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The Changing Landscape of International Law Scholarship: Do Funding Bodies Influence What We Research?

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Why does scholarship change? The rise of diverse methods in international legal scholarship has coincided with the creation, in jurisdictions and regions around the world, of individual grant schemes operated by external funding bodies. Studies have shown that securing external funding increases both the likelihood of promotion and the chances that subsequent external funding will be secured. In this Article, we explore whether international law scholars exercise "strategic anticipation" by shaping their research projects to fit those they think most likely to be funded. We analyze 20 years of data from the Dutch Research Council (NWO) and the European Research Council (ERC) to examine whether scholars change what they research in light of funding bodies' preferences and the character of the panels that evaluate grant proposals. Our findings provide novel insights into how international law research has changed over the past 20 years and what factors may have driven those changes. In doing so, our Article contributes to the larger debate regarding the move towards interdisciplinarity and empirical research in international law scholarship, and the appropriate role of external funding bodies.

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INTRODUCTION

Why does scholarship change? The rise of diverse methods in international legal scholarship has coincided with the creation, in jurisdictions and regions around the world, of individual grant schemes operated by external funding bodies. Studies have shown that securing external funding increases both the likelihood of promotion and the chances that subsequent external funding will be secured.[1] In this Article, we look at whether funding schemes have also had an impact on the very character of legal scholarship, as it has evolved over the last two decades. We explore, in particular, the possible impact of such funding schemes on research projects due to the phenomenon of "strategic anticipation," whereby legal scholars may shape their projects to suit the perceived preferences of panels consisting of a mix of legal academics and academics from other disciplines. Such "strategic anticipation" follows from the assumption among legal academics that panelists from the social sciences are more likely to approve law projects that resemble research from their own field. This Article is therefore dedicated to testing the hypothesis that social scientists are more likely to select international law projects that resemble research in their own disciplines, and to examining the implications that this could have for international legal research.

We test this hypothesis by analyzing 20 years of data from the Dutch Research Council (NWO) and the European Research Council (ERC) to examine whether scholars change what they research in light of funding bodies' preferences and the character of the panels that evaluate grant proposals. Our findings provide novel insights into how international law research has changed over the past 20 years and what factors may have driven those changes. In doing so, our Article contributes to the larger debate regarding the move towards interdisciplinarity and empirical research in international law scholarship, and the appropriate role of external funding bodies.

1. Giulio Marini & Viviana Meschitti, *The Effect of Being Awardees for Academic Careers. ERC and FIRB Recipients' Outcomes Compared to Ordinary Academics—Performances and Promotions.* 12 (UCL Soc. Rsch. Inst., Quantitative Soc. Sci. Working Paper No. 21-08, Mar. 2021); Thijs Bol, Mathijs de Vaan & Arnout van de Rijt, *The Matthew Effect in Science Funding*, 115 PROC. NAT'L ACAD. SCIS. 4887 (2018).

Although this Article focuses on the Netherlands and Europe, the findings are potentially relevant for scholars based in jurisdictions around the world. External funding schemes represent a significant feature of academic life not only in Europe, but also in jurisdictions in many other regions, including Australia, Canada, China, Israel, and Singapore. We do not presume that grant schemes in other regions or jurisdictions necessarily have similar impacts on the trajectory of legal scholarship, but we do consider that the possible effects of these schemes are worth investigating and comparing. Although individual grant schemes do not form a major feature of legal academia in the United States, grant schemes do exist and could take on more prominence in the future.[2] Though the U.S. National Science Foundation served as a model for the ERC, the roles of these two funding bodies in shaping legal academia appear to differ markedly. Our study could also prompt further consideration of the causes of and the extent of the empirical legal turn in the United States as compared with other jurisdictions, which feature prominent funding schemes. Although the empirical turn was first observed by American legal scholars,[3] the empirical turn in Europe has arguably been sharper or more pronounced and has coincided with the introduction of funding schemes.[4]

This Article begins with a discussion of how we hypothesize the link between funding bodies and research in Part I. Parts II and III then provides an explanation of our methodology and our findings, respectively. Finally, we conclude with some possible explanations for these findings and reflections on their broader implications for the future of international legal research. With respect to our methodology, we explain why we choose to focus on the NWO and the ERC, how we collect and code the data from these funding bodies on selected projects and the composition of the panels. Our findings reveal, in part, that while doctrinal legal research methods have remained a fairly constant feature of international law projects selected for funding by the NWO and the ERC, the use of non-doctrinal methods has been steadily rising for the past 15 years. In addition, our findings show a positive correlation between projects employing non-doctrinal legal methods and the percentage of political scientists and international relations scholars on the panels. These findings support claims about an empirical turn in international legal scholarship, and also raise important questions about the place for doctrinal legal scholarship and the ways in which legal academics acquire other research methods and disciplinary perspectives.

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2. *See, e.g.*, *Law & Science*, U.S. NAT'L SCI. FOUND., https://new.nsf.gov/funding/opportunities/law-science-ls [https://perma.cc/MT4Q-DT4P].

3. Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1 (2012).

4. See, for example, the research generated by the Danish National Research Foundation's Centre of Excellence for International Courts (iCourts), based at the University of Copenhagen. *Research*, UNIV. OF COPENHAGEN, https://jura.ku.dk/icourts/research [https://perma.cc/E9AF-HXTT].

I. DEMAND-SIDE SCHOLARSHIP? CONTEXTUALIZING OUR HYPOTHESIS

In this Part, we lay out the main ideas that underpin our hypothesis, as well as the background information necessary to contextualize these ideas. International law scholarship has changed profoundly from even 20 years ago. Researchers now appear to be more interested in and/or capable of using a plurality of methods that go beyond the traditional doctrinal method, which we understand to mean a focus on "what the law says on a particular issue and why it says it," in order to address their research questions.[5] This change may be attributable to several factors: researchers now often take methods courses during graduate study programs, and online courses and materials make the self-study of methods more possible and accessible to a wider range of researchers. We think, however, that another important factor has played a role in shaping the landscape of international legal scholarship: external funding bodies.[6] This Part introduces our approach to this subject by discussing the concept of "methods" and the changing character of international legal scholarship (Sections I.A and I.B, respectively), the creation of external funding bodies in the Netherlands and Europe (Section I.C), and our hypothesis concerning the exercise of "strategic anticipation" by grant applicants (Section I.D).

A. On Method

To explain how and why we think the methods adopted by international law researchers have changed, first we need to outline our definition of that concept. We understand method to refer to "a technique of acquiring knowledge."[7] Within this definition fall, for example, qualitative and quantitative empirical methods (e.g., interviews, participant observation, content analysis, and process tracing) as well as doctrinal methods (e.g., archival methods, social network analysis, and agent-based modelling).

