# The Mainstream and the Intersubjective in International Law: From Objectivity to Imagination

# THE MAINSTREAM AND THE INTERSUBJECTIVE IN INTERNATIONAL LAW: FROM OBJECTIVITY TO IMAGINATION

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**Abstract.** This paper argues that international law can best be understood from an intersubjective lens — an engagement of varying subjectivities searching for legal objectivity. This intersubjectivity is guided by the twin components of the legal imagination that we identify as the constitutive and the interpretative imagination. It is within these imaginative exercises that the legal rhetoric operates and ultimately shapes our worldview of international law that is both subjective and objective at the same time.

**Keywords:** scholarship in international law; colonialism; objectivity and subjectivity; language games; imagination in international law.

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## 1. INTRODUCTION[1]

*"Law is the projection of an imagined future upon reality."*

— Robert Cover[2]

*"Law, like community, is an imagined activity or a linguistic–imaginative enterprise."*

— Gerry Simpson[3]

The history of international law is counterintuitive. There are always competing claims of the "international," and every engagement with the discipline is an engagement with hegemony.[4] That being the case, we cannot talk about a neutral history of international law.[5] Any historical narrative will have to engage with three things at the very outset. First, creating boundaries for what could be known as "domestic."[6] Second, assuming particular interests and viewpoints as falling outside this boundary.[7] And, third, employing ideas from the immediate domestic vicinity to make sense of what is lying beyond.[8] The idea of international law is, therefore, both *constitutive* and *imaginative* at the same time. It is constitutive because new entities, ideas or viewpoints about the world are continuously shaped or altered. And imaginative in the fact that a "universalising" language is necessarily employed to justify almost every such instance.[9]

In contrast, there is a widespread idea in international law and the law in general that objectivity is neutrality. And that such neutrality is reached by getting rid of subjectivities. What is more, some scholars seem to believe that such neutral objectivity is achieved by what we will call

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[1] The authors have presented part of the ideas of this paper in the Narratives of International Law Workshop organised by Maastricht University Study Group for Critical Approaches to International Law on 20 May 2021.
[2] COVER, Robert M. Violence and the Word 95. *Yale Law Journal*, 1985-1986, p. 1601; 1604.
[3] SIMPSON, Gerry. Imagination. *In*: D'ASPREMONT, Jean; SINGH, Sahid (eds.). *Concepts for International Law.* Cheltenham: Edward Elgar, 2019, p. 413-414.
[4] KOSKENNIEMI, Martti. International Law and Hegemony: a reconfiguration. *Cambridge Review of International Affairs*, v. 17, n. 2, 2004, p. 197.
[5] ORFORD, Anne. *International Law and the Politics of History*. Cambridge: Cambridge University Press, 2021, p. 257.
[6] ABBOTT, Andrew. Things of Boundaries. *Social Research*, v. 62, n. 4, 1995, p. 857.
[7] KOSKENNIEMI, Martti. *To the Uttermost Parts of the Earth*: Legal Imagination and International Power (1300-1870). Cambridge: Cambridge University Press, 2021.
[8] This is what Koskenniemi calls 'Bricolage'. KOSKENNIEMI, Martti. *To the Uttermost Parts of the Earth*: Legal Imagination and International Power (1300-1870). Cambridge: Cambridge University Press, 2021, p. 6.
[9] KOSKENNIEMI, Martti. International Law and Hegemony: a reconfiguration. *Cambridge Review of International Affairs*, v. 17, n. 2, 2004, p. 197; 199. On the relevance of understanding international law's internal logic, see also: MENEZES, Wagner. International Law in Brazil. *Boletim da Sociedade Brasileira de Direito Internacional*, Rio de Janeiro, Edição Comemorativa Centenária, v. 103, n. 125-130, p. 1237-1311, 2017.

"orthodox scholarship."[10] The orthodox view, the mainstream style of international legal scholarship developed nowadays in the West, is based on the idea that its object of research can be perceived acritically. Orthodox scholars assume that it is possible to say what international law is without engaging any theoretical substratum. Methodologically, they believe that one should first know what international law is and only then think about criticising it. In other words, the orthodox view thinks of their work as the view that perceives international law objectively, given that they are neutral interpreters. Perspectival views (such as those assumed by critical approaches) are non-objective insofar as they are non-neutral.

Against the orthodox view, this paper argues that: (1) orthodox scholarship is not neutral; it is just the mainstream tradition in contemporary international law. And (2) objectivity is not best seen as the absence of subjectivity but a confluence of subjectivities leading to intersubjectivity; intersubjectivity is objectivity. This paper explains how international law could better be understood not through the competing claims of *objectivity* and *universality* but within the shared space of *intersubjectivity* within which its language finds operation.

## 2. THE MAINSTREAM TRADITION

The mainstream tradition in international law talks about the liberal world order and proposes its universal claims. This universal claim is based on the Hobbesian "state of nature" where States are equated to individuals. Their interaction is assumed to be happening in a free autonomous manner.[11] The "state of nature" in international law is established upon the Cartesian assumption that there is a world outside the body of the individual and that this world could be subject to individual interpretations and understandings.[12] This means that States are independent

[10] See: KAMMERHOFER, Jörg. Alexander Orakhelashvili, The Interpretation of Acts and Rules in Public International Law. [Book Review]. *European Journal of International Law*, v. 20, p. 1282-1286, 2009; HAUCK, Sué González. The Outside Keeps Creeping in: On the Impossibility of Engaging in Purely Doctrinal Scholarship. *Vöelkerrechtsblog*, 23 Feb. 2021. Available at: https://voelkerrechtsblog.org/the-outside-keeps-creeping-in-on-the-impossibility-of-engaging-in-purely-doctrinal-scholarship/. Accessed on: 28 Mar. 2021. See also: MARCOS, Henrique Jerônimo Bezerra. Didática, Ensino e Pesquisa Jurídico-Dogmática em Direito Internacional. *In*: MENEZES, Wagner (org.). *Direito Internacional em Expansão* – Volume XIX. Belo Horizonte: Arraes Editores, 2020, p. 147-166.

[11] The argument that the international society of nation-States is to be understood in Hobbesian terms was proposed by Hedley Bull by invoking the terminology of "domestic analogy". For a comprehensive understanding of Bull's work, see: ALDERSON, Kai; HURRELL, Andrew (eds.). *Hedley Bull on International Society*. London: Palgrave Macmillan, 2000. In the context of international law, see: CARTY, Anthony. Language Games of International Law: Koskenniemi as the Discipline's Wittgenstein. *Melbourne Journal of International Law*, v. 13, n. 2, 2012, p. 859.

