INTERNATIONAL LAW AND THE POLITICS OF INTERDISCIPLINARITY

*Jeffrey L. Dunoff**

Anne Orford's *International Law and the Politics of History* (ILPH) provides a comprehensive and subtle analysis of the conceptual and political puzzles raised by the disciplinary encounter between law and history.[1] This short commentary seeks to locate ILPH in the broader legal literature addressing interdisciplinarity. I will argue that while Orford explicitly addresses the material and ideational motivations for international lawyers' "turn to history,"[2] she implicitly identifies the intellectual anxieties that prompt a broader range of interdisciplinary work undertaken by international legal academics. Thus, her account is more generalizable than ILPH suggests, and in this sense the text is even more intellectually ambitious than may appear at first glance.

Having located ILPH within a larger literature, I will identify several ways in which it both recapitulates and departs from recurrent moves found in these writings. To do so, I will focus on the book's treatment of the politics of the disciplinary encounter between law and history. I'll argue that Orford's account of these politics is an advance over previous accounts of the politics of interdisciplinary work and is more true to critical sensibilities. At the same time, and not surprisingly, ILPH runs the risk of reproducing some of the recurrent shortcomings found in legal writings addressing interdisciplinarity. For example, while the volume criticizes historians for presenting a straw man image of international lawyers, some readers may question whether ILPH sufficiently accounts for the methodological diversity and deep substantive disagreements found among historians, or whether it presents an unduly circumscribed picture of the discipline of history.

I'll then raise questions about the conceptualization of interdisciplinarity found in ILPH and the broader legal literature on disciplinary encounters. I focus on how these writings understand disciplines and the borders between them. While this literature often calls for new or different forms of interdisciplinary research, we might ask whether these writings tend to dissolve—or reify—disciplinary borders, and whether ILPH offers a fruitful approach to interdisciplinary work.

A brief conclusion offers some reflections on ILPH's claim that international law "is politics all the way down."[3]

---

* Laura H. Carnell Professor of Law, Temple University Beasley School of Law.

1. *See generally* ANNE ORFORD, INTERNATIONAL LAW AND THE POLITICS OF HISTORY (2021).

2. *See id.* at 70 (stating that international legal scholars' turn to history was driven by various motivations, professional styles, and scholarly ambitions).

3. *Id.* at 310.

TABLE OF CONTENTS

I. INTERDISCIPLINARITY AND POST-REALIST ANXIETIES

ILPH identifies several, presumably cumulative, causes of the well-documented "turn to history." One strand of the argument foregrounds a "material" set of explanations, which include the end of the Cold War, the United States' muscular response to the 9/11 attacks, the rise of the BRICS,[4] and a series of interlocking financial, economic, and climate crises.[5] A second strand of the argument focuses less on material than ideational causes. Here, the motivation for the "turn to history" is a claim by historians that international lawyers misuse and distort the past in the service of "presentist" ends.[6] This strand of the "turn to history" features sometimes heated debates over the historical methods and historiographical approaches appropriate to the study and practice of international law.[7] These debates often revolve around claims that history can serve as "a master interpretative discipline that [is] capable of producing verifiable and impartial accounts of international law."[8]

For current purposes, the ideational strand of ILPH's argument is more relevant. It immediately begs the question of why international lawyers would feel the need to seek "verifiable and impartial accounts of international law."[9] ILPH provides a response that deserves more attention than it receives in the book, in part because it is more generalizable—i.e., it helps to explain not only the "turn to history," but also the more general move to interdisciplinarity that marks much of contemporary international legal scholarship. I refer to ILPH's discussion of the legal realists' systematic attack on legal formalism.[10] It might be useful to supplement ILPH's account of realism by recalling and distinguishing two quite separate moves in the realist arsenal.

The first was to subject legal doctrine to rigorous analysis that exposed inconsistencies, unsubstantiated assumptions, and a propensity to present contingent outcomes as logically or doctrinally necessary. Influential realists demonstrated the

4. *Id.* at 57 (The BRICS membership consists of Brazil, Russia, India, China, and South Africa).

5. *Id.* at 18–69 (discussing how these four conditions led to this turn to history).