Others have, however, adopted a different definition of methods. Steven Ratner and Anne-Marie Slaughter used a more normatively infused understanding of the term to introduce their influential 1999 *American Journal of International Law* symposium on the methods of international law, defining method as "the application of a conceptual apparatus or framework—a theory of international law—to the concrete problems faced in the international

5. Graham Virgo, *Doctrinal Legal Research*, *in* THE NEW OXFORD COMPANION TO LAW 339, 339 (Peter Cane & Joanne Conaghan eds., 2008).

6. The link between external funding and the character of research undertaken has been suggested by others in the context of legal scholarship in general. *See* Richard Fentiman KC, The Queens' Distinguished Lecture in Law 2022: Citadels of the Law: Law Schools and the Defence of Doctrine (Oct. 12, 2022) (transcript on file with authors).

7. Rossana Deplano & Nicholas Tsagourias, *Introduction*, *in* RESEARCH METHODS IN INTERNATIONAL LAW 1, 1 (Rossana Deplano & Nicholas Tsagourias eds., 2021); *see also* Eliav Lieblich, *How to Do Research in International Law? A Basic Guide for Beginners*, 62 HARV. INT'L L.J. ONLINE 42, 49-50 (2021).

community."[8] Method, according to this definition, is more than just a technique. Instead, it stands for a worldview about how international law works (or should work), one that colors not just how you go about acquiring knowledge, but also *what* you study, *why* you choose to do so, and *how* you presuppose actors (should) behave. Within this definition of the concept, theory and method are inextricably linked.

To our minds, theory and method are, to a large degree, separable: one can pursue a Marxist analysis of international law using text-as-data methods, just as one might be able to pursue a feminist analysis of law through qualitative empirical methods, such as interviews, or through doctrinal research.[9] In this respect, we disagree with the assertion that "[t]he link between a legal theory and a legal method is . . . one between the abstract and the applied."[10] Instead, we consider method to be the techniques by which hypotheses from theories are tested, elaborated, and refined.[11]

Take, for example, the question of compliance with international obligations. We might hypothesize that states act as the result of a rational calculation of costs and benefits of a particular course of action, or that states are likely to comply with legal rules that more closely reflect their identities (or those of their leaders' or officials'). Whichever of these theories we adopt, however, is separate from the question of the method that we use to test that theory. We might consider quantitative methods that provide a detailed analysis of state behavior across hundreds of cases to be appropriate; qualitative methods, like interviews, that let those involved in the compliance decision-making process tell their story; or archival methods, that would allow us to explore the written history of compliance decisions in case studies. It is the evolution of methods across different theories, rather than the rise and fall of theories themselves, that interests us in this Article.

By suggesting that theories and methods are distinct, we do not contend that methods are in some way apolitical. Methods, like theories, can carry with them ideological baggage that researchers should be aware of and acknowledge.[12] But their baggage is different—and not necessarily linked—to any particular international law theory.

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8. Steven R. Ratner & Anne-Marie Slaughter, *Appraising the Methods of International Law: A Prospectus for Readers*, 93 AM. J. INT'L L. 291, 292 (1999).

9. *Cf.* Shaffer & Ginsburg, *supra* note 3, at 1 (noting that "[t]he empirical turn is not atheoretical, but it generally is not aimed at building grand metatheory").

10. Ratner & Slaughter, *supra* note 8, at 292. We are not alone in our disagreement. *See* Shaffer & Ginsburg, *supra* note 3, at 3.

11. *Cf.* Shaffer & Ginsburg, *supra* note 3, at 3-4.

12. Martti Koskenniemi, *Letter to the Editors of the Symposium*, 93 AM. J. INT'L L. 351, 352 (1999).

B. The Changing Landscape of International Law Scholarship

Until relatively recently, a large part of international legal scholarship was doctrinal in character.[13] Sometimes unfairly maligned, this label perhaps does not do justice to the variety of research conducted under that moniker, which covers a range of questions of both a positive and normative nature. Indeed, the former often entails the latter; in the words of Richard Fentiman, "[t]he agenda for doctrinal scholarship is to critique the law and to propose solutions to unanswered legal questions by presenting a conceptual structure for the law. This involves a more complex methodology than is often supposed."[14]

Within international law, doctrinal research addresses a relatively broad range of questions, such as whether a certain state practice has crystalized into customary international law,[15] how a particular treaty should be interpreted,[16] or whether the law as interpreted and applied is coherent or consistent.[17] Indeed, the very subject matter with which legal academics deal means that research projects very often rely—implicitly or explicitly—on some prior doctrinal analysis. The use of quantitative empirical methods to analyze the reasoning of courts and tribunals, for example, relies on a determination of the preceding question of *what* those courts or tribunals decided in a judgment or award.

In our own research, doctrinal projects and interests have led us to research questions that spurred further enquiries. For example, exploring the (doctrinal) question of when the Grand Chamber of the European Court of Human Rights uses the consensus doctrine laid the groundwork for a subsequent quantitative empirical study of the Court's case law,[18] which tested the link between choice-set size and interpretative method.[19] Similarly, a doctrinal interest in the legal arguments advanced by counsels before the International Court of Justice laid the groundwork for a subsequent quantitative empirical study of the demographics of counsels appearing before the Court.[20]

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13. *See* Shaffer & Ginsburg, *supra* note 3, at 2; Rossana Deplano, *Introduction*, *in* PLURALISING INTERNATIONAL LEGAL SCHOLARSHIP 1 (Rossana Deplano ed., 2019).

14. Fentiman, *supra* note 6, at 6.

15. *See, e.g.*, Richard Price, *Emerging Customary Norms and Anti-Personnel Landmines*, *in* THE POLITICS OF INTERNATIONAL LAW (Christian Reus-Smit ed., 2009).

16. *See, e.g*, SCHREUER'S COMMENTARY ON THE ICSID CONVENTION (Stephan W. Schill, Loretta Malintoppi, August Reinisch, Christopher H. Schreuer & Anthony Sinclair eds., 2022) (providing a collection of doctrinal analyses of the ICSID Convention).

17. *See, e.g*, Julian Arato, Yas Banifatemi, Chester Brown, Diane Desierto, Fabien Gelinas, Csongor Istvan Nagy & Federico Ortino, *Lack of Consistency and Coherence in the Interpretation of Legal Issues* (Concept Paper on Issues of ISDS Reform, Jan. 30, 2019) https://www.cids.ch/images/Documents/Academic-Forum/3_Inconsistency_-_WG3.pdf [https://perma.cc/7A7Y-VDT4].

18. *See* DANIEL PEAT, COMPARATIVE REASONING IN INTERNATIONAL COURTS AND TRIBUNALS 140-77 (2019).

19. *See* Daniel Peat, *The Tyranny of Choice and the Interpretation of Standards: Why the European Court of Human Rights Uses Consensus*, 53 N.Y.U. J. INT'L L. & POL. 381 (2021).

20. *See* Shashank P. Kumar & Cecily Rose, *A Study of Lawyers Appearing Before the International Court of Justice, 1999-2012*, 25 EUR. J. INT'L L. 893 (2014).