[12] SCOBBIE, Ian. Rhetoric, Persuasion and Interpretation in International Law. *In*: BIANCHI, Andrea; PEAT, Daniel; WINDSOR, Matthew (eds.). *Interpretation in International Law*. Oxford: Oxford University Press, 2015, p. 61.

within themselves and are free to choose the kind of action they would like to perform. Additionally, the international conduct of the State is independent of any proclivities apart from its autonomous rationality, which is guided by its self-interest. Since a State's behaviour is what constitutes the standards of international behaviour, it is better to study them in the same systematic fashion as the rules of the physical world are determined by physicists.[13] Grotius brings this scientificity into the discipline and, thus, tries to take it away from its religious foundations.[14]

Interestingly, the discipline continues to carry the germ seeds of the Christian ethic, which define some of its aspects. For instance, the universal claims embedded in its language. The universal language of the discipline is the immediate outcome of its civilisational discourse.[15] This civilisational discourse is also fed by the history of coloniality, which began with the Christian monarch's mission of proselytisation, going as far back as the times of Christopher Columbus, even before the famous invocations of the Spanish Jesuit, Francisco Vitoria.[16] It is different that the civilisational discourse in its most modern form finds its mention in the American tradition in international law, grounded much in James Scott's Catholicism.[17]

Mainstream international law makes universalistic claims especially on account of two historical developments. First, through colonial history, which allowed the exportation of internationalist ideas[18] and the rise of liberalism in erstwhile colonies.[19] Second, through the establishment of international organizations that accompanied the decolonization process and transformed regional unions into universal organizations having greater subject-specific scope to their working.[20] Membership in these organizations was floated on a universal level so as to ensure

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[13] HOMMES, Hendrik van Eikema. Grotius on Natural and International Law. *Netherlands International Law Review*, v. 30, n. 1, 1983, p. 61. See also: TRIBE, Laurence H. Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics. *Harvard Law Review*, v. 103, 1989, p. 1.

[14] GROTIUS, Hugo. Prolegomena. *In*: GROTIUS, Hugo. *De Jure Belli Ac Pacis*. Translated by Francis W. Kelsey. Oxford: Clarendon Press, 1925, para. 11. George, however, argues that Grotius never intended to secularize the law as is usually understood. GEORGE, William P. Grotius, Theology, and International Law: Overcoming Textbook Bias. *Journal of Law and Religion*, v. 14, n. 2, 1999-2000, p. 605.

[15] PAZ, Reut Yael. Religion, Secularism and International Law. *In*: ORFORD, Ann; HOFFMAN, Florian (eds.). *The Oxford Handbook of the Theory of International Law*. Oxford: Oxford University Press, 2016, p. 924.

[16] SEED, Patricia. *Ceremonies of Possession in Europe's Conquest of the New World*: 1492-1640. Cambridge: Cambridge University Press, 1995. See also: MIKHAIL, Alan. *God's Shadow*: Sultan Selim I, His Ottoman Empire and the Making of the Modern World. New York: Liveright Publishing, 2020.

[17] AMOROSA, Paolo. *Rewriting the History of the Law of Nations*: How James Brown Scott Made Francisco De Vitoria the Founder of International Law. Oxford: Oxford University Press, 2019.

[18] KOSKENNIEMI, Martti. Sovereignty, Property and Empire: Early Modern English Contexts. *Theoretical Inquiries in Law*, v. 18, 2017, p. 355.

[19] See for instance, ZIADEH, Farhat Jacob. *Lawyers, the Rule of Law and Liberalism in Modern Egypt*. Stanford: Hoover Institution on War, Revolution, and Peace: Stanford University, 1968.

[20] KENNEDY, David W. The Move to Institutions. *Cardozo Law Review*, v. 8, 1987, p. 841.

general participation. Yet, the standards of membership, rules of engagement, and the deliberation processes were defined in a differential manner.[21]

The establishment of the United Nations and other organisations after World War Two allowed the international legal system to become more participatory and permitted the emergence of specific areas of collaboration as diverse as the international monetary policies, environmental governance and human rights jurisprudence.[22] The emergence of the latter, further strengthened the resolve of the international community to come together and solve problems through peaceful means, though in a highly diversified manner.[23]

## 3. BETWEEN THE MAINSTREAM AND THE OBJECTIVE

At the heart of the perspective that equates orthodox scholarship to objectivity is the notion that the mainstream is the objective view. In other words, this perspective assumes that the mainstream way of working with international law is the only perspective that is not tainted by subjectivity. In truth, however, the mainstream is just the one that represents a liberal worldview of international law-making. The mainstream liberal worldview suffers from three types of subjectivities. First, one that does not allow it to be framed in a monolithic mould.[24] Second, that it is critiqued by a diverse set of viewpoints.[25] Third, it springs from a particular point of view which is not Archimedean.[26]

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[21] Take for instance the voting mechanisms provided by the UN, IMF, World Bank etc. The influence which the members have over the voting process is differential, seeking to fulfil varying purposes. In the UN Security Council the voting by any permanent member is definitive, but for any non-permanent member that is not the effect. Similarly, in the IMF the member States enjoy different levels of influence reflected in the relative weightage provided to their votes. See generally KLABBERS, Jan. *An Introduction to International Organizations Law*. 3. ed. Cambridge: Cambridge University Press, 2015.

[22] KOSKENNIEMI, Martti. The Politics of International Law - 20 Years Later. *European Journal of International Law*, v. 20, 2009, p. 7.

[23] For example, the organisational response to the COVID-19 crisis. The World Health Organization (WHO) seems unable to find itself capable of forging a global alliance in the event of a public health emergency of international concern, especially due to the toothless nature of Article 44 of the International Health Regulations, 2005. This is also due to the diverse nature of the international legal rules - WTO, WHO, and World Bank all dealing with similar yet overlapping aspects of global health. See generally KOSKENNIEMI, Martti. Report of the Study Group of the International Law Commission: Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. *Fifty Eighth Session of the International Law Commission*, A/CN.4/L.682, 13 Apr. 2006. Additionally, see: BENVENISTI, Eyal. The WHO - Destined to Fail?: Political Cooperation and the COVID-19 Pandemic. *American Journal of International Law*, v. 114, n. 4, 2020, p. 588.

