

‘No Topic Has Been the Subject of More Confusion’: Two Books on the Relationship between International Politics and Law

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Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law*, Oxford, Oxford University Press, 2005, ISBN-13: 9780195314175, ISBN-10: 0195314174, 272 pp., £11.99 (pb).

Thomas J. Schoenbaum, *International Relations: The Path Not Taken. Using International Law to Promote World Peace and Security*, Cambridge, Cambridge University Press, 2006, ISBN-13: 9780521681506, ISBN-10: 0521681502, 320 pp., £16.99 (pb).

I. INTRODUCTION

The relationship between international law and international relations is a tenuous subject. As Jack Goldsmith and Eric Posner write in *The Limits of International Law*,

The international law community has declared that some agreements and customs are law because the states say so or treat them that way, but they do not explain why these agreements and customs should be treated as the subject of a special discipline rather than as just a part of international politics that states call law. Instead, international lawyers raise the law part of international politics to a higher plane by claiming that states are more likely to comply with what they call ‘law’ than with other agreements and customs. (p. 202)

Goldsmith and Posner here, and throughout their book, make two claims. The first claim is that international law reduces to state practice; they deny the efficacy of an independent motivation to uphold the law. The second claim is that the academic discipline of international law (IL) can and should therefore be integrated into the field of international relations (IR).¹ To be sure, Goldsmith and Posner do not argue that international law does not exist, only that ‘it is not an exogenous influence on state behaviour’ (p. 43). There is use for the IL specialization: co-operation between self-interested states often requires disambiguation (p. 203). Whether states actually choose to co-operate (or to conflict), however, is a matter better described using IR theory, in particular game theoretical models.

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1. Throughout this review essay I use the abbreviations to refer to the academic disciplines, the full words to refer to their subject matter.

Thomas Schoenbaum argues the opposite in *International Relations: The Path Not Taken*: ‘International law and international institutions must be the focal points of foreign policy and international relations for all countries’ (p. vii). The task Schoenbaum sets himself is ‘to convince readers that international law and institutions have matured over the past half-century to the point where they now have a proven record of usefulness and accomplishment’ (p. vii). Here also there are two claims: that international law is an effective instrument in foreign policy and international relations, and that the separation of the academic disciplines therefore counts as a loss to both – but particularly to IR. The first claim can be subdivided. Schoenbaum claims that international law serves state interests better than other instruments of foreign policy. He also claims that international law benefits humankind, providing for international peace and security: ‘From the perspective of the years since 1945, great progress has been made. If we continue improving the international system, by the centennial of the United Nations in 2045, we may see a real difference in the global world order’ (p. 305).

Schoenbaum is, in a manner of speaking, the target in Goldsmith and Posner’s sights. The self-conscious liberal internationalism (and the optimism) of *The Path Not Taken* contrasts with the realist (and conservative) predilections of *The Limits of International Law*. But both books also have something in common: they aim to evaluate international law by the standards of international relations. During the interbellum, the great IR scholar E. H. Carr argued that the legal approach to world affairs clouded the vision of observers, who remained blind to the interests at stake, thus misunderstood such conflicts as occurred, and consistently offered mistaken policy prescriptions.² (The quotation that forms the title of this review is taken from Carr’s magnum opus, *The Twenty Years’ Crisis*.) In effect, Carr emancipated IR from IL.³ Both books under review take a further step. They attempt to reintegrate IR and IL, but reverse the hierarchy between the two fields. Goldsmith and Posner argue that international law should be understood as a political practice. Schoenbaum also views law as an instrument, the efficacy of which should be measured in political terms. Despite the great difference in outlook and goals, then, both books put forward a remarkably similar, and interesting, view of the relations between international law and international relations.