Since the mid- to late 2000s, however, the methods adopted in international law scholarship appear to have diversified, including not only the traditional doctrinal method but also those methods more commonly associated with social sciences.[21] Starting in the mid-2010s, commentators began speaking of an "empirical turn" in international law academia, in which scholars leveraged the methods of social sciences to explore how international law is formed, when and why international rules influence state behavior, and how international law operates on the ground.[22] Over the past decade, others have identified an "experimental turn,"[23] an "interdisciplinary" turn,[24] a "behavioral turn,"[25] and a "turn to history,"[26] suggesting that international law research has diversified both in terms of methods as well as its engagement with neighboring disciplines.

This raises two questions. The first is whether international law scholarship has actually diversified in method and approach, or whether this is just a false or exaggerated impression? To the best of our knowledge, no study exists that systematically tracks whether and how the character of international law research has changed. The second question is whether commentators have correctly asserted that there has been a shift in international law research, why has this shift occurred, and what the implications of this shift are.

C. The Rise of Funding Bodies

The (purported) rise of diverse methods in international legal scholarship has coincided with the creation, in jurisdictions and regions around the world, of individual grant schemes by external funding bodies.[27] Within the European Union, the most well-known schemes are those of the ERC, which was established in 2007 to provide grants for scholars who are entry-level (Starting Grants), mid-level (Consolidator Grants), and advanced-level (Advanced

21. For some forerunners in this context, see, for example, Ole Kristian Fauchald, *The Legal Reasoning of ICSID Tribunals—An Empirical Analysis*, 19 EUR. J. INT'L L. 301 (2008); and BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009).

22. *See, e.g.*, Shaffer & Ginsburg, *supra* note 3; Adam Chilton & Dustin Tingley, *Why the Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT'L L. 173 (2013); Emilie M. Hafner-Burton, David G. Victor & Yonatan Lupu, *Political Science Research on International Law: The State of the Field*, 106 AM. J. INT'L L. 47 (2012); Jakob V.H. Holtermann & Mikael Rask Madsen, *Toleration, Synthesis or Replacement? The 'Empirical Turn' and Its Consequences for the Science of International Law*, 29 LEIDEN J. INT'L L. 1001 (2016); Gleider I. Hernández, *The Judicialization of International Law: Reflections on the Empirical Turn*, 25 EUR. J. INT'L L. 919 (2014); Sergey Vasiliev, *On Trajectories and Destinations of International Criminal Law Scholarship*, 28 LEIDEN J. INT'L L. 701, 712 (2015).

23. Jeffrey L. Dunoff & Mark A. Pollack, *Experimenting with International Law*, 28 EUR. J. INT'L L. 1317, 1319 (2017).

24. Moshe Hirsch & Andrew Lang, *Introduction*, *in* RESEARCH HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW 1 (Moshe Hirsch & Andrew Lang eds., 2018).

25. Eva van der Zee, Veronika Fikfak & Daniel Peat, *Introduction to the Symposium on Limitations of the Behavioral Turn in International Law*, 115 AJIL UNBOUND 237 (2021).

26. Anne Orford, *On International Legal Method*, 1 LONDON REV. INT'L L. 166, 171 (2013); Matilda Arvidsson & Miriam Bak McKenna, *The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries*, 33 LEIDEN J. INT'L L.37 (2020).

27. For a meta-analysis of the effectiveness of external funding bodies, see Kaare Aagaard, Alexander Kladakis & Mathias W. Nielsen, *Concentration or Dispersal of Research Funding?*, 1 QUANTITATIVE SCI. STUD. 117 (2020).

Grants).[28] Similar schemes exist in national jurisdictions within and beyond Europe. The "Talent Programme" of the NWO, for example, has operated since 2002, and provides individual grants to entry-, mid-, and advanced-level researchers in a three-tier system akin to that of the ERC (called the Veni, Vidi, and Vici schemes, respectively).[29] Comparable programs have also been established by other national funding bodies, such as the Australian Research Council (ARC), which began operating in 2002,[30] as well as the Swiss National Science Foundation and the UK Arts and Humanities Research Council, both of which commenced their individual funding programs in 2005.[31]

The establishment of both the ERC and the NWO's Talent Programme may be traced back to a period in the early 2000s when the European Union was focused on making Europe a competitive economic region, including through excellence in research.[32] European policymakers were concerned that investment in research in Europe lagged behind competitors, such as the United States and Japan, and that emerging economies, such as China and India, were poised to overtake Europe. In the Netherlands, this led to individual grant schemes designed not only to foster excellent and innovative research, but also to ensure attractive career prospects for talented researchers.[33]

The ERC was modeled on the U.S. National Science Foundation (NSF), which was established in the United States in the 1950s. The NSF funds individual projects that are reviewed by peers and evaluated on the basis of the merits of the research proposal and the track record of the applicant.[34] Likewise, the applications for ERC and NWO grants are subjected to external peer review, with the final decisions taken by the panels assembled by the funding bodies. Although the ERC and NWO funding schemes originate in a drive to ensure Europe's competitiveness in a "global knowledge economy," the anticipated societal impact of the research is not an evaluation criterion for ERC grants. By contrast, societal impact is one of the criteria used by the NWO, along with the merits of the proposal and the applicant's record.

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28. *ERC at a Glance*, EUR. RSCH. COUNCIL, https://erc.europa.eu/about-erc/erc-glance [https://perma.cc/2ERZ-8AHX].

29. Sander Gerritsen, Erik Plug & Karen van der Wiel, *Up or Out? How Individual Research Grants Affect Academic Careers in the Netherlands* 4 (CPB Neth. Bureau for Econ. Pol. Analysis, CPB Discussion Paper 249, 2013), https://www.cpb.nl/sites/default/files/publicaties/download/cpb-discussion-paper-249-or-out-how-individual-research-grants-affect-academic-careers-netherlands.pdf [https://perma.cc/CY6T-Q7JH].

30. AUS. RSCH. COUNCIL, STRATEGY 2022-2025, at 2, https://www.arc.gov.au/sites/default/files/2022-08/ARC%20Strategy%202022-2025_1.pdf [https://perma.cc/Z8GN-W7BK].

31. *Data Portal*, SWISS NAT'L SCI. FOUND., https://data.snf.ch/key-figures/funding-instruments?s4=1&s5=18 [https://perma.cc/BY5G-7HRH]; Molly Conisbee, *The History of the Arts and Humanities Research Council*, MAKING HIST., https://archives.history.ac.uk/makinghistory/resources/articles/AHRC.html [https://perma.cc/B62N-UXHB].

32. *See generally* THOMAS KÖNIG, THE EUROPEAN RESEARCH COUNCIL (2017) (describing the history of the creation and development of the ERC).

33. FRANK BONGERS ET AL., EVALUATIE VERNIEUWINGSIMPULS 2000-2006, at 13-14 (2007).

34. Andrew Gunn & Michael Mintrom, *Higher Education Policy Change in Europe: Academic Research Funding and the Impact Agenda* 48 EUR. EDUC. 241, 245 (2016).

