"INTERNATIONAL LAW, THIS INTERACTIVE BUTTERFLY"

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[1] I am grateful to the Belgian Network of Junior Researchers in International Law for giving me the opportunity to test these ideas in a welcoming environment, to the members of the Symposium and Andrea Bianchi and Anne Lagerwall for a fruitful discussion, as well as to Gleider Hernández for comments on a previous draft. Typical disclaimers apply, as they should.

A. SETTING THE SCENE — Do international law scholars[2] make law? "No", says the mainstream view on international lawmaking. To support this answer, many refer to an analogy between international law scholars and lepidopterologists.[3] Scientists who study (pink) butterflies, the argument goes, do not make butterflies, they merely study them. So how could international law scholars make international law? If we are to be scientists—and most of us hold this label dearly—then we must act like ones and limit ourselves to studying international law rather than making it.

I wish to offer a counter-view to this mainstream understanding of international law scholarship. Taking the comfortable butterfly analogy seriously, I question the attractive reduction of international law to an "objective" entity, which one can study from a safe distance. What would happen to international law, our very own pink butterfly, if no scholar ever recognized it as pink? And what of a consortium of mischievous scholars who suddenly decide to claim that it is a blue butterfly, rather than a pink one, or, even more dramatically, that it is no butterfly at all? Does it make sense to claim that our pink butterfly still exists, out there, although nobody views it as such? I think not. Instead, I claim that our pink butterfly does not outlive our cognition: it depends on it.

To explore the ambiguous relationship between international law scholars and international law, I tentatively apply to the latter the concept of "interactive kind" developed by HACKING. Before delving into the "interactivity" of international law, I must situate the analogy in its context: the clash between an orthodox and a contemporary approach to international lawmaking. Then, I proceed to flesh out avenues for further research based on this interactivity.

B. SITUATING THE ANALOGY — The story begins with a simple question: how does international law come about?[4] There are almost as many answers to this question as there are writers on the topic. For clarity's sake, it is useful to have recourse to two ideal types: the orthodox approach and the contemporary approach.[5] The

[2] For the purpose of this exposition, I use the phrase "international law scholars" to refer to international law professionals involved in communicative practices relating to (internationally) legally relevant behaviors—mainly through written academic outputs and teaching—in no other capacity than that of "experts". Naturally, most scholars also participate in such communicative practices as civil servants or members of the international judiciary, among other hats. Exploring the implications of this form of *dédoublement fonctionnel*, to paraphrase SCELLE, is essential but not within the scope of the present piece.

[3] For instance, see Jörg Kammerhofer, 'Law-Making by Scholars', in *Theory and Practice of International Lawmaking* (Cheltenham: Edward Elgar Publishing, 2012), pp. 305–27. BIANCHI also compares "IN-LAW" to butterflies, and thus, indirectly, IN-LAW scholars to lepidopterologists, but not in the same vein. Instead, it is to emphasize the diversity and heterogeneity of IN-LAW manifestations, as well as to shed light on the competition between conflicting disciplinary discourses *about* the phenomenon of "informal lawmaking". In fact, BIANCHI's chapter makes a number of significant points about the importance of (legal) theory and reflexivity that I attempt to address in this short piece. If anything, this truly shows that metaphors do not speak for themselves. See Andrea Bianchi, 'Reflexive Butterfly Catching: Insights from a Situated Catcher', in *Informal International Lawmaking*, ed. by Joost Pauwelyn, Ramses Wessel, and Jan Wouters (Oxford: Oxford University Press, 2012), pp. 200–215.

[4] Non-lawyers would probably consider this a preliminary question—the type of question one must answer before being able to address the next one, namely "what is the international law of X?". How can you identify the international legal rules governing sanitary and phytosanitary measures that affect international trade without first properly understanding what is "international law" tout court? Lawyers accept this tension matter-of-factly; law is a practical discipline and we work with concrete, practical problems, not grand theories. Yet concepts are too important to just let go. In law, theory meets practice. Besides, not engaging with theoretical discussions is not equivalent to theoretical abstinence; it merely implies embracing the theoretical status quo.

