
Within and Beyond Interdisciplinarity in International Law and Human Rights

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Moshe Hirsch. *Invitation to the Sociology of International Law*. Oxford: Oxford University Press, 2015. Pp. 240. £50. ISBN: 9780199688111.

Pamela Slotte and Miia Halme-Tuomisaari (eds). *Revisiting the Origins of Human Rights*. Cambridge: Cambridge University Press, 2015. Pp. 420. £82. ISBN: 9781107107649.

1 Introduction: Disciplinarity as Politics

To discuss interdisciplinary work is a disciplinary policy exercise on many levels, and it may be quite daunting, even frustrating, and, therefore, oftentimes, one has an urge to push past it despite the irritating suspicion that there is a whole iceberg under the surface. The first source of discomfort is that one is rarely equally adept in two, let alone several, disciplines; second, all disciplines have a multitude of approaches, sub-disciplines, and idioms whose stances and internal quarrels may be difficult to fathom and, third, there is the nagging sense of what the value of ‘disciplines’ or disciplinarity is anyway. There are many ideological positions as to what disciplinarity means, what its value is and whence disciplinary authority should come. Reading Moshe Hirsch’s *Invitation to the Sociology of International Law* together with Pamela Slotte and Miia Halme-Tuomisaari’s anthology *Revisiting the Origins of Human Rights* requires an introductory elaboration on what ‘interdisciplinarity’ – or multi-, pluri-, anti-, trans- or even counter-disciplinarity – might or could mean in and for international law and other disciplines, and how these meanings inform observations, policies, choices and recommendations. I shall use the term ‘x-disciplinarity’ when

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I do not wish to distinguish or prioritize between inter-/multi-/pluri-/trans-/counter-/anti-approaches to disciplinarity.

Interdisciplinarity has become a somewhat loosely applied term pointing to visions of methodological and theoretical modernization. It is included in many a university and faculty strategy paper without any of the qualms mentioned above and bereft of careful definition. In this sense, it is understood more as a diplomatic move, also by law faculties, to connote that, of course, international law faculties are ready and willing to learn from, and liaise with, other disciplines. This stance takes interdisciplinary association as a gateway for more strategic prominence in international law. We may hope that interdisciplinarity improves the perception of international law's relevance because, if associated with, for example, political, economic or natural sciences, 'a stakeholder public may see political, economic and social value in international legal training as something more than just mastering formal rules'.¹

Thus, it is not only knowledge, but also many strategic interests, that drive x-disciplinary politics in all scientific disciplines. It is no wonder then that, in recent years, there has been a rise of non-mono-disciplinary, less traditionally legalist scholarship in international law. It can be seen as a collective response to fundamental challenges and as expression of the eternal competition between and within disciplines for strategic and scientific relevance. Depending on how far one wants to trace the recent phenomena, one can find the 'fall of international law' in the 1960s as Martti Koskenniemi does,² or the rise of a dual agenda of international law/international relations (IL/IR) in the 1990s as Anne-Marie Slaughter, Andrew Tulumello and Stepan Wood do,³ or the emergence of new approaches to international and global law as Jose Maria Beneyto and David Kennedy have done since the 1980s and 1990s.⁴ There are also more scholars educated or reading heavily in philosophy, women's studies, economics, anthropology, sociology or literature⁵ hired in international law fora, increasingly in the new millennium. One may associate oneself more with the shift towards a dual agenda – most conspicuously, the IL/IR or the law and economics bi-disciplinarity – or more with the pluralist approaches of many different disciplinary border crossings.

These choices divide the x-disciplinary interests and movements quite fundamentally. Those who prefer one bi-disciplinary posture to all other possible disciplinary associations tend to be much more traditional in their attitude towards disciplinarity and disciplinary politics. On the contrary, if one associates oneself with the collective pluralist shifts, one is likely to be 'for' inclusiveness and various different ways of transcending disciplinary boundaries and open to ever renewing vocabularies and styles. If the bi-disciplinarity is for recreating stability with the one steady disciplinary

¹ N. Rajkovic, 'The Transformation of International Legal Rule and the Challenge of Interdisciplinarity', Inaugural address, Tilburg University, 27 May 2016, 23.

² M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001).

³ See, e.g., Slaughter, Tulumello and Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship', 92 *American Journal of International Law* (1998) 367.

⁴ J.M. Beneyto and D. Kennedy (eds), *New Approaches to International Law: The European and the American Experiences* (2012).

⁵ See, e.g., A. Orford and F. Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (2016).

interrelationship, the pluri-disciplinaries are open for continued destabilization. The more liberal one is to what scientific disciplinaryity requires, the more one is 'against' disciplinary turf wars or pluristic epistemic tendencies aimed at excluding concepts, thought patterns, ideas, methodologies – and, ultimately, colleagues and audiences – from restricted access domains – that is, disciplinary fora and jobs.

Even a most liberal, inclusive and welcoming disciplinary ethos may, however, alternate with, or even turn into an anxiety when one is faced with, not only the epistemological phenomena of porous disciplinary borders and the intellectual challenges that ensue but also with the political economy and institutional politics of today's globalized 'knowledge economy'. In international law faculties, we encounter challenges stemming from the fact that 'universities and disciplines seem to be losing their monopoly over the terms of knowledge production', we must 'interact and compete with a network of public/private think-tanks and cross-disciplinary research institutes', we also rely increasingly on "external" funding agencies for the formulation of research problems' that keep pushing ever new 'hybridizing notions' such as 'policy-relevance, global governance, or climate change' and new strategic priorities that we need to accommodate in our research and teaching offer.⁶

In this review article, I shall identify what kinds of disciplinary stances Hirsch's and Halme-Tuomisaari and Slotte's books represent and discuss their contributions, keeping in mind the underlying disciplinary politics that the review of such books necessarily involves. I shall first elaborate on the concept of disciplinaryity, then characterize the most familiar forms of x-disciplinary work in international law today. In the latter parts of the article, I shall give an overview of the content and main arguments of the two books and discuss their merits and contributions against the background and context of international law's contemporary disciplinary politics and options.

2 Disciplinarity as Market Position

The reader (supervisor, evaluator, referee, reviewer, audience member) of interdisciplinary work must come to terms with the academic policy, political economic and funding policy consequences of what she makes of disciplinary turfs or no turfs – epistemically, academically, socially, pedagogically, economically and politically – on a daily basis. These questions abound. One has to take a position on a myriad of general and highly specific questions such as whether an interdisciplinary human rights record qualifies a person for a professorial-level position in the 'field of international law' in a traditional law faculty; how the 'field of international law' is to be defined for the purposes of recruitment or in the university catalogue; whether a study utilizing psychoanalytical methodology qualifies as a doctoral dissertation in (international) law; whether a European Union (EU) law expert can qualify as an international law professor and vice-versa; what is/are the core topic/s of the international legal discipline; what is the correct position of the field of international law in the map of all

⁶ For the international relations/international law context, see Rajkovic, *supra* note 1, at 19.

other legal fields; should international law be one of the core fields of the law curriculum and should it be part of the first-year curriculum or rather ‘merely’ an elective. All of these questions presuppose a stand on disciplinary politics.