6. *See id.* at 44-56.

7. *See id.* at 74–92 (summarizing these debates over methods and approaches).

8. *Id.* at 92.

9. *Id.*

10. *Id.* at 288–89. To be clear, legal realism does play an important role in ILPH (for example, *id.* at 206–17) but not as a motivation for the turn to history.

ambiguities in legal doctrine; given "the indeterminacy of abstract concepts and the manipulability of precedent, it was almost always possible to appeal to competing and contradictory rules to decide any interesting contested case."[11] Realists thus demonstrated that adjudication was not—and could never be—mechanical or apolitical.

If legal doctrine is indeterminate, on what grounds can one make, let alone defend or critique, legal decisions? Put more sharply: how does one construct persuasive legal argument without either reverting to a discredited formalism, or effacing any distinction between "legal" claims and pure power politics? In short, how should lawyers respond to the realist challenge?

ILPH—as well as much legal thought for nearly a century—can be read as an effort to address the realist challenge and, at the risk of oversimplification, the responses fall generally into one of a handful of categories. One involves a shift from emphasizing the centrality of legal *rules* to emphasizing legal *process*. In U.S. domestic law, this approach:

> [F]ocuses primary attention on who is, or ought, to make a given legal decision, and how that decision is, or ought, to be made. Is, or ought, a particular legal question to be resolved by . . . courts, legislatures, or executive agencies? If by courts, at the trial level or by appellate tribunals? If at trial, by judges or juries? Subject to what standard of appellate review?[12]

An "international legal process" school likewise focused on the allocation of decision-making authority in the international legal sphere. At the same time, this school was equally a response to a different realist challenge—one from political science realism. Thus, international legal process writings sought to demonstrate international law's impact on international affairs.[13] Process-oriented approaches still occupy an important space in legal thought[14]—yet receive little attention in ILPH[15]—perhaps because these approaches might be seen as another variety of neoformalist thinking that elides underlying normative issues, and perhaps also because process is widely understood as having a substance of its own.[16]

A second response to the realist challenge embraces the proposition that law (including international law) is—in Orford's memorable phrase—"politics all the way down."[17] The insight animates many critical approaches to international law. Yet, unless nuanced in significant ways, this claim will be resisted by the mainstream

---

11. Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 470 (1988).

12. Akhil Reed Amar, *Law Story*, 102 HARV. L. REV. 688, 691 (1989).

13. A classic remains ABRAM CHAYES, THE CUBAN MISSILE CRISIS: INTERNATIONAL CRISES AND THE ROLE OF LAW (1974).

14. *See, e.g.*, Harold Hongju Koh, *Transnational Legal Process and the "New" New Haven School of International Law*, *in* INTERNATIONAL LEGAL THEORY: FOUNDATIONS AND FRONTIERS 101 (Jeffrey L. Dunoff & Mark A. Pollack eds. 2022).

15. *See* ORFORD, *supra* note 1, at 208–12 (summarizing anti-formalism approaches to international law).

16. *E.g.*, Laurence H. Tribe, *The Puzzling Persistence of Process-Based Constitutional Theories*, 89 YALE L.J. 1063 (1980).

17. ORFORD, *supra* note 1, at 315.

of a discipline that insists on a meaningful—if sometimes blurry—distinction between politics and law, with politics viewed as an arena for policymaking and interest group bargaining, and law understood, in contrast, as a site for employing particular forms of argumentation and reasoned decision making on the basis of principle. While this conceptualization may not be widely shared among members of law faculties, it nonetheless captures an important element of the profession's self-understanding.[18] Given these beliefs, it is difficult to envision the legal profession embracing strong forms of the claim that "law is politics all the way down," an observation indirectly strengthened by portions of ILPH highlighting instances where critical insights were overlooked, only to be "discovered" years later by mainstream scholars, often without acknowledgment that they were following in the footsteps of critical colleagues.

