International Law and International Relations

This volume is intended to help readers understand the relationship between international law and international relations (IL/IR). As a testament to this dynamic area of inquiry, new research on IL/IR is now being published in a growing list of traditional law reviews and disciplinary journals. The excerpted articles in this volume, all of which were first published in *International Organization*, represent some of the most important research since serious social science scholarship began in this area more than twenty years ago. They are important milestones toward making IL/IR a central concern of scholarly research in international affairs. The contributions have been selected to cover some of the main topics of international affairs and to provide readers with a range of theoretical perspectives, concepts, and heuristics that can be used to analyze the relationship between international law and international relations.

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International Organization Books

Issues and Agents in International Political Economy, edited by Benjamin J. Cohen and Charles Lipson

Theory and Structure in International Political Economy, edited by Charles Lipson and Benjamin J. Cohen

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International Law and International Relations, edited by Beth A. Simmons and Richard H. Steinberg
International Law and International Relations

Edited by

BETH A. SIMMONS and RICHARD H. STEINBERG
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Abstracts

Structural Causes and Regime Consequences: Regimes as Intervening Variables (1982)
by Stephen D. Krasner

International regimes are defined as principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area. As a starting point, regimes have been conceptualized as intervening variables, standing between basic causal factors and related outcomes and behavior. There are three views about the importance of regimes: conventional structural orientations dismiss regimes as being at best ineffectual; Grotian orientations view regimes as an intimate component of the international system; and modified structuralist perspectives see regimes as significant only under certain constrained conditions. For Grotian and modified structuralist arguments, which endorse the view that regimes can influence outcomes and behavior, regime development is seen as a function of five basic causal variables: egoistic self-interest, political power, diffuse norms and principles, custom and usage, and knowledge.

The Demand for International Regimes (1982)
by Robert O. Keohane

International regimes can be understood as results of rational behavior by the actors – principally states – that create them. Regimes are demanded in part because they facilitate the making of agreements, by providing information and reducing transaction costs in world politics. Increased
interdependence among issues – greater “issue density” – will lead to increased demand for regimes. Insofar as regimes succeed in providing high-quality information, through such processes as the construction of generally accepted norms or the development of transgovernmental relations, they create demand for their own continuance, even if the structural conditions (such as hegemony) under which they were first supplied change. Analysis of the demand for international regimes thus helps us to understand lags between structural change and regime change, as well as to assess the significance of transgovernmental policy networks. Several assertions of structural theory seem problematic in light of this analysis. Hegemony may not be a necessary condition for stable international regimes; past patterns of institutionalized cooperation may be able to compensate, to some extent, for increasing fragmentation of power.

Democratic States and Commitment in International Relations (1996)
by Kurt Taylor Gaubatz

Making credible commitments is a formidable problem for states in the anarchic international system. A long-standing view holds that this is particularly true for democratic states in which changeable public preferences make it difficult for leaders to sustain commitments over time. However, a number of important elements in the values and institutions that have characterized the liberal democratic states should enhance their ability to sustain international commitments. Indeed, an examination of the durability of international military alliances confirms that those between democratic states have endured longer than either alliances between nondemocracies or alliances between democracies and nondemocracies.

On Compliance (1993)
by Abram Chayes and Antonia Handler Chayes

A new dialogue is beginning between students of international law and international relations scholars concerning compliance with international agreements. This article advances some basic propositions to frame that dialogue. First, it proposes that the level of compliance with international agreements in general is inherently unverifiable by empirical procedures. That nations generally comply with their international
agreements, on the one hand, or that they violate them whenever it is in their interest to do so, on the other, are not statements of fact or even hypotheses to be tested. Instead, they are competing heuristic assumptions. Some reasons why the background assumption of a propensity to comply is plausible and useful are given. Second, compliance problems very often do not reflect a deliberate decision to violate an international undertaking on the basis of a calculation of advantage. The article proposes a variety of other reasons why states may deviate from treaty obligations and why in many circumstances those reasons are properly accepted by others as justifying apparent departures from treaty norms. Third, the treaty regime as a whole need not and should not be held to a standard of strict compliance but to a level of overall compliance that is “acceptable” in the light of the interests and concerns the treaty is designed to safeguard. How the acceptable level is determined and adjusted is considered.