The quotidian questions take for granted that there is a turf – a discipline of law and, within it, a field of law and the sub-discipline of international law. They imply that someone ‘certified’ in that turf should act as a guardian of the entry to, and the upholder of, the standards of the same. The guardianship and standard keeping are not neutral; they are exercises of power and authority that one performs every day. The responses to the quotidian questions are not only theoretical or superfluous. They influence and decide the funding and futures of real people and projects, not to mention participate in the rise or decline of the ‘status’, ‘currency’, ‘stock’ and relative significance of the scholarly market and the entities (competing) within and against it. Nicolas Rajkovic’s discussion on IL/IR interdisciplinarity provides again an instructive observation that applies to bi- and multi-disciplinary relations more widely. While relating the market logic of IL/IR disciplinarization to developments in American society and academia in the inter- and post-war periods, he describes the shift to a marketized academia as follows: ‘The triad of discipline-department-degree ... reconfigured scholarship into a series of corporate economies where the existence or growth of each discipline depended on cultivating the perceived social value of one’s scholarly market and, vitally, degree as a coveted asset for social purpose.’⁷

It seems that the same logic of social value accrual, degrees as disciplinary and social assets and becoming aligned to the societies’ political aspirations have only increased in the more contemporary period. The university and funding reforms in Europe, for instance, have promoted and articulated such alignments as matters of accountability that the academy, science and funded research must show towards their host communities. As the European Centre for Strategic Management of Universities describes for the contemporary university funding ‘is a means to an end; it is an instrument used by public authorities to affect the behaviour of an agent or an organization – say a ‘spending unit’. The funder (or ‘budget holder’) is expecting the spending unit to work on achieving particular outcomes. Funding is often the foundation of other governance instruments that enforce common goals set for higher education (for example, access, efficiency). Funding sets incentives for certain behaviour.’⁸ The incentivized behaviour encompasses increased productivity, efficiency, policy relevance, economic accountability for public funds, leaner administration and performance management measured by frequent audits, outputs and so-called ‘impacts’. In this contemporary academic climate, the market-utilitarian consequences of disciplinary postures are evaluated and de/appreciated in the same way as the IL/IR evolution several decades ago that Rajkovic describes.

Independent of the market-utilitarian considerations for or against x-disciplinarity, one must also note that there are necessarily illiberal connotations to disciplinary

⁷ See Rajkovic, *supra* note 1, at 13.

⁸ European Centre for Strategic Management of Universities, *Funding Higher Education: A View across Europe* (2010), at 10.

control, gatekeeping and guardianship: the exclusionary sentiment, the perpetuation of a member-only club, segregation, reification, hierarchization, discrimination, submission to examination, surveillance and control and, not least, the justification 'to discipline' members as well as applicants/prospectives. Although the Latin origins and etymologies of the concept of 'discipline' and 'disciple' may seem neutral at first glance, one must also recognize the 'discipline-and-punish' tradition within disciplinary control systems. To accept a discipline, to be socialized into it, to be 'yoked', implies many levels of continuous submission (rituals), while the gain and rise within disciplinary hierarchies also implies bounded emancipation and privilege. The latter, however, are not independent of the former. Applying to any 'evaluation' practice – whether a traditional student examination, doctoral defence, job talk or the more recent panopticon of multiplying audit practices within institutions – Michel Foucault's words elaborate on the discipline, hierarchy production, normalization, exercise of power and punitive control that are present in any strict mechanisms of disciplinarity that start with the qualifying examinations:

The examination combines the techniques of an observing hierarchy and those of a normalizing judgement. It is a normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges them. That is why, in all the mechanisms of discipline, the examination is highly ritualized. In it are combined the ceremony of power and the form of the experiment, the deployment of force and the establishment of truth. At the heart of the procedures of discipline, it manifests the subjection of those who are perceived as objects and the objectification of those who are subjected.⁹

Given both the economic market-utilitarian consideration and the power/knowledge aspect of disciplinary politics, it is curious, therefore, how often the most ardent gatekeepers and discipliners of international law portray themselves as the most objective, ideologically disinterested and humanitarian representatives of a settled field – to whom their own approaches and scholarly postures are 'natural' and 'normal' – while others are 'ideological', 'marginal' or euphemistically condoned as 'alternative'.

3 A Taxonomy of X-Disciplinarity in International Law Today

Rajkovic's discussion calls for clarity as to disciplinary postures. He warns that multi-/pluri-/cross-disciplinarity are not the same thing. Referring to interdisciplinarity literature and, in particular, to accounts of IL/IR and politics interrelations, he says that a:

[c]loser scrutiny of these terms reveals how each expresses different visions of the possible degree to which disciplines can be integrated. Where the terms cross-disciplinary and

⁹ M. Foucault, *Discipline and Punish, The Birth of the Prison*, translated by Alan Sheridan (1995), at 184–118; Rajkovic, *supra* note 1, at 5.

multidisciplinary emphasize disciplinary boundaries, while transdisciplinary is nearer to ‘a total system without any boundaries between disciplines’.

He insists that conflating the various terms (x-disciplinarity) is more than a semantic problem since it ignores the crucial question of ‘how to shape social perceptions of both the value and placement of different types of knowledge’.¹⁰

While Rajkovic is right about the desirability of avoiding confusion and the important need not to ignore the politics involved, the inter/cross-/multi- and trans-disciplinary postures do not exhaust the variety of stances that different scholars take these days. In addition to the socio-political status and implications of one’s disciplinary stance, political identity and (socio)-psychological and philosophical meaning is not to be discounted. These meanings reach much beyond social perception of value or discursive semantics. Many feminist approaches, subaltern studies and law and culture are exemplary of these further implications.¹¹ Thus, there are epistemic, political, social, economic, cultural and academic, individual and collective consequences and conditions to defining disciplinarity in one way or another. With such caveats relating to the infinitely rich phenomenology of x-disciplinary postures, the following is a tentative and non-exhaustive taxonomy of three broad and conspicuous x-disciplinary postures in international law today. The idea is not to classify and, hence, ‘discipline’ contemporary modes of work into strict categories but, rather, just to give a sense of what is meant by these terms in the following discussion and review commentary on Hirsch, Halme-Tuomisaari, Slotte and the other featured authors.¹²

A Bi-disciplinarity

Bi-disciplinarity in its modest kind may only ‘borrow’ a method or technique from another field, while, simultaneously, it asserts its own proper home-disciplinarity through attachment to a very specific and well-defined field; it is very much like traditional or even absolute sovereignty – interventions to other sovereign turfs are rare and formally controlled. Bi-disciplinarity in its strict forms is bilateral diplomacy between two sovereign fields with the requisite sovereign and diplomatic immunities guarded in all disciplinary exchanges.

As an example of prominent bi-disciplinarity, the dual agenda of IL/IR has gained an institutionally well-recognized position in the USA; more globally, IL/IR scholarship has been produced by academics well versed in international politics and political and social science in general. Another example is the law and economics bi-disciplinarity practised by, for example, international economic and trade law scholars. A more critical approach that combines legal and economic science is the law and development

¹⁰ Rajkovic, *supra* note 1, at 6.

¹¹ E.g., Charlesworth, Chinkin and Wright, ‘Feminist Approaches to International Law’, 85 *American Journal of International Law* (1991) 613.

¹² I shall refrain from naming particular scholars as exemplary authors of the taxonomy here since, first, it might focus unnecessary attention to the accuracy of any such assignments (which is not the focal argument here) and, second, I regard it as each scholar’s individual privilege to either sign up for, or stay away from, such disciplinary classifications.

studies' approach, which, through the disciplinary combination field of development studies, easily tends towards multi-, pluri- and trans-disciplinarity.

B Multi-, Pluri- and Trans-disciplinarity

The authors of multi-, pluri- or trans-disciplinary scholarship are not as strictly 'discipline' or 'turf' conscious as bi-disciplinaries, or, at least, they are happier with multilateral disciplinary diplomacy than strict bilateral structures. They are also less, if at all, wary of mutual 'contamination'; they embrace it as disciplinary 'multi-culturality' and are confident that each separate discipline can only benefit from crossing influences and 'other ways' of doing science that float over disciplinary borders. Feminism-informed research on (international) law provides many prominent examples. Pluri-disciplinarity is the conscious effort to seek illumination on a subject from a variety of different disciplines concerned with it. Many collective research agendas benefit from pluri-disciplinarity – for example, the International Panel on Climate Change and the International Panel of Social Progress, in which efforts to approach the same subject or general research question from many disciplinary angles are utilized to produce many-sided, yet, more or less, common, research outcomes.