A third potential response—of greatest relevance for current purposes—is to take up the realist insight that law is an instrument of social policy. Doing so leads naturally to the conclusion that it is necessary to know something about society to understand, criticize, or improve the law. This logic led reform-minded realists to empirical, often social scientific, forms of inquiry in an effort to find "objective" methodologies that could ground legal decisions and doctrine in something other than political preferences. In later years, interdisciplinary legal scholars drew upon insights, concepts, and methods from an expanding list of neighboring disciplines—including economics, political science, psychology, philosophy, history, and other cognate disciplines.

One of ILPH's signature contributions is to highlight a contradiction in the interdisciplinary response to the legal realist challenge. The central claim here is that, just as legal analysis cannot provide "objective," "neutral," or uncontroversially "true" answers to the most important legal questions, neither can the cognate disciplines—prominently including history.

This is so for at least two reasons. The first rests on a general epistemological point. ILPH argues that it is not possible to undertake a "history" of "international law," or of particular international legal regimes or specific legal texts, from an objective perspective.[19] Although lawyers are told that "historical claims provide an exit from the uncertainty, self-doubt, or existential dread produced by arguments about the indeterminacy of legal rules,"[20] Orford persuasively argues that the empirical history on offer as a "master interpretative discipline" is less found than made.[21] Put more sharply, it is impossible to develop a theoretical perspective based upon a "view from nowhere;"[22] when scholars write history—as when they pursue

18. For a recent high-profile account, see STEPHEN BREYER, THE AUTHORITY OF THE COURT AND THE PERIL OF POLITICS (2021) ("If I catch myself headed toward deciding a case on the basis of some general ideological commitment, I know I have gone down the wrong path, and I correct course. My colleagues think the same way. All studiously try to avoid deciding a case on the basis of ideology rather than law."). To be clear, many are not persuaded by Breyer's arguments.

19. *See* ORFORD, *supra* note 1, at 256 (no neutral history of international is possible as no impartial account exists of what international law is).

20. *Id.* at 7.

21. *See id.* at 300 (history is inevitably "partisan and political").

22. For a discussion in the context of international legal theory, see Jeffrey L. Dunoff & Mark

economics, political science, psychology, or other disciplines—it is not possible to separate methodology from ideology. In brief, history as a discipline is neither more objective, nor any less ideologically charged, than law as a discipline, and the turn to history offers no satisfactory resolution to the realist challenge.

Second, the nature of the most interesting questions lawyers ask are not susceptible to "neutral," "objective," or "true" answers. Rather, the most important and most interesting questions that lawyers ask are deeply and inescapably normative. These questions—including at an abstract level over justice, legitimacy, rights and the allocation of authority; and at a concrete level over security, permissible forms of discrimination, and the allocation of material resources—are not susceptible of objective or impartial answers. Rather, the questions are deeply value-laden, and the responses to them rest on justifications and arguments rather than empirical proofs.

Variations of these claims can be, and have been, made in what is now a large body of legal writings on interdisciplinarity. In the sections that follow, I attempt to describe how ILPH both advances and reproduces certain recurrent moves found in this genre of legal scholarship.

II. ANALYZING INTERDISCIPLINARY LEGAL SCHOLARSHIP

Given the ubiquity of interdisciplinary legal analysis, a large literature addresses the strengths and limits of this type of scholarship. Perhaps not surprisingly, the arguments in these writings tend to contain a number of recurring moves or features. To identify just a few, these writings often present a history, or periodization, that features alternating periods of interdisciplinary harmony and antagonism. During the more harmonious periods, scholars from neighboring fields "discover" that they share common subjects of inquiry, calls for interdisciplinary work are issued, and research agendas are pursued. In more antagonistic periods, scholars from one (or both) of the disciplines break with the other. More specifically, at some point the legal literature will often feature a prominent backlash against interdisciplinarity. A standard move by opponents of interdisciplinarity is to argue that the methods or insights of the non-law discipline are of limited utility to lawyers because of fundamental differences in the purposes or goals of legal scholars and scholars in the non-law discipline. Finally, lawyers who object to interdisciplinary undertakings often warn about the undesirable "politics" associated with those undertakings.