by George W. Downs, David M. Rocke, and Peter N. Barsoom

Recent research on compliance in international regulatory regimes has argued (1) that compliance is generally quite good; (2) that this high level of compliance has been achieved with little attention to enforcement; (3) that those compliance problems that do exist are best addressed as management rather than enforcement problems; and (4) that the management rather than the enforcement approach holds the key to the evolution of future regulatory cooperation in the international system. While the descriptive findings are largely correct, the policy inferences are dangerously contaminated by endogeneity and selection problems. A high rate of compliance is often the result of states formulating treaties that require them to do little more than they would do in the absence of a treaty. In those cases where noncompliance does occur and where the effects of selection are attenuated, both self-interest and enforcement play significant roles.

The Concept of Legalization (2000)
by Kenneth W. Abbot, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal

We develop an empirically based conception of international legalization to show how law and politics are intertwined across a wide range of
institutional forms and to frame the analytic and empirical articles that follow in this volume. International legalization is a form of institutionalization characterized by three dimensions: obligation, precision, and delegation. Obligation means that states are legally bound by rules or commitments and are therefore subject to the general rules and procedures of international law. Precision means that the rules are definite, unambiguously defining the conduct they require, authorize, or proscribe. Delegation grants authority to third parties for the implementation of rules, including their interpretation and application, dispute settlement, and (possibly) further rule making. These dimensions are conceptually independent, and each is a matter of degree and gradation. Their various combinations produce a remarkable variety of international legalization. We illustrate a continuum ranging from “hard” legalization (characteristically associated with domestic legal systems) through various forms of “soft” legalization to situations where law is largely absent. Most international legalization lies between the extremes, where actors combine and invoke varying degrees of obligation, precision, and delegation to create subtle blends of politics and law.

Legalized Dispute Resolution: Interstate and Transnational

(2000)

by Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter

We identify two ideal types of international third-party dispute resolution: interstate and transnational. Under interstate dispute resolution, states closely control selection of, access to, and compliance with international courts and tribunals. Under transnational dispute resolution, by contrast, individuals and nongovernmental entities have significant influence over selection, access, and implementation. This distinction helps to explain the politics of international legalization – in particular, the initiation of cases, the tendency of courts to challenge national governments, the extent of compliance with judgments, and the long-term evolution of norms within legalized international regimes. By reducing the transaction costs of setting the process in motion and establishing new constituencies, transnational dispute resolution is more likely than interstate dispute resolution to generate a large number of cases. The types of cases brought under transnational dispute resolution lead more readily to challenges of state actions by international courts. Transnational dispute resolution tends to be associated with greater compliance with
international legal judgments, particularly when autonomous domestic institutions such as the judiciary mediate between individuals and the international institutions. Overall, transnational dispute resolution enhances the prospects for long-term deepening and widening of international legalization.

Legalization, Trade Liberalization, and Domestic Politics:
A Cautionary Note (2000)
by Judith Goldstein and Lisa L. Martin

If the purpose of legalization is to enhance international cooperation, more may not always be better. Achieving the optimal level of legalization requires finding a balance between reducing the risks of opportunism and reducing the potential negative effects of legalization on domestic political processes. The global trade regime, which aims to liberalize trade, has become increasingly legalized over time. Increased legalization has changed the information environment and the nature of government obligations, which in turn have affected the pattern of mobilization of domestic interest groups on trade. From the perspective of encouraging the future expansion of liberal trade, we suggest some possible negative consequences of legalization, arguing that these consequences must be weighed against the positive effects of legalization on increasing national compliance. Since the weakly legalized GATT institution proved sufficient to sustain widespread liberalization, the case for further legalization must be strong to justify far-reaching change in the global trade regime.