[5] This gross oversimplification of the current state of the art draws, inter many alia, from VENZKE and D'ASPREMONT's overviews: Ingo Venzke, 'Contemporary Theories and International Lawmaking', in *Research Handbook on the Theory and Practice of International Lawmaking*, ed. by Catherine Brölmann and Yannick Radi, Research Handbooks in International Law (Cheltenham, UK: Edward Elgar Publishing, 2016), pp. 66–84; Jean d'Aspremont, 'Subjects and Actors in International Lawmaking: The Paradigmatic Divides in the Cognition of International Norm-Generating Processes', in *Research*

orthodox approach is static, state-centered, and output-oriented.[6] It typically revolves around Article 38 of the Statute of the International Court of Justice and builds on a catalog of "accepted" sources: conventions, customs, and general principles of law.[7] Supposedly, one need not look further than this catalog to know what is international law and who are the actors involved in its creation. To these three primary sources, one must add two "subsidiary means" mentioned in Article 38(1)(d): international case law and doctrine. The status of these subsidiary means is certainly ambiguous: what is "subsidiary" about them and how do they compare to "sources"?[8] Yet it is brushed over by the orthodox approach: doctrine (and case law) are mere signs or pieces of evidence of the existence of legal rules, not sources of legal normativity properly so-called. Consequently, scholars are not lawmaking actors, but rather legal archivists, as it were.

The contemporary approach, on the contrary, is dynamic, flexible, and process-oriented.[9] Focusing on international lawmaking as a complex phenomenon spreading over time and involving a wide range of actors, authors who embrace a contemporary approach reject the simplistic "catalog approach". Instead, they attempt to explain the coming about of international legal rules by observing the actual development of international law and by situating this phenomenon within its broader context. Such a move necessarily implies a broadening of the "internal" legal perspective.[10] Instead of reductionist positivism[11], these authors typically adopt an interdisciplinary perspective, at the crossroads of international law and international relations, sociology, or philosophy, for instance.

Enter our lepidopterologists. Naturally, the claim that legal scholars *cognize* international law in the way that lepidopterologists *cognize* butterflies—and moths, I must add—fits neatly within the orthodox approach to international lawmaking. Because scholarly outputs are not an accepted source of international law, the

Handbook on the Theory and Practice of International Lawmaking, ed. by Catherine Brölmann and Yannick Radi, Research Handbooks in International Law (Cheltenham, UK: Edward Elgar Publishing, 2016), pp. 32–55. See also, generally, Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford: Oxford University Press, 2016).

[6] For a canonical illustration, see L. Oppenheim, *Oppenheim's International Law. Vol. 1: Peace*, ed. by R. Y. Jennings and Arthur Watts, 9th ed (London; New York: Longman, 1996), p. 22 et s.

[7] Naturally, nobody seriously claims that the list of Article 38 is exhaustive. Usually, authors add a number of "new" (potential) sources, such as binding resolutions of international organizations or unilateral acts of states. On Article 38 generally, see Alain Pellet and Daniel Müller, 'Article 38', in *The Statute of the International Court of Justice: A Commentary*, ed. by Andreas Zimmermann and others, Oxford Commentaries on International Law, 3rd ed (Oxford: Oxford University Press, 2019), pp. 819–962.

[8] The ambiguity as to the status of doctrine (and case law) is clearly shown by the discussions held by the Advisory Committee of Jurists convened to draft the Statute of the then Permanent Court of International Justice. It flows from the difficulty for the Committee to decide what should the Court do in case there is no clear rule of international law to decide a dispute brought before it, in order to avoid a finding of non liquet (see Cour permanente de justice internationale, 'Procès-verbaux des séances du Comité Consultatif de Juristes avec Annexes' (La Haye, 1920), p. 307 et s.; Berthold Schenk von Stauffenberg, *Statut et Règlement de la Cour permanente de Justice internationale : éléments d'interprétation* (Berlin: Carl Heymanns Verlag, 1934), p. 227). Incidentally, Article 15 of the Statute of the International Law Commission echoes this ambiguity when it defines the "codification of international law" as "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and *doctrine*" (emphasis added). On the drafting history of the Statute of the International Court of Justice, see also Gleider I. Hernández, *The International Court of Justice and the Judicial Function* (Oxford: Oxford University Press, 2014), pp. 11–40.