[24] MACDONALD, Euan. *International Law and Ethics After the Critical Challenge: Framing the Legal within the Post-Foundational*. Leiden/Boston: Martinus Nijhoff Publishers, 2011, p. 28.

[25] ORFORD, Anne; HOFFMAN, Florian. *The Oxford Handbook of the Theory of International Law*. Oxford: Oxford University Press, 2016.

[26] HOLLAND, Jocelyn; LANDGRAF, Edgar. The Archimedean Point: From Fixed Positions to the Limits of Theory. *Substance*, v. 43, n. 3, 2014, p. 3.

The first subjectivity relates to an inner disciplinary diversity — where the liberal worldview cannot be framed as a "particular" one, and not the "specific" other. Here it becomes difficult to articulate what is the mainstream view. For instance, did the mainstream orthodox scholarship interpret the American "War on Terror" in Iraq as legally justifiable?[27] While one may say that the choices were political, it is also true that they gained "interpretative" and not merely a wishful support from the "invisible college", so to say, of international lawyers.[28] Where do we stand legally on any given issue is something that seems unresolvable any given day.[29] And so the mainstream itself becomes a hugely subjective engagement — a "politics" of sorts.[30]

The second subjectivity stems from the competing viewpoints about what international law is or should be. Certain methodological discourses populate the discipline: third world approaches to international law (TWAIL), feminist legal studies (FtLS), critical legal studies (CLS), critical race theory (CRT) etc.[31] Each approach brings a fresh perspective to the understanding of law, its purposive *telos* and its fallacies. And each one critiques a particular aspect of the mainstream. For instance, where TWAIL focuses on the material aspects of the discipline (linking it with Marxism),[32] FtLS employs gender as the praxis of engagement.[33] Similarly, where CLS dissects the argumentative structure of the legal argument,[34] CRT projects race as the foundational bias with which the discipline suffers from.[35]

The third aspect of subjectivity is more narrative-based. It roots itself in the history of the discipline and argues that legal traditions (and not any specific tradition) have played a

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[27] CRAVEN, Matthew et al. We Are Teachers of International Law. *Leiden Journal of International Law*, v. 17, n. 2, 2004, p. 363.

[28] The "invisible college of international lawyers'' is a term framed by Oscar Schachter to define the nature of work an international lawyer engages in: SCHACHTER, Oscar. The Invisible College of International Lawyers. *North Western University Law Review*, v. 72, n. 2, 1977-1978, p. 217.

[29] KOSKENNIEMI, Martti. *From Apology to Utopia*: The Structure of International Legal Argument. Cambridge: Cambridge University Press, 2005.

[30] KOSKENNIEMI, Martti. *The Politics of International Law*. Cambridge: Cambridge University Press, 2004.

[31] For an introductory engagement with the methodological approaches in international law, see: RATNER, Steven R.; SLAUGHTER, Anne-Marie. Appraising the Methods of International Law: A Prospectus for Readers. *American Journal of International Law*, v. 93, n. 2, 1999, p. 291. TWAIL was not included in the *Symposium* originally. See: AMERICAN JOURNAL OF INTERNATIONAL LAW. *Correspondence of the American Journal of International Law*, v. 94, 2000, p. 100. Upon the request of the editors, the following chapter was incorporated later: ANGHIE, Antony; CHIMNI, B. S. Third World Approaches to International Law and Individual Responsibility in Internal Conflicts. *Chinese Journal of International Law*, v. 2, n. 1, 2003, p. 77. Similarly, the CRT also requested for its inclusion: AMERICAN JOURNAL OF INTERNATIONAL LAW, op. cit., p. 99.

[32] CHIMNI, B.S. *International Law and World Order*: A Critique of Contemporary Approaches. 2. ed. Cambridge: Cambridge University Press, 2017.

[33] CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelly. Feminist Approaches to International Law. *American Journal of International Law*, v. 85, n. 4, 1991, p. 613.

[34] KENNEDY, David. *International Legal Structures*. Nomos, 1987; KOSKENNIEMI, Martti. *From Apology to Utopia*: The Structure of International Legal Argument. Cambridge: Cambridge University Press, 2005.

[35] MUTUA, Makau. Critical Race Theory and International Law: The View of an Insider-Outsider. *Villanova Law Review*, v. 45, n. 5, 2000, p. 841.

significant role in the emergence of international law. These traditions provide multiple perspectives to look at the discipline, which, when ignored, disallows one to conclude that the mainstream is universal. For instance, the origins of international law cannot overlook the civilizational discourse that happened at the cusp of the 15th century at the hands of the Islamic and the Christian empires. There is evidence which demonstrates that Columbus' voyage to the Indies was fed by his desire to support the Christian empire against its Islamic counterpart.[36] Moreover, the harshness with which Columbus treated the Indians also sprang from the way he looked at the "moors" (or Muslims).[37] Similarly, Francisco Vitoria's famous *Relectio de Indis*[38] and the universality of *jus gentium*[39] also came in the context of the civilizational interaction between Christianity and Islam.[40] Likewise, Grotius' engagement with Simon Stevin,[41] from whom he adopted the scientific approach,[42] and his views about Islam,[43] clearly demonstrate the trans-civilizational context in which international law emerged.[44]

As such, the mainstream international law does not come to us in a neutral fashion. It has had its own set of biases. Therefore, what we study as the "mainstream" cannot be classified as "objective," especially when this objectivity is thought of as neutrality.

