>3</sup> Erich Goode, *Deviant Behaviour* (Prentice Hall 2011) 49–50; Erich Goode, 'Deviance' in George Ritzer and J. Michael Ryan (eds), *The Concise Encyclopedia of Sociology* (Wiley-Blackwell 2011) 135.

<sup>4</sup> See, for example, Emile Durkheim, *The Rules of Sociological Method* (3rd edn., Free Press 1962) 1–13; Ritzer and Stepnisky, *supra* n 2, 243–47; Turner, *supra* n 2, 49–63; Macionis, *supra* n 2, 12–13.

<sup>5</sup> On the structural-functional perspective on international law, see, for example, Hirsch, Chapter 19 in this volume, on Sociological theories – Section II(a).

<sup>6</sup> See Puig, Chapter 15 in this volume; Dothan, Chapter 16 in this volume.

<sup>7</sup> Alschner, Chapter 17 in this volume.

<sup>8</sup> Lamp, Chapter 13 in this volume.

<sup>9</sup> Ritzer and Stepnisky, *supra* n 2, 350–1. See also Norman K. Denzin, *Symbolic Interactionism and Cultural Studies* (Blackwell 1992) 23; Waters, *supra* n 2, 16.

interaction between individuals. As people interact over time, patterns of interactions emerge, and rules governing social interaction develop.<sup>10</sup> The interpretations that individuals give to social patterns are important because they significantly influence behaviour. These meanings are developed from interactions, and are contested, negotiated, and – to some extent – shared by the individuals who comprise society.<sup>11</sup> Human beings are not viewed here as the products (or victims) of the social system; but rather as active agents who can resist, challenge, and change social structures.<sup>12</sup> Humans construct a society that significantly depends on symbols, and interactions among human beings rely heavily on the employment of symbols (such as words).<sup>13</sup>

As an approach to international law, symbolic-interactionism emphasizes the inter-subjective nature of the process of legal interpretation, and also pays attention to the ways in which legal meaning-making affects the meanings that actors give to the world more generally, on which they base their decisions. Inter-subjective meanings of legal rules and ensuing expectations are constructed in interactionist processes. Unlike the structural-functional approach, whose proponents tend to prefer wide-ranging integration through inclusive and uniform legal regimes, those adopting this approach tend to express a preference for flexible international legal regimes that correspond to the particular social characteristics of the individuals and groups involved. The ingrained aversion of symbolic-interactionism towards uniformity and integration suggests that the desirable structure of international regimes should allow the members a greater extent of discretion. Thus, for example, some working within this tradition suggest that international treaties should include minimum mandatory principles that bind all parties alongside various optional instruments that are open to voluntary accession of each member.<sup>14</sup> Symbolic-interactionist features are also present in many of the contributions to this volume; including the social constructivist approach in international relations literature,<sup>15</sup> anthropological analysis,<sup>16</sup> as well as Bourdieusian investigations of international legal issues.<sup>17</sup>

*Social conflict perspectives* belong to the category of macro-sociological theories and, like structural-functionalism, tend to highlight the structural features of society. But unlike structural-functional theorists, the proponents of social conflict perspectives highlight the role of social inequality and power relations as drivers of social change.<sup>18</sup>

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<sup>10</sup> Herbert Blumer, *Symbolic Interactionism: Perspective and Method* (Prentice Hall 1969) 1; Joel M. Charon, *Symbolic Interactionism* (Pearson 2011) 28; Turner, *supra* n 2, 315–17; Ritzer and Stepnisky, *supra* n 2, 348–50, 352–3; Anthony Giddens and Philip Sutton, *Sociology* (Polity 2013) 22–3; Macionis, *supra* n 2, 16–17; Craig Calhoun, Joseph Gerteis, James Moody, Steven Pfaff and Indermohan Virk (eds), *Contemporary Sociological Theory* (Blackwell 2002) 2–4; George Ritzer and Douglas J. Goodman, *Modern Sociological Theory* (McGraw Hill 2004) 230.

<sup>11</sup> Waters, *supra* n 2, 15; Denzin, *supra* n 9, 25.

<sup>12</sup> Ritzer and Goodman, *supra* n 10, 230. See also Ritzer and Stepnisky, *supra* n 2, 352–3; Turner, *supra* n 2, 315; Charon, *supra* n 10, 29; Waters, *supra* n 2, 15.

<sup>13</sup> Charon, *supra* n 10, 68–9, 25; Denzin, *supra* n 9, 27.

<sup>14</sup> On the symbolic-interactionist perspective on international law, see, for example, Hirsch, Chapter 19 in this volume, on Sociological Theories – Section II(b).

<sup>15</sup> Cho, Chapter 18 in this volume.

<sup>16</sup> Sarfaty, Chapter 14 in this volume.

<sup>17</sup> See, for example, Madsen, Chapter 9 in this volume; Messenger, Chapter 10 in this volume.

<sup>18</sup> David K. Brown, *Social Blueprints: Conceptual Foundations of Sociology* (Oxford University Press 2004) 76; Turner, *supra* n 2, 217; Ritzer and Stepnisky, *supra* n 2, 267; Allan, *supra* n 1, 236.