By way of example, consider debates over "international law/international relations" (IL/IR) scholarship. The canonical texts in this field recount a story of disciplinary estrangement, prompted in part by international relations' (IR) preoccupation with the primacy of power as a driver of international affairs, eventually giving way to a period of rapprochement, as scholars from both disciplines recognized that they shared common interests in international rules and institutions as mechanisms for promoting international cooperation.[23] This

A. Pollack, *Introduction to International Legal Theory: Taking Stock, Looking Ahead*, *in* Dunoff & Pollack, *supra* note 14, at 3.

23. For a recent overview, see Jeffrey L. Dunoff & Mark A. Pollack, *International Law and*

"discovery," in turn, prompted calls for further collaborative research, and generated an outpouring of writings. ILPH's account of the "turn to history" likewise features a lengthy history of disciplinary estrangement, eventually leading at the end of the Cold War to a time when "international lawyers, legal historians, and historians more broadly were developing a collective interest in the past of international law. Not only did this offer areas of substantive overlap, but lawyers and historians seemed to have a common project . . . ."[24]

The excitement and enthusiasm that mark the era of cross-disciplinary discovery are often followed by a period of backlash. This backlash commonly includes efforts to draw borders and defend lawyerly turf, [25] complaints that scholars from the other discipline misunderstand the workings of international law or the purpose of legal scholarship,[26] and claims that concepts and insights from the non-law discipline are of limited use because of the different nature of the enterprises in which lawyers and non-lawyers are engaged.[27]

Each of these classic tropes appears in writings on the quarrels between lawyers and historians. For example, ILPH carefully details the many ways that historians misunderstand the diverse roles lawyers play and the various purposes of legal argument.[28] Thus, historians mistakenly view lawyers as adopting the "standpoint of the moralising judge or the scholastic formalist"[29] and fail to appreciate the multiple roles lawyers play, particularly the dual hats academic lawyers wear as members of a profession and as scholars. Finally, historians mistakenly view lawyers as possessing "a naive faith in metaphysical meanings, universal values, and progress narratives."[30]

The details of ILPH's analysis illuminate the complexities of the law/history encounter. Stepping back from the details, the *structure* of ILPH's argument is similar to that often found in the broader legal literature on interdisciplinarity. Yet several moves in ILPH represent important advances in this broader literature. I will foreground one of these: ILPH's discussion of the politics associated with the encounter between law and history.

International Relations: Introducing an Interdisciplinary Dialogue, *in* INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS 3 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2014).

24. ORFORD, *supra* note 1, at 75.

25. James Crawford urged international lawyers to focus on their own discipline: "We are lawyers first and last. We are not, as such, soldiers, accountants, economists, surveyors, cartographers . . . astrophysicists, river morphologists . . . the list is long of those we are not." And, lest anyone miss the point, he continued, "We are not, as such, political scientists. We are the professionals of our discipline—law." James Crawford, *International Law as Discipline and Profession*, 106 AM. SOC'Y INT'L L. PROC. 471, 484–85 (2012).

26. *See, e.g.*, Michael Byers, *Taking the Law Out of International Law: A Critique of the "Iterative Perspective*,*"* 38 HARV. INT'L L.J. 201, 205 (1997) (criticizing IR scholars for overemphasizing role of sanctions and ignoring the "very essence of law"—its normativity).

27. *See* Dunoff & Pollack, *supra* note 23, at 17-18 (discussing this critique in context of IL/IR research).

28. ORFORD, *supra* note 1, at 194-201.

29. *Id.* at 180.

30. *Id.* at 206.

III. THE POLITICS OF INTERDISCIPLINARITY

Many critiques of interdisciplinarity by legal scholars emphasize the "politics" of such research. But "politics" has more than one meaning in this context. One strand of argument emphasizes *disciplinary* politics and claims that interdisciplinary work is a project by partisans of one discipline to exert control over another. For example, in the context of IL/IR writings, Jan Klabbers memorably argued that:

> [i]nterdisciplinary scholarship is always, and inevitably, about subjection. Interdisciplinary scholarship is, more often than not, about imposing the vocabulary, methods, theories and idiosyncrasies of discipline A on the work of discipline B. Interdisciplinary scholarship, in a word, is about power, and when it comes to links between international legal scholarship and international relations scholarship, the power balance tilts strongly in favor of the latter.[31]