While NSF funding appears to play a relatively marginal role in funding legal scholarship in the United States,[35] the same cannot be said for ERC and NWO funding for legal scholars. Studies show that the importance of acquiring a grant from an external funding body for one's career is significant in some European jurisdictions, including the Netherlands. One study on the impact of securing an individual research grant within the Dutch academic system found that such a grant has "positive effects on the probability to stay in academia, on the probability to become a full professor and on the probability to receive a follow-up grant."[36] Similarly, a study of the impact of grants of the Danish Council for Independent Research on career advancement found that grantees were almost twice as likely to be appointed full professor than those who did not have a grant.[37] A study on the effects of an ERC grant on career advancement also found that grantees were significantly more likely to be promoted (from Assistant Professor to Associate Professor, or Associate Professor to Professor) in the five years after receiving such a grant than non-grant recipients.[38] Further studies show that grantees are subsequently more likely to succeed in acquiring another research grant, a knock-on consequence referred to as the "Matthew effect."[39]

D. Strategic Anticipation and Our Hypothesis

Studies also demonstrate that researchers design their current projects and publication strategies in light of future external funding opportunities.[40] In this manner, external funding has been shown to exert an important influence on the shape of research conducted in a field. In a recent study of 16 research groups across the humanities, social sciences, and natural sciences, researchers found that "strategic anticipation" of future external funding was ubiquitous, both by current grant holders as well as those without funding.[41] Individuals considered "how their current choices might increase or decrease their future chances of grant success" and altered their research strategy accordingly.[42] Importantly, for the purposes of this Article, strategic anticipation manifested itself in the project

35. *See Award Search*, U.S. NAT'L SCI. FOUND., https://www.nsf.gov/awardsearch/advancedSearchResult?ProgEleCode=128Y&BooleanElement=ANY&BooleanRef=ANY&ActiveAwards=true&#results [https://perma.cc/ME93-RYMH] (revealing only 100 grants made to "Law and Science" research projects).

36. Gerritsen et al., *supra* note 29, at 12.

37. Carter Bloch, Ebbe Krogh Graversen & Heidi Skovgaard Pedersen, *Competitive Research Grants and Their Impact on Career Performance*, 52 MINERVA 77, 94 (2014).

38. *See* Marini & Meschitti, *supra* note 1.

39. *See* Bol et al., *supra* note 1, at 4887.

40. A different strand of literature traces the impact that external funding bodies may exercise over the output of funded projects. *See, e.g.*, Sam McCrabb et al., *"He Who Pays the Piper Calls the Tune": Researcher Experiences of Funder Suppression of Health Behaviour Intervention Trial Findings*, 16 PLOS ONE 1, 1-2 (2021).

41. Wout Scholten, Thomas O. Franssen, Leonie van Drooge, Sarah de Rijcke & Laurens K. Hessels, *Funding for Few, Anticipation Among All: Effects of Excellence Funding on Academic Research Groups*, 48 SCI. & PUB. POL.Y 265 (2021).

42. *Id.* at 272.

proposals submitted to external funders: "Researchers attempt to write proposals that are not (only) the best proposals from their point of view, but also are adjusted to what they think (or know) selection committees appreciate."[43] Similar studies confirm that researchers attempt to mold their proposed research projects to funders' expectations, with potentially counterproductive effects.[44]

Rather than engage in strategic anticipation, it may instead be the case that some researchers "self-select" out of such funding competitions, as they consider that their planned lines of research would not be likely to garner the interest of funding bodies. In the case of the NWO's funding scheme, however, the chances of this are limited, as early- to mid-career scholars at Dutch universities are very much expected to submit funding applications to the NWO. Self-selection could play a more significant role in the context of the ERC's funding scheme, but this is a question yet to be addressed in existing scholarship.

Leaving aside the issue of self-selection, the studies on strategic anticipation are consonant with a sentiment that we believe to be widespread in international law academia in Europe: that one of the ways to rise to the top involves securing large, individual grants from external funding bodies. They also provide empirical support for what many of us have seen (and, indeed, done) over the years: strategic anticipation in the form of shaping projects according to what is perceived to be the most likely to secure funding. This strategic anticipation raises issues on two levels.

First, on an individual level, strategic anticipation raises the issue of academic independence. If strategic anticipation is widespread, then funding bodies effectively diminish the autonomy of individual researchers to identify and pursue what they consider to be worthwhile research (unless, of course, the researcher's conception of valuable research happens to align with that of the funding body). In our view, this reduced autonomy detracts from one of the defining characteristics of an academic career, and one that many of us place importance on when deciding to enter academia.

Second, on a systemic level, if funding bodies exercise influence over what individual academics choose to research, then their ability to shape the landscape of international law scholarship may be significant. But are funding bodies, and the panelists that serve them, the right actors to determine what international law scholarship should look like? The interests, preferences, and expertise of those that set funding bodies' agendas differ from those within our field. To be sure, this may be a good thing, pushing international law research to be responsive to external factors that would not be taken into account if the field were hermetically sealed. But it might also cause research to shift from areas that only experts are capable of identifying as gaps in the literature. In addition, the panelists who cull the applications and select grant recipients may have subject

43. *Id.*

44. Conor O'Kane, Jing A. Zhang, Jarrod Haar & James A. Cunningham, *How Scientists Interpret and Address Funding Criteria: Value Creation and Undesirable Side Effects*, 61 SMALL BUS. ECON. 799 (2023).

matter expertise that is quite distant from that of the applicants themselves, leaving them ill-equipped to assess proposals on a substantive level.

In order to understand how funding bodies influence individual researchers, we carried out a quantitative analysis of every international law project funded by the ERC and the NWO since the start of their respective individual funding schemes, which are described in more detail in Part II. This is, to the best of our knowledge, the first study of its kind to be undertaken in the international legal sphere.[45] One issue we encountered, however, is the unavailability of information regarding unsuccessful projects. How, then, could we test for the influence of funding bodies on research?

Instead of analyzing whether certain kinds of international law projects were more successful than others (for which we would need data on unsuccessful projects), we looked at whether the character of successful projects changed with the composition of the funding body's evaluation panel. Panels that have the remit to evaluate international law projects normally also cover a range of social sciences, such as political science, international relations, anthropology, sociology, as well as law in general. By design, these panels are comprised of a diverse range of experts from different fields, sometimes—but not always—including an international lawyer.

Our hypothesis is based on the idea that social scientists are more likely to approve international law projects that resemble research in their own field. The underlying premise is that experts from two disciplines are particularly likely to draw parallels between international law projects and work within their own field: those from international relations and political science. Traditionally, these are the fields that have had the closest relationship to international law scholarship, with political scientists and international relations scholars often tackling problems that are related to, if not identical to, questions of international law.[46] We consider that political scientists and international relations scholars are more able to engage critically with the substance of international law project proposals and are more likely to evaluate an international law project in light of what they consider to be an appropriate project in their own discipline. Accordingly, we expect that the more political scientists and international relations scholars are included in a panel, the more likely it is that funded international law projects will resemble research in those disciplines.

