Bridging the Gap

Practice Theory in Interdisciplinary International Law and International Relations Scholarship

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Bridging the Gap: Practice Theory in Interdisciplinary International Law and International Relations Scholarship

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Abstract:

Recent years have seen a new, by now almost normalized, openness towards empirical, interdisciplinary approaches within international law scholarship; in part driven by research conducted within the Nordics. Scholarship that bridges International Law and International Relations has been a key example, promising new insights on how power dynamics shape international law, and how international law in turn constitutes global order. However, interdisciplinary work combining both disciplines has also been met with critique, including accusations of disciplinary hegemony, a priori theorising, and not accounting for international law’s normativity. This article argues that practice theory provides one possible way to address these challenges. Focusing on day-to-day legal practices, especially at the intersections of legal regimes, we identify three examples of particularly promising research avenues: state responses to international legal developments; international lawyers navigating overlapping communities of practice; and data-driven approaches for understanding how legal interpretations are negotiated across different groups of practitioners. All three avenues offer important insights on how international law develops and changes in practice.

Keywords: Practice theory, IR’s practice turn, interdisciplinarity, change in international law, communities of practice, state power in practice

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MOBILE – Center of Excellence for Global Mobility Law – focuses on systematically studying the legal infrastructures of human mobility across geographies, social divides, travel patterns and time.

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1. Introduction

The Nordic countries have always positioned themselves as staunch supporters of international law. As small states this makes geopolitical sense, but also enables Nordic countries to individually brand themselves as championing different areas, such as peace and the use of force, human rights, and climate law. However, navigating unequivocal support for international law in a changing political landscape is less straightforward. The invasion of Ukraine saw Norway change its longstanding policy not to export military equipment to non-NATO countries. Meanwhile, Sweden’s largest weapons manufacturer, SAAB AB, is referring to the “human right to feel safe” as its vision statement. Nordic countries have come into the search light in terms of their own international law performance, not least in relation to migration. And in several instances, Nordic states have been part of initiatives to push back against what they perceived as overly dynamic developments in international law. For example, Finland, Norway, Sweden, and Denmark were all part of the intergovernmental consortium to draft principles on the handling of military detainees in response to what the leading diplomat described as a “blurring” of the lines between international humanitarian law and international human rights law in the context of transnational law enforcement and military operations. Similarly, Denmark led a Council of Europe declaration widely seen as an attempt to “rebalance” the powers of the European Court of Human Rights (ECtHR) in favour of more national authority.

To understand such political shifts and contestation dynamics in regard to international law, interdisciplinary research at the intersection between International Law (IL) and International Relations (IR) seems like an obvious fit. Such interdisciplinary exchange is particularly promising in the context of a growing empirical research agenda on international law, including in the Nordics. However, compared to, for example, cross-exchanges with sociology, interdisciplinary engagement between IL and IR has arguably had a slightly more complicated trajectory. Historical attempts to merge the two disciplines have been criticised for leading to disciplinary hegemony and a priori theorising, so much so, that prominent voices within the

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Nordics have called for “counterdisciplinarity,” explicitly rejecting interdisciplinary research across both fields.

In this contribution, we argue that practice theory offers a particularly fruitful avenue for cross-exchange between IL and IR that responds to such challenges. We thereby follow-up on earlier calls to use practice theory to bridge both disciplines. In doing so, however, this research note is particularly interested in how intellectual trajectories at the intersection between IL and IR have developed within the Nordics, and what a practice-oriented approach could add to our understanding of especially some of the above-described processes of backlash and contestation that have played out in the Nordic region in recent years. To do so, we present three, partly overlapping examples of using practice theory to understand the day-to-day practices of international law and their politics across the Nordic region: a focus on a) how state power is exercised through legal practices; b) how international lawyers navigate competing demands across different communities of legal practice, including those revolving around international law’s various subspecialisations; and c) how specific interpretations are embedded and proliferate across groups of practitioners. As the examples from the Nordic region given above illustrate, it might be exactly a “blurring of the lines” between different legal regimes where interpretive developments can be perceived as particularly dynamic and thus give rise to political contestation and initiatives to adjust exiting legal frameworks. Drawing on recent advances across IL and IR, we argue that practice theory offers a particularly useful research avenue, both conceptually and methodologically, to study how practitioners across the Nordics and beyond navigate competing assumptions and knowledge repertoires at the intersections of legal regimes, and thereby enact or resist legal change.