[9] There are many variants to this ideal type. Notable authors include, in no specific order, KOSKENNIEMI, KENNEDY, VENZKE, BRUNNÉE and TOOPE, STAPPERT, HERNÁNDEZ, ORFORD, and PETERS.

[10] On the distinction between an internal, a moderately external and a radically external perspective, see Michel van de Kerchove and François Ost, *Le système juridique entre ordre et désordre*, Les Voies du Droit (Paris: Presses universitaires de France, 1988). See also, for the notion of "moderately internal approach", Sanne Taekema, 'Relative Autonomy, A Characterisation of the Discipline of Law', in *Law and Method: Interdisciplinary Research Into Law*, ed. by Sanne Taekema and Bart van Klink (Tübingen: Mohr Siebeck, 2011), pp. 33–52.

[11] I try not to overuse this very loaded label. In this context, I mean "a reductionist approach to legal research that strictly focuses on the interpretation of and comparison between posited sources of law".

question of whether scholars make international law becomes nonsensical. What, then, should we make of the analogy if we belong to the side of contemporary accounts of international legal normativity? One possibility is to allow for an excursion into the realm of social epistemology, a subfield of philosophy that studies knowledge from a social or collective perspective.[12]

Unsurprisingly, social epistemology offers a very complex picture of the collective production of knowledge.[13] Some authors—often labeled "postmodernist"—highlight the (partial) collective construction of the object of study by the individuals who study it.[14] HACKING is one such writer who developed a middle-ground position between a naïvely perfect distinction between cognition and creation (the object of study is not affected by our studying it) and an extreme form of anti-realism (the object of study is entirely constructed by our studying it).[15] His concept of "interactive kind" is particularly useful to shed light on what international law scholars do and to challenge the comfortable butterfly analogy. In the remainder of this piece, I briefly explore the *interactivity* of international law as an object of study and some of the implications for our understanding of international lawmaking and our daily activities as scholars.[16]

C. THE INTERACTIVITY OF INTERNATIONAL LAW — Applying the concept of "interactive kind" to (international) law is a stretch.[17] In its original formulation, the phrase restrictively refers to classifications of people that *interact* with the people thus classified. HACKING uses practical examples rather than grand theories to explain his views: for instance, the category "women refugees", he says, "can be called an interactive kind because it interacts with things of that kind, namely people, including individual women refugees, who can become aware of how they are classified and modify their behavior accordingly"[18]. This builds on a distinction between "natural" and "human" kinds that is supposedly reflected in the distinction between natural and human

[12] As always, see the Stanford Encyclopedia of Philosophy for a brilliant introduction: Alvin Goldman and Cailin O'Connor, 'Social Epistemology', in *The Stanford Encyclopedia of Philosophy*, ed. by Edward N. Zalta, Spring 2021 (Metaphysics Research Lab, Stanford University, 2021) <https://plato.stanford.edu/archives/spr2021/entries/epistemology-social/> [accessed 8 March 2021]. See also Alvin I Goldman, *Knowledge in a Social World* (Oxford: Clarendon, 1999).

[13] Who would have thought that lawyers use overly simplistic binary distinctions?

[14] For a telling illustration, see the works of LATOUR and WOOLGAR: Bruno Latour and Steve Woolgar, *Laboratory Life: The Construction of Scientific Facts*, ed. by Jonas Salk (Princeton, NJ: Princeton University Press, 1986); Bruno Latour, *The Pasteurization of France* (Cambridge, Mass.: Harvard University Press, 1993).

[15] See generally Ian Hacking, *The Social Construction of What?* (Cambridge, Mass: Harvard University Press, 1999). He calls this position, between realism and relativism, "dynamic nominalism" (Jonathan Y. Tsou, 'Hacking on the Looping Effects of Psychiatric Classifications: What Is an Interactive and Indifferent Kind?', *International Studies in the Philosophy of Science*, 21.3 (2007), 329–44 (p. 331)) On the concept of interactive kinds, see also: Ian Hacking, *Historical Ontology* (Cambridge, Mass.: Harvard University Press, 2004), chap. 6, and Ian Hacking, *Rewriting the Soul: Multiple Personality and the Sciences of Memory* (Princeton, NJ: Princeton University Press, 1998), chap. 2. For a critical discussion of some tenets of "radical social constructivism" (illustrated by LATOUR and WOOLGAR's 1986 work), see Goldman, pp. 10–17.