2. SCHOENBAUM

The reader may have noticed that in discussing Schoenbaum I have abbreviated ‘international law and international institutions’ to ‘international law’. This not just a matter of convenience, or of careless phrasing. This is in fact the first thing to notice about the book, that it subsumes institutions under law. Much of the discussion in

2. See E. H. Carr, *The Twenty Years’ Crisis, 1919–1939* (1964).

3. IR histories depict Carr’s opponents as IR liberals (or utopians in Carr’s phrase), but most of the scholars, and some of the practitioners, criticized in *The Twenty Years’ Crisis* actually worked in IL. (The others are overwhelmingly practical politicians. It should be remembered that the first chair in IR was endowed only in 1919 in Aberystwyth.) Carr devotes about a third of the work to a careful analysis of contemporary international legal scholarship.

The Path Not Taken deals with the track records of institutions. Several chapters are devoted to the workings of the UN system and of the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO). Another addresses environmental regimes. Lay readers who associate international law with courts and tribunals will have to wait until the last chapter.

Schoenbaum writes in an essayistic style with frequent changes in register, ranging from the technical to the colloquial. The format seems best suited for undergraduate education. Separate boxes summarize historical background (e.g. ‘The rise and fall of European hegemony’, pp. 22–3) or present organizational diagrams (‘The United Nations system’, p. 83). However, the argument for changes in US foreign policy (throughout but particularly in chapter 1 and the conclusion) addresses a broader audience. A bit of personal anecdote (p. 25) also seems thrown in for this purpose. Using ‘we’ to refer to the United States suggests that the book is intended to reach the American public at large.

Unfortunately, Schoenbaum’s dual purpose leads to a sprawling narrative which touches on far too many subjects to be able to address them with anything like the nuance they demand. Careless wording compounds the error. For example, the box on European politics takes the view that

Europe in the twenty-first century has emerged as a ‘softpower’ leader through emphasizing the necessity of international relations rooted in the rule of law, justice and international institutions. The European Union and other common European institutions have remarkably ended past internecine conflict and knitted together diverse peoples and cultures. The European Union has proved its worth as the correct political formula for a diverse and dynamic continent. But the EU is not destined to evolve into a super state. Rather the EU will continue to evolve into an umbrella organization that requires and promotes deep and positive political and economic changes in its member states, but provides shifting coalitions and options. (p. 23)

All this may well be true at least in broad outline. But Schoenbaum’s easy assertion raises many troubling questions. How can Schoenbaum be so sure about the future of the EU? Can ‘Europe’ be considered an actor? (Note that Europe as a softpower leader refers to the EU *and other institutions*.) Are all the member states really that committed to the rule of law, justice, and international institutions? Including those that supported the US invasion of Iraq in 2003? How did the EU and ‘other common European institutions’ (OSCE? Council of Europe? NATO?), really banish internecine conflict, say in the former Yugoslavia? Such questions distract from the point Schoenbaum is trying to make. Joseph Nye’s (2002) idea, that states possess powers of attraction in addition to the traditional economic and military instruments,⁴ may apply to the European Union as well. In fact the case can be made that soft power works particularly well for the EU because it is a co-operative organization rather than a state.⁵ Still, the definite particle in ‘the correct political formula’ in this context starts to look indicative of a peculiarly Whig view of history (also in evidence on the preceding page). *The Path Not Taken* is riddled with passages like the one quoted

4. See J. S. Nye, *The Paradox of American Power. Why the World’s Only Superpower Can’t Go It Alone* (2002).

5. See E. O. Eriksen, ‘The EU – A Cosmopolitan Polity?’, (2006) 13 *Journal of European Public Policy* 252.

above. The cumulative effect is that the book seems to present not research but a world-view.

The heart of the book lies in a comprehensive survey of international law's achievements, presented in chapters 4–9, while the first three chapters set the scene. Schoenbaum begins his book with an exposition of the controversies surrounding the 2003 US invasion of Iraq. He posits a 'fundamental choice the United States must make' (p. 10) between multilateralism and unilateralism, associating the former with international law, the latter with power politics. The second chapter reviews trends and developments in international politics since the end of the Cold War. It (ineffectively) champions European integration as an example of successful multilateralism and warns against an aggressive China policy. The third chapter summarizes realist IR scholarship. This is the most problematic of the lot.