Trans-disciplinaries not only acknowledge disciplinary borders but also promote different kinds of border-crossings and migrations into other disciplinary projects – the borrowing and use of methodologies, concepts, findings and even more complex research agendas. Trans-disciplinarity has led to the creation and establishment of new teaching and academic fields such as 'environmental studies' that include ingredients from a variety of social, natural and human sciences and that are characteristically exercised from many more different methodological starting points than law, for example. Typically, multi-disciplinaries are more relaxed as to 'disciplinary procedures', in Foucault's sense, and do not restrict bibliographical, empirical, methodological or other sources from being specified 'classes' or fields; they may practise methodological poaching and the use of metaphors, interpretations and applications of knowledge from unrestricted sources as in, for example, the scholarship that is identified with the 'turn to historiography' in international law.¹³

C Anti-, Counter- and Post-Disciplinarity

Anti-, counter- and post-disciplinarity can be characterized as more radical forms or onto-epistemological critiques of disciplinarity; thus, they problematize the consequences of disciplinary choices beyond utility, strategic visibility and methodological gains. They foreground the social, ideological and power/knowledge links of disciplinary stances and approaches. They encompass different levels and types of fundamental criticism towards strict and formal disciplinarity, disciplinary borders, exclusive turfs and disciplinary socialization (rituals) as submission to external authority. Anti- and counter-disciplinarity emphasize the need to work against the regressive and

¹³ Craven, 'Theorizing the Turn to History in International Law', in Orford and Hoffmann, *supra* note 5, 21.

conservative ‘discipline-and-punish’ functions that are exercised through the examination, surveillance, audit, referee and evaluation procedures and mechanisms within academia and more widely. They promote emancipatory processes of knowledge formation, and they are critically aware and articulate the power/knowledge, epistemic violence, production of reality effects and the knowledge-monopolization tendencies within strict disciplines and conservative or protectionist disciplinary policies.

Post-disciplinarity is less concerned with the need to subvert and critique contemporary disciplinary power politics; it may strategically acknowledge disciplinary divides in a superficial sense – for example, when one submits a funding application to a specific scientific field committee – yet it seeks emancipation through a move beyond debates about disciplinary borders and their implications as much as possible. Even if within the third classification the post-disciplinary posture may seem more ‘cool, calm and collected’ than, for example, a perpetual engagement in heated turf debates, it must be noted that disciplinary politics are not likely to disappear even if many scholars think that they should. As Rajkovic says, ‘prognostications that involve the “post” prefix, or specifically the intimation of a “post-disciplinary” future for International Law, likely amount to hurried or even ideological assessments divorced from evolutionary pragmatics: ... disciplines retain considerable social resilience’.¹⁴ Although many disciplinary-conscious scholars may seem to lean towards post-disciplinarity for its obvious coolness appeal, the classifications of this taxonomy are not absolutist, and most scholars will rather wander across them than stick to one perpetually. It is very much like the relationship of modernity and postmodernity; it has more commonly produced hybrid or oscillating ‘mpm’ conditions than pure and stable modernist or post-modernist stances, as Duncan Kennedy has shown.¹⁵

With the many caveats in mind, this tentative taxonomy will be used as a background to the analysis and reflections on, first, Hirsch’s and, second, Halme-Tuomisaari and Slotte’s very different x-disciplinary projects, their potentials and their limitations.

4 *The Invitation to the Sociology of International Law and Bi-disciplinarity*

With the introductory remarks of what venturing beyond one discipline or legalist international law may entail, it is now possible to review Hirsch’s book as one exemplary exercise of bi-disciplinarity.¹⁶

A Bi-disciplinary Diplomacy

Hirsch’s work is both an introductory book and a collection of case studies for those that are interested in the sociological dimensions and analyses of international law. As

¹⁴ Rajkovic, *supra* note 1, at 19

¹⁵ D. Kennedy, *A Critique of Adjudication (fin de siècle)* (1997–1998), at 7–8, 342–350.

¹⁶ See Hoffmann, ‘International Legalism and International Politics’, in Orford and Hoffmann, *supra* note 5, 954, at 954.

such, it is much needed for international lawyers since their training in social theory is often quite sporadic, particularly in the traditional legal curricula in European universities. Law is a social science, and the less one knows of one's scientific family, the thinner is the ice on which one walks. How law exists as a social phenomenon and how it interacts with other social phenomena is, however, not systematically examined or studied in bachelor-, master's- or even doctoral-level courses in many law schools. The perplexity caused by the omission of social studies from legal curricula may be quite striking, since it unnecessarily mystifies the law's social context or life-world dimensions and, thus, makes the functioning as a credible practitioner or legal academic too much a matter of fortuity.¹⁷

The evident necessity for international lawyers to get a grip on social study, however, is not how Hirsch grounds the importance of his book. He adopts a tone that emphasizes utility rather than necessity in making the argument for the relevance of sociology. Hirsch's book starts with a sub-chapter entitled 'Invitation', the same word that appears in its title and in the last chapter. The initial, as well as the concluding, quotes are drawn from Peter Berger's 1963 classic *Invitation to Sociology*.¹⁸ This tone of invitation – that is, persuasion/seduction relying on a classic forebearer – marks the entire book. While it certainly gives a sense that is unassuming, warm and welcoming, the continuing use of the invitational mode comes close to preaching to the converted, particularly when the reader gets further beyond the first chapter. Law is, after all, recognized as a social science even in Europe, and sociological approaches to international law have had considerable influence.¹⁹

On the other hand, in the Americas and beyond, the disciplinary borders have never drawn an overly Kelsenian line between the pure science of law and other sciences, such as social theory, in the first place. Common law judges and jurisprudence seem at ease in discussing the social functions and goals of the law. There seems to be no need or value to be confined strictly to intra-legal, dogmatist deductions.²⁰ By emphasizing the invitation of legal audiences to sociological inquiries, Hirsch in fact assumes or may even serve to reify a higher wall, a wider moat, a sharper line and a more uniform mono-disciplinarity on both sides than there actually is. This is reflected also in the description of the book's methodology when Hirsch suggests that international legal scholars are invited to broaden their methodological toolbox through the sociological methods elaborated in the book, including 'the examination of public records and statistics, surveys, interviews, content analysis, ... and secondary data analysis',²¹ methods and sources that few international lawyers would not have used or, at the very least, not have seen used since time immemorial.

¹⁷ A. Alvesalo and K. Ervasti, *Oikeus yhteiskunnassa: näkökulmia oikeussosiologiaan* (2006).

¹⁸ P.L. Berger, *Invitation to Sociology: A Humanistic Perspective* (1963).

¹⁹ See Delbrück, 'Max Huber's Sociological Approach to International Law Revisited', 18 *European Journal of International Law* (2007) 97; see, e.g., M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (1989), introduction.

²⁰ See generally D. Kennedy, *Legal Reasoning: Collected Essays* (2008), passim.

²¹ M. Hirsch, *Invitation to the Sociology of International Law* (2015), at 13.

Such off-the-mark assumptions about the narrowness of the methodological and substantive preoccupations of the partner discipline are commonplace in interdisciplinary studies. They are of no dramatic consequence to open-minded multi-/cross-disciplinary enthusiasts on any side of the disciplinary ‘divides’. Yet, sometimes, studies claiming inter- or bi-disciplinarity also draw sharp criticisms from those who make it an identity and disciplinary political crusade to assert ‘ownership’ of a discipline and who point to all kinds of reductionist fallacies, lack of breadth of knowledge of all concerned fields, constructions of straw(wo)men of the other, less-familiar disciplines, their methods, substance, schools, canons, histories, classics or other properties committed or omitted by those who attempt to discuss across or even without discipline/s. Falling prey to such criticisms may be a danger for Hirsch – for example, with respect to the methodological observations mentioned above.