[16] This need not be an isolated exploration. Several authors adopting the contemporary approach started to pay attention to the "epistemic" forces of international law scholarship, at the forefront of which D'ASPREMONT. He developed a theory of formal law-ascertainment grounded in the social practice of law-applying authorities à la HART. This implies, of course, the need to identify such "law-applying authorities" or, at least, the conditions for their identification. He does not do so exhaustively but importantly highlights the "secondary role" played by scholars: although certainly not formally involved in law-making nor "law-applying actors" properly speaking, they shape and influence the practice of law-ascertainment, and contribute, albeit indirectly, to the production of "communitarian semantics" (Jean d'Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (Oxford: Oxford University Press, 2011), p. 195; Jean d'Aspremont, *Epistemic Forces in International Law* (Cheltenham, UK: Edward Elgar Publishing, 2015).

[17] In my defense, I am not the first one to attempt the stretch: ROSEN used HACKING's insights to examine the relationship between the concept and the phenomenon of law from a general legal theory perspective (Arie Rosen, 'Law as an Interactive Kind: On the Concept and the Nature of Law', *Canadian Journal of Law and Jurisprudence*, 31.1 (2018), 125–50).

[18] Hacking, *The Social Construction of What?*, p. 32.

sciences.[19] The concept has progressively come to be understood as referring to objects of cognition that are created or significantly modified once a theoretical label has been attached to them and employed.[20] What distinguishes interactive kinds from other types of objects of study[21] is the awareness and reactivity of that which is studied.[22] Even though it is commonsensical that international law is a "social construct"[23], applying the concept of "interactive kind" to it is a stretch: international law has no self-standing conscience and thus, it cannot be said to be "aware" of the labels scholars use to refer to and analyze it. Yet this notion of "awareness" is more complex than appears at first sight, even in HACKING's original work: it is not only, nor is it mainly, about the reaction and awareness of the individual object being studied, but rather about the interactivity of the *matrix* of institutions and practices surrounding the theoretical label thus developed and employed.[24] It is not that international law becomes aware of and reacts to new classifications—say, between usage and custom. It is rather that the very matrix of international law—institutions, practices, and the corresponding actors and their interrelations—changes and reacts to new classifications.

This is not all. Brilliantly, HACKING pointed out what he calls the "looping effect" of interactive kinds[25]: once affected by the theoretical labels attached to it (and the use thereof), an interactive object of study reciprocally feeds back into our cognitive endeavor and affects the theoretical labels previously developed, so much so that the effort of cognizing an interactive kind leads to a never-ending co-constructive process.[26] In other words, our work on a particular set of (internationally) legally relevant behaviors as international law scholars affects these behaviors. Thus affected, these behaviors are different from what they were at the start of our work. Because this difference is "visible", we adapt our enterprise in return—change our methodology, shift our focus, reassess our expectations. This renewed legal research enterprise will, again, affect the object under study—and the cycle continues.

Supposing that the above is a valid re-appropriation of HACKING's thought, what should we do about it? I contend that there are at least two avenues for improvement: a broader research agenda and a sense of self-restraint.