The emphasis in the first three chapters of *The Path Not Taken* lies on foreign policy rather than international relations, in spite of the title. Theories of international relations are reduced to a box half a page in size (p. 44). IR scholars receive a few lines at most; a single page narrates decades of methodological debate (p. 49). Internationalists (from interdependence scholars to institutionalists to constructivists) are held over to the next chapter, where a mere three-page summary leads only to this conclusion: 'All of these new theories have in common an emphasis on international law. What must occur is nothing less than in a revolution in the way international relations are conducted' (p. 59). Similarly, policy relevance guides the inclusion of neoconservatives, very few of whom have gained (or sought) scholarly prominence. A further emphasis on means as opposed to ends leads Schoenbaum to lump neoconservatives in with opponents of liberal internationalism (pp. 49–51). Indeed, they share with realists a preference for unilateralism and the use of force. But neoconservatives share with liberal internationalists a strong preference for spreading democracy and improving the world order; classical realists rightly criticize them as radical idealists. On this note, Schoenbaum's assertion that realism led to Vietnam (p. 47) overlooks both the ideological nature of that confrontation and the strong opposition from prominent realists such as Hans Morgenthau. Arguably, the second chapter contains the more serious failures of style (such as the oracular treatment of the EU discussed above), but for a book that claims to want to engage with IR, the failure to give due consideration to IR scholarship seems more fundamental.

The fourth chapter succeeds much better than the first three. It introduces international law and outlines its history and fundamental principles, giving due credit to nuanced thinkers such as Hugo Grotius. The next five describe particular institutions and regimes. Their intent is to demonstrate the contributions of international law and institutions to peaceful conflict resolution and improved global governance. They also demonstrate that Schoenbaum can write competently and insightfully when he is on familiar terrain. Chapter 5 on the UN system enumerates the various contributions not only of the Security Council but also of regional security organizations and proliferation control regimes. It includes a discussion of reform proposals and the Millennium Development Goals. Chapter 6 deals with the Bretton Woods organizations – the IMF and the World Bank – along with the General

Agreement on Tariffs and Trade (GATT)/WTO. International environmental protection is the subject of the next chapter. Besides the Rio Declaration and the Kyoto Protocol, the chapter discusses ocean governance (the UN Convention on the Law of the Sea – UNCLOS), programmes to preserve biological diversity, and water management. Similarly, the ninth and final chapter, and also the shortest of the substantive chapters, succinctly treats the various international courts and tribunals.

The strength of these chapters lies in the concise but comprehensive treatment of diverse international regimes. Nevertheless, it may be remarked that Schoenbaum does not engage with regime theory or other relevant IR concepts.⁶ Schoenbaum demonstrates the contributions and discusses proposals for reform, where relevant, but avoids thorny theoretical questions. Insight develops from the breadth of the discussion rather than from sustained theory-oriented enquiry. It gradually becomes clear that the author favours incremental reforms that build on what has already been achieved. No revolutionary, but also not a sceptic, Schoenbaum emerges as a classical liberal.

One chapter in the second half of *The Path Not Taken* stands out. Chapter 8, on international human rights, devotes ten pages to UN declarations and the bodies charged with implementing them, but reserves twice that number for an exposé of US failures to promote or even to respect human rights. Schoenbaum explains, ‘Americans believe their country is in the forefront of protecting human rights in the world, but the reality is somewhat different’ (p. 282). Again, political purpose takes over from academic exposition, and direct addresses to an exclusively American audience take precedence over scholarly neutrality and stylistic consistency. But this time it works. Schoenbaum’s anger is righteous. His tone is sincere, if a little pedantic (like a good liberal educator). The critique is the stronger for placing US failures to live up to international law in the middle of several strong chapters on the achievements of international law and institutions.