Another line of critique focuses less on the politics of the university than the politics of the larger world. In the international law context, these politics sometimes have a geopolitical dimension. Koskenniemi, for example, claimed that IL/IR scholarship "is an American crusade . . . [T]he interdisciplinary agenda itself, together with a deformalized concept of law, and enthusiasm about the spread of 'liberalism,' constitutes an academic project that cannot but buttress the justification of American empire . . . ."[32]

This geopolitical critique resonates with other discussions of the political salience of interdisciplinary work in law. Thus, law and economics, perhaps the most influential example of interdisciplinary work in law in recent decades, is often criticized as being politically conservative.[33] Put most crudely, the claim is that economic analysis provides an ideological justification for the unwarranted rejection of government intervention and for the valorization of liberalized markets. Likewise, as used in U.S. constitutional law discourse, "originalism"—which ILPH explicitly analogizes to the Cambridge School approach to history[34]—is often characterized as less a principled approach to constitutional interpretation than a "rationalization for

---

31. Jan Klabbers, *The Bridge Crack'd: A Critical Look at Interdisciplinary Relations*, 23 INT'L REL. 119, 120 (2009); *see also* Martti Koskenniemi, *Miserable Comforters: International Relations as New Natural Law*, 15 EUR. J. INT'L. REL. 395, 410 (2009) (IL/IR interdisciplinary scholarship "is not really about [disciplinary] cooperation but conquest"). The point has been generalized, and some lawyers claim that *all* forms of interdisciplinarity are efforts to take over a neighboring discipline. *See, e.g.*, Martti Koskenniemi, *The Politics of International Law – 20 Years Later*, 20 EUR. J. INT'L L. 7, 16 (2009) (describing interdisciplinarity as a means to occupy and conquer the academic field); *see also* J.M. Balkin, *Interdisciplinarity as Colonization*, 53 WASH. & LEE L. REV. 949, 949–52 (1996) (same).

32. MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960, at 484 (2004). Elsewhere, I have suggested that both lines of critique are exaggerated. Jeffrey L. Dunoff, *From Interdisciplinarity to Counterdisciplinarity: Is There Madness in Martti's Method?*, 27 TEMP. INT'L & COMPAR. L.J. 309 (2013).

33. The critique is not new. *See, e.g.*, Morton J. Horwitz, *Law and Economics: Science or Politics?*, 8 HOFSTRA L. REV. 905 (1980) (discussing the tendency of economic analysis to justify politically conservative positions).

34. *See* ORFORD, *supra* note 1, at 96–98.

conservatism."[35] As one leading constitutional scholar notes, "nearly all participants in debates about constitutional theory take for granted that originalist theories almost invariably have conservative or libertarian implications."[36] On the other hand, not all interdisciplinary projects are perceived to have conservative political implications. For example, feminist legal theory, legal thought informed by various literary theories, and sociological and anthropological approaches to law are widely understood as having a liberal or left tilt.[37]

Like other analysts of interdisciplinary work, Orford focuses on the "politics" of the encounter between law and history. Interestingly, ILPH provides two quite different accounts of these politics. The first is an account of the *historians*' view of these politics, and the structure of the argument is quite familiar, even if the details are not. ILPH explains that generations of historians have presented international lawyers:

> as symbols and champions of ahistorical or traditional thinking, who defend the status quo through appealing to continuity and tradition, have a naïve belief that legal concepts or doctrines exist outside or beyond the specific time of their creation, and imagine that legal forms somehow exist independently of the social, economic, or political context in which they operate.[38]

In brief, in this view lawyers are (Burkean?) conservatives, functioning largely as apologists for the existing order, and historians bring intellectual approaches and conceptual frameworks that promise to destabilize the certainty of legal claims and, presumably, thereby open space for reformist, if not radical, political change.