This research note is divided into three parts. First, we briefly review the chequered history of interdisciplinary collaborations between IL and IR, with a focus on contributions from the Nordics and their situatedness within a broader context of a growing empirical research agenda in international law. Second, we turn to practice-oriented approaches as a particularly fruitful research agenda for further cross-exchange, especially regarding state practices, community of practice approaches, and data-driven approaches. Third, in our concluding reflections, we emphasize the implications of such an approach for understanding how international law’s normative content develops, including at the intersections of legal regimes.

2. International Law and International Relations: Between a rock and a hard place

Interdisciplinary research stretching across IL and IR has had a somewhat turbulent history. In one sense, IR has at times appeared as IL’s favourite co-discipline, promising insights into the power dynamics and politics that shape international law, and thus a set of theoretical and

methodological tools that is often seen as essential but outside of lawyers’ core expertise. Reversely, it is the “inner workings” of international law that typically falls outside of IR training. As one observer concluded, IR and IL were thus ultimately “in a sense founded on a similar presence and absence of one another.” At least historically, both disciplines also shared a set of similar starting assumptions, including a tendency to emphasize the role of states to the point of state-centrism, be it as regarding states as the main subjects or main actors of international law and politics.

Given such complementary overlaps, calls to pursue an interdisciplinary research agenda have been frequent, but also fraught with difficulties. As an analytical factor worth considering in the study of world politics, international law was for a long time all but ostracized from IR. Within the tradition of realism that then dominated (in particular North American) IR, international law and international institutions were typically regarded as epiphenomenal, that is, a mere reflection of the power distributions among states. At best, international law served to ease transaction costs among states. At worst, it represented a form of “idealistic legalism,” leading prominent IR scholars to regard developments such as the negotiation of the Rome Statute of the International Criminal Court as “very problematic,” given that “[p]ower is wished away.”

Vice versa, international legal scholarship engaging politics in anything but a prescriptive manner has been accused of undermining the discipline’s commitment to practice. Questioning international law’s political and colonial formation or the continued politicization of international legal interpretation invariably undermines the culture of formalism still adhered to by the majority of doctrinal international legal scholars. Consequently, works associated with, for example, the third world approaches to international law (TWAIL) movement and critical legal studies (CLS) were long marginalized at many law schools, including in the Nordics – to the point that one of the authors of this article was squarely told during the PhD: “if you are a crit, you don’t get a job.”

As realism gradually lost its dominant position in IR, however, a key obstacle to interdisciplinary exchange fell away. Several ambitious initiatives for IL/IR cooperation emerged in the aftermath of the Cold War targeting both disciplines, especially Slaughter’s call

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for a dual research agenda\textsuperscript{19} and the subsequent, cross-disciplinary collaborative attempt to examine the “legalization” of international institutions.\textsuperscript{20} Concomitantly, IR scholarship giving attention to how legal rules and principles shape and constitute international politics gained further traction from a range of different positions, including (critical) constructivist, rationalist, and English School perspectives.\textsuperscript{21}