3. GOLDSMITH AND POSNER

In contrast to Schoenbaum’s essayistic style, Goldsmith and Posner write with confidence in the American academic style. Their book, *The Limits of International Law*, draws on game theory to argue that international law is the product of, and limited by, state interests. Two out of three parts (five out of eight chapters) are rooted in game theory. The first part deals with customary international law. One chapter sets out the argument from game theory, the other presents four case studies in its support. The second part addresses treaty law. One chapter again sets out the game theoretical argument, building on the models used in the first part. Two more chapters analyse human rights and international trade as examples of treaty regimes. Both conclude that state interests trump law. The third part differs from the others: two of its three chapters do not draw on game theory, and instead it addresses counter-arguments

6. For an introduction to IR regime theory, see the essays collected in F. Kratochwil and E. D. Mansfield (eds.), *International Organization: A Reader* (1994).

from rhetoric, from moral obligation (as distinct from actual behaviour), and from cosmopolitan duty.

In style, *The Limits of International Law* is somewhat dry but well structured and unambiguous, and on the whole very readable. Goldsmith and Posner set out their arguments in clear sentences, grouped in paragraphs that stick to their point (a relief after reading Schoenbaum). Nevertheless, the authors are given to bold claims, such as: 'International lawyers . . . have proposed many theories about customary international law. But as we explain in the pages that follow, these theories are acknowledged failures' (p. 21). They propose rigorous application of game theory as a remedy. Perhaps the first test of the book, then, is whether Goldsmith and Posner themselves use game theory appropriately and consistently.⁷

Game theory is a branch of rational choice theory which uses matrices to model strategic choices in competitive situations. In its simplest form, a matrix shows the strategies for two (sometimes more) rational actors and the resulting pay-offs. Perhaps the most famous game is Prisoner's Dilemma. It models the situation of two suspects who are held in custody and questioned in connection with a crime they committed together. They are questioned separately and are unable to co-ordinate their strategies. The prosecutor offers each a deal: if he tells on his mate, he will be let off while his mate goes to jail for the crime. If his mate also tells, both will be punished but receive somewhat shorter sentences because they have made the prosecutor's job a little easier. If both keep silent, there is not enough evidence to convict them of the crime but they will be punished for a smaller infraction (illegal possession of the weapons used to commit the crime). This situation yields the model shown in Figure 1.

		Player B	
		Don't tell (co-operate)	Tell (defect)
Player A	Don't tell (co-operate)	-1, -1	-20, 0
	Tell (defect)	0, -20	-10, -10

Figure 1 Prisoner's dilemma

The pay-offs in the matrix stand for prison years, represented by a negative number. The first number in each cell is the pay-off for prisoner A, the second for prisoner B. Prisoner A compares strategies across columns. If player B tells, he has the choice between staying silent, which yields him 20 years in prison, and also telling, which yields him only ten years in jail. If player B keeps silent, player A has

7. Game theory is an accepted method in IR, one of the ingredients in the discipline's methodological pluralism. A fundamental critique of game theory as a method would take this review too far. For an influential endorsement see P. G. Bennett, 'Modelling Decisions in International Relations: Game Theory and Beyond', (1995) 39 *Mershon International Studies Review* 19. For an equally influential critique see D. P. Green and I. Shapiro, *Pathologies of Rational Choice Theory: A Critique of Applications in Political Science* (1994).

the choice between also keeping silent, which yields one year in jail, and telling, which gets him off without any jail time at all. In both cases, prisoner A is better off if he breaks his mate's trust. Player B faces the same choices (this time compared across lines) and also rationally breaks his silence. The end result of each player's individually rational choices is that both go to prison for ten years. If they had kept silent, both would have served only one year in jail.