Alternatives to “Legalization”: Richer Views of Law and Politics (2001)
by Martha Finnemore and Stephen J. Toope

The authors of “Legalization and World Politics” (International Organization, 54, 3, summer 2000) define “legalization” as the degree of obligation, precision, and delegation that international institutions possess. We argue that this definition is unnecessarily narrow. Law is a broad social phenomenon that is deeply embedded in the practices, beliefs, and traditions of societies. Understanding its role in politics requires attention to the legitimacy of law, to custom and law’s congruence with social practice, to the role of legal rationality, and to adherence to legal processes, including participation in law’s construction. We examine three applications of “legalization” offered in the volume and show how a fuller
consideration of law’s role in politics can produce concepts that are more robust intellectually and more helpful to empirical research.

by Robert H. Jackson

Decolonization in parts of the Third World and particularly Africa has resulted in the emergence of numerous “quasi-states,” which are independent largely by international courtesy. They exist by virtue of an external right of self-determination – negative sovereignty – without yet demonstrating much internal capacity for effective and civil government – positive sovereignty. They therefore disclose a new dual international civil regime in which two standards of statehood now coexist: the traditional empirical standard of the North and a new juridical standard of the South. The biases in the constitutive rules of the sovereignty game today and for the first time in modern international history arguably favor the weak. If international theory is to account for this novel situation, it must acknowledge the possibility that morality and legality can, in certain circumstances, be independent of power in international relations. This suggests that contemporary international theory must accommodate not only Machiavellian realism and the sociological discourse of power but also Grotian rationalism and the jurisprudential idiom of law.

by Jeffrey W. Legro

Scholars tend to believe either that norms are relatively inconsequential or that they are powerful determinants of international politics. Yet the former view overlooks important effects that norms can have, while the latter inadequately specifies which norms matter, the ways in which the norms have an impact, and the magnitude of norm influence relative to other factors. Three different norms on the use of force from the interwar period varied in their influence during World War II. The variation in state adherence to these norms is best explained by the cultures of national military organizations that mediated the influence of the international rules. This analysis highlights the challenge and importance of examining the relative effects of the often cross-cutting prescriptions imbedded in different types of social collectivities.
The Territorial Integrity Norm: International Boundaries and the Use of Force (2001)
by Mark W. Zacher

Scholars and observers of the international system often comment on the decreasing importance of international boundaries as a result of the growth of international economic and social exchanges, economic liberalization, and international regimes. They generally fail to note, however, that coercive territorial revisionism has markedly declined over the past half century – a phenomenon that indicates that in certain ways states attach greater importance to boundaries in our present era. In this article I first trace states’ beliefs and practices concerning the use of force to alter boundaries from the birth of the Westphalian order in the seventeenth century through the end of World War II. I then focus on the increasing acceptance of the norm against coercive territorial revisionism since 1945. Finally, I analyze those instrumental and ideational factors that have influenced the strengthening of the norm among both Western and developing countries.

by Charles Lipson

Informal agreements are the most common form of international cooperation and the least studied. Ranging from simple oral deals to detailed executive agreements, they permit states to conclude profitable bargains without the formality of treaties. They differ from treaties in more than just a procedural sense. Treaties are designed, by long-standing convention, to raise the credibility of promises by staking national reputation on their adherence. Informal agreements have a more ambiguous status and are useful for precisely that reason. They are chosen to avoid formal and visible national pledges, to avoid the political obstacles of ratification, to reach agreements quickly and quietly, and to provide flexibility for subsequent modification or even renunciation. They differ from formal agreements not because their substance is less important (the Cuban missile crisis was solved by informal agreement) but because the underlying promises are less visible and more equivocal. The prevalence of such informal devices thus reveals not only the possibilities of international cooperation but also the practical obstacles and the institutional limits to endogenous enforcement.
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Abstracts

by James McCall Smith
Dispute settlement mechanisms in international trade vary dramatically from one agreement to another. Some mechanisms are highly legalistic, with standing tribunals that resemble national courts in their powers and procedures. Others are diplomatic, requiring only that the disputing countries make a good-faith effort to resolve their differences through consultations. In this article I seek to account for the tremendous variation in institutional design across a set of more than sixty post-1957 regional trade pacts. In contrast to accounts that emphasize the transaction costs of collective action or the functional requirements of deep integration, I find that the level of legalism in each agreement is strongly related to the level of economic asymmetry, in interaction with the proposed depth of liberalization, among member countries.