Social conflict theorists generally view structural-functionalists as conservative and their theories as implicitly legitimating the status quo.<sup>19</sup> From this perspective, society is characterized by regular patterns of inequality regarding the allocation of essential resources among its members (such as wealth, political power, and cultural resources).<sup>20</sup> The uneven distribution of resources engenders social stratification and struggle among rival groups; each is interested in advancing its own interests at the direct expense of the other groups.<sup>21</sup> Existing social structure represents the contingent and temporary outcomes of prior struggles between rival groups.<sup>22</sup> Thus, unlike structural-functionalists who tend to value a stable society, the proponents of the social conflict perspective tend to underline that social order stems from coercion exerted by the stronger members, and that social change is desirable.<sup>23</sup> The social conflict perspective views symbolic goods, solidarity, ideologies, and values as instruments that the competing groups use to advance their own goals.<sup>24</sup> While most conflict theorists are oriented towards macro-sociology, recent social conflict literature also pays attention to questions of meaning-making originally associated with symbolic-interactionism.<sup>25</sup>

Approaches to international law which proceed from within the social conflict tradition tend to highlight the underlying links between international legal rules and the exercise of material and economic power, emphasizing the stratification of the international system either culturally or economically. Thus, for instance, the process of ‘international socialization’ (undertaken, for example, through international institutions’ accession processes) is often perceived as an instrument of socio-cultural imperialism employed by stronger parties in the international system. International law is seen as much as a tool of domination as it is an instrument for emancipation, and the normative impulse of such scholarship tends more towards radical reform rather than continuity. Scholarship within this tradition thus tends to suggest numerous legal changes to fight social domination and promote equality in the international legal system. For example, it is said that international legal instruments should allocate differential obligations to different states according to their level of economic capacities.<sup>26</sup> Furthermore, as to the question of interpretation, this approach rarely purports to prescribe a ‘neutral’ method of legal interpretation; rather, it is suggested that treaties be interpreted in favour of the disadvantaged parties in a particular setting.

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<sup>19</sup> Turner, *supra* n 2, 217.

<sup>20</sup> Allan, *supra* n 1, 253.

<sup>21</sup> Waters, *supra* n 2, 292, 321–2; Randall Collins, *Conflict Sociology* (Academic Press 1975) 59–60.

<sup>22</sup> Ritzer and Stepnisky, *supra* n 2, 267–9, 272–4; Turner, *supra* n 2, 206–19; Anthony Oberschall, ‘Theories of Social Conflict’ 4 (1987) *Ann Rev Sociol*, 291, 291–3; James Fulcher and John Scott, *Sociology* (Oxford University Press 2011) 53–4.

<sup>23</sup> Collins, *supra* n 21, 59; Ritzer and Stepnisky, *supra* n 2, 267, 269; Turner, *supra* n 2, 205; Allan, *supra* n 1, 236.

<sup>24</sup> Ritzer and Stepnisky, *supra* n 2, 274; Turner, *supra* n 2, 206.

<sup>25</sup> Brown, *supra* n 18, 78–9. See also Allan, *supra* n 1, 234.

<sup>26</sup> The differential approach is widespread in modern environmental and economic treaties and in some economic treaties. See, for example, Pieter Pauw, Steffan Bauer, Carmen Richerzhagen, Clara Brandi, and Hanna Schmole, *Different Perspectives on Differentiated Responsibilities* (German Development Institute 2014), available at [https://www.die-gdi.de/uploads/media/DP\\_6.2014..pdf](https://www.die-gdi.de/uploads/media/DP_6.2014..pdf) (accessed 4 June 2018).

Mindful of power relations and stark inequalities existing in the international system, this method of interpretation aims to redistribute power among the contracting parties. Again, a number of contributions to this volume share certain prominent features of the social conflict approach, such as an attention to inequality, power relations, and hierarchy.<sup>27</sup>

It is worth pausing here to draw attention to the ways in which early engagements between international law and sociology mapped onto these three approaches. The writings of *Max Huber* and *Julius Stone*, notably those published during the first half of the twentieth century, are among the most prominent and serious of such engagements, and remain the most influential of the early writers. Those scholars' work explored the impact of diverse 'extra-legal' factors on international law, including political, psychological, economic, historical, philosophical, and socio-cultural factors.<sup>28</sup> This extensive scope of analysis is notable in Julius Stone's scholarship addressing 'the extra-legal or sub-stratal factors which influence the content and growth of international law'.<sup>29</sup> These 'extra-legal' factors included, for Stone, socio-cultural, economic, psychological, and technological conditions of human life;<sup>30</sup> and their exploration is essential for understanding the content, development, implementation, stability, and change in international law.<sup>31</sup> The breadth of Stone's approach meant that his approach was best understood not as a 'sociology' but rather a 'meta-sociology' of international law.<sup>32</sup>

One of the most conspicuous features of early writings on the sociology of international law relates to the nature of the state and its dominant role in the international legal system. Both Huber and Stone, as well as other similar writers, viewed the international legal system as composed of sovereign states.<sup>33</sup> Indeed, Huber's conception of the existing international legal system<sup>34</sup> followed many of the main characteristics of the realist approach in contemporary international relations literature. As Delbrück explains, this perspective emphasizes that states are egoists, the international legal system is infused with power-politics, antagonist and conflictual relations prevail between states, and the system is generally characterized by anarchy.<sup>35</sup> States' aspirations to promote their unilateral interests often present a challenge to the general binding force of international

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<sup>27</sup> See, for example, Garth, Chapter 2 in this volume; Frerichs and James, Chapter 4 in this volume; Buchanan, Byers, and Mansveld, Chapter 6 in this volume.

<sup>28</sup> See, for example, Edda Blenk-Knocke, 'Sociology of international law' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (vol. 9, North Holland (Amsterdam) 1986) 351. See also Anthony Carty, 'Sociological Theories of International Law', Max Planck Encyclopedia of Public International Law Online (March 2008) para. 1.

<sup>29</sup> Julius Stone, 'A Sociological Perspective on International Law' in Ronald St. John Macdonald and Douglas M. Johnston (eds), *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory* (Martinus Nijhoff 1983) 263, 287. On historical, political, economic and military factors in Huber's scholarship, see Carty, *supra* n 28, at para. 5.