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[19] Contra Rachel Cooper, 'Why Hacking Is Wrong about Human Kinds', *The British Journal for the Philosophy of Science*, 55.1 (2004), 73–85.
[20] See Muhammad Ali Khalidi, 'Interactive Kinds', *The British Journal for the Philosophy of Science*, 61.2 (2010), 335–60. I choose "theoretical label" instead of "concept" because, to me, the latter notion is overly loaded.
[21] It should be noted that a controversy surrounds the question whether it is the object or the classification thereof that is interactive (an interactive object versus an interactive label, so to speak). A close reading of HACKING's work seems to indicate that he supports the latter view, but ALLEN's developments in this regard, supporting a more nuanced approach, are very convincing (see Sophie R. Allen, 'Kinds Behaving Badly: Intentional Action and Interactive Kinds', *Synthese*, 2018).
[22] Interactive kinds are thus opposed to *indifferent* kinds, the latter being indifferent to their being classified (Hacking, *The Social Construction of What?*, p. 104 et s.).
[23] Carlo Focarelli, *International Law as Social Construct: The Struggle for Global Justice* (Oxford: Oxford University Press).
[24] Hacking, *The Social Construction of What?*, p. 103.
[25] Ian Hacking, 'The Looping Effects of Human Kinds', in *Causal Cognition: A Multidisciplinary Debate*, Symposia of the Fyssen Foundation (New York: Clarendon Press/Oxford University Press, 1995), pp. 351–94; Tsou; Davide Sparti, 'Making up People: On Some Looping Effects of the Human Kind - Institutional Reflexivity or Social Control?', *European Journal of Social Theory*, 4.3 (2001), 331–49; Tuomas Vesterinen, 'Identifying the Explanatory Domain of the Looping Effect: Congruent and Incongruent Feedback Mechanisms of Interactive Kinds', *Journal of Social Ontology*, 6.2 (2020), 159–85.
[26] There lies the distinctive value of "interactive kinds", as opposed to "social construction talk": interactivity is "a two-way street, or rather a labyrinth of interlocking alleys" (Hacking, *The Social Construction of What?*, p. 116).

D. BROADENING OUR RESEARCH AGENDA: PRE-LAW, LAW, AND POST-LAW — One implication of the interactivity of international law as an object of study is the necessity to reckon with the law-creative power international law scholars wield. At first sight, it seems that transparently addressing the constructive nature of our scholarly exercises should be enough to remain "scientific" and continue to aim at conducting an objective study of the law. But applying constructivist insights to the legal field yields more complex results, for the coming about of (international) legal rules—notwithstanding their "validity"—is a major part of our inquiry. If international law is interactive in the sense developed above, then it looks as if we are a part of the data we purport to analyze.[27] In other words, studying international lawmaking is always also already necessarily a *self-study*. Practically speaking, since cognition and creation are inseparable, the best approach is probably one that moves away from a narrow focus on legal "outputs" and embraces international legal normativity as a live process.[28] This implies looking at the law as it stands, of course, but also at the law in its formation ("pre-law") and the law as it is re-appropriated, re-negotiated, re-constituted by its addressees and, in the present context, the scholars who attach theoretical labels to it and employ these labels in a variety of ways ("post-law"[29]). The notion of "pre-law" that I suggest is not absent from an orthodox approach but traditional legal scholars disregard what is sometimes called the "material sources" of the law, relegating them to an object of interest for sociologists or historians, not lawyers properly so-called. Conversely, "post-law", the constant re-appropriation of legal outputs, constitutes itself the basis for the formation of new law, in relation to which it will serve as pre-law. Hence pre-law, law, and post-law should not be understood in isolation beyond explanatory purposes: they are mere conceptual touchstones that enable us to grasp the complex, ever-moving phenomenon of the coming about of international legal normativity. International law scholars should devote their attention to each of these instead of focusing on "law" in the narrow sense.[30]

E. CHALLENGING OUR RESEARCH AGENDA: SELF-RESTRAINT — Running counter what I said in the previous paragraph, I must point out that another important implication of the interactivity of international law is not to broaden our research agenda, but to challenge it. For if we determine that scholars play a role—a complex, co-constituted, relative, obscure role—in the development of international law, then surely this should also spur a wave of self-reflection and, perhaps even, self-restraint. At the very least, the age of unfettered doctrinal productions for the sake of quantitative academic gratification should succumb and leave the stage to a reflexive exercise of one's power as a scholar within the international legal system.[31] Positively put, it is possible to consciously gear one's scholarly attention to the pursuit of normative ends. This, of course, seems