Yet, this work similarly saw significant pushback from international lawyers, including in the Nordics. At an institutional level, bridge-building attempts met with institutional resistance in many places, including within the Nordics, where, for example, dual IL/IR degree programmes never gained the same momentum as in the Netherlands or the United Kingdom. Furthermore, especially prominent initiatives, and particularly work on the “legalization” of international institutions,\textsuperscript{22} was received with some scepticism. Some of the criticism related to specific aspects, such as the focus on treaties as opposed to customary law\textsuperscript{23} and whether the concept’s proposed dimensions of obligation, precision, and delegation of decision-making dimensions were analytically useful.\textsuperscript{24} More fundamentally, IL scholars objected that the programme, seen as emblematic of a broader IR/IL research agenda, failed to take international law’s distinct technique, “craftsmanship,” and normative ambition seriously.\textsuperscript{25} In their view, the \textit{a priori} theoretical orientation typical of much IR scholarship meant that for some international lawyers, any kind of IL/IR “cooperation” always sounded more like conquest,” with lawyers being relegated to providing empirical content for political science analyses.\textsuperscript{26} Ultimately, such critique culminated in calls for “counterdisciplinarity,”\textsuperscript{27} voiced prominently within the Nordics, and led to a re-orientation of critical legal scholars towards other neighbouring disciplines, notably history.\textsuperscript{28}

As several observers were quick to point out, however, such a generalist portrayal of interdisciplinary scholarship between IR and IL glossed over, among other aspect, the sprawling body of research adopting, for example, more constructivist outlooks to examining

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\textsuperscript{26} Koskenniemi, \textit{supra} note 21, p. 16.

\textsuperscript{27} Koskenniemi, \textit{supra} note 21, pp. 3–34; J. Klabbers, ‘Counter-Disciplinarity’, \textit{International Political Sociology} 4, no. 3 (1 September 2010): pp. 308–11.

\textsuperscript{28} A. Orford, \textit{International Law and the Limits of History} in W. Werner, A. Galán, and M. de Hoon (eds), \textit{The Law of International Lawyers: Reading Martti Koskenniemi} (CUP August 2015).
norms in their social context. However, as Pollack has pointed out, the concern still remained that IR scholarship was comparatively “insular”, and has been “more likely to draw theoretical concepts ”off the shelf” from political science theories, and less likely to incorporate insights from international legal scholarship.”

Even for constructivist research on norms in IR, one of the thornier questions has for a long time been how legal norms and other social norms might differ, despite a long-standing scholarly interest in legal studies in the character of legal obligation. Despite recent advances in this regard, for research between IL and IR, questions still remain on how best to combine the strengths of both disciplinary perspectives to shed light on the politics of international law without losing sight of international law’s normative content.

Since the by now decade-old call for “counterdisciplinarity,” however, research within IL has also changed face. In general, empirical work on international law has become considerably more commonplace, including across several universities in the Nordics that have traditionally maintained a more doctrinal outlook to both teaching and research. How exactly such empirical work has co-existed with doctrinal legal work has varied, ranging from approaches that combine empirical and doctrinal approaches to work that draws a strict epistemological distinction. Within the Nordics, some of this work has been more akin to what Shaffer and Ginsburg have called an “empirical turn in international law”, an endeavour of typically US-based scholars more prone to employing quantitative methods and social science positivism as their preferred epistemology. As chronicled in another contribution to this special issue, computational analysis in particular has received growing attention in the Nordics as well, and arguably as part of a more wide-spread application of quantitative methods.

At least within the Nordics, however, empirical research on international law that employed meso- or micro-level analytical perspectives has arguably been more wide-spread, combining


30 Pollack, supra note 25, p. 369.


constructivist outlooks with more qualitative methods. At the same time, the Nordic empirical legal research agenda has moved closer to other disciplines than IR and instead taken inspiration from, for example, linguistics and sociology. A key example is Holtermann and Rask Madsen’s “European New Legal Realism,” which outlines an epistemological distinction between two forms of legal validity, namely “axiological” (internal) and empirical validity. Operationalized through Bourdieusian sociology, their approach has subsequently also been employed to add to recent constructivist IR scholarship by providing a clearer epistemological basis for how to approach the empirical study of legal norms. At the same time, however, given the radical distinction between axiological and empirical validity, and an exclusive focus on the latter for empirical research, the question again remains what place there is for international law’s normativity within such work. As we show in the subsequent section, further avenues for fine-grained analyses of how international law’s normativity is created, maintained, and changed is possible from a practice-oriented approach at the intersection of IL/IR.