<sup>30</sup> Julius Stone, 'Problems Confronting Sociological Enquiries Concerning International Law' in *Collected Courses*, Hague Academy of International Law (vol. 89, 1956–1) 61, at 69, 75, 115.

<sup>31</sup> Stone, *supra* n 30, 75–81, 116.

<sup>32</sup> Stone, *supra* n 30, 73.

<sup>33</sup> Jost Delbrück, 'Max Huber's Sociological Approach to International Law Revisited' 18 (2007) EJIL, 97, 103–4.

<sup>34</sup> On intellectual movements constituting the background for Huber's writings, see Delbrück, *supra* n 33, 98–100.

<sup>35</sup> Delbrück, *supra* n 33, 102–3. It is noteworthy that Huber also discusses some ethical elements

law, and Huber preferred not to premise this binding force on the positivist element of state's consent but rather on the collective interests of states (which restrain the individualistic pursuit of interests).<sup>36</sup>

Against this state-dominated view of the existing international system, some writers in this sphere – prominently Stone – suggested adopting a homocentric perspective.<sup>37</sup> From this perspective, the turn to sociology signals a turn to the individual as the most important international actor, to an international law ‘made by and for human beings . . . [in which] state entities in some manner and degree represent their human populations’.<sup>38</sup> States, in this perspective, are placed between human beings and constitute a considerable barrier to the adequate development of international law and global welfare.<sup>39</sup> Emphasizing the importance of ‘human’ communication, Stone believed that states impede such communication across borders.<sup>40</sup> This conception of the international legal system led some well-known scholars – such as Falk,<sup>41</sup> Jenks,<sup>42</sup> and Landheer<sup>43</sup> – to adopt an integrationist vision of international law,<sup>44</sup> promoting the concepts of world society and world legal order.<sup>45</sup> Comparing the underlying theoretical basis of these earlier studies of sociology of international law and the three major theoretical perspectives in mainstream sociological literature set out above, it is clear that earlier writings present certain characteristics of the structural-functional approach<sup>46</sup> as well as some features of the social conflict approach (mainly regarding the links between power relations and international law).<sup>47</sup> They paid relatively little attention, however, to the main themes of the symbolic-interactionist perspective in sociological literature, and to issues related to the ‘interpretative turn’ in sociology and social science, addressed below.<sup>48</sup> As to major

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of the international system, like those relating to restraining warfare and the prohibition of slavery; Delbrück, *supra* n 33, 104.

<sup>36</sup> Delbrück, *supra* n 33, at 107–10.

<sup>37</sup> On the homocentric approach to international law, see Tamar Megiddo, ‘International Law as a Human Affair’, paper submitted to the Second Workshop on Sociological Inquiries into International Law, University of Toronto, October 2015, 9–10.

<sup>38</sup> Stone, *supra* n 29, 263. See also Stone, *supra* n 30, 73–4.

<sup>39</sup> Stone, *supra* n 29, 264.

<sup>40</sup> Stone, *supra* n 30, at 93–8, 110. See also Blenk-Knocke, *supra* n 28, 352.

<sup>41</sup> Richard Falk, ‘The Adequacy of Contemporary Theories of International Law’ 50 (1964) *Va L Rev* 231, 247–9. See also, Richard Falk, ‘A New Paradigm for International Legal Studies: Prospects and Proposals’ 84 (1975) *Yale L J* 969, 973, 979.

<sup>42</sup> Wilfred Jenks, *The Common Law of Mankind* 172, 14–17 (Stevens and Sons 1958); Wilfred Jenks, *Law, Freedom and Welfare* 144–46 (Stevens and Sons 1963).

<sup>43</sup> Bart Landheer, *On the Sociology of International Law and International Society* (Nijhoff 1966) 26–31, 56–64 and 108–13.

<sup>44</sup> On the background for this integrationist vision of international law, see Moshe Hirsch, ‘The Sociology of International Law’ 55 (2005) *Univ Tor Fac Law Rev*, 891, 935–6.

<sup>45</sup> On these writers (and others) who shift the focus from a community of states to an international society where individuals take centre stage and are the main subjects of international law, see Andrea Bianchi, *International Law Theories* (Oxford University Press 2016) 246 *et seq.*

<sup>46</sup> On Parsons and Luhmann in this scholarship, see, for example, Blenk-Knocke, *supra* n 28, 353.

<sup>47</sup> See, for example, Blenk-Knocke, *supra* n 28, 351–2.

<sup>48</sup> Generally, interpretive perspectives do not define social reality as an exterior object, and the latter is viewed rather as a subjectively lived construct, emphasizing instead the reflexive nature and

international relations theories, it is clear that earlier studies emphasized central characteristics of the realist tradition, such as the dominant role of sovereign states, which are driven by egoist interests as well as the general state of ‘anarchy’ in the international system.<sup>49</sup>

More recent engagements between international law and social thought present both an interesting continuity with, as well as a clear departure from this pioneering literature. In his 2008 survey of sociological approaches to international law, Anthony Carty identified two major forces which have provided the impetus for much of the contemporary literature which has emerged at the intersection of international law and sociology over the past three or four decades.<sup>50</sup> The first is the emergence of globalization, both as a social phenomenon and as an object of international legal theorisation and reflection. A number of questions began to preoccupy international lawyers: to what extent are the new structures of power, and the distributional consequences associated with globalization, a function of law and legal work? In what ways is international legal work helping to constitute global structures which reflect and serve the interests of the powerful? What, more generally, are the relationships between international law, globalization, and empire?