Hirsch’s study itself is not the most liberal in the above sense – that is, in regard to disciplinary turfs and their ‘ownership’ or ‘sovereignty’. His intervention is explicit in not attempting to be multi- or anti-/counter- or post-disciplinary in any sense. His purpose is not to emancipate the disciplines or international law and sociology from their ‘cages’ but, rather, to establish methodological rules and procedures for diplomatic relations and rights of visitation. Hirsch does not abandon, mix or seek to unite any aspects of the two disciplines but proceeds from a ‘two-state solution’. The disciplines of international law and sociology are clearly and naturally separate, each with their own canons, procedures, methods, tools, tropes, conventions and tricks of the trade that can be learned respectively in order to facilitate bi-disciplinary interventions or orderly, (bi)-disciplined reciprocal borrowing. He recognizes the possibility of other useful bi-disciplinary efforts in claiming that ‘[w]hile sociological analysis provides a set of valuable tools for inquiry into various international legal spheres, this study does not aim to substitute economic, political or other modes of analysis drawn from other disciplines’.²² To be sure, he asserts in the concluding remarks that mutual contributions ‘should not blur the limits of international law or the sociological discipline’.²³ Thus, Hirsch’s *Invitation* posits itself decidedly against the hybridization of disciplines, against anti- or post-disciplinarity and for clear boundaries, limits and disciplines. It manifests a disciplinary politics that does not support the (uncontrolled) opening of disciplinary markets, yet recognizes diplomatic exchanges, visitations and maybe even a dual nationality upon the set criteria.

While strongly discipline-conscious studies by scholars of other sciences often tend to regard international law or law as being narrowly defined by its formal sources – rules, judgments, principles, institutions – and even as a legalist strawman,²⁴ Hirsch’s *Invitation* proposes that sociological inquiry would also offer insight as to what he calls ‘unofficial sources’ of ‘living international law’.²⁵ He articulates very persuasively the need to look beyond legally binding rules or their establishment. In clear and simple

²² *Ibid.*, at 2.

²³ *Ibid.*, at 185.

²⁴ Hoffmann, *supra* note 16, at 954–60.

²⁵ Hirsch, *supra* note 21, at 2.

terms, Hirsch's *Invitation* would likely broaden the consciousness and horizons of even the most headstrong dogmatist. However, it is not quite clear where one may find such an audience, especially one that would be interested to read beyond official materials or mono-disciplinary works. A first-year law student may not yet be as firmly socialized in legalist doctrinalism and dogmatism as to have abandoned an intuitive interest in the social world beyond the legal texts or have become a legalistic puritan. On the other hand, a more seasoned lawyer is likely to have come across numerous situations in which 'what the judge had for breakfast' – that is, extraneous factors²⁶ – have come to matter alongside, if not more than, formalist doctrinal deductions and, thus, rekindled her interests in matters beyond formal sources. The audience that would need to be persuaded to look into the life-world of international law beyond official sources must hence lie somewhere in between a first-year student and a lawyer with experience. The most opportune audience could perhaps be found among thesis writers or doctoral candidates in conservative law faculties.

B *Bi-disciplinary Rehearsals in the Invitation to Sociology of International Law*

The *Invitation* consists of an introduction and very short conclusion and five 'études' of how sociological inquiry is applied to subjects and sub-fields of international law. The introduction makes the persuasive case for the need for sociological inquiry, the substantive chapters are demonstrative and the conclusion is light. The book is relatively short (218 pages), yet with a hefty 'selected bibliography' (31 pages) and substantial referencing in footnotes. The demonstrative chapters apply different sociological conceptual, theoretical or methodological approaches to themes, including regional and global trade agreements, the European Monetary Union (EMU) and the International Centre for Settlement of Investment Disputes (ICSID), IR/IL, investment tribunals and human rights law as examples of fragmentation and compliance. Each chapter comes with its independent introduction and short conclusion giving a sense of each having been written initially as a stand-alone piece.²⁷ They can be used independently as course materials for a variety of (advanced) international law courses on trade, monetary and investment matters and dispute settlement topics that would manifestly profit from bi-disciplinary knowledge.

In a very interesting, although discipline-conscious/discipline-loyal manner, Hirsch's book introduces the canonical debates of sociology. Some examples on how sociological research questions can be applied to international legal actors are refreshingly other-disciplinary – for instance, when Hirsch draws attention to the EU as an instance of a human rights-oriented collective identity,²⁸ at the very moment when

²⁶ On the influences of legal realism in international law, see, e.g., Bodansky, 'Realism and Its Discontents', 28 *Leiden Journal of International Law* (2015) 267.

²⁷ E.g., Chapter 2 has come out as an independent piece in the *European Journal of International Law* (2008); see Hirsch, *supra* note 21, at vii (preface).

²⁸ *Ibid.*, at 8.

the EU may have found itself at its worst-(managed) humanitarian crisis ever in curbing, containing, controlling and deterring refugees. Hirsch elaborates very nicely and compactly on the interdependency of norms, identities, collective memories and culture; their significance for communities is illuminatingly demonstrated,²⁹ which also relates to Slotte and Halme-Tuomisaari's book tracing the origins of human rights through various transnational communities and their histories. Hirsch's book also sheds further light on the role of social constructivism and identity in IL/IR.³⁰ It is very important to know the wherewithal of such an increasingly important and more widely utilized approach that is rarely examined in international law textbooks, yet is a strong theoretical driver.

Chapter 3 on collective memory explains with clarity and insight such fundamentally important concepts as narrativization, counter-memory and fragmented and multi-vocal commemoration,³¹ demonstrating their significance and application through case studies on, e.g., Germany (EMU) and Latin America (ICSID).³² Hirsch's discussion stresses the significance of these core concepts, which should be systematically introduced to every law student and lawyer/scholar to facilitate the understanding of how stories emerge, evolve and influence legal positions and outcomes beyond 'objective' facts, fact patterns and historical events.³³ Similarly illustrative and important is the fourth chapter that concludes with the observation that 'international institutions often present significant aspects of identity groups (such as symbols, rituals, and collective narratives)'.³⁴ It is no surprise that studies concentrating on these very 'aspects' – particularly addressing the international human rights community – have recently come out in increasing frequency, including in such works as Slotte and Halme-Tuomisaari's anthology reviewed here, Halme-Tuomisaari's earlier work and the many studies emerging from the confines of the research project on the ritualization of human rights led by Hilary Charlesworth, to name but a few.³⁵

The fifth chapter on the tendency of investment tribunals to ignore human rights is perhaps the least persuasive of the book – at least to the already 'converted' x-disciplinary audience. While producing convincing amounts of justificatory materials to buttress the expected finding that investment arbitrators and their entire professional communities short sell human rights, it can be argued that the issue is far more complicated than a question of 'distance' (between 'hard' investment and 'soft' human rights) or even 'fragmentation'. According to James Gathii, for example, social issues

²⁹ *Ibid.*, at 11.

³⁰ *Ibid.*, at 11–13, ch. 4.

³¹ *Ibid.*, at 48–52.

³² *Ibid.*, at 58–88.

³³ See also O. Korhonen, *International Law Situated: A Lawyer's Stance towards Culture, History and Community* (2000), at 129–151.

³⁴ Hirsch, *supra* note 21, at 126.

³⁵ Charlesworth, 'Swimming to Cambodia: Justice and Ritual in Human Rights after Conflict', 29 *Australian Year Book of International Law* (2011) 1; H. Charlesworth and E. Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (2014).

would not be beneficially adjudicated in predominantly economic fora, even if applied with best intentions regardless of any public interest – whatever it means in each individual case – sensitization or an informed social agenda.³⁶ They may result in unintended, ineffective, counter-productive and unforeseen consequences given the underpinning axioms and pre-conditions of a particular forum and regime. Much scholarship, for example, on the ‘trade and’ agendas has raised this point about the World Trade Organization, its organs and its mechanisms of dispute settlement, for example.³⁷

The sixth chapter and the conclusions run unfortunately close to what Rajkovic identifies as a major shortcoming of the IR/IL bi-disciplinary effort – an anaemic conception of law and a lack of two-way cross-fertilization between the concerned disciplines. Rajkovic reminds us of a general flaw in the international law and international politics/relations disciplinary interaction that applies similarly to many other bi-disciplinary efforts that end up imagining law as static and less powerful straw(w) man than it is: ‘(D)espite *via media* theorizing on “legalization” or “institutionalism”, a fundamental contradiction remain(s) ... Expressly or implicitly, International Law (is) reduced to a field concerned with rule compliance, and lawyers reimaged as glorified compliance managers.’³⁸ While Hirsch’s final chapter and short concluding remarks acknowledge some of the potential influences of law on the social, the risk of reducing the interdisciplinary research interest on the side of law into how compliance can be managed looms large. One can only strongly agree with Hirsch that ‘ignoring or underestimating the social context in which international law evolves [will] often lead to an incomplete understanding of the real-life international law’;³⁹ however, one cannot agree that the interdisciplinary cross-fertilization is limited because of its inability to produce precise anticipations or predictions of conforming or non-conforming behaviour.⁴⁰ To prioritize predictive tools in any absolute manner is misguided and, indeed, far too modest a goal for interdisciplinary work because the enrichment of a multi-dimensional understanding of, on the one hand, drivers, backgrounds, influences, power relations and, on the other hand, consequences, effects and feedback loops of legal endeavours in social contexts (reality and realities) offers a much wider horizon of intellectual and scholarly mutual enrichment.