3. Practice-Oriented Approaches across IL and IR

Building on recent advances in empirical research on international law, we argue that practice-oriented approaches are particularly useful to enable cross-disciplinary dialogue between IR and IL that investigates the day-to-day politics of international law, and its implications for international law’s normative content. Compared to, for example, the concept of legalization, practice-oriented approaches are engaged in mid-level theorizing, or even micro-level analysis, and typically maintain an interpretivist epistemology and inductive approach that eschews “disciplinary reductionism or ex ante theorizing.” Indeed, immediately after calls for “counterdisciplinarity” emerged, a focus on practices, and specifically legal practices of interpretation and argumentation, was presented as one particularly promising way to overcome such “interdisciplinary turf wars”. Moreover, since these earlier calls for practice-oriented approaches to international law, the use of international practice theory more generally – including within the Nordics – has expanded significantly. This is thus an opportune moment to revisit how a practice-oriented approach to international law may benefit from these theoretical developments. Specifically, in this section, we provide three examples of how this

expanding literature could be utilized for further interdisciplinary research on the politics of international law, including in the Nordics.

At the most general level, a practice-oriented approach entails a research focus on the everyday practices through which international law is enacted and contested. As its key promise, it thus sets the day-to-day lived reality of international lawyers and other practitioners engaging with international legal questions centre stage, and empirically studies how they navigate competing legal knowledge repertoires and political demands as part of their professional activities. One way to conceptualize practices in IR is as “competent performances” or, following Schatzki, as “embodied, materially mediated arrays of human activity centrally organized around shared practical understandings.” Applied to law, such an approach entails understanding legal argumentation and interpretation as sets of social practices through which normative meaning (including an understanding of legal provisions and their interpretations as “valid”) are established and contested on a day-to-day basis. At the same time, conceptualizations of international law’s practices have differed, with some authors preferring a more macro-level perspective that broadly focuses on, for example, the practices of states and their attempts to “navigate the increasingly complex international legal order in which they find themselves embedded.” For others, practice-oriented approaches have been more narrowly constructed in support of e.g. doctrinal analysis. In both cases, the empirical approach may include participant observation, as well as interviewing and different forms of textual analyses, insofar that legal practices are typically text-based. Furthermore, practice-oriented approaches in IR (and beyond) have emphasised the role of technologies and artefacts in how practices are enacted, which resonates with a growing attention in IL scholarship to how

48 For a recent example going into a similar direction, see I. Johnstone and S. Ratner, Talking International Law: Legal Argumentation Outside the Courtroom (Oxford: Oxford University Press, 2021).
international law interacts with material artefacts, be they typewriters, life rafts, or courthouses. Theoretically, the interest in understanding social practices is inspired by the wider “practice turn” in social theory, which has prompted a flurry of practice-oriented contributions in IR in recent years. It furthermore resonates with earlier calls to understand law as an “argumentative practice” or “practical reasoning,” and to investigate the epistemic foundations and interpretive construction of international law. Given such cross-disciplinary sources of inspiration, international practice theory has sometimes been described as a “trading zone” between a variety of approaches – ranging from actor network theory, to work using the concept of communities of practice – that share core sensibilities. This may include a focus on knowledge as enacted in practice and within social learning processes, as well as practices’ materiality, insofar as legal practices are both embodied and may involve material artefacts and technologies. Based on such a reading, Bourdieusian approaches has been argued to fall within the broader umbrella of practice theory, and been a key source of inspiration for IR research in this vein. As mentioned above, Bourdieu-inspired work has been similarly influential for empirical work on international law. However, the key concepts of capital, habitus, and fields have predominantly led to examinations of power struggles as opposed to empirically tracing how legal content is constructed and amended. In addition, when applied to international law, paying attention to the ways each field is conceptualized typically requires scholars to focus on “more specific and specialized areas of practice,” leading to studies on individual regimes such as international commercial arbitration, human rights, or international criminal law.