Loosening the Ties that Bind: A Learning Model of Agreement Flexibility (2001)
by Barbara Koremenos
How can states credibly make and keep agreements when they are uncertain about the distributional implications of their cooperation? They can do so by incorporating the proper degree of flexibility into their agreements. I develop a formal model in which an agreement characterized by uncertainty may be renegotiated to incorporate new information. The uncertainty is related to the division of gains under the agreement, with the parties resolving this uncertainty over time as they gain experience with the agreement. The greater the agreement uncertainty, the more likely states will want to limit the duration of the agreement and incorporate renegotiation. Working against renegotiation is noise – that is, variation in outcomes not resulting from the agreement. The greater the noise, the more difficult it is to learn how an agreement is actually working; hence, incorporating limited duration and renegotiation provisions becomes less valuable. In a detailed case study, I demonstrate that the form of uncertainty in my model corresponds to that experienced by the parties to the Nuclear Non-proliferation Treaty, who adopted the solution my model predicts.
by Alexander Wendt

The Rational Design project is impressive on its own terms. However, it does not address other approaches relevant to the design of international institutions. To facilitate comparison I survey two “contrast spaces” around it. The first shares the project’s central question – What explains institutional design? – but addresses alternative explanations of two types: rival explanations and explanations complementary but deeper in the causal chain. The second contrast begins with a different question: What kind of knowledge is needed to design institutions in the real world? Asking this question reveals epistemological differences between positive social science and institutional design that can be traced to different orientations toward time. Making institutions is about the future and has an intrinsic normative element. Explaining institutions is about the past and does not necessarily have this normative dimension. To avoid “driving with the rearview mirror” we need two additional kinds of knowledge beyond that developed in this volume: knowledge about institutional effectiveness and knowledge about what values to pursue. As such, the problem of institutional design is a fruitful site for developing a broader and more practical conception of social science that integrates normative and positive concerns.

by Paul F. Diehl, Charlotte Ku, and Daniel Zamora

This article describes the basic components of the operating and normative systems as a conceptual framework for analyzing and understanding international law. There are many theoretical questions that follow from the framework that embodies a normative and operating system. We briefly outline one of those in this article, namely how the operating system changes. In doing so, we seek to address the puzzle of why operating system changes do not always respond to alterations in the normative sphere. A general theoretical argument focuses on four conditions. We argue that the operating system only responds to normative changes when response is “necessary” (stemming from incompatibility, ineffectiveness, or insufficiency) for giving the norm effect and when the change is roughly coterminous with a dramatic change in the political environment (that is,
“political shock”). We also argue, however, that opposition from leading states and domestic political factors might serve to block or limit such operating system change. These arguments are illustrated by reference to three areas of the operating system as they concern the norm against genocide.

Europe Before the Court: A Political Theory of Legal Integration (1993)  
by Anne-Marie Slaughter [Burley] and Walter Mattli

The European Court of Justice has been the dark horse of European integration, quietly transforming the Treaty of Rome into a European Community (EC) constitution and steadily increasing the impact and scope of EC law. While legal scholars have tended to take the Court’s power for granted, political scientists have overlooked it entirely. This article develops a first-stage theory of community law and politics that marries the insights of legal scholars with a theoretical framework developed by political scientists. Neofunctionalism, the theory that dominated regional integration studies in the 1960s, offers a set of independent variables that convincingly and parsimoniously explain the process of legal integration in the EC. Just as neofunctionalism predicts, the principal forces behind that process are supranational and subnational actors pursuing their own self-interests within a politically insulated sphere. Its distinctive features include a widening of the ambit of successive legal decisions according to a functional logic, a gradual shift in the expectations of both government institutions and private actors participating in the legal system, and the strategic subordination of immediate individual interests of member states to postulated collective interests over the long term. Law functions as a mask for politics, precisely the role neofunctionalists originally forecast for economics. Paradoxically, however, the success of legal institutions in performing that function rests on their self-conscious preservation of the autonomy of law.