## 4. OBJECTIVITY

[36] MIKHAIL, op. cit., 2020.
[37] Ibid.
[38] ROVIRA, Mónica García-Salmones. The Disorder of Economy? The First Relectio de Indis in a Theological Perspective. *In*: KADELBACH, Stefan Thomas Kleinlein; ROTH-ISIGKEIT, David (eds.). *System, Order, and International Law*: The Early History of International Legal Thought from Machiavelli to Hegel. Oxford: Oxford University Press, 2017, p. 443.
[39] KOSKENNIEMI, Martti. *To the Uttermost Parts of the Earth*: Legal Imagination and International Power (1300-1870). Cambridge: Cambridge University Press, 2021, p. 117-210.
[40] SEED, op. cit. (discussing the Islamic roots of the Spanish '*requerimiento*'); KOSKENNIEMI, Martti. *To the Uttermost Parts of the Earth*: Legal Imagination and International Power (1300-1870). Cambridge: Cambridge University Press, 2021, p. 160 (providing that the Spanish *requerimiento* was created by Palacio Rubios based on the ideas propounded by Pope Innocent IV and Canon lawyer Hostiensis); and POTZ, Richard. Islam and Islamic Law in European Legal History. *In*: INSTITUTE OF EUROPEAN HISTORY (IEG). *European History Online (EGO)*. (providing that Francisco Vitoria based his teachings in the works of Pope Innocent IV). Available at: http://ieg-ego.eu/en/threads/models-and-stereotypes/from-the-turkish-menace-to-orientalism/richard-potz-islam-and-islamic-law-in-european-legal-history. Accessed on: 27 Nov. 2021.
[41] SARTON, George. Simon Stevin of Bruges (1548-1620). *ISIS*, v. 21, n. 2, July, 1934, p. 241 (providing details about Stevin's connection with Grotius' father, and with Grotius himself).
[42] VERMEULEN, B. P. Simon Stevin and the Geometrical Method in *De Jure Praedae*. *Grotiana*, v. 4, n. 1, 1983, p. 63. See also: HOMMES, Hendrik van Eikema. Grotius' Mathematical Method. *Netherlands International Law Review*, v. 31, n. 1, 1984, p. 98.
[43] KLEIN, Dietrich. *Hugo Grotius' Position on Islam as Described in De Veritate Religionis Christianae, Liber IV*. (In *Socinianism and Arminianism*: Antitrinitarians, Calvinists and Cultural Exchange in Seventeenth-Century Europe). [S.l.]: Brill Publications, 2005, p. 149.
[44] YASUAKI, Onuma. *A Transcivilizational Perspective on International Law*. Leiden: Martinus Nijhoff Publishers, 2010.

The concept of objectivity is controversial. While most of us have opinions on whether a given entity is or is not objective, we are not always able to tell what we mean when we say that something is or is not objective. For instance, is subjective the same as non-objective? Can we arrive at objectivity while dealing with subjective matters or is it always an opposition (if something is subjective it is not objective, and vice-versa)?

There are two well-defined conceptions for objectivity; one is narrow the other is wide.[45] In both conceptions, objectivity is related to how the world "really" is in the sense that anyone who does not register it as such can be said to be missing something or adding what is not there. The main difference between the narrow and wide conceptions is the part played by subjectivity. In the former, the subjective is the same as the non-objective. In the latter, subjective entities are subject-dependent entities but that does not necessarily entail non-objectivity.

Williams and Nagel are two contemporary champions of the narrow conception. Nagel, for instance, argues that the objective view is "centerless" and hostile to all subjective afflictions.[46] In his cartesian endeavour for objectivity, Williams also argues that all subjective qualities must be excluded given that they are merely aftereffects played by our minds.[47] The narrow conception looks to get rid of appearances caused by our perspectives. Here the notion of perspective is taken quite literally as the spatial notion of an individual's point of view — a particular line of sight of something viewed from a certain angle. The solution to getting rid of the false appearances caused by our perspectives is to "transcend," assuming a view from nowhere where we place our perspectives in a matrix of alternative perspectives that allows us to correct distortions and achieve a transparent estimation of the object by eliminating individual views.[48] Nagel reasons that an unobstructed view of reality demands abstraction from the way that humans perceive and act "[…] toward a conception of the world which as far as possible is not the view from anywhere within it."[49] As such, he takes our subject-dependent qualities to be perspectives that cloud reality, a reality which can only be clearly seen from this transcendental viewing point.

Depicting objectivity as the opposite of subjectivity is attractive. Crary, however, attributes that appeal to the failure to think of an alternative. Trying to lighten the demands made

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[45] CRARY, Alice. Objectivity. *In*: CONANT, James; SUNDAY, Sebastian (eds). *Wittgenstein on Philosophy, Objectivity, and Meaning*. 1. ed. Cambridge: Cambridge University Press, 2019. p. 47-61.

[46] NAGEL, Thomas. *The View from Nowhere*. Oxford: Oxford University Press, 1989, p. 14-15.

[47] WILLIAMS, Bernard. *Descartes*: The Project of Pure Enquiry. Hoboken: Taylor & Francis, 2005, p. 222.

[48] The expression is taken from Conant: "Distortion arising from some of our perspectives (e.g., those pertaining to the spatial properties of objects) – here at stage one in the dialectic – can still be corrected for by shifting to an alternative perspective within the same matrix of perspectives (thereby allowing us, to estimate, e.g., the real shape of an object)." CONANT, James. The Dialectic of Perspectivism, I. *Sats - Nordic Journal of Philosophy*, v. 5, 2005, p. 23.

[49] NAGEL, Thomas. *Mortal Questions*. Cambridge: Cambridge University Press, 2012, p. 206.

by Nagel and Williams, she argues that the subjective is *not* supposed to be understood as non-objective but something conceivable only in terms of the effects it has on subjects. Subjective qualities become subject-dependent qualities. With these new lenses, she invites us to widen our conception of objectivity by removing the opposition between subjective and objective qualities, allowing some subjective elements may fit within the broadened objective domain. But, before we widen our conception, let us point out some of the arguments against narrow objectivity.

There are two main arguments against the narrow conception of objectivity. The first one is thematic; the second comes from the philosophy of language. First, the main allure of the narrow view is that we assume that eliminating subjectivities gets us rid of false appearances and closer to reality. That might make sense when dealing with some aspects of the physical world. However, if our interests are attuned to different themes, it might not be so attractive to eliminate everything that is subject-dependent. Even if the colour and taste of an apple is subject-dependent, it still seems like a research topic worth pursuing for some neuroscientists and philosophers. One might argue that the narrow conception of objectivity does not reject such themes; it is still possible to research the neural correlates of colour and taste by examining brain activity that corresponds to those experiences. Even so, that counterargument falls short of helping the narrow conception. Even so, that counterargument falls short of helping the narrow conception. It only brings us closer to realising the difficulty of an absolute separation of objectivity from subjectivity. Second, if we embark on the "transcendental project", it will not be long for us to, once again, start discarding everything subjective from the world, including some relevant aspects of our life that are without a doubt subject dependent. Also, we need to ask whether the requirements made by the narrow conception are not only capable of being met but if they are indeed a means that can bring us closer to understanding reality.