57 Kratschwil, supra note 17.
In contrast, a number of recent contributions have highlighted not only how international law’s legalities and subfields overlap or can become entangled, but also how these dynamics are often at the heart of politicization and pushback dynamics, for example based on a perception of regime overreach. To empirically study these under-researched, but in our view important, politics of international law, we provide three examples across issue areas grounded in practice theory and drawing on insights from both IL and IR. Far from constituting a comprehensive typology of possible synergies, these examples represent avenues that we see as particularly promising in terms of simultaneously drawing on Nordic research trajectories and addressing pertinent issues of international law contestation and backlash in the Nordic region. The first is to focus on the day-to-day practices of states employing, interpreting, and contesting international law. From an analytical perspective – and based on variations in how practices have been conceptualized as detailed above – this first example operates on a more institutional scale, and inherently concentrates on the politics of international law (i.e., by focusing on the practices of states). The second example zooms in on the street-level politics of international lawyers, in particular governmental legal advisors, and how they navigate potentially competing demands across bureaucratic and professional communities of practice. Finally, a third example points to the expansion of data-driven methods in Nordic legal research to argue that practice theory more generally may benefit from the inclusion of mixed-method designs in the analysis of international law and politics, and points to recent advances in Nordic empirical legal scholarship as a source of inspiration in this regard. In the following, we briefly sketch out each of these three examples.

3.1. State Power in (Legal) Practice

Within research on the politics of international law, processes of backlash and contestation have emerged as a key concern in recent years. While empirical legal research has contributed significantly to unpacking political backlash to international law and its institutions, less empirical attention has been paid to the politics of the legal practices through which states engage international legal proceedings or respond to judgments impacting politically sensitive issue areas. Examining such everyday legal practices conducted on behalf of states may include, for example, asking how statements on

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65 Further research could, for example, give closer attention to the role of materiality within international legal practices, as mentioned above.


representatives of international legal bodies. Ultimately, such an analysis would seek to trace how state power is enacted through legal practices, including the practices states employ to impact the construction of specific legal interpretations as valid or not.\textsuperscript{68}

Returning to the situation of intersecting legal regimes, the migration-human rights nexus perhaps represents the most high-profile example of Nordic states contesting and actively seeking to navigate a shifting international legal terrain.\textsuperscript{69} Traditionally, refugee and migration have always been state-led areas of international law, never endowed with international courts or strong supervisory mechanisms. The past two decades, however, have seen an increasing involvement of international human rights courts and bodies in this area, to the point where asylum and non-deportation claims today compose the majority of all individual petitions across the UN human rights treaty bodies.\textsuperscript{70} Both Denmark and Sweden are among the countries that have seen most such UN treaty bodies claims, while there has also been a significant number of migration cases concerning Nordic countries before the ECtHR – in several instances establishing violations.\textsuperscript{71}

Previous analysis has pointed to these developments as central for understanding, for example, Denmark’s general pushback against the ECtHR.\textsuperscript{72} Yet, the situation has also given rise to a range of much less prominent, more day-to-day legal-political developments that are nevertheless important for understanding Denmark’s complex but highly strategic relationship with international law in this area. This involved unprecedented forms of, among others, cross-institutional dialogue, with the Danish Refugee Appeals Board (the second instance decision-maker in asylum cases) paying several visits to both the UN Committee Against Torture and the UN Human Rights Committee seeking to explain the qualities of the Danish asylum procedure, free legal aid program, and generally above-average recognition rates as compared to the EU average.\textsuperscript{73} Domestically, however, such international interactions were accompanied by legislative amendments restricting access to free legal aid for complaints to international human rights bodies and the ECtHR, as a managerial strategy to reduce the number of submissions.\textsuperscript{74}

Another favoured strategy in migration cases has been post-judgment positioning. In 2016, the ECtHR found a key element of Denmark’s restrictive family reunification policy to constitute


\textsuperscript{71}Scott Ford, supra note 7.