The European Court of Justice, National Governments, and Legal Integration in the European Union (1998)  
by Geoffrey Garrett, R. Daniel Kelemen, and Heiner Schulz

We develop a game theoretic model of the conditions under which the European Court of Justice can be expected to take “adverse judgments”
against European Union member governments and when the governments are likely to abide by these decisions. The model generates three hypotheses. First, the greater the clarity of EU case law precedent, the lesser the likelihood that the Court will tailor its decisions to the anticipated reactions of member governments. Second, the greater the domestic costs of an ECJ ruling to a litigant government, the lesser the likelihood that the litigant government will abide by it (and hence the lesser the likelihood that the Court will make such a ruling). Third, the greater the activism of the ECJ and the larger the number of member governments adversely affected by it, the greater the likelihood that responses by litigant governments will move from individual noncompliance to coordinated retaliation through new legislation or treaty revisions. These hypotheses are tested against three broad lines of case law central to ECJ jurisprudence: bans on agricultural imports, application of principles of equal treatment of the sexes to occupational pensions, and state liability for violation of EU law. The empirical analysis supports our view that though influenced by legal precedent, the ECJ also takes into account the anticipated reactions of member governments.

by Virginia Page Fortna

In the aftermath of war, what determines whether peace lasts or fighting resumes, and what can be done to foster durable peace? Drawing on theories of cooperation, I argue that belligerents can overcome the obstacles to peace by implementing measures that alter incentives, reduce uncertainty about intentions, and manage accidents. A counterargument suggests that agreements are epiphenomenal, merely reflecting the underlying probability of war resumption. I test hypotheses about the durability of peace using hazard analysis. Controlling for factors (including the decisiveness of victory, the cost of war, relative capabilities, and others) that affect the baseline prospects for peace, I find that stronger agreements enhance the durability of peace. In particular, measures such as the creation of demilitarized zones, explicit third-party guarantees, peacekeeping, and joint commissions for dispute resolution affect the duration of peace. Agreements are not merely scraps of paper; rather, their content matters in the construction of peace that lasts.
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Abstracts

In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO (2002)
by Richard H. Steinberg

This article explains how consensus decision making has operated in practice in the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO). When GATT/WTO bargaining is law-based, consensus outcomes are Pareto-improving and roughly symmetrical. When bargaining is power-based, states bring to bear instruments of power that are extrinsic to rules, invisibly weighting the process and generating consensus outcomes that are asymmetrical and may not be Pareto-improving. Empirical analysis shows that although trade rounds have been launched through law-based bargaining, hard law is generated when a round is closed, and rounds have been closed through power-based bargaining. Agenda setting has taken place in the shadow of that power and has been dominated by the European Community and the United States. The decision-making rules have been maintained because they help generate information used by powerful states in the agenda-setting process. Consensus decision making at the GATT/WTO is organized hypocrisy, allowing adherence to the instrumental reality of asymmetrical power and the sovereign equality principle upon which consensus decision making is purportedly based.

The Legalization of International Monetary Affairs (2000)
by Beth A. Simmons

For the first time in history, international monetary relations were institutionalized after World War II as a set of legal obligations. The Articles of Agreement that formed the International Monetary Fund contain international legal obligations of the rules of good conduct for IMF members. Members were required to maintain a par value for their currency (until 1977), to use a single unified exchange-rate system, and to keep their current account free from restrictions. In this article I explore why governments committed themselves to these rules and the conditions under which they complied with their commitments. The evidence suggests that governments tended to make and keep commitments if other countries in their region did so as well. Governments also complied with their international legal commitments if the regime placed a high value on the rule of law domestically. One inference is that reputational concerns have a lot to do with international legal commitments and
compliance. Countries that have invested in a strong reputation for protecting property rights are more reluctant to see it jeopardized by international law violations. Violation is more likely, however, in the face of widespread noncompliance, suggesting that compliance behavior should be understood in its regional context.