International law research projects can resemble research in the fields of political science and international relations in two ways. First, they can directly engage with the substance of these other disciplines, by drawing on theories, findings, or concepts from outside international law. A good example of this is

45. Indeed, relatively few studies examine the role of external funding in general legal academia. For our previous work on the topic, see Daniel Peat & Cecily Rose, *International Law from the Outside: Insights from the Dutch Research Council (NWO)*, 35 LEIDEN J. INT'L L. 1 (2022).

46. For some commentary on the overlaps between the two fields, see INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013); Anne-Marie Slaughter, Andrew S. Tulumello & Stepan Wood, *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L L. 367 (1998).

international lawyers' engagement with the constructivist strand of international relations literature in order to explain state compliance with international rules.[47] Another way in which international law projects can resemble political science or international relations research is by utilizing methods that are more commonly used in those disciplines. For example, whilst international lawyers have increasingly used quantitative empirical analyses in their work, we do not think it incorrect to say that those methods are still much more common in political science and international relations. Similarly, methods such as participant observation, process tracing, and interviews are more common in political science and international relations than in international law, even if they are gaining traction within our discipline.

In light of this, we hypothesize that international law projects that are interdisciplinary in nature or that adopt non-doctrinal methods are more likely to be approved when there is a greater proportion of individuals from what we refer to as "highly salient" disciplines—that is, political science and international relations—on panels.

II. METHODOLOGY

A. Justifying the Focus on the NWO and the ERC

This Section explains why we chose to focus on the NWO and the ERC, in addition to how we gathered and coded the data that we assembled from these two institutions. We considered studying funding bodies in Australia, Canada, and the United Kingdom, but ultimately decided to focus on the NWO and the ERC for two main reasons. First, existing studies on the NWO and the ERC formed an important basis for the development of the hypothesis guiding our particular study. The NWO and the ERC have both been the subject of studies dedicated to assessing various aspects of their impact on research, whereas this is not the case to the same extent for the Australian Research Council, the UK Arts and Humanities Research Council, and the Canadian Social Sciences and Humanities Research Council.[48]

Second, our decision to focus on the NWO and the ERC was also grounded in pragmatic considerations about available information. The NWO and the ERC

47. *See, e.g.*, JUTTA BRUNNÉE & STEPHEN J. TOOPE, LEGITIMACY AND LEGALITY IN INTERNATIONAL LAW: AN INTERACTIONAL ACCOUNT (2013).

48. On academic grants in the Netherlands, see, for example, Rob van Gestel & Marnix Snel, *Evaluation of Academic Legal Publications in the Netherlands*, *in* EVALUATING ACADEMIC LEGAL RESEARCH IN EUROPE: THE ADVANTAGE OF LAGGING BEHIND 56, 73-78 (Rob van Gestel & Andreas Lienhard eds., 2019); Michel Vols et al., *Mythes en Waarheden over Kansen voor Juridisch Onderzoek bij NWO*, 94 NEDERLANDS JURISTENBLAD 1319 (2019); Thijs Bol, *De suprematie van de bèta's: hoe het onderzoeksgeld in Nederland verdeeld wordt*, STUK ROOD VLEES (July 12, 2018), https://stukroodvlees.nl/de-financiele-suprematie-van-de-betas [https://perma.cc/9357-TRRT]; *Meer Geld Nodig Voor Juridisch Onderzoek*, MR. ONLINE (Mar. 21, 2017), https://www.mr-online.nl/meer-geld-nodig-juridisch-onderzoek [https://perma.cc/W6ES-KUZR]; Romy van der Lee & Naomi Ellemers, *Gender Contributes to Personal Research Funding Success in The Netherlands*, 112 PROC. NAT'L ACAD. SCI. 12349 (2015).

are relatively transparent organizations compared with some of the other funding bodies that we considered studying. Because both the NWO and the ERC make a significant amount of information available on their websites and in their annual reports, it was possible for us to gather sufficient data not only on selected projects, but also on the composition of the panels that selected those projects. By contrast, the Australian Research Council and the Canadian Social Sciences and Humanities Research Council publicize information about selected projects, but not panel composition.[49] In addition, the UK Arts and Humanities Research Council has only published information about projects selected from 2015 onwards, though the funding scheme dates back to 2005.[50] The ERC, however, has published information about projects and panels from the beginning of the programs, which date back to 2007.[51] While the information that the NWO has made publicly available does not entirely stretch back to the beginning of its program, it goes back much further than the UK's data. Moreover, we were able to address most of the gaps in the NWO's published data through a freedom of information request. The extent of the data made publicly available by (or obtained from) the NWO and the ERC therefore made these institutions the most feasible, logical choices for the focus of this study.

Our comparison of the information made available by a limited selection of national and regional funding bodies raises questions about what should be considered "best practices" with respect to the collection and release of information by research funding bodies. According to norms of good governance, in particular transparency in public administration, the collection and release of comprehensive information dating back to the beginning of a funding program is desirable.[52] In addition, comprehensive information ought to include data about panelists (at the very least, their names, the panels on which they served, and when they served). Transparent data on panelists is significant because they allow applicants and researchers to gain a basic sense of their audience—whether proposals are being evaluated by individuals mostly within or outside of their discipline.

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49. The Australian Research Council makes information available about selected projects, the numbers of approved and rejected applications, and the basic procedure for selecting panels, but not their composition. The Australian Research Council did not respond to our requests for more information about panel compositions, so we are limited to the publicly available information. *Selection Advisory Committees*, AUS. RSCH. COUNCIL, https://www.arc.gov.au/about/our-organisation/committees/selection-advisory-committees [https://perma.cc/5GLN-93WS].

50. Conisbee, *supra* note 31. The predecessor to the Arts and Humanties Research Council, the Arts and Humanities Research Board, was established in 1998.

51. *Competitive Funding Decisions Data 2015 to 2020*, UK RSCH. & INNOVATION (Oct. 21, 2021), https://www.ukri.org/publications/competitive-funding-decisions-data-2015-to-2020 [https://perma.cc/V6HE-EEVY].

52. The NWO's data has some minor gaps, especially data from the early years of the Talent Programme.

B. Data Collection

We were able to gather information about selected projects and panel composition through the use of databases maintained by the NWO and the ERC;[53] through information otherwise made available on their websites, including annual reports; and in the case of the NWO, through a freedom of information request.

We used a three-step process to identify international law projects. First, we searched for all law projects in the relevant databases of the NWO and the ERC and we then included all of these projects in our own initial data set.[54] Second, we cross-checked the projects found through the databases against other lists of projects awarded funding, where this information was available on the websites of the NWO and the ERC.[55] The result of the first two steps was the creation of a data set containing information about various aspects of law projects, including the year when the project was selected; the name, nationality, gender, and institution of the principal researcher; the project title; and a brief description of the project. The third step involved the creation of a data subset including only projects specifically relating to international law. The third step required us to code the projects, which we will discuss later.