\textsuperscript{74}Legislative amendment 263 of 16 March 2016.
indirect discrimination based on ethnic origin.\textsuperscript{75} The immediate response by the Danish government was to expand the so-called “attachment criteria” to also apply to Danish citizens, before subsequently replacing it with a new “integration requirement” considered to achieve a similar result while simultaneously taking the new ECtHR precedent into account.\textsuperscript{76} As opposed to more open contestations or pushback to international courts, this type of response suggests that even where states choose to accept the specific requirements of the juridical construction of the issue, there is still significant scope to impact legal interpretation or to organize legal-political practices so as to limit the impact of new jurisprudence and retain political manoeuvrability.\textsuperscript{77} The Danish example above is echoed in wider research, suggesting that European states have developed a range of managerial strategies in relation to international migration case law. In addition to post-judgment responses, such strategies also involved for example, regime shopping, third party mobilization, and anticipatory measures.\textsuperscript{78} Broadly understood, practice theory points to the importance of systematically studying these more day-to-day, and often less immediately visible, practices as a means to gain a more nuanced understanding of the politics of international law beyond simply pushback and contestation.

3.2 Navigating Overlapping Communities of Legal Practice

In addition to more macro-level analysis of state practices, a second example for practice-oriented research across IL and IR is a more meso-level perspective, analysing how individual international law practitioners navigate competing demands. Compared to a macro-level focus on the practices of states or other international actors, the concept of communities of practice instead draws attention to how practices are learned within institutional-professional social settings,\textsuperscript{79} and how individuals navigate the demands of respective practice communities, be it their colleagues in the office next door or a wider professional community. Think of a recent law school graduate who begins working at a law firm, and who gradually becomes proficient within the working practices of their new workplace by having their legal drafts corrected by more senior lawyers. Conceptually, communities of practice are thus not only defined by “mutual engagement” between members to ensure such learning, but also by a “joint enterprise” (such as working for the same firm) and reliance on a “shared repertoire” of concepts and assumptions, such as how to proficiently draft a legal memo.\textsuperscript{80} Beyond localized organizational practices, however, the concept has also been employed to analyse, among others, legal practices across judges and legal staff at international criminal courts and tribunals,\textsuperscript{81} and how the constant re-enactment of legal norms across communities sustains a

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\textsuperscript{75} Biao v. Denmark, European Court of Human Rights, Appl. n° 38590/10, 24 May 2016.

\textsuperscript{76} T. Gammeltoft-Hansen & S. Scott Ford, "Danish Immigration Law".


\textsuperscript{80} E. Wenger, Communities of Practice: Learning, Meaning and Identity, pp. 72–85.

\textsuperscript{81} E. Baylis, ‘Function and Dysfunction in Post-Conflict Justice Networks and Communities’, Vanderbilt Journal of Transnational Law 47, no. 3 (2014): pp. 625–98; N. Stappert, ‘Practice Theory and Change in
sense of legal obligation. We thus move beyond a focus on international actors such as states, and instead are interested in communities of individuals who share professional expectations of what “counts” as a good legal argument within a specific subspecialisation of international law, and who may work within, but also stretch across institutional settings. The concept of communities of practice thus resonates with the concept of interpretive communities, which has been similarly used in international law scholarship to conceptualize how legal interpretation is based on a social process of evaluating such interpretations as valid or not. Notably, such interpretive communities have been conceptualized as including not only government representatives and legal advisors, but also legal staff and representatives of international organizations, as well as international law scholars, among others.

Within IR, work using the concept of communities of practice has expanded in recent years, among others emphasizing the role of humour. For the purposes of researching communities of international legal practice, in our view particularly pertinent are recent contributions that analyse how such communities distinguish themselves from others, and how learning occurs across overlapping communities via “brokers” moving between them. In our view, this provides a particularly useful inroad for studying how practitioners engage across different sub-specializations of international law and consequently how legal concepts and interpretation may be impacted from one specialization to another. At the same time, moving across different overlapping legal communities with different assumptions, routines, and expectations on how to construct legal arguments may also lead to contradictory pressures, which such “brokers” would need to navigate in practice. Doing so, however, can come at a cost, as engaging in what counts as a “competent” practice within one community might be seen with some scepticism in another. A community of practice lens may therefore add further insights by making such trade-offs and learning processes visible, as well as their political implications.