In that connection, Williams admits that our views are irrevocably ours,[50] and Nagel concedes that the transcendental view is an unreachable ideal.[51] Regardless, they still insist that it is a horizon worth pursuing. Williams, for one, contends that our views may be ours, but we can still develop concepts that are not peculiarly relative to our experience.[52] In his philosophy of mathematics, Russell shows how mathematical induction can define natural numbers.[53] He claims

[50] "Are not all our concepts ours, including those of physics? Of course: but there is no suggestion that we should try to describe a world without ourselves using any concepts, or without using concepts which we, human beings, can understand. The suggestion is that there are possible descriptions of the world using concepts which are not peculiarly ours, and not peculiarly relative to our experience" WILLIAMS, B., op. cit., p. 228-229.

[51] "To grasp this by detaching more and more from our own point of view is the unreachable ideal at which the pursuit of objectivity aims." NAGEL, Thomas. *Mortal Questions*. Cambridge: Cambridge University Press, 2012, p. 208.

[52] WILLIAMS, B., op. cit., p. 228-229.

[53] RUSSELL, Bertrand. *Introduction to Mathematical Philosophy*. New York: Dover Publications, 1993. 20 p.

that we can generalise that definition to the posterity of all numbers that succeed 0. It is so because the application of a mathematical rule such as the +1 rule will always lead to the same outcome on each occasion. That seems like a good contender for an experience-free concept. Mathematics is as transcendental and abstract as humans have gone, and applying the +1 rule appears to be an activity that even a young child can fully understand and succeed in. Wittgenstein, however, teaches us that it is not so.

Wittgenstein argues that assessing the correctness of that rule application is not set up in a code outside our experience. It is dependent on our ways of handling it. As he puts it: "It is one thing to describe methods of measurement, and another to obtain and state results of measurement. But what we call "measuring" is partly determined by a certain constancy in results of measurement."[54] Understanding is taken by Wittgenstein as mastering a practice of rule-following; we understand a concept when we have mastery of the rules for its use. Still, when teaching the +1 rule (as well as any other), it is not possible to explain all the possible steps in advance nor all the possible uses of that rule. Even mathematical certainties such as that adding 1 to 1000 gives 1001 are in this way dependent on determinations made by access to public subject-imposed criteria.[55] The child will have understood the rule when she understands the collective use of the rule and matches her application of the rule with that use. In conclusion, understanding and rule-following is a public — experience-laden and subjective — practice, be there any kind of language-based rules that give rise to whichever concept.[56]

There is also something to say about the transcendental view and whether it can give us privileged knowledge of a language-based world. Here too Wittgenstein can help us. He traces some of our philosophical confusions to our tendency to think that we need to survey the world from a point of view that is outside all our perspectives, including language, as there is a widespread belief that by stepping outside of language, we will finally find the essence of the world. Wittgenstein asks us to reject those tendencies (as he rejected them himself) because meaning is

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[54] WITTGENSTEIN, Ludwig. *Philosophical Investigations*. Translated by G. E. M Anscombe. 3. ed. Oxford: Basil Blackwell, 1986, para. 242.

[55] Ibid., para. 198. Cavell summarises this conclusion nicely: "We learn and teach words in certain contexts, and then we are expected, and expect others, to be able to project them into further contexts." CAVELL, Stanley. *The Availability of Wittgenstein's Later Philosophy, Must We Mean What We Say?* A Book of Essays. Cambridge Philosophy Classics edition. Cambridge: Cambridge University Press, 2015. For detailed analysis and (alternative) explanations, see: KRIPKE, Saul A. *Wittgenstein on Rules and Private Language*: An Elementary Exposition. Cambridge: Harvard University Press, 2000; WEIR, Samuel. *Wittgenstein on Rule Following*: A Critical and Comparative Study of Saul Kripke, John McDowell, Peter Winch and Cora Diamond. Masters in Philosophy, King's College London, London, 2003; LABI, Clément. "Kripkenstein" in Legal Interpretation. *International Journal for the Semiotics of Law* - Revue internationale de Sémiotique juridique, v. 33, 2020, p. 1059.

[56] WITTGENSTEIN, Ludwig. *Philosophical Investigations*. Translated by G. E. M Anscombe. 3. ed. Oxford: Basil Blackwell, 1986, para. 202.

not fixed by a connection of a word to a particular feature of reality but rather by how we use it. As the slogan goes, meaning is use.[57]

Traditional interpretations of Wittgenstein are satisfied with the idea that he suggests abandoning attempts to look for a viewpoint outside of language because it is impossible. However, it is not that such a standpoint is unreachable. The fact of the matter is that even if we got to view the world from nowhere, we would notice that there is nothing out there underwriting it. Trying to find meaning outside of language is not understanding the role words play as tools or pieces in a game. Likewise, ignoring such role is to insist on thinking of our subjectivity as a barrier between ourselves and the real fabric of the world and that getting rid of it will get us closer to an accurate picture of the world. However, there is no hidden meaning that comes from leaving subjectivity. As such, its abandonment is not only impossible but inconsequential for any entitlement that we have to epistemic ideals.[58]

## 5. INTERSUBJECTIVITY

Some are quick to jump from the criticism made against the narrow conception to conclude that there is no objectivity possible. From that conclusion, one immediately infers the impossibility of knowledge, the absence of truth, and absolute relativism. But such reasoning is unwarranted. As mentioned above, alongside the narrow conception, there is also a wide conception of objectivity, which we will examine in this section. If we insist on treating objectivity as non-subjectivity, we turn it into something that no language-dependent being can grasp, talk about, or use. Maintaining the conception of objectivity as non-subjectivity ultimately forces us to admit that there are no objective facts insofar as facts are too language-dependent. This turns objectivity into an unusable concept.

The alternative is to propose a different meaning to objectivity. Following the wide conception, our terminological suggestion is to define objectivity not as something that belongs to the realm of the non-subjective as far as we allow some subjective entities to count as objective. Such a proposition is not entirely unprecedented. In their inquiry on scientific objectivity, Daston and Galison appear to reach a similar outcome.[59] They reveal that throughout history, objectivity

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[57] "But if we had to name anything which is the life of the sign, we should have to say that it was its use." WITTGENSTEIN, Ludwig. *The Blue and Brown Books*: Preliminary Studies for the 'Philosophical Investigations. Malden: Blackwell, 2007, p. 4.

[58] On similar "therapeutic" readings of Wittgenstein, see: CRARY, Alice; READ, Rupert J. (eds.). *The New Wittgenstein*. London: Routledge, 2000.