[27] Taekema.
[28] Moving from the sitting area to the back stage of a theater room is perhaps a useful metaphor to capture this exploration of international legal normativity: we would like to know what happens "behind the scene".
[29] With this notion of "post-law", I also try to convey, at least partially, a sense of the importance of narratives, next to legal rules, for the development of international legal normativity. This is strongly inspired by COVER's concept of jurisgenesis as far as I presently manage to understand it, which is to say not that far (Robert M. Cover, 'The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative', *Harvard Law Review*, 97 (1983), 4–68). Post-law also echoes something of the reader-response criticism school.
[30] This narrow focus translates into purely "doctrinal" (or "dogmatic") outputs.
[31] On reflexivity, see Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking*, p. 3 et s.; Bianchi, 'Reflexive Butterfly Catching'.

to amount to scholarly activism, i.e. the use of the methods of international law scholarship to promote one's political and social agenda.[32] Certainly, an academic community of international law scholars dominated by activism does not sound like a promising future for the profession. However, the interactivity of international law as an object of study might very well mean that any and all academic endeavor in the field is, at least for a part, *active*, if not *activist*. In this light, the claims of "objectivity" and "neutrality" in international law scholarship call for further crucial research.

F. CONCLUDING THOUGHTS: "BEWARE, O WANDERER, THE ROAD IS WALKING TOO"[33] — This short paper asked more questions than it answered: these are but preliminary steps on a long road, and much remains to be explored. This might lead to a certain sense of frustration. Nevertheless, I hope that asking simple questions will spur new research interests and encourage self-reflection. For acknowledging our role as actors engaged in a law-creative communicative process is one thing; accounting for this role is another. This gives way to a twofold sense of responsibility. On the one hand, if we are to understand the development of international law properly, we must broaden our research interests and our methodological toolbox so as to engage meaningfully with pre-law, law, post-law, and everything in between. On the other, in our day-to-day activities as international law scholars, we must be aware of the communicative processes in which we engage, sometimes unconsciously, often matter-of-factly. This awareness could crystallize in prudence and restraint.

[32] See Gleider Hernández, 'The Activist Academic in IL Scholarship', *ESIL Reflections*, 2013 <https://esil-sedi.eu/post_name-145/> [accessed 12 January 2021].
[33] This phrase is from HARRISON, who adapted an unpublished line of RILKE: Stephen Mitchell and Rainer Maria Rilke, *Duino Elegies and The Sonnets to Orpheus* (New York: Vintage International, 2009), p. 215.

G. REFERENCES

Allen, Sophie R., 'Kinds Behaving Badly: Intentional Action and Interactive Kinds', *Synthese*, 2018

d'Aspremont, Jean, *Epistemic Forces in International Law* (Cheltenham, UK: Edward Elgar Publishing, 2015)

———, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (Oxford: Oxford University Press, 2011)

———, 'Subjects and Actors in International Lawmaking: The Paradigmatic Divides in the Cognition of International Norm-Generating Processes', in *Research Handbook on the Theory and Practice of International Lawmaking*, ed. by Catherine Brölmann and Yannick Radi (Cheltenham, UK: Edward Elgar Publishing, 2016), pp. 32–55

Bianchi, Andrea, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford: Oxford University Press, 2016)

———, 'Reflexive Butterfly Catching: Insights from a Situated Catcher', in *Informal International Lawmaking*, ed. by Joost Pauwelyn, Ramses Wessel, and Jan Wouters (Oxford: Oxford University Press, 2012), pp. 200–215

Cooper, Rachel, 'Why Hacking Is Wrong about Human Kinds', *The British Journal for the Philosophy of Science*, 55.1 (2004), 73–85

Cour permanente de justice internationale, 'Procès-verbaux des séances du Comité Consultatif de Juristes avec Annexes' (La Haye, 1920)

Cover, Robert M., 'The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative', *Harvard Law Review*, 97 (1983), 4–68

Focarelli, Carlo, *International Law as Social Construct: The Struggle for Global Justice* (Oxford: Oxford University Press, 2012)

Goldman, Alvin I, *Knowledge in a Social World* (Oxford: Clarendon, 1999)