We used a two-step process to gather information about panelists. The first step involved searching for information about panel composition on the websites of the NWO and the ERC, including in annual reports.[56] This search yielded information about the names of panel members, the years in which they served, and the panel chair. Because the information provided by these funding bodies does not always include the institutional affiliations, disciplines, or gender of the panelists, our second step therefore involved internet searches to find this data. In a small number of instances, we were unable to find website profiles of panelists, and therefore could not determine or confirm their current institutional affiliation, discipline, or gender. In these instances, we omitted these individuals from our data set.

While the information made publicly available by both funding bodies is relatively extensive compared with the other funding bodies already mentioned, there are nevertheless gaps in the available data about panel members. The gaps

53. *ERC Dashboard*, EUR. RSCH. COUNCIL, https://erc.europa.eu/project-statistics/project-database [https://perma.cc/8VTL-BBYE]; *Project Database*, NWO, https://www.nwo.nl/en/projects [https://perma.cc/4XT8-HDRV].

54. For the NWO, we identified all law projects by using the following filters in the database: Veni, Veni SGW, Vidi, Vidi SGW, Vici, Vici SGW, law/*recht*. For the ERC, we identified all law projects by using the following filters in the database: Starting Grants, Consolidator Grants, Advanced Grants, SH2—Institutions, Governance & Legal Systems.

55. *See, e.g.*, *ERC Starting Grants 2022: List of Principal Investigators Selected for Funding*, EUR. RSCH. COUNCIL (Nov. 22, 2022), https://erc.europa.eu/sites/default/files/2022-11/erc_2022_stg_results_all_domains.pdf [https://perma.cc/EEM6-CVDQ]. The information contained in the databases and on website pages was largely, but not 100%, the same.

56. We focused on ERC panels evaluating projects on "institutions, governance, and legal systems" (SH2) and on NWO panels evaluating projects for social sciences (MaGW) and for *Recht en Bestuur* (law and administration).

were most significant in the case of the NWO, which has only published information about panels beginning in 2008, even though the Talent Programme began in 2002. Through a freedom of information request, however, we were able to obtain much of the missing information about these early NWO panels. Finally, while both bodies have released statistical information about rejected or ineligible projects, further information about unsuccessful projects is not publicly available, presumably for privacy reasons. Through the freedom of information request that we submitted to the NWO, we were able to obtain addition information about the titles of rejected or ineligible projects, but not enough additional data to allow us to compare the methods and approaches of the unsuccessful projects with those of the successful ones.

C. Data Coding

After we completed the data gathering process, we developed a codebook on the basis of which we separately coded the data on international law projects and on panels. We then compared our coding and resolved differences through discussion, which allowed us to produce a "master" coded data set.

1. Projects

We coded the international law projects with respect to the following categories of data: year of application; funding scheme; nationality of applicant; gender of applicant; institution of applicant; field of law of the project; and the methods and approach of the project. A number of these categories merit some further explanation. Applicants sometimes move to other institutions after having secured funding for a project, a phenomenon which complicates the task of coding each applicant's institutional affiliation. We resolved this issue by coding the institution of the applicant according to the institution indicated as the applicant's host institution at the time of application. In the relatively unusual cases in which the applicant ultimately carried out the project at a different host institution, we did not take this "institutional move" into account in the coding, as the panel would have only taken into account the applicant's initial institutional affiliation.

With respect to the field of law, we assigned one of eleven possible codes, on the basis of the title and the project description. The fields are general public international law, international environmental law, human rights law, international criminal law, international organizations law, refugee and migration law, law of the sea, international dispute settlement, international economic law, climate law, and global governance.[57] This classification system was not pre-conceived, but instead emerged on the basis of a "pilot" coding of a sample of NWO projects. Projects were classified as "general public international law" where they focused on one of the foundational subjects of the field, such as jurisdiction or sources of international law. Projects dealing only

57. The code '0' was assigned to non-public international law projects.

or mainly with European Union law were omitted from our final data set.[58] Where projects concerned multiple branches of public international law, we nevertheless assigned only one code with respect to the field of law, based on the apparent focus of the project.

Our coding of both the field of law and the methods and approaches was based on the project descriptions found on the websites of the NWO and the ERC. These project descriptions consist of brief, 250- to 300-word summaries of selected projects, which are written by the applicants at the time of application. We found that the project descriptions generally provided a sufficient, but not necessarily a robust, basis for assessing the projects' fields of study, methods, and approaches. In cases where the information contained in the project description did not provide sufficient support for coding the field of law or methods or approaches, we additionally reviewed the website profiles of the project leaders and made use of this supplementary information, especially in coding the disciplinary approach. We did not, however, supplement the project descriptions with a review of the academic output of the project leader or other researchers funded by the project. We did not consider this information about the implementation of the project because our focus is on how the funding bodies evaluated the applications ex ante, before their implementation.

Classifying the projects according to method and approach was the most involved part of the coding process. Each project was coded with respect to three separate features, namely whether or not the project entailed (1) doctrinal research methods, (2) non-doctrinal research methods, and (3) an interdisciplinary approach. Some projects were coded as involving doctrinal research methods and non-doctrinal research methods, while others were coded as involving only doctrinal or non-doctrinal methods. Because some projects ticked both of these boxes, it would not have been possible for us to employ just one binary variable (doctrinal/non-doctrinal) in our coding of the projects. In addition, we found that among the projects using interdisciplinary methods, some used only doctrinal or non-doctrinal research methods, while others used both doctrinal and non-doctrinal research methods.

We use the term "doctrinal legal research" to refer to research focused on "what the law says on a particular issue and why it says it," as well as research focused on identifying the principles underlying the law.[59] Doctrinal legal research may encompass theoretical and critical studies of the law, as long as these studies are carried out from an "internal" legal point of view, as opposed to the perspective of another discipline.[60] For the most part, we had to infer that applicants proposed the use of doctrinal research methods because they did not explicitly describe their research methods, or did not do so in these exact terms. Only on occasion did an applicant use the term "doctrinal" in a project

58. Where a project concerned both European Union law and public international law, we classified it as a public international law project if this field of law appeared to form a major, rather than a minor or ancillary part of the project.

59. *Cf.* Virgo, *supra* note 5.

60. *Cf.* Fentiman, *supra* note 6.

description. We considered that the use of doctrinal legal methods was implied where, for example, the project description referred to the analysis of treaties and/or case law, such as the jurisprudence of the European Court of Human Rights.

We use the term "non-doctrinal methods" to refer to methods other than legal doctrinal methods. The term encompasses quantitative and qualitative empirical methods, as well as other methods used by researchers in the humanities. Non-doctrinal methods include, for example, statistical analysis, content analysis, process tracing, semi-structured interviews, and ethnography. In general, project descriptions referred to the use of non-doctrinal legal methods in explicit and relatively specific terms (e.g., "ethnographic study," interviews with stakeholders, and citation network analysis), such that it was not necessary for us to draw any inferences. Where researchers used terms like "genealogy," however, it was necessary for us to infer the use of non-doctrinal methods.