Constructing an Atrocities Regime: The Politics of War Crimes Tribunals (2001)
by Christopher Rudolph

From the notorious “killing fields” of Cambodia to programs of “ethnic cleansing” in the former Yugoslavia and Rwanda, the grizzly nature of ethnic and identity-centered conflict incites horror, outrage, and a human desire for justice. While the drive to humanize warfare can be traced to the writing of Hugo Grotius, current efforts to establish an atrocities regime are unparalleled in modern history. Combining approaches in international relations theory and international law, I examine the role political factors (norms, power and interests, institutions) and legal factors (precedent and procedure) play in the development of an atrocities regime. International tribunals have convicted generally low-level war criminals in both Rwanda and the former Yugoslavia, but they have had much more limited success in achieving their more expansive goals – deterring atrocities and fostering national reconciliation in regions fraught with ethnic violence. This analysis reveals additional institutional modifications needed to construct a more effective regime and highlights the importance of placing this new regime within a comprehensive international strategy of conflict management.

by Andrew Moravcsik

Most formal international human rights regimes establish international committees and courts that hold governments accountable to their own citizens for purely internal activities. Why would governments establish arrangements so invasive of domestic sovereignty? Two views dominate the literature. “Realist” theories assert that the most powerful democracies coerce or entice weaker countries to accept norms; “ideational” theories maintain that transnational processes of diffusion and persuasion socialize less-democratic governments to accept norms. Drawing on theories of
rational delegation, I propose and test a third “republican liberal” view: Governments delegate self-interestedly to combat future threats to domestic democratic governance. Thus it is not mature and powerful democracies, but new and less-established democracies that will most strongly favor mandatory and enforceable human rights obligations. I test this proposition in the case of the European Convention on Human Rights – the most successful system of formal international human rights guarantees in the world today. The historical record of its founding – national positions, negotiating tactics, and confidential deliberations – confirms the republican liberal explanation. My claim that governments will sacrifice sovereignty to international regimes in order to dampen domestic political uncertainty and “lock in” more credible policies is then generalized theoretically and applied to other human rights regimes, coordination of conservative reaction, and international trade and monetary policy.

Regime Design Matters: Intentional Oil Pollution and Treaty Compliance (1994)
by Ronald B. Mitchell

Whether a treaty elicits compliance from governments or nonstate actors depends upon identifiable characteristics of the regime’s compliance systems. Within the international regime controlling intentional oil pollution, a provision requiring tanker owners to install specified equipment produced dramatically higher levels of compliance than a provision requiring tanker operators to limit their discharges. Since both provisions entailed strong economic incentives for violation and regulated the same countries over the same time period, the variance in compliance clearly can be attributed to different features of the two subregimes. The equipment requirements’ success stemmed from establishing an integrated compliance system that increased transparency, provided for potent and credible sanctions, reduced implementation costs to governments by building on existing infrastructures, and prevented violations rather than merely deterring them.

The Regime Complex for Plant Genetic Resources (2004)
by Kal Raustiala and David G. Victor

This article examines the implications of the rising density of international institutions. Despite the rapid proliferation of institutions, scholars continue to embrace the assumption that individual regimes
are decomposable from others. We contend that an increasingly common phenomenon is the “regime complex”: a collective of partially overlapping and nonhierarchical regimes. The evolution of regime complexes reflects the influence of legalization on world politics. Regime complexes are laden with legal inconsistencies because the rules in one regime are rarely coordinated closely with overlapping rules in related regimes. Negotiators often attempt to avoid glaring inconsistencies by adopting broad rules that allow for multiple interpretations. In turn, solutions refined through implementation of these rules focus later rounds of negotiation and legalization. We explore these processes using the issue of plant genetic resources (PGR). Over the last century, states have created property rights in these resources in a Demsetzian process: As new technologies and ideas have made PGR far more valuable, actors have mobilized and clashed over the creation of property rights that allow the appropriation of that value.
This volume is intended to help readers understand the relationship between international law and international relations (IL/IR). The excerpted articles, all of which were first published in *International Organization*, represent some of the most important research since serious social science scholarship began in this area more than twenty years ago. The contributions have been selected to provide readers with a range of theoretical perspectives, concepts, and heuristics that can be used to analyze the relationship between international law and international relations. These articles also cover some of the main topics of international affairs. In this brief preface, we note the rise of law in interstate relations and flag some of the most important theoretical approaches to understanding this development. We also introduce the topics chosen and discuss the volume’s organization.