To be clear, Orford persuasively argues that the historians' account of the politics involved in the disciplinary encounter is deeply mistaken. To do so, ILPH deploys another classic trope in the literature on interdisciplinarity, which is to claim that scholars in the neighboring discipline misunderstand law. Specifically, the historians who would liberate international lawyers from their attachment to abstract conceptualism and metaphysical foundations do not understand contemporary international law. As Orford correctly notes, "[t]he idea that law is a social product rather than a set of rules handed down from time immemorial or from some divine source is now a commonplace feature of legal thought."[39] To summarize the gist of

---

35. Richard H. Fallon, Jr., *Are Originalist Constitutional Theories Principled, or Are They Rationalizations for Conservatism?*, 34 HARV. J.L. & PUB. POL'Y 5, 6 (2011).

36. *Id.* at 22.

37. *See, e.g.*, FEMINIST JUDGEMENTS IN INTERNATIONAL LAW (Loveday Hodson & Troy Lavers eds., 2019); Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991); MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (1989); DAVID KENNEDY, INTERNATIONAL LEGAL STRUCTURES (1987); RESEARCH HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW (Moshe Hirsch & Andrew Lang eds., 2018); THE OXFORD HANDBOOK OF LAW AND ANTHROPOLOGY (Marie-Claire Foblets et al. eds., 2020); ANTHROPOLOGY AND LAW: A CRITICAL INTRODUCTION (Mark Goodale ed., 2017).

38. *See* ORFORD, *supra* note 1, at 174.

39. *Id.* at 287. *But see* Francisco Quintana & Sarah Nouwen, *In Defense of International Law?* 36 TEMP. INT'L & COMPAR. L.J. 65 (2022) (arguing that formalism is still widespread among international lawyers in certain regions of the world).

this criticism, it seems that the historians who criticize the metaphysical groundings of legal scholarship did not receive the memo explaining that international lawyers "are all realists now."[40]

Much more intriguing is Orford's own conceptualization of the "politics" of the law/history encounter, which can be sharply distinguished from the academic, ideological, geopolitical, or partisan politics that other critics foreground. For Orford, the "politics" of the turn to history have little to do with left or right, liberal or conservative, but rather consist of the false promise of a (re)turn to "neoformalism."[41] By neoformalism, it appears that she means a return to the belief that, by proper use of the proper method, one can identify objectively neutral or true accounts of legal doctrine. These true accounts are revealed not through abstract legal reasoning, as earlier generations of formalists might have claimed, but rather through empiricist historical research. This research, in turn, is said to "offer[] an impartial and undistorted account of what a treaty is, what its authors intended, or the relation of its purpose to is meaning," and thus generate determinate answers to questions about legal meaning.[42] The purported ability to generate unambiguous and correct results to legal inquiries is what renders the "turn to history as a method for thinking about law . . . strongly neoformalist."[43]

I read Orford to claim that the *political* problem associated with the historical turn is that —like other types of formalistic reasoning—it denies the political, moral, social, and economic choices involved in legal decisions (indeed, it denies that there is any choice at all). The coercive and reductive power of the "truths" revealed by history is that they treat as inexorable decisions that in fact involve contingent and consequential substantive choices. This denial of choice, or agency, is for Orford the political dimension of the turn to history. The "politics" of historically inflected legal argument, then, is the politics of inevitability; it is the denial of choice and agency. This politics also constitutes an avoidance of responsibility, an issue I briefly return to below.

Orford's account of the politics of the disciplinary encounter is a significant departure from the more typical accounts that emphasize partisan or disciplinary politics. To be sure, others have debunked the purportedly value-free methodologies of neighboring disciplines,[44] but Orford has brought this argument to a prominent spot in international legal discourse, and this is a welcome development. International lawyers, particularly critical international lawyers, should not readily accept that adopting a particular methodology is politically conservative or liberal. For example, economic approaches are commonly associated with politically "conservative" outcomes that valorize markets and criticize governmental

40. *See* ORFORD, *supra* note 1, at 15, 286.

41. Use of this term is potentially confusing for at least two reasons. First, it is used in different senses in U.S. domestic law in constitutional, contract, and commercial law scholarship. Second, many modern understandings of neoformalism often involve both realist and formalist insights. *See* Cass Sunstein, *Must Formalism Be Defended Empirically?*, 66 U. CHI. L. REV. 636, 643–45 (1999).

42. *See* ORFORD, *supra* note 1, at 235.

43. *Id.* at 319.