International lawyers’ interest in these and similar questions has provided an important bridge between the disciplines, as international lawyers have turned to sociological theory in their attempts to understand the nature, dynamics and stakes of globalization as it relates to law. Quite apart from the profound influence of the globalization theories of Giddens, Held and McGrew, Sassen, and others,<sup>51</sup> a number of different sociological traditions have proved useful for those interested in these questions. For some, the conceptual apparatus and methodological commitments of Bourdieusian sociology of law, as well as the sociology of professions, have proved productive, and have inspired several accounts of the impact of the dynamics of competition within the legal profession on the emergence and content of transnational legal orders.<sup>52</sup> Much of this sort of work pushes back against conventional narratives concerning the judicialization of international

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subjective meanings of the social world. *See, for example*, Véronique Mottier, ‘The Interpretive Turn: History, Memory, and Storage in Qualitative Research’ 6 (2005) *Forum: Qualitative Social Research*. For a concise discussion on interpretative sociology, *see* ‘Interpretation’, *Oxford Dictionary of Sociology* (Oxford University Press 2014) 368.

<sup>49</sup> On the realist perspective in international relations literature, *see* Brian C. Schmidt, ‘Realism’ in John Baylis, Steve Smith and Patricia Owens (eds), *The Globalization of World Politics* (Oxford University Press 2014), at 99 *et seq.*

<sup>50</sup> Carty, *supra* n 28.

<sup>51</sup> The classics include: Anthony Giddens, *Runaway World: How Globalization is Reshaping Our Lives* (Routledge 2000); James H. Mittelman, *Globalization: Critical Reflections* (Lynne Rienner Publishers 1996); David Held, Anthony McGrew, David Goldblatt, and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Stanford University Press 1999); Saskia Sassen, *Globalization and Its Discontents* (New Press 1998); Malcolm Waters, *Globalization* (Routledge 1995).

<sup>52</sup> *See, for example*, Yves Dezalay and Bryant G. Garth, *The Internationalization of the Palace Wars: Lawyers, Economists and the Contest to Transform Latin American States* (University of Chicago Press 2002); Yves Dezalay and Bryant G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press 1996); Terence Halliday and Bruce Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (Stanford University Press 2009).

relations, and the transnationalization of legal norms, preferring instead to highlight the ways in which the legal infrastructures of globalization reflect and serve the interests of the powerful.<sup>53</sup>

Others have turned to alternative traditions of sociology to conceptualize the ways in which economic structures of global markets are legally constituted. In this line, we now see an important body of international legal work – including a number of chapters in this book<sup>54</sup> – drawing on the work of Karl Polanyi, on the old institutional economists, or on more recent economic sociology, all of which provide different ways of understanding the constitutive role of law in the construction of global economic life.<sup>55</sup> More generally, it is worth noting the strong affinity between this work and a prior generation of law and society scholarship which sought to engage critically with the ideology and practice of the rule of law in the domestic context. Such work famously exposed not just the law's failure to address enduring structures of domination and inequality within liberal democracies, but also the way in which such structures are entrenched by the law, and perhaps even necessarily accompanied it. To the extent that contemporary international legal literature represents an extension of the same arguments at the international level, it brings with it the full range of sociological engagements already present in the law and society movement.

The second force identified by Carty is the continued working out of the influence of *poststructuralist social theory* on international legal scholarship – as well as the overlapping but non-identical literature emanating from the so-called 'interpretive' and 'cultural' turns in sociology.<sup>56</sup> If international lawyers have turned to sociology to help them theorize globalization as a legal project, it is also true that a significant portion of their work in this area has a distinctly poststructuralist flavour, and it is this as much as anything which separates most contemporary sociological approaches in international law from the earlier work of such canonical figures as Huber and Stone described earlier.

Two characteristics in particular are worth pointing out in the context of the current volume, both of which are associated in one way or another with fundamental shifts in social thought over the past three or four decades. The first is a profound re-problematization of what counts as a *constraint* on social action, as well as a rethinking of the mechanisms by which (legal) constraints work. Decades of living with poststructuralist critiques of legal indeterminacy have necessarily called into question accounts of the structural impact of

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<sup>53</sup> See Garth, Chapter 2 in this volume, and cf. Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998).

<sup>54</sup> See, for example, Bohnenberger and Joerges, Chapter 3 in this volume; Frerichs and James, Chapter 4 in this volume.

<sup>55</sup> Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 1957 [1944]); John Roger Commons, *The Legal Foundations of Capitalism* (Macmillan Company 1924); Robert Hale, 'Coercion and Distribution in a Supposedly Non-coercive State' 38 (1923) *Political Sci Q*, 470–94; Viktor Vanberg, *The Constitution of Markets: Essays in Political Economy* (Routledge 2001); Christian Joerges and Josef Falke (eds), *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets* (Hart 2011); Bettina Lange, Dania Thomas, and Austin Sarat (eds), *From Economy to Society? Perspectives on Transnational Risk Regulation* (Emerald 2013); Diamond Ashiagbor, Prabha Kotiswaran, and Amanda Perry-Kessaris (eds), *Towards an Economic Sociology of Law* (Wiley-Blackwell 2013).

<sup>56</sup> Carty, *supra* n 28.

law which rely solely or primarily on the content of legal rules and formal shape of legal institutions. If legal rules are indeterminate, to a greater or lesser extent, how can we account for their ability to provide stability to social arrangements? The solution, in the main, has been to adopt many of the key moves within poststructural social theory, locating the source of law's constraint in the regularized and iterative interaction of a range of diverse phenomena including legal rules, professional practices, material arrangements, habits of thought, organizational and personal routines, and so on.