[59] DASTON, Lorraine; GALISON, Peter. *Objectivity*. New York: Zone Books; Distributed by the MIT Press, 2007.

moved from the narrow conception to something wider. The scientific ideal steered away from a neutral cold gaze to an ideal that the authors call "trained judgement" — an experienced way of seeing the world and thinking about its problems. Trained judgement is an outlook that values pluralistic evaluative methods over attempts to exclude the subjective from the equation. In other words, contemporary scientific activity goes in the opposite direction of the matrix that swallows all perspectives to spit a picture without any particular view; trained judgment is a portrait gallery of multiple perspectives. There is certainly room to criticise Daston and Galison's conclusions and their newfound ideal. But, at the very least, their work reveals that conceiving the objective as non-subjective has become disconnected from contemporary scientific activity, including research directly dealing with the physical world.

Following such a line of thought, the proposal for our new concept of objectivity is to, first, accept that we cannot escape subjectivity. Second, recognise that subjectivity plays a role in shaping objectivity and defining what is or is not objective. These two steps lead us from conceiving objectivity as non-subjectivity (or subjective as non-objective) to a conception of objectivity as a congruence of subjectivities.[60] Plainly: objectivity is inter-subjectivity. This new concept of objectivity asserts is that our ways of understanding the world — including the conception of objectivity in itself — are all dependent on our subjective experiences. Thus, objectivity relies on ourselves and our experiences. Such affirmations lead to questioning whether all that is objective is dependent on what we deliberate or agree that is objective. "So you are saying that human agreement decides what is true and what is false?" — as Wittgenstein asks and answers — "It is what human beings say that is true and false; and they agree in the language they use. That is not agreement in opinions but in form of life."[61] Beyond plain deliberations between individuals, objectivity is grounded on shared features defined by our biological, psychological, and sociocultural modes of reference, which Wittgenstein calls forms of life.[62] These forms of life are

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[60] The expression 'congruence of subjectivities' comes from from McDowell's description of Cavell's view: "What Cavell offers looks, rather, like a congruence of subjectivities, not grounded as it would need to be to amount to the sort of objectivity we want if we are to be convinced that we are really going on in the same way." MCDOWELL, John. Non-Cognitivism and Rule-Following. *In*: CRARY, Alice; READ, Rupert J. (eds.). *The New Wittgenstein*. London: Routledge, 2000, p. 43.

[61] WITTGENSTEIN, Ludwig. *Philosophical Investigations*. Translated by G. E. M. Anscombe. 3. ed. Oxford: Basil Blackwell, 1986, para. 241.

[62] Wittgenstein moved from the term 'conventions' in the *Blue and Brown Books* to 'forms of life' in *Philosophical Investigations* to emphasise that they are not necessarily related to voluntary agreements. Compare: WITTGENSTEIN, Ludwig. *The Blue and Brown Books*: Preliminary Studies for the 'Philosophical Investigations. Malden: Blackwell, 2007, p. 24; WITTGENSTEIN, Ludwig. *Philosophical Investigations*. Translated by G. E. M. Anscombe. 3. ed. Oxford: Basil Blackwell, 1986, para. 241. For an introductory analysis of the meaning attributed to "forms of life", see: TONNER, Philip. Wittgenstein on Forms of Life: A Short Introduction. *E-LOGOS*, v. 24, 2007, p. 13. Available at: http://elogos.vse.cz/doi/10.18267/j.e-logos.440.html. Accessed on: 24 Mar. 2021; GLOCK, Hans-Johann. *A Wittgenstein Dictionary*. Oxford: Blackwell Reference, 1996.

a set of interconnections between our practices and beliefs on the world and ourselves. But they are susceptible to cultural differences, allowing them to change from community to community and across time.

It is relevant to emphasise that such forms of life should not be read as a belief or a set of beliefs with doxastic basicality. Forms of life are not the foundation on which objectivity (or intersubjectivity) is grounded.[63] Giving grounds, and justification does come to an end. But this end is not foundational. It is, as Wittgenstein says, a kind of seeing and acting according to the rules (the grammar) of the language-games played by the community.[64] These games are central components of our public practice and our uses of language. We can understand these games as "regions" of our language, each with a specific grammar and relations to other language-games. The law, or even better, legal argumentation, is one such game. Law's objectivity (and the objective nature of legal arguments) is not contingent on something set over it, constituting non-subjective restraints. Here too objectivity is a matter of intersubjective practices within the legal game.

The matter is that the law's argumentative nature is pervasive. Legal practice consists of deploying and arguing about itself.[65] No claims within or about law are "foundational" in the sense that they are beyond challenge. Even the concept of law becomes the aim of disagreement as a contested concept. And that is not a residual effect of a legal order in need of fine-tuning. It is an essential character of the law's purpose within the community — it supplies focus for disagreement about matters of collective importance — it is not a warehouse of agreements.[66] In that connection, the law makes no demand for criterial semantics for argumentation to be meaningful — sensible disagreement is not only possible when parties share the criteria for fixing the extension of the concepts they employ.[67] Discussants can disagree about the application of criteria as well as

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[63] WILLIAMS, Michael. Why Wittgenstein Isn't a Foundationalist. *In*: MOYAL-SHARROCK, Danièle; BRENNER, William H. (eds.). Readings of Wittgenstein's On Certainty. [S.l.]: Palgrave Macmillan, 2005. Available at: http://link.springer.com/10.1057/9780230505346_4. Accessed on: 24 Mar. 2021; CAVELL, op. cit.; MICHELON JUNIOR, Cláudio Fortunato. Aceitação e Objetividade: Uma Comparação Entre as Teses de Hart e do Positivismo Precedente sobre a Linguagem e o Conhecimento do Direito. São Paulo: Revista dos Tribunais, 2004, p. 137.

[64] WITTGENSTEIN, Ludwig. *On Certainty*. Edited by G. E. M. Anscombe and G. H. von Wright. Tranlated by Denis Paul and G. E. M. Anscombe. Oxford: Basil Blackwell, 1969, para. 204; and WITTGENSTEIN, Ludwig. *Philosophical Investigations*. Translated by G. E. M. Anscombe. 3. ed. Oxford: Basil Blackwell, 1986, para. 23. See also: MCGINN, Marie. Grammar in the Philosophical Investigations. *In*: KUUSELA, Oskari; MCGINN, Marie (eds.) *The Oxford handbook of Wittgenstein*. Oxford: Oxford University Press, 2011.