5 Human Rights through Pluri-disciplinarity

While the anthology *Revisiting the Origins of Human Rights*, which is edited, introduced and also partly co-authored by Slotte and Halme-Tuomisaari, is pluri-disciplinary in that it employs authors from the disciplines of, for example, history, law, theology and

³⁶ Gathii, ‘Re-Characterizing the Social in the Constitutionalization of the WTO: A Preliminary Analysis’, 7 *Widener Law Symposium Journal* (2001) 137, at 173.

³⁷ *Ibid.*

³⁸ Rajkovic, *supra* note 1, at 18.

³⁹ Hirsch, *supra* note 21, at 185.

⁴⁰ *Ibid.*, at 186.

anthropology, each of the authors have an independent take on disciplinarity. Most of them are bi-, multi-, trans-, cross- or even anti-disciplinary, yet there are some more mono-disciplinary contributions as well. The title of the anthology clearly negotiates the anti-disciplinary desire not to be tied down to particular disciplines (most obviously by avoiding the term ‘history’) and the disclaimer on being branded as an alternative to the mainstream canon of international human rights. Differently to Kennedy’s influential *The Dark Sides of Virtue* (2004), for example, it modestly proposes to ‘revisit origins’ when, based on the radical novelty of several of its chapters, it could easily be titled something much more revolutionary.⁴¹ Questioning the very concept of history, the editors ask ‘to what extent all historical explorations [are] simply “stories” existing both as concrete events of foregone days and as today’s perceptions over their meaning’.⁴²

Throughout the book, it is obvious that novel propositions, departures from and recastings of core assumptions of canonical human rights discourses are best when they are conscious of the disciplinary political economy. The social, political and academic market that operates under the auspices of the greater sphere of human rights studies – beyond ‘the international human rights law’ discipline – is important and global in reach as is the human rights policy discourse and practice. To put it bluntly again, both projects and disciplinary currency, including careers and funding, are at stake when deciding whether to brand a work as a ‘revolution’, ‘counter-narrative’ or a ‘revisit’.

The *Revisiting the Origins* anthology contains an unprecedented variety of 14 different takes on the ‘origins’ of human rights. ‘Origins’ are understood more often as significant historical turns, even epiphanies, that are important for the evolution of the different key features of today’s human rights than as ‘the original source’ of rights, although many chapters discuss origins also in the sense of beginnings. The chapters do not seek a consensus on the origins or the evolutionary narrative but, rather, share a sense of importance of weaving all of these different threads into a pluri-disciplinary matrix that enables us to better understand contemporary human rights, their successes, failures, potentials and limitations. A new more correct canon or master narrative of human rights is not the purpose. It allows the authors to trace the important evolutive growth of either a Wittgensteinian duck-rabbit or something else – as long as they make their disciplinary background axioms sufficiently transparent. It is precisely the kind of book that, if given to students as a textbook would, at first, incite remonstrance and annoyance, especially from those preferring superficial easy-to-hand instruction. They would find it confusing, difficult to memorize and its main argument disturbingly non-linear, while it refuses to categorize human rights as anything singular whether in terms of the main value instrument of liberal legality or as a historical trajectory of social progress. This same non-linear and pluralistic quality, however, would make it an excellent textbook since after the first round of

⁴¹ D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004).

⁴² P. Slotte and M. Halme-Tuomisaari (eds), *Revisiting the Origins of Human Rights* (2015), at 2.

protestation the readers would see the world of human rights and duties exposed as a place that keeps inspiring many questions to which we – as authors and authorities – do not have ready or simple answers.

The editors applaud those voices that have challenged the human rights canon – that is, '[w]hat a mere decade ago emerged as a "completed" field of inquiry with a distinct "textbook narrative of origins" located at its centre'.⁴³ They problematize this 'settlement on history' that was utilized to produce pedigree and authority to its canonical authors as well as human rights as a powerful discipline and professional field. Taking distance from such authority projects, the editors of *Revisiting the Origins* describe their own focus being directed 'partly on the discourse of human rights, but without restricting [the] gaze on its etymology'. They claim to be particularly interested 'on the structural features accompanying rights claims ... both in a moral sense and also a legal sense'.⁴⁴ Discussing Kennedy's critique of rights, they observe that 'rights are not now nor have they ever been intended to be solely legal entities. Rather, they gain their persuasive power from their ability to transgress the narrow borders of the law. This allows them to exist both "inside" and "outside" the law as "either rules or reasons for rules",' also as artefacts, even articles of faith, 'providing values for a Godless age' and 'not merely as the last, but the *only* possible global utopia that in the course of history was "destined" to become a global phenomenon' – characterizations that underline the need for pluri-disciplinary investigation.⁴⁵

A Contents of the Revisiting the Origins of Human Rights

The book has three parts; in the first two, the chapters address the 'imagined antiquity', medieval and revolutionary periods moving all the way to the modern era. The final part features narratives that rely on a big bang theory of the origin of modern human rights in the shock of the atrocities perpetrated during World War II.⁴⁶ After a preface by Koskenniemi on the history of human rights as political intervention in the present and a long editorial introduction (36 pages) both to the theme and to the chapter contributions, the book starts with Kaius Tuori and Jacob Giltaij's examination of the claimed origins of human rights in Roman law.⁴⁷ Analysing, for example, the Roman delicts and their applicability, the authors find some similarities and more anachronisms, thus illustrating the instrumentalization of the stories of origins.⁴⁸ They conclude that the literature tracing the origins of human rights to Roman law was born after the promulgation of the Universal Declaration of Human Rights.⁴⁹ They

⁴³ *Ibid.*, at 1.

⁴⁴ *Ibid.*, at 23

⁴⁵ Kennedy, 'The Critique of Rights', in W. Brown and J. Halley (eds), *Left Legalism/Left Critique* (2002) 178, at 184–185.

⁴⁶ Slotte and Halme-Tuomisaari, *supra* note 42, 2.

⁴⁷ Koskenniemi, 'Foreword: History of Human Rights as Political Intervention in the Present', in Slotte and Halme-Tuomisaari, *supra* note 42, ix.

⁴⁸ Giltaij and Tuori, 'Human Rights in Antiquity?, Revisiting Anachronism and Roman Law', in Slotte and Halme-Tuomisaari, *supra* note 42, 39, at 48, 61.