44. *See, e.g.*, J. M. Balkin, *Too Good to Be True: The Positive Economic Theory of Law*, 87 COLUM. L. REV. 1447 (1987); Ronald Dworkin, *Is Wealth a Value?*, 9 J. LEGAL STUD. 191 (1980).

interventions, yet economic approaches can just as readily be used to illuminate market failures justifying government regulation as they can be for deregulatory efforts.[45] Likewise, international relations approaches can lead to claims that international law is irrelevant to international affairs, or to claims highlighting the multiple ways international norms help states achieve individual and collective goals.[46] Similarly, historical approaches can be deployed to produce either politically "liberal" or "conservative" legal outcomes. Those familiar with U.S. constitutional law may recall, in this regard, Justice Scalia's "originalist" opinion and Justice Stevens's equally "originalist" dissent in *Heller*[47]—an important Second Amendment case—or the various ways that "[b]oth states' rights advocates and those who believe in strong federal government have relied on history for support."[48] Indeed, legal scholars with critical sensibilities might go so far as to suggest that the various interdisciplinary methods on offer to lawyers are as indeterminate as the texts they purport to explicate. For these reasons, we should welcome Orford's break with tradition and decision not to claim that the use of historical methodologies has a partisan political valence.

IV. DISSOLVING—OR REIFYING—DISCIPLINARY BORDERS?

Many writings on interdisciplinarity adopt a "compare-and-contrast" strategy, in which the aims, methods, and nature of law are juxtaposed against those of the neighboring discipline to assess the utility, desirability, and politics of the disciplinary encounter.[49] We should note two features of this strategy. First, this approach presupposes the coherence and integrity of law and the cognate disciplines, and second that "there really *are* ends to law or legal scholarship and that those ends really *are* different from those of philosophy or history."[50] In this view, disciplines are defined by their own methods and standards, which in turn supports the frequent claim that scholars from one field misuse or misunderstand concepts or approaches from the neighboring field—precisely the critique that empiricist historians make about international lawyers. This line of argument, commonly found in legal writings on interdisciplinarity, tends to reify disciplinary borders.

One could, however, imagine a different, more radical approach that turns the argument around. That is, instead of reinforcing disciplinary boundaries, might those who reflect on interdisciplinarity question the treatment of disciplines as

45. Jeffrey L. Dunoff & Joel P. Trachtman, *Economic Analysis of International Law*, 24 YALE J. INT'L L. 1, 8–9 (1999).

46. Mark A. Pollack, *Is International Relations Corrosive of International Law?: A Reply to Martti Koskenniemi*, 27 TEMP. INT'L & COMPAR. L.J. 339 (2013).

47. District of Columbia v. Heller, 554 U.S. 570 (2008). For a recent critique of originalism as an anachronistic effort to impose modern thinking on the eighteenth century, see Jonathan Gienapp, *Written Constitutionalism, Past and Present*, 39 L. & HIST. REV. 321 (2021).

48. Farah Peterson, *Expounding the Constitution*, 130 YALE L.J. 2, 6 (2020).

49. Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L.J. 1059, 1061 (1999).

50. Jane B. Baron, *Interdisciplinary Legal Scholarship as Guilty Pleasure: The Case of Law and Literature*, *in* LAW AND LITERATURE 21, 22–23 (Michael D.A. Freeman & Andrew D.E. Lewis eds., 1999).

hermetically sealed domains or, pushing even further, question the stability and integrity of academic disciplines? Indeed, this is precisely the direction in which ILPH moves. Orford is insistent that "[t]here is no impartial and agreed account of what 'international law' is," and that writing a "history of international law involves writing a history of something for which there is no stable referent or fixed object."[51] Rather than reify international law, or its disciplinary boundaries, Orford argues that "there is no objective answer to the question 'what is international law?'"[52] This move represents an important departure from most of the writings on interdisciplinarity which seem to presuppose strong and (relatively) fixed forms of disciplinary coherence.