[65] DWORKIN, Ronald. *Law's Empire*. Cambridge: Belknap Press of Harvard University Press, 1986, p. 13; POSTEMA, Gerald J. "Protestant" Interpretation and Social Practices. *Law and Philosophy*, v. 6, 1987, p. 283; BIX, Brian. *Law, Language and Legal Determinacy*. Reprinted. Oxford: Clarendon Press, 2003.

[66] DWORKIN, Ronald. A Reply by Ronald Dworkin. *In*: COHEN, Marshall (ed.). *Dworkin Ronald and Contemporary Jurisprudence*. Totowa: Rowman & Allanheld, 1983, p. 255; DWORKIN, Ronald. *A Matter of Principle*. Cambridge: Harvard University Press, 1985, p. 71.

[67] POSTEMA, Gerald J. *Legal Philosophy in the Twentieth Century*: The Common Law World. Dordrecht: Springer, 2011, p. 417.

disagree about the criteria themselves. They can rely on competing conceptions of what makes propositions of law true or hold different views about the kinds of arguments that give rise to the truth of those propositions (the grounds of law), and still be genuinely disagreeing.

However, the holistic nature of legal argumentation is the source of anxiety among some scholars and practitioners. According to Postema, such uneasiness is derived from a long tradition that attempts to tie law's coherence to reference to a structural foundation.[68] In its absence, the possibility of challenging any legal claims leads to discomfort that motivates the insistence on seeking some point of reference, thus preventing them from understanding how language works when we disagree, including legal disagreement.[69]

## 6. INTERSUBJECTIVITY IN INTERNATIONAL LAW

For international law to function, its practitioners (or else those who engage in its discourse) must attach themselves to some imagination – the disciplinary *telos*, which gives sense to its engagement.[70] This imagination provides the discipline with the sense of a legal order,[71] even though at the hands of its practitioners it remains primarily discursive.[72] Legal imagination gives rise to the "rhetoric" of law. This imagination about the law can be bifurcated into two components which we refer to here as the *constitutive imagination* and the *interpretative imagination*.[73] Where the constitutive imagination refers to the context within which the constitutive rhetoric[74] is framed, interpretative imagination[75] provides the context for the interpretative rhetoric[76] to

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[68] POSTEMA, Gerald J. "Protestant" Interpretation and Social Practices. *Law and Philosophy*, v. 6, 1987, p. 317-318.

[69] MACEDO JUNIOR, Ronaldo Porto. *Do Xadrez à Cortesia*: Dworkin e a Teoria Do Direito Contemporânea. São Paulo: Saraiva, 2013.

[70] ALLOTT, Philip. *The Health of Nations*: Society and Law Beyond the State. Cambridge: Cambridge University Press, 2002, p. 316; KOSKENNIEMI, Martti. Law, Teleology and International Relations: An Essay in Counterdisciplinarity. *International Relations*, v. 26, n. 1, 2011, p. 3; 23; SIMPSON, op. cit., p. 413; 417.

[71] Ibid.

[72] SCOBBIE, op. cit., p. 61; 70. See also: TAMMELO, Ilmar. On the Logical Openness of Legal Orders: A Modal Analysis of Law with Special Reference to the Logical Status of Non Liquet in International Law. *The American Journal of Comparative Law*, v. 8, n. 2, Spring 1959, p. 187.

[73] The bifurcation can be situated in the manner Koskenniemi classifies legal imagination operating in routine and non-routine situations. See: KOSKENNIEMI, Martti. *To the Uttermost Parts of the Earth: Legal Imagination and International Power (1300-1870)*. Cambridge: Cambridge University Press, 2021, p. 6.

[74] WHITE, James Boyd. *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character and Community*. Chicago: The University of Chicago Press, 1985, p. 266. See also: WHITE, James Boyd. Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life. *University of Chicago Law Review*, v. 52, 1985, p. 684.

[75] Since law works within the realm of a natural language, legal propositions are always open to interpretation. This means that creativity is inherent to the discipline of law; and, creativity falls within the domain of imagination. SCOBBIE, op. cit., p. 61; 70. See also: TAMMELO, op. cit., p. 187.

[76] SCOBBIE, op. cit., p. 61; 64.

function. The constitutive imagination informs the legal understanding as situated in its non-legal context[77] and within which the battle between the varying subjectivities is framed. Its interpretative counterpart, however, feeds into that aspect of law which we usually identify with the legal argumentation.[78] Here again, a "contestation" exists between the subjective understandings of the legal forms.[79]

The realm of constitutive imagination allows the birth of a relationship between the subjectivities. This is a dialogical relationship in which the negotiation happens between these subjectivities. It is the shared understanding of the common existence that leads to both — mutual recognition of each other and participation in the commonly imagined time-space trajectory.[80] Once this imagination, which we are calling here constitutive, comes into existence, the possibility of a more frequent relation-specific interaction arises. It is further participation in the ensuing relationships which give rise to the legal rhetoric often linked to what is usually identified as instrumentalism or the interpretative engagement[81] over the constituted legal forms.[82] The relationship which emerged in ordinary existence earlier now shifts to the institutional set-up where more specific relationships are now negotiated, forged, debated and even annulled.

Take, for instance, colonisation. Only in the intersubjective universe could a relationship between the coloniser and the colony be forged.[83] The struggle within the colonies was nothing else but the desire to "constitute" — both itself and the world around it.[84] For example, the Government of India Act of 1935 was passed by the British Parliament twelve years before India could finally attain independence from its erstwhile colonial master. This Act paved the way for the national Constitution, which was adopted later in January 1950.[85] Interestingly, under the same law, India signed the UN Charter as an original member back in October 1945 at the San Francisco Conference.[86] India's engagement with the norm of "self-determination" is also a worthwhile

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[77] KOSKENNIEMI, Martti. *To the Uttermost Parts of the Earth: Legal Imagination and International Power (1300-1870)*. Cambridge: Cambridge University Press, 2021, p. 7-8.

[78] SCOBBIE, op. cit., p. 61; VIEHWEG, Theodor. *Topics and the Law*: A Contribution to Basic Research in Law. Translated by W. C. Durham. Pieterlen: Peter Lang, 1993, p. xxiv.

[79] PATNAIK, Dabiru Sridhar; SIDDIQUI, Nizamuddin Ahmad. Problems of Refugee Protection in International Law: An Assessment Through the Rohingya Refugee Crisis in India. *Socio-Legal Review*, v. 14, 2018, p. 1.