⁴⁹ Universal Declaration of Human Rights 1948, UN Doc. A/810 (1948).

also show that when ideas comparable to human rights ideas are found, the validity of the comparison depends on ‘what one is willing to accept as “human rights”’, thus also problematizing, quite rightly, the disciplinary field.⁵⁰

Virpi Mäkinen’s chapter, ‘Medieval Natural Rights Discourse’, discusses voluntarism and the rise of the subjectively understood notion of *ius naturale*. The reader learns that the psychological insights of voluntarism introduced a conception of the human being as self-assertive, morally autonomous, self-preservation oriented and thus able to bear natural rights that, in turn, impacted the theories of Thomas Hobbes, John Locke, Samuel von Pufendorf, David Hume and Adam Smith.⁵¹ Again, however, in the light of the work of, for example, Anthony Anghie, one needs to accept the non-universal character of natural rights if one accepts their similarity to varying historical conceptions of human rights, similarly as Giltaij and Tuori pointed out.⁵²

Annabel Brett’s chapter examines human rights – human person and human dignity – in the Thomist and, more broadly, Catholic social philosophy up to neo-Thomism of the modern age, which, in the early times, set itself against the ‘pernicious system of values in which the individual came before the community, rights before law, and the “pursuit of happiness” before any collective or transcendent goal.’⁵³ Neo-Thomist Jacques Maritain sought to get away from individualism and advocated a concept of ‘person’ that ‘denotes transcendence of material nature: an overture, opening, towards the divine – but also, crucially, towards other persons’.⁵⁴ Brett’s chapter also addresses the question concerning which conceptual commensurabilities and incommensurabilities historical commentators tend to trace. In this regard, she questions what she calls ‘verbal jugglery’ as to the notion of ‘dominium’ and its relationship to a ‘right’ in Thomas Aquinas, Domingo de Soto, Francisco de Vitoria and beyond. It is, again, the question of what one is willing to see as related, similar, comparable or commensurate with however one defines ‘human rights’ today. Brett concludes about the 16th-century Thomists in a way that is rather cynical and not so unfamiliar in many Western political ideologies even today:

The result of [the] mediated dynamic is a very uneven juridical situation of individual human beings. They might all be equal by nature, in the sense of all having the capacity for rights, and they might all, by nature, actually have certain rights. But ‘by nature’ does not mean that they must always have them, nor even the capacity for them, as we have seen. Human beings will be very unequal in the actual rights they do have: in all rightfulness, some will be slaves, others will be free; some will be beggars, others will be rich; some will exercise the power of the commonwealth, others will die on the scaffold. This just is the space of the *ius gentium*, the necessary but iron-fisted juridical matrix within which human life must be lived.⁵⁵

⁵⁰ Giltaij and Tuori, *supra* note 48, at 62.

⁵¹ Mäkinen, ‘Medieval Natural Rights Discourse’, in Slotte and Halme-Tuomisaari, *supra* note 42, 64, at 65, 81.

⁵² Anghie, ‘The Evolution of International Law: Colonial and Postcolonial Realities’, 27 *Third World Quarterly* (2006) 742, at 743.

⁵³ Mäkinen, *supra* note 51, at 82.

⁵⁴ *Ibid.*, at 83.

⁵⁵ Brett, ‘Human Rights and the Thomist Tradition’, in Slotte and Halme-Tuomisaari, *supra* note 42, 82, at 100.

And, further, '[t]hese rights, which seem to us to do some of the work we expect human rights to do, co-exist within the same juridical theory with legitimations of actions that we would regard as in absolute violation of any notion of human rights. ... Our task is to understand that co-existence, not to ignore it.'⁵⁶

Lynn Hunt's chapter on revolutionary rights commences the second part of the book on the Enlightenment and single-issue causes in the 19th century. She identifies that in this era '[h]uman rights have been most useful in criticizing, denouncing or mobilizing against practices'.⁵⁷ This perception continues to provide much of the universal currency of human rights today even in the face of the critical perception – that human rights have never broken free of the very same 'iron-fisted juridical matrix' that Brett identifies.⁵⁸ Hunt sees the history of human rights through their revolutionary role marked by jumps and discontinuities depending 'on successive moments of revolutionary crystallization'.⁵⁹ She concludes surpassing any disciplinary boundaries and urges that 'human rights can never be one fixed thing ... It is a field of conflict ... It is a way of thinking about people and politics, not a blueprint for specific groups or governments. Its power comes from its ability to change as a concept, not out of all recognition, but in a way that accommodate changes in people and politics.'⁶⁰ For her, human rights are clearly not to be bounded by any (mono)-disciplinary boxes because, first and foremost, they are a dynamic social force.

Samuel Moyn, whose book *The Last Utopia: Human Rights in History* (2010), is credited as an inspiration for the present anthology and clearly many of its individual chapters, discusses a marginalized historical figure as an example of how the history of human rights gets written – that is, what sort of selection, editorial choices and casting politics take place when the main roles are dealt. Moyn's chapter seeks a useful lesson in the peripheralized status of a 19th-century heir of the French Revolution and a nationalist, Giuseppe Mazzini. Moyn discusses a historian's difficulty with the 19th century – for example, the difficulty in divorcing the nationalist and the rights legacies emanating from the French Revolution.⁶¹ Mazzini would have rejected the responsibility to protect and other liberal internationalist ideas precisely on the ideology of the rights of man.⁶² For him, the rights of man were dependent on his status as a national. Therefore:

[w]hen the history of human rights was invented after the Cold War, it occurred to no-one to include him (Mazzini), given the political situation of a first world in which the nation-state achieved through violence now seemed the chief threat to basic values, rather than the

⁵⁶ *Ibid.*, at 101.

⁵⁷ Hunt, 'Revolutionary Rights', in Slotte and Halme-Tuomisaari, *supra* note 42, 105, at 105.

⁵⁸ See Anghie, *supra* note 52, *passim*.

⁵⁹ Hunt, *supra* note 57, at 107.

⁶⁰ *Ibid.*, at 118.

⁶¹ Moyn, 'Giuseppe Mazzini in (and beyond) the History of Human Rights', in Slotte and Halme-Tuomisaari, *supra* note 42, 119, at 122–124.

⁶² *Ibid.*, at 125–131.

premier vessel for their advancement. But the historian's task is to retrieve the mentalities and beliefs of past actors, not to exclude what does not fit on the teleological road to our own.⁶³

He concludes with an omen: '[T]he vogue of the history of human rights may soon give way to a history of human duties more faithful to the realities of the past than its predecessor.'⁶⁴ Moyn's contribution reflects his bi-disciplinary chair denomination – law and history – providing a critical modern reading through the classical historian's mode of analysing a historical figure.

Lauren Benton and Aaron Slater's chapter is titled 'Constituting the Imperial Community: Rights, Common Good and Authority in Britain's Atlantic Empire (1607–1815)', and it sets out an agenda involving all of them. The analysis of the civic debates about the rights, privileges, public interest/common good and necessity of authority depict the many difficulties of making incommensurate things co-exist, similarly to what Brett shows.⁶⁵ Kathryn Kish Sklar's study of women's movements and rights conventions spans over the 1840s, 1850s and 1860s in the USA. She discusses the progressive ideas of, for example, the Grimke sisters combining anti-slavery and women's struggles, Mary Wollstonecraft's equal education demand, Elizabeth Stanton's idea of the link between gender and class relations and the many others little known even as names outside the USA. The chapter is particularly welcome in marking the fact that women did exist in the history (of human rights) not only as victims of abuse but also with authorship and agency of their own.⁶⁶ Implicitly, the chapter underlines the same sort of selectivity and 'casting politics' as Moyn's.

Martin Ceadel's chapter discusses the important relationship between peace and human rights – that is, the modes of pacifism and their relationships to the shifting human rights agenda. Very importantly, Ceadel states that 'although many progressives are reluctant to face up to the fact, human rights are now in conflict with peace as an ideal, because – especially since the end of the Cold War – they are encouraging the replacement of war-prevention as the primary political goal with a modern form of crusading'.⁶⁷ Gregory Claeys chapter on socialism and the language of rights discusses the 'quintessential economic right, the right to property' ever present in human rights discourse since Locke.⁶⁸ Other economic rights, to Claeys, are thus at the core of the emergence of natural and, later, human rights, not a 'second generation' as the familiar story would have it.⁶⁹ The relationship of human rights and humanitarian intervention is traced by Dzovinar Kevonian to the turn of the 20th century and

⁶³ *Ibid.*, at 131.

⁶⁴ *Ibid.*, at 139.

⁶⁵ Benton and Slater, 'Constituting the Imperial Community: Rights, Common Good and Authority in Britain's Atlantic Empire, 1607–1815', in Slotte and Halme-Tuomisaari, *supra* note 42, 140, at 140.