**THE RISE OF LAW IN INTERNATIONAL RELATIONS**

The study of international law has enjoyed something of a renaissance in the last two decades. Of course, international affairs have long been assumed to include international legal issues. Yet, in the first third of the twentieth century, analysts did not sharply distinguish “international law” from “international relations.” International relations courses were often about international law and frequently confounded the prescripts of international law with the way states were said to behave in fact. By the time the United States entered the Second World War, that illusory mistake was exposed: it was clear that international legal rules and processes had not operated the way many had hoped. The failure to
contain German and Japanese aggression, the weakness of agreements to keep the international economy functioning, and the humanitarian disasters of the Second World War made most observers acutely aware of the limits of law in international affairs. For more than thirty years after the end of the war, American political science turned its back on international law, focusing its study of international relations on the material interests and observed behavior of states.

Yet by the early 1980s, many international relations scholars had rediscovered a role for law in interstate relations. Reflecting on the post-war order, many recognized that it was built not only upon power relationships but also on explicitly negotiated agreements. These agreements in themselves increasingly piqued scholarly interest. One reason may have been the sheer proliferation of such agreements. A century ago, most international law was said to arise from custom – evidenced by continuous, recurrent state practice and *opinion juris* (i.e., the practice was compelled by legal obligation). For a number of reasons – including the growth of independent states, the lack of consent implied by many approaches to customary law, the increasingly detailed nature of international agreements, and the rise of multilateral treaty-making capacity, e.g. by various working groups of the United Nations – today, many (if not most) international legal obligations are expressed in treaty form. Some treaties codify customary law, but in a way that respects the express consent of the states that are parties to them.

Figure 1 shows the number of new multilateral treaties concluded in each quarter of the last century. While the number of new multilateral treaties grew from 1900 to 1975 and then began to decline in the 1976–95 period, Figure 1 strongly suggests that the aggregate number of multilateral treaties in force has grown rapidly in the last hundred years.

Not only has the number of treaties grown, so has the scope of topics and subjects addressed by treaty law. As Figure 1 suggests, treaty growth has been especially marked in economic affairs, as well as in areas of human welfare and the environment. Moreover, in the late nineteenth century, most international law defined the rights and responsibilities of *states* toward each other – purely “public” international law. Over the course of the twentieth century, international law increasingly began to address the responsibilities of states toward individuals and nonstate actors (characteristic of human rights treaties), and set forth rules governing the relationships of private individuals and nonstate actors toward each other – an expansion of private international law. This latter development is reflected in such important treaties as the United Nations

In this context, it is perhaps not surprising that the authority to adjudicate international disputes has been delegated increasingly to international courts. Figure 2 shows that the number of international judicial, quasi-judicial, and dispute settlement bodies has grown from just a handful in 1900 to nearly a hundred today. Moreover, the rate at which dispute settlement bodies are growing has accelerated in the last 25 years. Interstate disputes over territory, trade, human rights, environmental protection, intellectual property, labor protection, and criminal matters may now be resolved in international institutions that more or less resemble well-developed domestic legal systems in the way they apply legal standards, procedures, and norms to dispute resolution. Some of these institutions, such as the European Court of Justice (ECJ) and the World Trade Organization’s (WTO) dispute settlement system, have compulsory jurisdiction over member states or territories and enjoy impressive rates of compliance with their decisions.

What explains the explosive growth of treaty law, the broader scope of international law topics and subjects, and expansion of international venues for law-based dispute resolution? Does international law affect the behavior of individuals, states, and nonstate actors? How