The Prisoner's Dilemma explains how a breakdown of co-operation can occur even when co-operation would lead to collectively better outcomes. Other models have different pay-offs and lead to different strategic choices. Models can be made more complicated by introducing more players, more options, or subsequent choices. Repeated games also yield different outcomes. For the Prisoner's Dilemma, if both prisoners were to face each other in subsequent games, the decision to tell on the other in one game can lead to retaliation in the next. Experiments show that in repeated games a strategy called Tit for Tat (start by co-operating; in subsequent games choose whatever strategy the other player chose in the previous game) gives the best results. Single games do not account for learning and adaptation. Repeated games do, and they tend to favour co-operative strategies. According to Robert Axelrod, then, the evolution of co-operation is best modelled using repeated games between multiple players.⁸

Goldsmith and Posner's analysis is based on four basic situations, which they label (respectively) 'coincidence of interest', 'coercion', 'co-operation', and 'co-ordination'. One of these, coercion, is not provided with a game theoretical matrix. It is not clear why not, since Goldsmith and Posner discuss the situation in game theoretical language, using words like pay-off, co-operation, and deviation throughout (pp. 28–9). By contrast, co-ordination gets two matrices (simple Co-ordination and Battle of the Sexes).⁹ Only two of the four models present game theoretical problems – that is, matrices in which rational players would choose actions that result in suboptimal outcomes. These two are the Battle of the Sexes and the classic Prisoner's Dilemma, which Goldsmith and Posner use to model 'co-operation'. Subsequent discussion focuses on these two situations. In the other two modelled situations, co-operative behaviour emerges naturally; it also 'emerges' in the coercive situation. In these, international law is not needed to explain co-operation. Compliance with the law becomes a factor only when it constrains an actor to act against his clear interest. It becomes useful when such constraint drives an actor to behave in ways that in the long run prove mutually beneficial, in other words when it solves a game theoretical dilemma.

Goldsmith and Posner provide no matrix for multiplayer games. All matrices represent two-player games. This would seem to reduce international relations to a

8. See R. Axelrod, *The Evolution of Co-operation* (1984).

9. In a simple Co-ordination game both players gain equal pay-offs from choosing a co-operative action and gain nothing from deviating (3,3 vs. 0,0). In Battle of the Sexes both parties are clearly better off co-ordinating their actions but receive different pay-offs, depending on whether they co-operate according to one or the other's wishes (3,2 vs. 2,3 vs. 0,0). Goldsmith and Posner rightly point out that co-ordination should be easier to achieve in the first situation. Battle of the Sexes can be solved by negotiation or by adherence to customary rules, but there remain incentives to deviate if by deviation the other player can be brought around to the more advantageous co-operative outcome.

series of parallel bilateral interactions. The authors explain this choice in two ways. First, they demonstrate that a typical example of supposed multilateral interaction can be reduced to bilateral games between different players (p. 35). Second, they claim that since multiplayer games are much harder to solve (i.e. to produce co-operative outcomes), ‘we are sceptical that customary international law’s supposed multilateral or “universal” behavioral regularities are best explained as examples of overcoming multistate prisoner’s dilemmas’ (p. 36). Still, modelling international law as a series of (parallel) two-player games excludes externalities from the model. The pay-off in each game does not include positive externalities – such as good reputation with other actors – or negative externalities – such as the breakdown of rules and expectations. It is true that multiplayer games like the free-rider dilemma or the tragedy of the commons are hard to solve, but such models at least take into account costs and benefits accruing to the whole. Goldsmith and Posner also do not factor the outcome of previous games into the model for subsequent interactions. In effect, they treat each bilateral interaction as independent from any other interaction that may be going on at the same time or that may have come before.

According to Goldsmith and Posner, international agreements signal intent but cannot offer guarantees. For this reason, they reject the analogy with contracts in domestic law:

Unlike statute and contract violations, violations of international agreements, though sometimes subject to self-help remedies, are not subject to reliable sanctions by independent third-parties. A better domestic analogy is the nonbinding letter of intent, in which individuals exchange promises without consenting to legal enforcement. Letters of intent, which are common, depend for their efficacy on retaliation and reputation. (p. 90)

Note, however, that in game theoretical terms retaliation requires at minimum iterated games, while reputation (if it is to be distinct from retaliation) seems to require spillover from one (set of iterated) game(s) to another. In other words, Goldsmith and Posner’s preferred analogy relies for its efficacy on precisely those conditions that they have deliberately eliminated from their models.