We use the term "interdisciplinary approaches" to refer to the study of law that is either entirely or partially from the perspective of another academic discipline, such as a discipline in the social sciences or humanities, like anthropology or history. The term interdisciplinary approaches therefore covers projects that involve the study of law by academics who are trained entirely in other disciplines, or by academics who are trained in law but influenced by (and sometimes also trained in) other disciplines. Many project descriptions explicitly stated that they approached the study of international law partially from the perspective of another discipline, but some in cases we inferred interdisciplinarity based on the use of methodologies that are integral to other academic disciplines (e.g., ethnography, which is a method in the field of anthropology).

2. Panels

In coding the panel data, we used two different approaches to capture the influence that the disciplines of panel members may have had on their assessments of international law projects. Both approaches involved calculating the proportion of panel members from "salient" disciplines, meaning disciplines that that we hypothesize to be the most relevant for or related to public international law. As explained in Section I.D, we hypothesize that political science and international relations, in particular, tend to be the "highly" salient disciplines in relation to international law. Political scientists and international relations scholars often study the same phenomena as international legal scholars (e.g., why states behave the way they do). We further hypothesize that panelists from these salient disciplines would tend to exert a relatively strong influence with respect to the evaluation of international law projects, which touch on cognate issues that are also studied within their own disciplines. According to our hypothesis, the greater the proportion of panelists from these highly salient disciplines, the greater the likelihood is that the panel will select international law projects that echo the methodologies, concepts, and approaches from their

own disciplines. This is not to say that scholars from other social science disciplines do not also sometimes study the same phenomena as international legal scholars. Rather, we proceed on the basis that political scientists and international relations scholars would be most likely to have strong or well formed views on international law projects, in comparison with scholars from other social science disciplines, all of which we have categorized as "mildly" salient disciplines.

Our first, simpler approach to coding the panel data involved calculating the percentage of panel members from highly salient disciplines (i.e., political science and international relations).[61] Our second, somewhat more complicated approach, which we term "disciplinary salience," involved calculating the relative proportion of panel members from highly salient disciplines and mildly salient disciplines. We assigned more weight to panel members from highly salient disciplines (coded with a 2) and less weight to panel members from mildly salient disciplines (coded with a 1).[62] Panel members from the field of law were assigned no weight (coded with a 0), on the basis that lawyers would be least likely to select law projects that involve the methods or approaches of other disciplines.[63] Where disciplinary information for one or more panel member was unavailable, they were not included in these calculations.

III. FINDINGS

Our data set contained 74 international law projects that received funding from either the NWO or the ERC (30 from the NWO and 44 from the ERC). In this Part, we describe our main findings: findings related to the character of the approved project; findings concerning changes in panel size and composition; and findings that pertain to the hypothesis described in Section I.D.

A. The Evolving Character of International Law Projects

International law projects across a relatively diverse array of fields have attracted funding from the NWO or the ERC over the past two decades. Yet, certain areas of international law seem to fare better than others. Figure 1 illustrates the areas of international law in which funded projects have operated. The findings show that projects that dealt with general public international law

61. We calculated this percentage by dividing the number of political scientists and international relations scholars by the total number of panel members, and multiplying by 100.

62. We coded international relations and political science (including governance, international governance) as highly salient (2); sociology (including sociology of law and political sociology), anthropology, economics, psychology, history, philosophy, and development studies as mildly salient (1); and law or other disciplines as 0.

63. After coding each panel member as highly salient (2), mildly salient (1), or law/other (0), we added up the total. For example, a panel of 2 lawyers, 2 economists, and 3 political scientists would come to a total of 8 (*(2 lawyers * 0) + (2 economists * 1) + (3 political scientists * 2) = 8*). We then divided this total by the number of panel members to reach a figure representing the disciplinary salience of the panel. In this case, the disciplinary salience of this panel would be 1.143 (*8/7 = 1.143*). Panels with a higher proportion of panelists from salient disciplines have a higher figure than panels with a smaller proportion of panelists from salient disciplines.

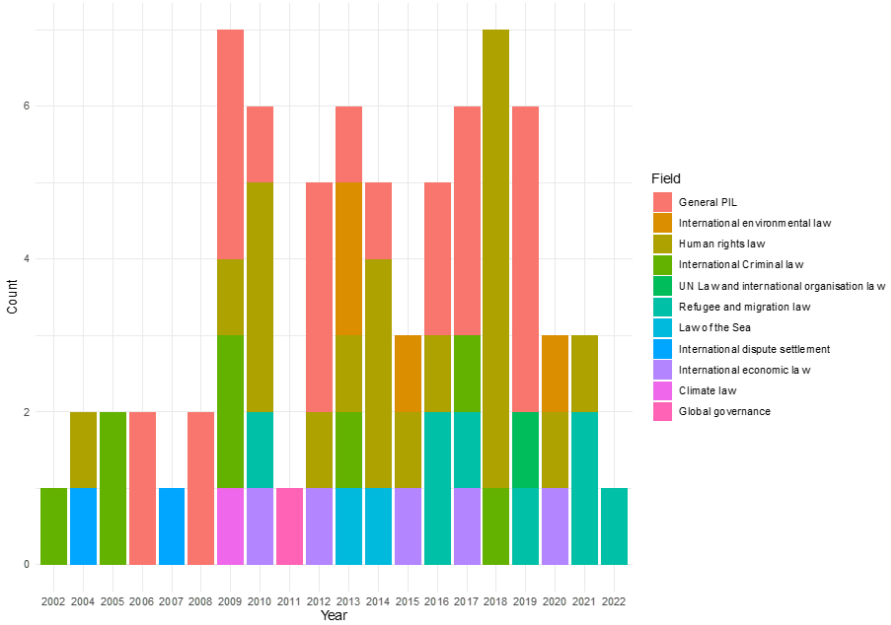
(which accounted for 29.7% of the total) and human rights law (27.0%), and, to a lesser extent, refugee and migration law (10.8%) and international criminal law (10.8%), have been consistently popular with funding panels over the past 15 years.

The strength of some of these subfields could be explained to a certain extent by the context in which the funding schemes operate. For example, within Europe, human rights is often considered to be a field distinct from international law, and one that focuses in particular on the European Convention on, and Court of, Human Rights. The number of human rights projects in our data set may thus result from the perception by panels that human rights is, in fact, a field that is distinct from international law, therefore meriting a place alongside projects in other subfields of international law, rather than as one of the numerous subfields of international law. Similarly, political and social context may explain the success of projects on refugee and migration law since 2016, which coincided with the beginning of the so-called "EU migrant crisis," a term used to describe the increased flow of refugees and migrants into EU member states from 2015 onwards.[64]

Certain subfields of international law are notably absent or underrepresented among the funded projects. In particular, no projects concerning international humanitarian law have been funded by the ERC or the NWO. In addition, projects on international dispute settlement accounted for a very small percentage of the total funded projects (2.7%), with just two projects receiving funding in the mid- to late-2000s. To us, this suggests that ERC and NWO panels find projects that are solely or even predominantly focused on international dispute settlement to be too narrow in focus to merit funding for large-scale research. This contrasts with the substantial and sustained funding by the Danish National Research Foundation of the Centre of Excellence for International Courts (iCourts), based at the University of Copenhagen.