Goldman, Alvin, and Cailin O'Connor, 'Social Epistemology', in *The Stanford Encyclopedia of Philosophy*, ed. by Edward N. Zalta, Spring 2021 (Metaphysics Research Lab, Stanford University, 2021) <https://plato.stanford.edu/archives/spr2021/entries/epistemology-social/> [accessed 8 March 2021]

Hacking, Ian, *Historical Ontology* (Cambridge, Mass.: Harvard University Press, 2004)

———, *Rewriting the Soul: Multiple Personality and the Sciences of Memory* (Princeton, NJ: Princeton University Press, 1998)

———, 'The Looping Effects of Human Kinds', in *Causal Cognition: A Multidisciplinary Debate*, Symposia of the Fyssen Foundation (New York: Clarendon/Oxford University Press, 1995), pp. 351–94

———, *The Social Construction of What?* (Cambridge, Mass: Harvard University Press, 1999)

Hernández, Gleider, 'The Activist Academic in IL Scholarship', *ESIL Reflections*, 2013 <https://esil-sedi.eu/post_name-145/> [accessed 12 January 2021]

Hernández, Gleider I., *The International Court of Justice and the Judicial Function* (Oxford: Oxford University Press, 2014)

Kammerhofer, Jörg, 'Law-Making by Scholars', in *Theory and Practice of International Lawmaking* (Cheltenham: Edward Elgar Publishing, 2012), pp. 305–27

van de Kerchove, Michel, and François Ost, *Le système juridique entre ordre et désordre*, Les Voies du Droit (Paris: Presses universitaires de France, 1988)

Khalidi, Muhammad Ali, 'Interactive Kinds', *The British Journal for the Philosophy of Science*, 61.2 (2010), 335–60

Latour, Bruno, *The Pasteurization of France* (Cambridge, Mass.: Harvard University Press, 1993)

Latour, Bruno, and Steve Woolgar, *Laboratory Life: The Construction of Scientific Facts*, ed. by Jonas Salk (Princeton, NJ: Princeton University Press, 1986)

Mitchell, Stephen, and Rainer Maria Rilke, *Duino Elegies and The Sonnets to Orpheus* (New York: Vintage International, 2009)

Oppenheim, L., *Oppenheim's International Law. Vol. 1: Peace*, ed. by R. Y. Jennings and Arthur Watts, 9th ed (London; New York: Longman, 1996)

Pellet, Alain, and Daniel Müller, 'Article 38', in *The Statute of the International Court of Justice: A Commentary*, ed. by Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, Christian Tomuschat, Felix Boos, and Eleni Methymaki, 3rd ed (Oxford: Oxford University Press, 2019), pp. 819–962

Rosen, Arie, 'Law as an Interactive Kind: On the Concept and the Nature of Law', *Canadian Journal of Law and Jurisprudence*, 31.1 (2018), 125–50

Schenk von Stauffenberg, Berthold, *Statut et Règlement de la Cour permanente de Justice internationale : éléments d'interprétation* (Berlin: Carl Heymanns Verlag, 1934)

Sparti, Davide, 'Making up People: On Some Looping Effects of the Human Kind - Institutional Reflexivity or Social Control?', *European Journal of Social Theory*, 4.3 (2001), 331–49

Taekema, Sanne, 'Relative Autonomy, A Characterisation of the Discipline of Law', in *Law and Method: Interdisciplinary Research Into Law*, ed. by Sanne Taekema and Bart van Klink (Tübingen: Mohr Siebeck, 2011), pp. 33–52

Tsou, Jonathan Y., 'Hacking on the Looping Effects of Psychiatric Classifications: What Is an Interactive and Indifferent Kind?', *International Studies in the Philosophy of Science*, 21.3 (2007), 329–44

Venzke, Ingo, 'Contemporary Theories and International Lawmaking', in *Research Handbook on the Theory and Practice of International Lawmaking*, ed. by Catherine Brölmann and Yannick Radi (Cheltenham, UK: Edward Elgar Publishing, 2016), pp. 66–84

Vesterinen, Tuomas, 'Identifying the Explanatory Domain of the Looping Effect: Congruent and Incongruent Feedback Mechanisms of Interactive Kinds', *Journal of Social Ontology*, 6.2 (2020), 159–85

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