In the chapters on customary international law, Goldsmith and Posner treat international law as an outcome. International law, on their account, is the product of a series of games (p. 26). It arises when a number of games (they do not specify how many) result in co-operative outcomes and so establish what may be taken for a rule. Due to the restriction of the model to unconnected two-player games, such co-operation will take a long time to get off the ground and in many cases will not stick. Here, Goldsmith and Posner use game theory to explain rule genesis. An alternative approach would treat international law as an external rule which can be applied to specific games in order to facilitate co-operation. In game theoretical terms, the rule provides information on the choices of other players and raises the possibility of retaliation. Such an approach explains the function of the rule, but it does not explain its emergence. In the chapters on treaty law Goldsmith and Posner in effect adopt this position when they state that international agreements facilitate co-operation by specifying what counts as co-operation and what as defection (pp. 90, 99–100). International agreements (both treaties and non-binding

agreements) do not, by themselves, alter the structure of the matrix or the value of the various pay-offs, but they provide information on the perceived interests and strategic choices of the other player. The same would seem to apply to customary international law. Customary law suffers in comparison with treaty law because the first part of *The Limits of International Law* sets up a different, tougher standard than the second.

In the third part, Goldsmith and Posner directly address criticisms from three perspectives. Chapter 6 argues that international rhetoric serves a function for state actors who would inform other actors of their intentions. States find the language of international law a convenient shorthand for signalling whether particular decisions apply to other cases than the one at hand, whether or not they potentially affect other states. Unfortunately, it remains unclear why legal and moral language is used as a shorthand. A short historical outline summarizing the shifts in the rhetoric (p. 183) raises more questions than it answers, first, because it is too sketchy and, second, because it gives no reasons for the transitions from one set of common values to the next (e.g. from references to Christianity to references to Europe). Interestingly, the next and final two chapters give explicitly moral arguments. Chapter 8 argues that states do not have a moral obligation to comply with international law. Chapter 9 argues that states' cosmopolitan duties ('to act internationally on the basis of global welfare rather than state welfare' (p. 205)) can and do conflict with commitments to liberal democracy, both domestically and internationally, and that liberal democracy should prevail.

In the introduction Goldsmith and Posner posited that states are the primary actors in international law and politics. In chapters 8 and 9 they argue that states act on behalf of their citizens, indeed that citizens' preferences, in particular limited altruism, restrict state action. These restrictions played no part in the preceding chapters. Moreover, they demonstrate a disputable (and historically dubious) teleology: 'The dominant purpose of any state is to create a community of mutual benefit for citizens and other members, and more generally to preserve and enhance the welfare of compatriots' (p. 211).

4. METHODS AND POLITICS

At bottom, the difference between the two books concerns philosophical perspectives. Schoenbaum's optimism is clear from the first page, even to the point of stating that 'the glass is half full, rather than half empty' (p. vii), and on the last page: 'Those who argue that international law is irrelevant must present a better and more feasible alternative' (p. 304). Goldsmith and Posner explicitly reject the challenge on their last page: 'It follows that some global problems may simply be unsolvable. This is a depressing conclusion, but is consistent with all we know of human history' (pp. 225–6). The second half of the sentence gives the lie to Goldsmith and Posner's claim to methodical rigour and instead reveals a profound philosophical pessimism.