[80] WEINERT, Friedel. Einstein and Kant. *Philosophy*, v. 80, n. 314, Oct. 2005, p. 585; 593.

[81] SLOANE, Thomas O. (ed.). *Encyclopedia of Rhetoric*. Oxford: Oxford University Press, 2001, p. 639.

[82] SCOBBIE, op. cit., p. 61; 64.

[83] SINGH, Prabhakar. Indian Princely States and the 19th-century Transformation of the Law of Nations. *Journal of International Dispute Settlement*, v. 11, n. 3, 2020, p. 365.

[84] See generally ESLAVA, Luis; FAKHRI; Michael; NESIAH, Vasuki (eds.). *Bandung, Global History and International Law*: Critical Pasts and Pending Futures. Cambridge: Cambridge University Press, 2017.

[85] The Act was abolished on 26 January 1950, the day when India adopted its Constitution. One of the major contributions of the Act was that it was a step towards creation of a federal system of government. The lacunae in the Act could, however, only be filled with the adoption of the Constitution.

[86] MUKERJI, Amb. Asoke. Signing of the UN Charter, 26 June 1945' by Amb. Asoke Mukerji, Former Permanent Representative of India to the United Nations. *Indian Council of World Affairs*, New Delhi, 26 June 2021.

example. India is a party to both the International Covenant on Civil and Political Rights, 1966 and the Covenant on Economic, Social and Cultural Rights, 1966. Article 1 of both the treaties provide for the human right of collective self-determination. India, having acceded to the treaties in 1979 provides an interpretative declaration against the respective provisions. It argues that the meaning of "self-determination" as understood by it should be construed only in the context of foreign domination (as against colonialism) and not in favour of any domestic secessionist movement.[87]

This provides us with an interesting case study to construe both the constitutive and interpretative aspects of the legal imagination, and the legal rhetoric that ensues therefrom. India was constituted as a nation-State in the context of the anti-colonial rhetoric. There were many instances where it had to engage with small princely States to convince them to join the Indian federation.[88] Moreover, owing to its continuing border disputes, especially with Pakistan[89] and Bangladesh[90], and the harrowing experiences in the name of national integration, India has continued to look at self-determination, in its narrow sense — as a right against foreign power only. This also is fed by India's dispute with Pakistan over Kashmir, where the latter continues to argue for a constitutional referendum in the form of a plebiscite, against India's stand that such a plebiscite is operatively futile since the territory already belongs to it.[91] It also helps us locate India's claims within the intersubjective frame of the international legal discourse. The interpretation that India gives to "self-determination" has the elements of both particularity and universality. While it is India's stand, it is made against everyone else. Even if we examine this through the Kashmir

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Available at: https://www.icwa.in/show_content.php?lang=1&level=1&ls_id=6127&lid=4212. Accessed on: 27 Nov. 2021.

[87] The Declaration made by India reads as follows: "I. With reference to article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the words 'the right of self-determination' appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation - which is the essence of national integrity." INDIA Accession Declaration to International Covenant on Economic, Social and Cultural Rights. 1979. Available at: https://treaties.un.org/Pages/showActionDetails.aspx?objid=080000028002bc45&clang=_en. Accessed on: 1 June 2022.

[88] SINGH, op. cit., p. 365. See also: ALEXANDER, C. H. International Law in India. *The International and Comparative Law Quarterly*, v. 1, n. 3, July 1952, p. 289.

[89] For instance, for the UN involvement in the Kashmir dispute between India and Pakistan, see: UNITED NATIONS PEACEKEEPING. [Website]. Available at: https://peacekeeping.un.org/mission/past/unipombackgr.html. Accessed on: 27 Nov. 2021.

[90] The Land Boundary Agreement of 1974 between India and Bangladesh along with its Protocol of 2011 is an instance where India has been able to settle boundary disputes with its neighbour. See: GOVERNMENT OF INDIA. Ministry of External Affairs. *India and Bangladesh*: Land Boundary Agreement. New Delhi: MEA, 1974. Available at: https://www.mea.gov.in/Uploads/PublicationDocs/24529_LBA_MEA_Booklet_final.pdf. Accessed on: 27 Nov. 2021.

[91] For a comprehensive study of the Kashmir Dispute, see: NOORANI, A. G. *The Kashmir Dispute (1947-2012)*. Oxford: Oxford University Press, 2014. See also: NOORANI, A. G. *Article 370*: A Constitutional History of Jammu and Kashmir. Oxford: Oxford University Press, 2012.

dispute (situated now in a more particular context), the competing claims made by both India and Pakistan retain the elements of universality.[92] In fact, international law itself validates this intersubjectivity by allowing State practice to be the ultimate basis for all legal acts. Moreover, any legal interpretation is *ipso jure* also made against the world at large, and in a universalistic fashion.[93]

## 7. FINAL REMARKS

This paper tried to explore how international law could be understood in its intersubjective sense. We argued that there is no neutral view to establishing the science of international law. It is mired with innumerable subjectivities that attach themselves to how the discipline is practised and interpreted at the hands of its practitioners. It is, therefore, better to explore this impending objectivity that any time imposes itself upon the discipline, as rooted in intersubjectivity.

We also explored how the subjective-objective employment of the legal language is made possible through the aspects of what we call constitutive and interpretative imaginations. Law being a product of the legal rhetoric, must consider how the identities of the "international" are forged and engaged among various actors on any given issue. This is where we engaged with India's both constitutive and interpretative engagements with the international norm of "self-determination."

We conclude that the fate of international law should be tied both to the practices of the States and their institutions and the ethics of international sociality. While we have focused too much on the free agency of the States and their interest-based rational behaviour, we need to focus now on the sociality of international life. The future of international law cannot merely talk about the obligations arising out of treaties or State-behaviour sponsored customs. It needs to be guided by the ethics of social morality and the rules of engagement in the international legal space. This, however, can only happen in an intersubjective fashion and not otherwise.

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[92] Viewed from its context, India's and Pakistan's positions with respect to the Kashmir dispute would ultimately give rise to some sort of State practice that informs the settlement of territorial disputes in international law in general.

[93] See generally BIANCHI, Andrea; PEAT, Daniel; WINDSOR, Matthew (eds.). *Interpretation in International Law*. Oxford: Oxford University Press, 2015.

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