A similar set of problems has been posed by the conundrum of social acceleration associated with contemporary globalization.<sup>57</sup> What accounts for the fact that distributions of material and economic power appear to remain largely intact even as many of the legal forms we have considered to be structural in nature (the state, international legal rules) are undergoing such rapid and radical transformation? Again, many international lawyers have adopted the vernacular of poststructuralist social theory as a language with which to capture the complex reality of power and constraint in conditions of contemporary globalization, in which constraints on action are somehow nowhere and everywhere at the same time, and the effects of power are everywhere visible but nowhere visibly exercised.

Alongside the question of *constraint* is that of *knowledge*, and in particular the move to centralize the question of the nexus of knowledge and power in the governance of the international. Thus, for example, international lawyers have sought to provide accounts of the ways in which authorized (expert) knowledge is produced, authorized, disseminated, and contested in the institutions and practices of global governance.<sup>58</sup> As the contributions to this volume attest, the theoretical building blocks for such arguments have been drawn in part from, on the one hand, poststructuralist theories of action and practice, and on the other the full range of sociologies of knowledge, science, technology, and indeed ignorance,<sup>59</sup> which have blossomed since the pioneering work of Foucault, Latour, and others. In addition, a good deal of sociologically inspired international legal scholarship which has emerged over the last three or so decades has sought to describe and explain the constitutive role of (international) law in shaping the social meanings that actors ascribe to the world and their actions, rather than solely its regulative impact on actors' behaviour. In this mode of enquiry, law is understood not primarily as a set of rules but rather as a 'set of conceptual categories and schemes that help construct, compose, communicate and interpret social relations'.<sup>60</sup>

All of this has necessitated a shift in – and a multiplication of – objects of scholarly attention. The contributions to this volume are a perfect illustration of broader dynamics within the field. Our authors have by and large chosen not to look only at the texts

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<sup>57</sup> See Werner, Chapter 5 in this volume.

<sup>58</sup> See especially, David Kennedy, *A World of Struggle: How Power, Law and Expertise Shape Global Political Economy* (Princeton University Press 2016); Fleur Johns, *Non-legality in International Law: Unruly Law* (Cambridge University Press 2013); Kevin Davis, Angelina Fisher, Benedict Kinsbury, and Sally Engle Merry (eds), *Governance by Indicators* (Oxford University Press 2012); Richard Rottenburg, Sally E. Merry, Sung-Joon Park, and Johanna Mugler (eds), *The World of Indicators: The Making of Governmental Knowledge through Quantification* (Cambridge University Press 2015).

<sup>59</sup> Desai, Chapter 8 in this volume.

<sup>60</sup> S. Silbey, 'After Legal Consciousness' 1 (2005) *Ann Rev L and Soc Sc*, 323–68, at 327.

and formal institutions of international law, and instead have produced studies of, for example: the institutional cultures of key international organizations;<sup>61</sup> the performances of legal practitioners in their appearances before international courts;<sup>62</sup> international judicial practices;<sup>63</sup> dynamics of competition within the legal profession;<sup>64</sup> knowledge practices including both formal and informal techniques of measurement, quantification, and commensuration;<sup>65</sup> and so on. Even where the focus is on legal texts, it is the text as a material rather than semantic artefact.<sup>66</sup>

Most of these objects of attention are typical of sociological enquiry, and have been adopted as the focus of attention within the discipline of sociology for very specific purposes. Sometimes, international lawyers have adopted them for the same purposes: the turn to practices, for example, has allowed international lawyers to move beyond the constraints of the agent-structure dualism, and to provide insights into the simultaneous and relational constitution of the 'legal' and the 'social'.<sup>67</sup> But more often they have been used alongside an agnosticism as to the underlying social theory from which they arose,<sup>68</sup> instead expressing nothing so much as an intuition that the significance of the law is best looked for in its everyday life, in its routinized operation and practical deployment within localized regimes of power and attention. Overall, what one gets from much contemporary literature at the intersection of international law and sociology, then, is a distinctive set of answers to the fundamental question of 'what makes things hold', which locate the force of determination neither in the will of powerful agents, nor in the march of modernity or capitalism, nor in the law itself understood as formal rules and institutions, but rather in the mid-level of professional sensibilities, institutionalised routines, social meanings, and characteristic habits of thought and action.

Such new objects of attention pose new *methodological problems*. One of the exciting aspects of this area of scholarship is its eclecticism and experimentalism as regards questions of method. This is illustrated again in the chapters collected in this volume. As might be expected, a number of the chapters deploy many of the traditional qualitative methods developed within the discipline of sociology, as well as the ethnographic techniques associated with anthropology. Others, however, use less familiar techniques such as social network analysis,<sup>69</sup> as well as methods deriving from computational linguistics.<sup>70</sup> It is also exciting to see serious attention being paid to certain fundamental methodological problems which have taken centre stage in sociology, but have been inadequately addressed within most mainstream international legal scholarship. One is the difficulty, grappled with for decades by sociologists, of providing an adequate account of some sphere of social action when one's categories of analysis are part of the stakes of the struggle one

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<sup>61</sup> Sarfaty, Chapter 14 in this volume.

<sup>62</sup> Messenger, Chapter 10 in this volume.

<sup>63</sup> Dunoff and Pollack, Chapter 12 in this volume.

<sup>64</sup> Garth, Chapter 2 in this volume.

<sup>65</sup> Buchanan, Byers and Mansveld, Chapter 6 in this volume.

<sup>66</sup> Alschner, Chapter 17 in this volume.

<sup>67</sup> Lamp, Chapter 13 in this volume.

<sup>68</sup> Dunoff and Pollack, Chapter 12 in this volume.

<sup>69</sup> Dothan, Chapter 16 in this volume; Puig, Chapter 15 in this volume.