It is obvious at first sight that Schoenbaum has a political purpose. Closer inspection reveals that Goldsmith and Posner, too, take up a position that has profound implications for contemporary US foreign policy. The explicit moral argument in

the third part of the book puts a premium on state autonomy, certainly for liberal democratic states. Disparaging customary international law and putting a narrow construction on treaty law, *The Limits of International Law* eliminates many legal barriers to state action, particularly to unilateral state action. Goals and methods both fit the foreign policy of the Bush administration, which preferred to promote liberal democracy and other foreign policy goals presumed beneficial to the American people through bilateral arrangements, including coercion, and as much as possible avoided working through established international institutions such as the United Nations.¹⁰

Rereading Goldsmith and Posner with this in mind, the reader might find that seemingly technical methodological decisions sometimes work to the advantage of realist conclusions. Modelling international legal interactions as two-player games without spillover effects is a case in point. Because states in bilateral interactions do not, according to Goldsmith and Posner, have to take account of reputation (they suffer no penalties for breaking trust with one state in interactions with other states), their actions are not as constrained by law as they would be in other models. For another example, holding customary international law to stricter standards than treaty law makes treaty law look more robust. This, in turn, gives pride of place to conscious state decision (concluding treaties) as opposed to a more diffuse social process of rule formation which includes states, and quite possibly various non-state actors, as members of an international society.¹¹ In both examples realist views triumph over liberal critiques, at least in part because the authors made methodological decisions that gave them an advantage.

Lack of IL expertise prohibits this reviewer from pronouncing stern judgement on the choice of case studies, although it is striking that all four cases selected as evidence on customary international law concern sovereignty and wartime, two points on which realism is usually thought to have an advantage. Note that this criticism does not apply to the last part of the book, which does not use methodology in the same way. It also does not apply to Schoenbaum, who wears his heart on his sleeve. It is certainly possible to criticize Schoenbaum's methodology and his case selection, but it is entirely unnecessary to worry that they hide substantial commitments, since these are all out in the open.

In his enlightening review of the great debates in IR, Ole Wæver points out that behaviouralist methodology gradually displaced philosophical differences between realism and idealism.¹² As a consequence, their behaviouralist successors, known

10. While this position puts Goldsmith and Posner closer to neoconservatism than many IR realists, their pessimism (even more than their rejection of its cosmopolitan goals) keeps them at a distance.

11. Goldsmith and Posner's passing reference to the English School misses this point: 'Other political science theories, such as the English School's theory of international society (Bull 1977), were more optimistic about international co-operation but did not focus on international law as a distinctive institution' (16). While the nuts and bolts of international law are indeed rarely addressed by authors associated with the English School, these authors strongly emphasize the social nature of international interaction and put stress on the role of norms and customs in rule formation. Incidentally, many English School authors give international law more credit than Bull, who is perhaps the closest to realism of the lot. Martin Wight even elevates Hugo Grotius to patron saint of international society. See M. Wight, *International Theory: The Three Traditions* (1991).

12. See O. Wæver, 'The Rise and Fall of the Inter-paradigm Debate', in S. Smith, K. Booth, and M. Zalewski, *International Theory: Positivism and Beyond* (1996), 149.

as neo-realism and neo-idealism, have in the last decades come much closer, close enough in fact to merge into a single school. In the process both have lost much of their flavour, causing Wæver to drop the descriptive part of both previous schools' names and refer to their synthesis as Neo-Neo. This leaves constructivism and post-structuralism as its challengers. These challengers attempt to recover the lost themes of classical realism (statecraft) and classical liberalism (ethics), reopen philosophical debates, and revoke standards of methodology that exclude such concerns.

On the evidence of the two books reviewed here, a grand synthesis has not yet come about in IL. Significantly, however, Goldsmith and Posner chide their opponents for their failure to come up with a fruitful research agenda supported by empirical evidence: 'This theorizing often fuels, and is overtaken by, normative speculation about improving international law' (p. 15). Goldsmith and Posner consciously imitate IR's current academic standards, which they see as more 'sophisticated' than those in IL (p. 15). It comes as no surprise that all IR scholarship cited in support of this argument comes from Neo-Neos. Thus *The Limits of International Law* lives up to its title by imposing strictures on research in IL. Presumably authors like Schoenbaum would be encouraged to restate their case, using approved methods and applying clearly defined standards of evidence. This is a tempting proposition in the light of Schoenbaum's problematic style, but the implications are troubling. Methods are not neutral. Whoever decides on methods, decides on outcomes.