Such a perspective may be particularly important in the context of contestation and backlash to international law. As states try to push back or hedge against perceived regime overreach, individual government legal advisors become crucial intermediaries – at once deciphering the boundaries of legitimate political action and actively engaged in devising creative solutions to ensure that these boundaries are not static but negotiable. Legal advisors – regardless of whether they act for states or, for example, international organizations – are inscribed in both bureaucratic and legal professional communities. The failure to navigate either can have
significant consequences, as illustrated by Madeleine Albright’s famous suggestion to Robin Cook “to get new lawyers” in order to justify the unilateral intervention in Kosovo or, in the run-up to the Iraq war, the UK’s Foreign Secretary Jack Straw’s response to Foreign and Commonwealth Office (FCO) legal advisor Michael Wood: “I note your advice, but I do not accept it.” Vice versa, political pressure to defend a particular governmental position can also become a significant liability vis-à-vis the wider legal professional community. And to do so competently often requires straddling multiple arenas. Returning to the example of handling detainees in international military operations, the Copenhagen Process and Principles were broadly criticized as an example of governments bypassing the wider legal professional community at the nexus of international humanitarian law and international human rights law, presumably because, in their view, an entirely state-led process was seen as less prone to the kind of institutional preferences and concerns that would come with negotiations chaired by, for example, an international organization and involving a broader group of civil society and academics. Beyond the formal negotiations, however, the process also saw the Danish lead diplomat invest significantly in re-fostering these links, inter alia by speaking at international conferences and publishing multiple academic articles (including in the present journal).

Again, a practice-oriented approach thus draws attention to a less visible, day-to-day politics of international law; but one which is important both in terms of ensuring the political impact of the Process within the a wider field of international law, and perhaps at an individual level, in terms of maintaining competence vis-à-vis a professional community.

### 3.3. Data-driven methods and the study of legal practice

Our third and final example is methodological in nature. Traditionally, practice theory scholarship has seen a strong emphasis on qualitative methods. Participant observation is often regarded as practice theory’s ”gold standard”, with interviews with practitioners or document analysis as alternative options, especially for sites and practices where direct access

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92 This is not to say, however, that quantitative methods have no place within at least some strands of practice theory. In particular, Bourdieusian approaches have used quantitative methods to trace larger patterns, with scholars working within IR practice theory subsequently highlighting the value of, for example, utilizing also more formalised forms of social network analysis. See e.g. V. Pouliot, “Methodology”, in Bourdieu in International Relations: Rethinking Key Concepts in IR, ed. by R Adler-Nissen (London: Routledge 2013), pp. 45-58, at 54.
is restricted. Within the disciplines of IL and IR more generally, such a qualitative focus is
situated within the context of a long-standing discussion on whether qualitative or quantitative
methods are better-suited to empirically examine international law and politics, respectively,
with a perceived dominance of quantitative methods within North America with regard to
particularly IR.

In the Nordic context, however, not only have quantitative methods never achieved the same
level of prevalence in the social sciences, their integration into empirical legal scholarship has
also followed a markedly different trajectory, creating opportunities to speak back to and enrich
practice theory at the intersection between IL and IR as a result. Whilst anchored in
Bourdieuian sociology, the “European New Legal Realism” programme mentioned above has
in practice remained methodologically pluralist. In a recent paper reflecting on the Danish
iCourts center’s use of quantitative methods, Shai Dothan points to examples of how the
analysis of larger datasets may be used both exploratorily, to reveal patterns not readily
accessible through qualitative analysis, and to test the generalisability of inductive findings
based on hunches or smaller-n studies. Yet, he also underscores that such methods are not a
panacea, and argues that “mixed-methods design that includes both quantitative and qualitative
methods is quickly becoming the gold standard for social science research.” From the
Norwegian Pluricourts center, Malcolm Langford makes a similar point to move beyond the
methodological “paradigm wars” and argues in favour of multi-method approaches, integrating
elements of both qualitative and quantitative analysis to test the robustness of conclusions
across disciplinary divides.