<sup>70</sup> Alschner, Chapter 17 in this volume.

seeks to describe and explain.<sup>71</sup> A related set of methodological problems is posed by reflexivity and reactivity – in particular, how to understand and enact scholarly objectivity in circumstances in which scholarly analysis has the potential reflexively to reshape the object of study?<sup>72</sup> And a third is more specific to the study of shared meanings and collective interpretive schema: how are we to take seriously, and respond adequately to, the reality that such schemas often operate below or outside the level of consciousness, are unavailable or misunderstood even by their natives, and in some important respects are fundamentally unobservable? Each of these problems is likely to continue to challenge sociologically inspired international legal scholarship for as long as it exists.

## THE CHAPTERS

The reality is, of course, that the contemporary engagements between international law and sociology are as diverse as they have ever been, and all of the elements identified in the previous section are being combined and creatively adapted in innovative ways. This is also true for this volume. Across the volume as a whole, one sees the themes identified above recurring again and again with important variations: a preoccupation with theorizing the legal aspects of globalization; a focus on questions of knowledge and meaning-making and their importance to international governance; a predilection for methodological experimentation and eclecticism; an emphasis on the contested foundations of the international legal order; and a heavy reliance on practice-oriented, and poststructuralist, social theory, among others.

Garth's opening chapter, for example, looks critically at the progress narrative which characterizes much of the literature on the globalization of law. This narrative, in Garth's view, not only describes but also promotes what has come to be called the judicialization or legalization of international politics, seeing it as instantiation of the rule of law in international life. The critical burden of his chapter is strong resistance to the received and seemingly neutral categories of this narrative – 'norms', 'hard law', 'soft law', 'courts' – that obscure hierarchies, competition, and contested imperial processes. Drawing on Bourdieu's sociological approach and his own collaborative work with Yves Dezalay, the chapter seeks to show how the progress narrative itself is the product and stakes of continuing imperial and professional competitions.

Two other chapters provide a similarly critical account of the legal foundations of economic globalization, but do so by drawing on various streams of economic sociology and related literatures, rather than the Bourdieusian tradition. Bohnenberger and Joerges discuss what they see as the fundamental tensions between economic globalization and democratic politics in the field of international trade, and examine the decoupling of trade agreements from national and democratic control. Drawing on the work of Polanyi – as well as on the redeployment of Polanyi by Rodrik – they note that national political

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<sup>71</sup> See generally, Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press 2005), as well as Desai, Chapter 8 in this volume, and Lang, Chapter 7 in this volume.

<sup>72</sup> Lamp, Chapter 13 in this volume.

structures are not an impediment to the formation of global markets, but rather their indispensable precondition. Making new and creative use of Polanyi's fundamental concept of 'embeddedness' to account for the institutional determinants of economic life, and drawing also for inspiration on the sociologies of Streeck and Beckert, they offer a vision of global economic governance in which international economic law merely mediates the relations between institutionally diverse, politically embedded national economies. This is international economic law as 'conflicts' law: not seeking to overcome socioeconomic and political diversity by some substantive transnational regime, but rather responding to diversity with procedural safeguards, thus ensuring space for cooperative problem-solving and the search for fair compromises.

For their part, Frerichs and James take aim at the ways in which, and the extent to which, international law has been harnessed to a project of universalizing a single imaginary of property rights. The global diffusion of neoclassical or neo-institutional concepts of property, they argue, has gone hand in hand with the transnationalization of the economic profession. Their broad aim in this chapter is to denaturalize this vision of property rights, and to expose a much fuller range of legal formations for the protection of 'property' which have emerged historically and which may usefully inspire alternative legal foundations for contemporary global markets. To make this argument, they too draw on Polanyi, but also on the 'old' economic institutionalism of Commons. Both scholars, they argue, represent traditions of thought which were interested in the institutional, or indeed constitutional, premises of the modern market society, and for that reason offer a useful counterpoint to much contemporary literature in which these institutions are taken as given. Looking back, they retrace how the concept of property changed with the advent of modern capitalism, and how it evolved in the transition from agricultural to industrial capitalism. Then, looking ahead, they also address the challenges of today's informational capitalism, which is characterized by the commodification of knowledge, and introduce a new 'correlative rights doctrine' as an alternative to the remnant 'property rights absolutism' in the field of (international) intellectual property law.

Werner's chapter approaches the problem of globalization via the question of time, examining some consequences of social acceleration – the 'speeding up of time' – for international law. It draws, in innovative and original fashion, on the work of Hartmut Rosa, who has proposed an account of social acceleration as a self-propelling process which ties together three spheres: technology, social structures, and the pace of life. A core insight of Werner's chapter is that social acceleration has led to new forms of law, which seek to combine accelerated decision-making with an increased capacity to adapt to rapidly changing situations. He uses the UN global counterterrorism regime as an illustration. Moreover, he notes that social acceleration is not taking place evenly: some sectors change at an increasing speed, while other sectors lag behind – international law is therefore just as implicated in deceleration as acceleration. The question for Werner, then, is not just the impact of social acceleration on legal techniques, but also the particular distribution of change and stasis within and across different regimes of global governance, and the systemic effects of such distribution.

Another set of contributions focuses attention on practices of knowledge production, and seeks to uncover the work they do as technologies of global governance. The chapter by Buchanan, Byers and Mansveld represents an intervention into the voluminous and rich literature on 'indicators' as a technology of global governance, focusing on

practices of measurement and quantification associated with tracking progress towards Millennium Development Goal 7 Target D. In this context, they are most interested in the question of the new forms of knowledge which are being produced and put into circulation by the international community's decision 'to target slums'. Drawing on the foundational insight, common to virtually all sociologies of knowledge, that regimes of measurement can never be 'neutral' representations of external 'objects', but are instead actively engaged in shaping what can be known, this chapter critically examines the ways in which the production of globalized rankings and metrics are imbricated with the production of the social and economic hierarchies that development as a project seeks to ameliorate. It argues that the project of international development can be understood as a way of seeing the world that is both constituted by and interwoven with evolving processes of measurement, comparison, and quantification.