5. INTERNATIONAL/LEGAL RELATIONS

The attempt to reintegrate IR and IL is fraught with difficulties, it appears. From an IR perspective, *The Path Not Taken* disappoints. It has already been said that Schoenbaum pays very little attention specifically to IR scholarship. Much of what he does say (mostly in chapter 3) is wildly inaccurate. E. H. Carr and Hans Morgenthau, for example, are presented as disciples of Nietzsche and Freud, who in turn are misrepresented: 'All rational values and the very possibility of objective truth were thrown into question' (p. 47). Neither Carr nor Morgenthau seems likely to espouse such a position; perhaps, then, it is fortunate that neither Freud nor Nietzsche ever formulated anything like it. On the other hand, neither Carr nor Morgenthau seems to have set much store by either Freud or Nietzsche, so if they had, their presumed followers might not have followed.

The Limits of International Law is better, but not that much. Goldsmith and Posner drop the names of quite a few IR scholars, but seldom engage in sustained discussion of their findings. For one example, Robert Keohane's classic article on rational choice and international co-operation receives a nod in the introduction (p. 16), but his findings – that international regimes facilitate states' pursuit of their own interests over the long run¹³ – are never even mentioned. Not only do Keohane's conclusions contradict those of Goldsmith and Posner, his methodological considerations also raise questions about their own methodology. For another example, Goldsmith and

13. See R. O. Keohane, 'The Demand for International Regimes', in R. O. Keohane (ed.), *International Institutions and State Power. Essays in International Relations Theory* (1989), 101.

Posner refer to E. H. Carr as a prominent realist (pp. 170–1). They credit Carr (along with Morgenthau and Niebuhr) with perceiving that ‘states’ legal and moral rhetorics are “disguises” or “pretexts” for actions motivated by a desire for power’ (p. 170).¹⁴ Carr’s complexity emerges from a single quotation, in which he ‘acknowledges’ (p. 171) that ‘the necessity recognized by all politicians, both in domestic and in international affairs, for cloaking interests in the guise of moral principles is itself a symptom of the inadequacy of realism’¹⁵ – a position Goldsmith and Posner later reject.

As indicated in the introduction to this review, E. H. Carr is a seminal figure in the history of IR. Although often thought of as a realist, his position in *The Twenty Years’ Crisis* embraces utopian aspirations. Against utopianism, he argued that legalism and liberal aspirations are no substitute for analysis – a lesson for Schoenbaum. Against realism, he argued that without aspirations there is no impetus for change – a lesson that Goldsmith and Posner might take to heart. His consistent theme is a warning against complacency and self-deception.

Carr reserved some of his sternest criticisms for those who believed their national interest and the interest of all other states to be in harmony. British and US politicians who upheld this doctrine of the harmony of interests singularly failed to address the interests and concerns of other peoples and countries. Both books under review here in whole or in part directly address an American audience. According to Schoenbaum, ‘The reason the spotlight is on the United States is that it is the most influential nation in the world, and rightly or wrongly, it sets the standards for other nations’ (p. 282). And according to Goldsmith and Posner, ‘In arguing for these points [that liberal democracy trumps cosmopolitanism], we focus primarily on the United States, the world’s richest, most powerful, and, in some respects, most vigorous liberal democracy’ (p. 205). It is an open question whether such arguments sound convincing to readers elsewhere.

The same question may be raised when scholars from one field attempt to integrate their insights with those from another field.

14. In another, co-written, article Goldsmith explicitly acknowledges Carr’s complexity, but proceeds, in a similar fashion, to read him primarily as a realist critic of misguided idealism. See J. L. Goldsmith and S. Krasner, ‘The Limits of Idealism’, 2003 (Winter) *Daedalus* 47.

15. See Carr, *supra* note 2, at 92.