

NEW VOICES IN INTERNATIONAL LAW: EMPIRICAL PERSPECTIVES ON INTERNATIONAL LAW

This panel was convened at 2:30 pm, Friday, April 11, by its moderator, Gregory Shaffer of the University of Minnesota Law School, who introduced the speakers: Andrew Bell of Duke University; Adam Chilton of the University of Chicago; Anna Schrimpf of Princeton University; Pierre-Hugues Verdier of the University of Virginia; and Mila Versteeg of the University of Virginia.*

THE NEW EMPIRICAL TURN IN INTERNATIONAL LAW SCHOLARSHIP

By Gregory Shaffer[†]

International law is increasingly broad in scope and dynamically changing. If we do not understand empirically how international law operates, the limits it confronts, and the efforts to make it more effective, our scholarship will be increasingly irrelevant.¹ This panel spurred vigorous exchange among scholars from a large number of disciplines. It was among the most stimulating panels at the ASIL Annual Meeting and represents among the most exciting and important developments in international legal scholarship.

The panel presentations covered sub-national organizations and the law of war (Andrew Bell), state foreign policy and international investment law (Adam Chilton), nongovernmental organizations and international health law (Anna Schrimpf), and the interaction between international law and domestic legal orders (Pierre-Hugues Verdier and Mila Versteeg). This introduction briefly summarizes the importance of this work.

As international law proliferates in an increasingly interdependent world, concerns arise regarding its democratic legitimacy. Pierre-Hugues Verdier and Mila Versteeg, two associate professors at the University of Virginia Law School, investigate this important question. They are creating an original database of national law practices regarding treaty-making, treaty reception, and customary international law reception of all countries from 1815–2013. Based on the data collected, Professors Verdier and Versteeg preliminarily show that a greater number of treaties require prior legislative approval from a greater number of countries, and are increasingly subject to constitutional review. They further show that the monist/dualist divide is less important from a law-in-action perspective since there is a correlation between being a monist country and the requirement of a treaty's domestic ratification, while dualist countries tend to have more ex post checks on treaty implementation. Finally, they show that while domestic legal systems have become more receptive to ratified treaties, they also create more constraints on treaty-making. The proliferation of international law creates new challenges for and new responses from domestic legal orders on which much of international law must depend if it is to be effective and normatively legitimate. Their findings can be read to alleviate, at least to some extent, concerns over a democratic deficit as countries increasingly turn to international law in an interdependent world.

Bilateral investment treaties (BITs) in particular are proliferating and increasingly are subject to legitimacy challenges. What spurs the turn to this treaty-making? All existing theories have been investment-centric, even though there is mixed evidence at best that these

* Ms. Schrimpf did not submit remarks for the *Proceedings*.

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¹ See Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AJIL 1 (2012).

treaties actually spur investment flows. In a fascinating paper, Adam Chilton, who is joining the faculty at the University of Chicago Law School, explores an alternative theory that foreign policy interests best predict the countries with which the United States signs BITs. International law, in other words, can purport to have a particular focus, but it involves strategies and has effects that are not reflected in the text. Chilton provides an excellent review of the existing literature, presents an important new theory, and thoughtfully analyzes new data in support of this theory. His project shows how realist perspectives remain important for empirical investigation.

The law of armed conflict is notoriously the most challenged in terms of its effectiveness given the extreme context in which it operates. Using important original survey research, Andrew Bell, a graduate of the University of Virginia School of Law and current Ph.D. candidate at Duke, turns to micro-analysis of organizational culture to explore how training over time affects cadets' ethical norms toward the treatment of civilians during armed conflict. Earlier work has speculated that it is such training that should give meaning to the law of war, such as the treatment of civilians during armed conflict, but this theory has not been tested. Bell does so by turning his research away from macro-state analysis and toward micro-organizational analysis. He examines the effects of training at the U.S. Military Academy and Army ROTC through comparative surveys of cadets during their freshman and senior years. This ongoing research, which examines the effects of law of war training on both military members' internal norms and their behavior in combat, represents an important, cutting-edge turn in the assessment of how, and the conditions under which, international law matters.

Finally, Anna Schrimpf, a Ph.D. candidate at Princeton, who unfortunately cannot be part of these published proceedings, presented compelling work building from an original dataset that investigates international NGOs' behavior in the international law sphere. As initiatives increasingly involve public-private partnerships to develop international law, exemplified in the realm of health law in particular, empirical investigations of NGO activity become critical. In this work, Schrimpf investigates how NGOs in the field of health law make decisions as to what health law initiatives to support.

These scholars, at various points in their early careers, are to be followed. We are fortunate to have them as part of a collective effort to build better understanding of how international law conditionally operates, whether among states, engaging private actors, or operating transnationally at the national and subnational levels. Their work reflects how international law's reach has expanded and how it dynamically interacts with domestic legal systems and sub-national organizations.

LEASHING THE “DOGS OF WAR”: EXAMINING THE EFFECTS OF LOAC TRAINING AT THE U.S. MILITARY ACADEMY AND IN ARMY ROTC

*By Andrew Bell**

What effect does international law have on military behavior on the battlefield? What factors drive states to comply—or not comply—with the law of armed conflict (LOAC)? In recent decades, legal scholars have wrestled with this question, arguing variously that the law's effects come from the shaping of actors' internal norms, the changing of external

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