If, as ILPH argues, neither history nor other disciplines can produce truly objective, universalistic research methods for its practitioners, and if no scholarly field or endeavor can escape the ideological leanings of its practitioners, should we reject the very notion of disciplines—and with it, the very possibility of interdisciplinarity? We should not be so quick to dismiss academic disciplines. As Balkin notes, a "discipline organizes and empowers thought. It makes having certain kinds of thoughts possible. Disciplines create forms of reasoning by the very organization they impose on the mind. Disciplined thought is organized thought . . . . an undisciplined mind would be unable to proceed very far."[53] And, despite its criticisms, I do not take ILPH to urge rejection of either disciplines or interdisciplinarity.

Instead, I take Orford to be urging a questioning of disciplines, and a blurring of disciplinary lines, or at least a building of bridges across disciplinary divides.[54] Near the end of a text devoted largely to criticism of contextualist history, Orford emphasizes the "many affinities between the politics of contextualist historiography and the politics of much critical work in international law during the late twentieth and early twenty-first centuries," particularly in critiquing the "militant liberal ideology" associated with certain Western states.[55] She also hints that, notwithstanding recent quarrels between members of the two disciplines, this alliance may yet prove fruitful in the future: "the methods developed by the contextualist intellectual history tradition embody a political and normative content that may be useful for international lawyers in certain situations."[56]

I read ILPH as offering an innovative defense of interdisciplinarity, *not* as a means of resolving doctrinal controversies, or even for addressing larger jurisprudential debates over the meaning or purpose of international law. Indeed, Orford is clear that a turn to other disciplines cannot credibly claim to answer such questions. Rather, the turn to history, and by implication other disciplines, can be

51. ORFORD, *supra* note 1, at 256.

52. *Id.*

53. Balkin, *supra* note 31, at 955.

54. Orford has thoughtfully addressed related questions of disciplinarity in other writings. *See, e.g.*, Anne Orford, *Scientific Reason and the Discipline of International Law*, *in* INTERNATIONAL LAW AS A PROFESSION 93 (Jean d'Aspremont et al. eds., 2017).

55. ORFORD, *supra* note 1, at 317.

56. *Id.* at 316.

productive insofar as it can illuminate the fact that international lawyers inescapably confront genuine choices. Interdisciplinarity is useful not for the usual reasons scholars offer, as "[t]here is no authority to which we can appeal and no method that will establish that our account of facts or our version of truth is the correct one,"[57] but rather as a means to reinforce the notion that we possess agency, and our decisions have normative and political implications. This argument is, no doubt, intended to be liberating. It can be read as empowering. And yet . . .

V. SHORT CONCLUSION, LARGE QUESTIONS

Reduced to its essence, and stripped of its considerable nuance, ILPH is an impassioned plea for international lawyers to take responsibility for their actions. The underlying insight is that traditional tools of legal analysis cannot rescue legal text from indeterminacy. In a misguided quest for certainty, international lawyers have turned to other disciplines, prominently including history, which promises to "expos[e] myths and fictions and replac[e] them with evidence and facts."[58] But this promise is empty, as:

> no other discipline or method can save us . . . [or] offer us . . . escape from uncertainty or redemption . . . All that is available is to construct an argument and commit to the premises or values underpinning it, knowing and fully accepting that everything about it is contingent. We need to take responsibility for those choices and their implications . . . .[59]

Orford's is a powerful and passionate argument, powerfully and passionately written. One large, unanswered question is whether the realist insight that law is indeterminate leads inexorably to the conclusion that "law is politics all the way down."[60] This conclusion is central to ILPH's argument, yet one might wonder if it is possible to accept the realist insight without necessarily embracing the implications ILPH draws? For example, might individuals who internalize the hermeneutic of suspicion ILPH describes nonetheless experience indeterminate legal norms as possessing a power to constrain? If so, how often would it be normatively desirable that international actors understand themselves to be legally constrained? Might a sense of constraint be a useful tool to restrict misguided, incompetent, wicked or simply mistaken decisionmakers whose sense of the good might diverge from that of the system that they purport to serve? Surely there are no simple nor, dare one say, acontextual answers to these questions. But I do think that these and similarly weighty questions lie close to the heart of the understandings that ILPH's insightful analysis reveals.

57. *Id.* at 320.
58. *Id.* at 319.
59. *Id.* at 320.
60. *Id.* at 310.