⁶⁶ Sklar, 'Human Rights Discourse in Women's Rights Conventions in the United States, 1848–70', in Slotte and Halme-Tuomisaari, *supra* note 42, 163, at 166–170.

⁶⁷ Ceadel, 'The Peace Movement and Human Rights', in Slotte and Halme-Tuomisaari, *supra* note 42, 189, at 189, 205.

⁶⁸ Claeys, 'Socialism and the Language of Rights: The Origins and Implications of Economic Rights', in Slotte and Halme-Tuomisaari, *supra* note 42, 206, at 221.

⁶⁹ *Ibid.*, at 235.

an early Russian liberal internationalist, Andre Mandelstam.⁷⁰ Discussing the liberal Russian thinkers (for example, André Mandelstam, Fedor de Martens), Kevonian elaborates on the concept of the modern liberal state and the internationalization of its ideals.⁷¹ Rather than attempting a new narrative, Kevonian states his approach and purpose in a Koskenniemi fashion, as one showing ‘the interplay of social fabrics and intellectual constructs ... relating individual trajectories to social and academic affiliations, and the tension between commitment and formalism to legal constructs, the “operations du droit”’.⁷²

Taina Tuori’s chapter, in contrast, is titled ‘a brief history of rights’, and it deals with human rights within the League of Nations context.⁷³ The chapter is an easy-to-read taster of Tuori’s excellent, but heavy, doctoral dissertation, outlining the trouble of the early 20th-century humanitarian internationalists with their colonial governance and the many discursive constructs and gambits with which they attempted to accommodate their conflicting ideas about human rights and racism.⁷⁴ Pamela Slotte’s chapter on ‘blessed peacemakers’ discusses human rights within the Christian internationalism and ecumenical movement.⁷⁵ The chapter is ‘an exposé of what made (human rights) activism imaginable – despite being partly framed in secular terminology’ and partly embedded in theological heritage.⁷⁶ For the Christian internationalist activists, working for human rights ‘became a part of what it meant to act responsibly as Christians’.⁷⁷ One can identify the influence and handiwork of the activists that Slotte discusses in many of the League welfare policies to which Tuori’s chapter refers. Miia Halme-Tuomisaari’s excellent archivalist chapter discusses the many implications of the American internationalists and French civil libertarians’ lobbies for the Universal Declaration of Human Rights.⁷⁸ It tells a tale of ‘inclusion and exclusion’ and confirms that ‘the global underdog’ was conspicuously absent from the drafting of the Universal Declaration where ‘[s]he was a referential other for whom all the action occurs but who is rarely met in person’, as the victimization preference today also testifies.⁷⁹ Both Halme-Tuomisaari’s chapter and the final chapter by Olivier Barsalou on the rise of an American conception of human rights in the post-war era⁸⁰ elaborate on

⁷⁰ Kevonian, ‘Andre Mandelstam and the Internationalization of Human Rights (1869–1949)’, in Slotte and Halme-Tuomisaari, *supra* note 42, 239, at 239, 248.

⁷¹ *Ibid.*, at 250–252.

⁷² *Ibid.*, at 265.

⁷³ Tuori, ‘From League of Nations Mandates to Decolonization: A Brief History of Rights’, in Slotte and Halme-Tuomisaari, *supra* note 42, 267, at 267.

⁷⁴ *Ibid.*, at 290.

⁷⁵ Slotte, ‘“Blessed Are the Peacemakers”: Christian Internationalism, Ecumenical Voices and the Quest for Human Rights’, in Slotte and Halme-Tuomisaari, *supra* note 42, 293, at 293.

⁷⁶ *Ibid.*, at 295.

⁷⁷ *Ibid.*, at 327.

⁷⁸ Halme-Tuomisaari, ‘Lobbying for Relevance: American Internationalists, French Civil Libertarians and the UDHR’, in Slotte and Halme-Tuomisaari, *supra* note 42, 330.

⁷⁹ *Ibid.*, at 360–361.

⁸⁰ Barsalou, ‘The Cold War and the Rise of an American Conception of Human Rights, 1945–8’, in Slotte and Halme-Tuomisaari, *supra* note 42, 362.

the Western particularism and cultural exclusion that haunts the international bill of rights since the Universal Declaration.

Barsalou's contribution thus concludes the anthology and is followed by Conor Gearty's insightful 'Afterword' that points out the many struggles and tensions that the book courageously takes on and picks up on the anti-disciplinary traces when observing 'the need to trace a human rights narrative (in the numerous different ways) on the one hand and, on the other, the necessity of breaking free of the exact language of human rights in order better to be able to do this'.⁸¹ Gearty has done a wonderful summary of his own of the main arguments of the different chapters that is not only greatly insightful but also very useful for forming a picture of the rich complexity that has been presented to the reader. One can only agree with Gearty that:

[a] rich account of human rights cannot avoid tough questions about true ownership of the field, its vulnerability to capture by those who want to add a dash of ethics to their already extensive repertoire of prosperity ... [and] [h]uman rights needs this kind of frank engagement if they are to move to a new level of seriousness.⁸²

B A Modest Historiography of Human Rights or a Bold Anti-Narrative?

Recently, the international law and human rights fields have been provoked by books titled *The Last Utopia* or *The Dark Side*, *The Rise and Fall* or *The End* of our disciplines.⁸³ This cannot be seen as overly sinister or surprising given that, since at least the mid-19th century, other scholarly disciplines have proclaimed the downfalls of God, man and even the author. Our belief in our disciplines is eroded – at least, it ebbs and flows – by our lack of means to produce or maintain an authority effect. What would be the authority to command the respect for law and rights if neither God, man, author nor nature. To look for new sources of legitimate and credible authority or to see what is left of the old, scholars turn to archives. Thus, the conspicuous turns to history in international law and to human rights disciplines. As Jacques Derrida says, archives are about authority and they are also about the archons – those who guard, preserve and draw force from the archive.⁸⁴ In this sense, archives offer disciplined excavation and guardian work for those who seek to gain pedigree and authority for themselves, their narratives and their discipline through rediscoveries of primary sources (origins) or other grounding. Through the archive desire, those who work there or through it become participants in the possession, recapitulation, restoration and guarding of things that were regarded in the past as worth archiving.⁸⁵ Archives are where

⁸¹ Gearty, 'Afterword', in Slotte and Halme-Tuomisaari, *supra* note 42, 381, at 383.

⁸² *Ibid.*, at 385–387.

⁸³ E.g., Moyn, *supra* note 61; C. Douzinas, *The End of Human Rights: Critical Thought at the Turn of the Century* (2000); Kennedy, *supra* note 41; M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001).

⁸⁴ Derrida and Prenowitz, 'Archive Fever: A Freidian Impression', 25 *Diacritics* (1995) 9, at 9–10.

⁸⁵ *Ibid.*, at 57–60.

scholarly epistemes are created, recapitulated and re-established. The data that did not make it there – that the archons did not admit or ignored – is present only as lacunae, gaps and silences.

If Halme-Tuomisaari and Slotte's title about 'revisiting the origins' is interpreted in the light of a Derridean (Freudian) archive desire, it loses its apparent modesty. Although the archive desire is operationalized against mainstream or textbook progress narratives or reductionist accounts of the human rights phenomenon, they both share the archivalist strategy in competing for disciplinary authority. It may then become a question about whose account is more objective, accurate, persuasive – for example, whose archival excavation (revisit) is most thorough – in check of its *Vorverständnis*, ideologically innocent, strategic and so on. Yet Halme-Tuomisaari and Slotte's book does not believe in ideological innocence in the disciplines of science. It is this anomaly that makes the effort of such pluri-disciplinary anthologies (revisits) simultaneously paradoxical and intriguing.