In our context, mixed-methods designs hold particular promise for the study of international
law as a means to understand how legal practices are socially entrenched, disseminated and
proliferate. In a study of the international criminal tribunals for Rwanda and the former
Yugoslavia, Holtermann and Kjær thus employ corpus linguistics to show how the use of
conditional clauses in the jurisprudence steadily declined over time, and tie this to the gradual
emergence of a transnational epistemic community in international criminal law with distinct
modes of legal reasoning. Network analysis has similarly been used to show how legal
practices are shared across groups of practitioners or across formal regime boundaries. In a
highly influential study, Langford, Behn and Lie thus document the widespread “double
hatting” and “revolving door” dynamics characterising international investment arbitration,

and use this to identify the key “gatekeepers” and “power brokers” impacting the field. In a study on judicial dialogue between the European Court of Human Rights and the Court of Justice of the European Union published in this journal, Frese and Palmer Olsen found cross-references to be significantly more pronounced in fair trial and immigration case law, suggesting that judges selectively seek support across regime boundaries depending on, among other things, the political sensitivity of the issues in question. In the context of asylum, computational analysis has similarly been used to document whether new legal practice from e.g. the Court of Justice of the European Union takes foothold in national decision-making in Nordic countries not formally bound by the court’s rulings, but also the significant discretion retained by national bodies in terms of how to frame and approach a given case type and the impact of e.g. new technologies for legal decision-making. Each of these examples speak to the themes set out above, and brings additional nuance to discussions about contested legal institutions or issue areas and resulting backlash or politicisation.

The above represents just a few examples of how mixed-methods designs may be used to bolster existing studies of legal practices. The benefit of quantitative methods in this area lies in the ability to study day-to-day practices of international law with greater scale and explorative depth; something particularly useful when seeking to understand longitudinal, multi-jurisdictional or cross-boundary dynamics of change. At the same time, however, this does not replace the need for more fine-grained qualitative research. As part of the ”empirical turn” in legal research, recent Nordic scholarship has been particularly instrumental in bridging methodological paradigm wars and may point to different ways forward for practice theory as well, also beyond the IL-IR nexus.

4. Concluding Remarks

Research attempting to bridge IL and IR has had a somewhat chequered history, including in the Nordics, where prominent international law scholars have discarded the potential of such interdisciplinary collaboration altogether. While such critique arguably glosses over the breadth of interdisciplinary research from both disciplines, in our view, the question remains how best to combine insights from both IL and IR without falling into the pits of previous attempts. In this research note, we have argued that practice theory offers a particularly fruitful avenue for interdisciplinary cross-exchange in a way that avoids both a priori theorizing and maintains epistemic parity across the disciplines. Revisiting such an interdisciplinary, practice-oriented research agenda between IL and IR is moreover timely, not only in light of the growing Nordic attention to empirical legal research, but also the significant expansion of practice theory in IR over the past few years. Specifically, we highlighted a focus on state practices,

communities of practice approaches, and mixed-methods designs as particularly promising examples, including to shed light on legal practices at the intersections of legal regimes.

Empirically, such a research agenda provides a more nuanced perspective on the politics of international law, which moves beyond straightforward narratives on pushback and contestation. As shown through the brief examples above, attention to the day-to-day practices of international law brings into focus both the intricate networks that individual lawyers engage in, as well as the broad, but also more subtle, repertoire of legal-political strategies that states pursue in response to a growing judicialization of international law. Ultimately, such a focus points to how states and individual lawyers are actively engaged in the ongoing development and interpretive struggles characterising international law; in ways that move beyond the traditional triptych of litigation, political contestation, and participation in treaty negotiations. The question of how international legal interpretation changes and evolves over time not only sits behind many current debates on backlash and contestation, but also speaks to a longstanding and fundamental puzzle in legal theory. Practice theory represents another possible inroad into such conversations, by emphasising social dynamics of how interpretive practices are retained, disseminated, creatively varied, and resisted.


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