For his part, Lang uses the literature on indicators as the starting point for a reflection on the assumptions which international lawyers have tended to bring to their study of expertise – concerning what knowledge is, the sort of social work it does, and the range of critical responses which are most usefully brought to bear on it. Using a distinction between the idioms of 'performativity' and 'representationalism' drawn from the sociology of science, Lang's chapter argues that there are some aspects of contemporary expert practices in global governance which are inadequately accounted for when international lawyers work within the representationalist idiom. He observes that a number of post-structuralist, post-positivist critical responses to universalizing knowledge have already been internalized into the practice of global expertise, rendering most of the traditional critical toolkit beside the point. He claims that refreshing our conceptual apparatus, by adopting some version of a 'performative idiom' in our approach to expertise in global governance, may help us to see and understand more fully the range of work which knowledge practices do in contemporary global governance, and help us to develop a different toolkit of interventions with which we may adequately respond to these practices.

Desai's chapter explores the emergence and implications of a new type of legal expertise in development, which he illustrates through an analysis of the work of 'rule of law reformers'. Against the backdrop of criticisms of global expertise as hubristic and universalizing, he identifies a new mode of being and doing expertise which openly denies its own capacity for authoritative and transportable knowledge. The chapter draws on the emerging literature on the sociology of ignorance for insights as to the dynamics of this form of expertise, as well as for assistance in developing a methodological apparatus to study it. The chapter applies this apparatus to Problem-Driven Iterative Adaptation (PDIA), a recent effort to formalize expert ignorance in development practice. It argues that PDIA shows the importance of sociologizing the specific ways in which PDIA tries to inculcate within reformers, and organize, a specific sensibility towards institutional reform. The chapter concludes with some broader reflections on how and why sociologically inclined scholars of global governance might study expert ignorance.

If some chapters are related by their common interest in an object of study, others are brought together by their adoption of the theoretical apparatus developed by a specific sociological figure. Bourdieu's marked influence on contemporary sociology of law and sociological analysis of international, for example, is clearly reflected in several chapters, notably in the contributions of Garth, Madsen, and Messenger. According to Madsen, there are roughly two ways in which Bourdieu has influenced the sociology of law: a softer

influence via the adaptation of some of his key concepts to a variety of studies; and a hard influence in terms of the production of ‘genuinely Bourdieusian’ studies of law. Madsen’s chapter discusses the latter path of influence. Building on extensive empirical studies of a host of different fields of international law, the chapter first outlines the contours of Bourdieu’s general sociology of law. It then turns to questions of the making of the ‘international’ by legal agency and how particularly the notion of field can help structure such an inquiry. Against this background, the chapter then proceeds to outlining concrete research strategies for Bourdieusian field studies of international law. It concludes with a discussion of particular challenges of sociological engagements with law.

Messenger’s chapter examines the practice of litigation at the International Court of Justice. By building on conceptual frames developed by Bourdieu, it focuses not on the practice of the ‘Court’ but on the performances of international legal counsel. In doing so it contrasts traditional accounts of how international law is made by states and then identified and interpreted by courts, with an account of a cooperative process of law-making exercised by international legal counsel, technical assistants, and diplomats in concert with judges and secretariats of international tribunals. Messenger argues that together they form a social space in which their competition is based on implicitly agreed rules (most of which are not formally legal in nature), and that such a process is to the benefit of a number of actors involved, although states are not necessarily principal among these. By examining the physical and verbal cues of practitioners at the Court through a Bourdieusian lens, this chapter presents a pilot study for a reappraisal of the relationship between the practice of litigants and their influence on the content and practice of international law.

Weber is another seminal sociological figure who features prominently in this volume. Schneiderman’s chapter, for example, adopts an explicitly Weberian analysis of international investment law as a formally rational law. Weber famously described formally rational law as the highest form of modern law, in which ‘definitely fixed legal concepts in the form of highly abstract rules are formulated and applied’. Formally rational law, according to Weber, facilitated economic development by providing continuous, predictable, and efficient administration of justice. Formally rational law also ensured that substantive elements exogenous to the legal system, such as those advanced by certain class interests or ideological movements, were kept at a safe distance. In this chapter, Schneiderman traces how the norm of entrepreneurs promoting investment law’s disciplines conceive of this regime as exhibiting features of formally rational law. The latter resist the substantively irrational – pejoratively labelled ‘politics’ – from entering into investment law’s domains. Schneiderman argues that keeping substantive justice at bay is impossible, not only because of pressures currently being generated by states and citizens alike, but because the system itself is saturated with substance, in much the same way as Weber’s higher form of law was.

One of the most significant conceptual legacies of late-twentieth-century social thought was the turn to ‘practices’ as a foundational unit of social analysis. Two of the chapters reflect this legacy in particularly central ways, and illustrate some of the range of uses to which the concepts and methodologies of practice theory are being put in contemporary international legal scholarship. Dunoff and Pollack’s chapter suggests that while international legal scholars closely examine the ‘practice’ of international law, they rarely study international legal practices. Their chapter reviews – and advocates for – the application of

'sociological theories of practice' to the study of international law. Following a brief introduction to practice theory, it traces the movement of practice theory to the international level in international relations theory, and examines the much more recent and tentative adoption of practice approaches by international legal scholars. The chapter then focuses on international judicial practices, and reviews efforts to describe and explain the large number and variety of practices that have arisen in and around international courts and tribunals. It briefly addresses epistemological and methodological questions of how best to access and study international legal and judicial practices that often take place outside of public view.