A few explanations for the paradoxical intrigue are possible:

- i. The desire of such 'revisitation' can be counter-strategically motivated. It is possible to argue that since the ideologically naive textbook narratives attempt to build their authority on poor historical reductions and flawed analyses of origins, there is a need to write counter-narratives even if one does not believe in their ideological innocence. It is possible to argue for a position that (a) some revisits to the origins and some historical accounts are better than others, although ideological innocence/objectivist ideals are impossible or (b) a multitude of accounts is the best way to undermine totalizing authority projects in the discipline(s) that emerge from one-voiced narrative accounts of archived 'evidence'. But another explanation is possible as well.
- ii. The desire of such 'revisitation' may not be a 'genuine'. It may merely manifest the instrumentalization of archived data for guising present-day ideological arguments as historical narratives. Implicitly, it may celebrate anachronism even though, explicitly, it pays homage to the archons, thus basking under the auspices of their good will and patronage and building up one's own participation in the 'club of the upcoming archons'. Cynically, it draws on the best of both worlds – anti-patronization (or critique) and patronization. A third possibility, however, would be to point to what Derrida (following Freudian psychoanalysis) calls:
- iii. archive fever,⁸⁶ which would amount to the destabilization or more of the archival production of authority in the disciplines.⁸⁷

Although Halme-Tuomisaari and Slotte's anthological revisit cannot be subsumed under any of the above explanations in any simple way, it seems that option i(b) – that

⁸⁶ *Ibid.*, at 51, 57–60.

⁸⁷ I shall not discuss the archive fever as a name or metaphor for foundational critique of disciplinary authority any further since it could be seen, at most, as a hint between the lines in contributions reviewed here. However, the idea will be further discussed within a project led by Gleider Hernandez, *Constructing Authority in International Law*, www.globalpolicyjournal.com/constructing-authority-international-law (last visited 10 April 2017).

is, making many voices hear that challenge and even axiomatically contradict each other – is one of the core tenets. Together, these voices persuade or sometimes even push the audience out of a comfortable box. In comparison to Hirsch's book, which seems to invite and gently propose something (sociology) to the lawyer to make her life easier by offering more tools to deal with the world and, indeed, to better predict it, the book by Halme-Tuomisaari and Slotte makes life harder for the lawyer and the student. After reading the latter, the lawyer's confidence in not only the determinability of human rights but also the determinability of the 'original source' for the truth about human rights is shaken, which is, of course, the enabling condition for scientific innovation and advancement. Together, the two books illustrate how differently cross-disciplinarity may come out in both execution and in its take aways.

6 Conclusion

There would be little sense in comparing Hirsch's monograph to the sizeable anthology edited by Halme-Tuomisaari and Slotte. What is important, however, is to point out how they propose two very different approaches to what is useful and helpful in crossing traditional disciplinary lines. While both books exploit and offer insights for cross-fertilization, Hirsch maintains a clear separation of each field from the other, while Halme-Tuomisaari and Slotte's book as a whole and in many individual chapters expressly problematizes clear divides and canonizations at the core of field promotion in human rights in international law and history. Again, Rajkovic's conclusion that '[t]he traditional certainty of knowledge divided between exclusive domains of scholarly specialization ... no longer holds' can be raised here.⁸⁸ While Hirsch's book would seem to oppose this idea, the Halme-Tuomisaari and Slotte anthology would agree with it beyond the IL/IR field. When one considers Rajkovic's analysis of how disciplines get produced and institutionalized as market units, it seems that whether or not one holds onto exclusive domains is a choice that impacts the disciplinary market. Our choice to do or to ignore, credit, distance or trash x-disciplinary work is an exercise of scientific judgment that includes an exercise of disciplinary authority within its political economy that produces consequences in terms of jobs, budget allocations, institutional audit outcomes and all sorts of trickle effects.

To dismiss the politico-ideological dimensions of disciplinarity in international law would mean to ignore the conditions and situatedness of scholarly occupations. Since there is no way to deny *a priori* the consequences of disciplinary politics, it is also equally impossible to pass over to an unproblematized post-disciplinarity. On the one hand, one cannot deny that disciplinary sovereignty promotion – sometimes more, sometimes less protectionist – is still alive and kicking, and we must make daily decisions relying on or resisting it. On the other hand, we cannot deny the wide implications of scientific post-modernism that has eroded confidence both in our scientific

⁸⁸ Rajkovic, *supra* note 1, at 10.

truths, facts, paradigms and institutions and in our scientific disciplines with their borders and constitutive canons. The loss of confidence is often mistaken to imply nihilism, while it is rather a driver of necessary renewal. It is crucial for x-disciplinary studies that the inextricable ties between 'facts and truths' and the 'vocabularies and paradigms' that are used to represent them have been exposed to also make explicit their disciplinary political dimensions. In Carolyn Ellis, Tony Adams and Arthur Bochner's view, the positive consequences of post-modernist renewal have helped scholars to 'recognize ... the impossibility and lack of desire for master, universal narratives' in that:

they understood new relationships between authors, audiences and texts. ... Furthermore, there was an increasing need to resist colonialist, sterile research impulses ... [because] (f)or the most part, those who advocate and insist on canonical forms of doing and writing research are advocating white, masculine, heterosexual, middle/upperclassed, Christian, able-bodied perspective.⁸⁹

There is nothing nihilistic or frustrating in the effort to push the discipline of international law and human rights beyond a protectionism of *status quo* in the bi- and pluridisciplinary works reviewed here. Although very different, both succeed in engaging an international legal audience outside the box of a narrowly construed disciplinary canon. Both offer new insight, new tools and new perspectives. The *Revisiting of Origins* anthology, of course, also presents new disciplinary perspectives and combinations. While both offer inspiring food for thought, ideas that challenge one's familiar disciplinary procedures and conceptual apparatus, Hirsch's monograph maintains disciplinary borders and anchors the reader into two pieces of disciplinary 'real estate' – one sociology and the other international law. In contrast, by means of a rather heavy anthology and with the conscious avoidance of editorial exercise of iron-handed harmonization between chapters, *Revisiting the Origins* sends the reader spinning over so many disciplinary turfs that the emancipatory outcome is almost guaranteed. Both books are best suited for advanced audiences, although both have chapters that can be read individually. Being eloquent, engaging and excellently written throughout, both will provide enjoyable reading. One can only hope that international lawyers will read and produce more of x-disciplinary work that will also instigate a wider discussion on the politics of disciplinarity that is a quotidian, yet grossly under-thematized, aspect of the situatedness of their work.

Individual Contributions to Revisiting the Origins of Human Rights

Miia Halme-Tuomisaari and Pamela Slotte, *Revisiting the Origins of Human Rights: Introduction*;

Jacob Giltaij and Kaius Tuori, *Human Rights in Antiquity? Revisiting Anachronism and Roman Law*;

Virpi Mäkinen, *Medieval Natural Rights Discourse*;

⁸⁹ Ellis, Adams and Bochner, 'Autoethnography: An Overview', 12 *Forum: Qualitative Social Research* (2011) 1, at 1–2.

Annabel Brett, Human Rights and the Thomist Tradition;

Lynn Hunt, Revolutionary Rights;

Samuel Moyn, Giuseppe Mazzini in (and beyond) the History of Human Rights;

Lauren Benton and Aaron Slater, Constituting the Imperial Community: Rights, Common Good and Authority in Britain's Atlantic Empire, 1607–1815;

Kathryn Kish Sklar, Human Rights Discourse in Women's Rights Conventions in the United States, 1848–1870;

Martin Ceadel, The Peace Movement and Human Rights;

Gregory Claeys, Socialism and the Language of Rights: The Origins and Implications of Economic Rights;

Dzovinar Kévonian, André Mandelstam and the Internationalization of Human Rights (1869–1949);

Taina Tuori, From League of Nations Mandates to Decolonization: A Brief History of Rights;

Pamela Slotte, 'Blessed Are the Peacemakers': Christian Internationalism, Ecumenical Voices and the Quest for Human Rights;

Miia Halme-Tuomisaari, Lobbying for Relevance: American Internationalists, French Civil Libertarians and the UDHR;

Olivier Barsalou, The Cold War and the Rise of an American Conception of Human Rights, 1945–1948;

Conor Gearty, Afterword.