Lamp's chapter returns to Giddens's justly influential theory of structuration, and asks how it might productively inform the study of practices in international law. He suggests that (international legal) rules are implicated in practices in three ways: they constitute patterns of action as 'practices', regulate the conduct that makes up a practice, and provide formulae for extending and adapting the practice to ever new situations. At the same time, the rules instantiated in practices are potentially transformed by those very practices. To capture this mutually constitutive relationship between rules and practices, Lamp develops a definition of practices as simultaneously rule-generated and rule-generative patterns of action. He then employs this definition to explore the relationship between international law and practices. Since the practices of a wide array of actors are involved in the constitution of international law, the chapter next discusses the responsibility of those actors whose practices can have an impact on what international law is, focusing on the role of academics. The chapter concludes by outlining three crucial challenges that empirical research of practices confronts: accessing information about practices, analytically separating the effects of agency and structure, and developing research designs which do not simply overlay familiar debates with a practice vocabulary.

The volume as a whole also exemplifies the methodological openness and innovation described above as characteristic of work at the intersection of international law and sociology. Sarfaty's chapter argues that given the critical need to uncover how international law is produced and operates in practice, legal scholars can usefully adopt ethnographic methods in their own analysis. An anthropological approach, she shows, can be applied to the study of a range of legal phenomena, including the organizational behaviour of international institutions; the internalization of international legal norms in local communities; and regulatory tools of global governance. It can uncover the reasons why certain laws are adopted and internalized, the process by which laws are enforced, the interaction between legal and non-legal norms, and the internal decision-making of legal institutions. After describing what an anthropological approach to international law entails, Sarfaty reviews key contributions that scholars have made in three areas: the cultures of international organizations and international tribunals; the transnational circulation and localization of international legal norms; and the knowledge practices and technologies of governance in international law. Finally, the chapter illustrates the value of an anthropological approach by providing a case-study of the culture of the World Bank, based on extensive ethnographic research.

Methodologies derived from social network analysis are also increasingly applied to the study of law and legal institutions, including international law. Puig and Dothan discuss in their separate chapters the distinctive features of that approach and its potential role in international legal scholarship. Puig briefly explains the origins, basic premises,

and operation of social network analysis, as well as its possible application to specific international legal fields. The chapter surveys the application of this research tool to international arbitration, a legal field where a core group of professionals influence the making, interpretation, and enforcement of the law. Puig also discusses the main limitations of this methodological approach to understanding the sociology of international law as well as its possible future application. While optimistic about the growing use of this research strategy, he argues that we should also be cautious of the normative and explanatory conclusions derived from the application of network analysis.

Dothan's chapter engages with one of the key debates in social network analysis – whether interactions within the network can help improve the information its members possess (the 'bandwidth hypothesis'), or do they instead corrupt the information held by the members by amplifying their biases (the 'echo hypothesis'). He argues that the network of non-governmental organizations (NGOs), which aim to enforce the judgments of the European Court of Human Rights (ECtHR) on recalcitrant states, processes information and provides support for the bandwidth hypothesis. This argument draws on an empirical study showing that such NGOs focus most of their attention on severe violations and legally important cases. The chapter also shows that NGOs tend to focus on states that usually comply with international law rather than states that usually violate their international obligations. This finding has valuable implications for the understanding of reputational sanctions among states in the international arena.

Alschner's contribution to this volume focuses on the reproduction of legal language in international investment treaties. The chapter argues that past legal language exerts an 'almost magnetic' force on negotiators. From boilerplate treaties or copy-and-paste adaptations to the codification of prior jurisprudence – practitioners constantly recycle already existent terms, phrases, and concepts into new legal outputs. Alschner links here the reproduction of legal language to the concept of path dependency and applies it to international investment agreements. He shows that historical sociology rather than rational design helps to explain the path-dependent style and content of today's investment regime. Using the fair and equitable treatment clause as a case-study, the chapter traces the emergence in investment law of these clauses, which then became entrenched through efficiency considerations, sociological forces, and cognitive biases. The ensuing path dependency has prevented adaptations of superior treaty design alternatives, and instead geared negotiators into reproducing or refining the fair and equitable treatment standard. Thus, negotiators have become locked in language. The chapter concludes by outlining ways in which current reform efforts can overcome the system's path dependency to allow for innovation inspired not by past practices but by current needs.

While earlier writings on sociology of international law highlighted central characteristics of the realist tradition in international relations literature, the more recent social constructivist approach in this literature draws significantly on sociological scholarship. Cho's chapter employs social constructivist literature to present the social construction of the World Trade Organization (WTO) law and criticize rationalist streams in international relations theoretical literature. This chapter argues that in making sense of the world trading system represented by the WTO, conventional rationalism focuses attention on individual trading nations and their fixed preferences on material benefits, such as expanded access to foreign markets. In contrast with a rationalist optic, this chapter offers a social constructivist optic that centres on an emergent normative structure which constitutes

WTO members' identities and guides their actions. Cho discusses norm internalization (compliance) as a process in which the WTO reality *qua* symbolic universe is recognized and maintained in a domestic legal reality. The chapter concludes by addressing various limits of such internalization.

Hirsch's concluding chapter exposes the three principal perspectives mentioned earlier in this introduction, that are widely recognized in sociological literature: the structural-functional perspective, the symbolic-interactionist approach, and the social conflict perspective. The chapter discusses three general approaches to international law, inspired by the above-mentioned key sociological perspectives, highlighting the sociological dimension of some international legal issues (like the invalidity of treaties, the enforcement of international law, and the structure and flexibility of international legal regimes). Hirsch employs those core sociological perspectives to analyse alternative interpretations of the relevant WTO legal provisions regarding the regulation of regional trade agreements, and offers some conclusions regarding the desirable approach in this sphere.