64. For an overview of the media coverage in certain EU states in 2015, see *Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries*, UN HIGH COMM'R FOR REFUGEES (Dec. 2015), https://www.unhcr.org/sites/default/files/legacy-pdf/56bb369c9.pdf [https://perma.cc/8CZ8-62V4].

FIGURE 1: SUBFIELD OF INTERNATIONAL LAW OF APPROVED PROJECTS



In terms of the character of funded projects, nearly three quarters (74.3%) involved at least some element of doctrinal legal research, over half adopted non-doctrinal methods (54.1%), and a significant minority also involved an interdisciplinary approach (49%). When broken down by funding body, we see that the average project funded by the ERC is likely to use doctrinal methods, somewhat likely to use non-doctrinal methods, and equally likely to draw on other disciplines substantively as not to draw on other disciplines.[65] The data for NWO-funded project mirrors these findings.[66]

If we disaggregate the data set by funding scheme, this provides interesting insights into the evolution of scholarship among different generations of scholars. Projects funded by the both early career schemes—the ERC's Starting Grant and NWO's Veni—were more likely to use non-doctrinal methods and to have interdisciplinary approach than projects funded by mid- and advanced-level schemes.[67] Without data on rejected projects, it is difficult to draw any hard

65. For the ERC, the average project scores 1.73 (doctrinal research), 1.57 (non-doctrinal methods), and 1.5 (interdisciplinary substance). These are coded on binary variables where 1 denotes the absence and 2 the presence of the variable.

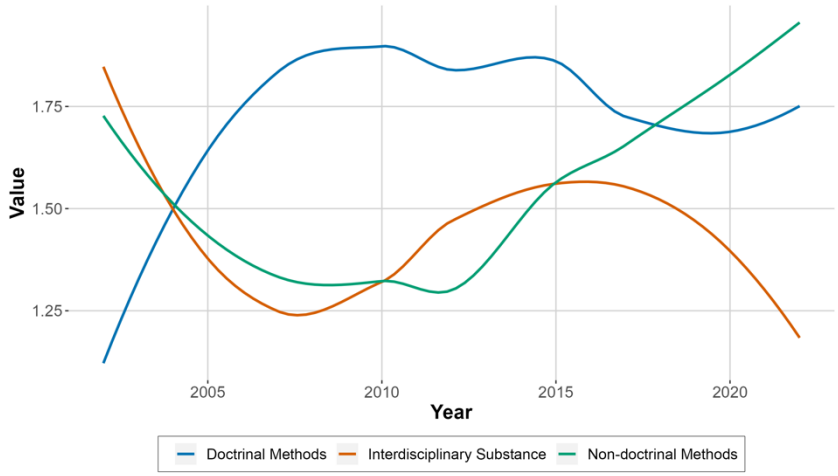
66. For the NWO, the average project scores 1.77 (doctrinal research), 1.5 (non-doctrinal methods), and 1.47 (interdisciplinary substance).

67. The ERC Starting Grant average project scores 1.61 (non-doctrinal methods) and 1.55 (interdisciplinary substance); the NWO Veni average project scores 1.58 (non-doctrinal methods) and 1.53 (interdisciplinary substance). An average ERC Consolidator Grant scores project scores 1.4 (non-doctrinal methods) and 1.4 (interdisciplinary substance); the NWO Vidi average project scores 1.43 (non-doctrinal methods) and 1.29 (interdisciplinary substance). An average ERC Advanced Grant scores project scores 1.5 (non-doctrinal methods) and 1.38 (interdisciplinary substance); the NWO Vici average project scores 1.25 (non-doctrinal methods) and 1.5 (interdisciplinary substance).

conclusions from this finding. The suggestion that emerges, however, is that younger international law scholars tend to adopt more diverse methods and are more ready to embrace interdisciplinarity than their more advanced colleagues.

Figure 2 shows the character of approved international law projects over time. The Y axis represents the average character of the selected projects, which were coded such that a 1 denotes the absence of a method or approach, and a 2 denotes the presence of a method or approach. Several aspects of this chart are notable. First, doctrinal methods have remained an important part of international law projects throughout our data set. Whilst the NWO, during its first few years of operation (2002-2005) funded several projects that did not use doctrinal methods, doctrinal methods have since become a standard element of most projects funded by the NWO and the ERC. The data suggests that panels consider a solid doctrinal basis to be the foundation of a successful international law project, even though doctrinal research may just lay the groundwork for subsequent sociological or critical analyses. Second, the use of non-doctrinal methods has been on an inexorable rise for the past 15 years, since the start of the ERC funding schemes in 2007. This contrasts with the use of an interdisciplinary approach, which, whilst present in many approved projects, has neither the perennial importance of doctrinal methods nor the rising trajectory of non-doctrinal methods.

FIGURE 2: AVERAGE APPROACH OF APPROVED PROJECTS



B. Changes in Panel Size and Composition

Panels for both NWO and ERC funding schemes have changed dramatically over the course of these funding schemes.[68] This is true not just with respect to the size of panels but also with respect to their composition, meaning the diversity of fields from which assessors are drawn.

In terms of the size of panels, the average panel size (for the NWO and the ERC combined) increased from 8 panel members in 2008 to a high of 18.4 members in 2021, before dropping marginally to 16.3 in 2022. Our data show that NWO panels increased from an average of just 5.5 members in 2008 to 22.5 in 2021; that is to say, NWO panels have undergone a four-fold increase in size.[69] The precipitous drop in NWO panel size in 2008, as depicted in Figure 3, may be explained by the fact that this was the year in which the NWO created a distinct panel for "law and management" (*recht en bestuur*), which it separated from a general social sciences panel. The ERC data, which is depicted in Figure 4, shows a similar, albeit less pronounced trend: an increase from 11 members on average in 2007 to a high of 17.3 members in 2020. The significant growth of NWO and ERC panels notably does not track the number of applications. In fact, the number of applicants for most of the funding schemes has decreased or tapered off in the last decade, with the exception of the NWO's Veni scheme for early career researchers. One possible implication here is that the ERC and the NWO have increased panel sizes not so much as a reaction to increased applications, but rather to alleviate the work burden on panelists.

68. We excluded the analysis of NWO Vici panels from our data set due to missing datapoints. Where data for a panel member for remaining schemes was not available, we omit that member from the data set.

69. Note that in 2002, 2004, and 2006, the NWO had two rounds for Veni grants per year. For these years, we used the average panel size of the two grant rounds.

FIGURE 3: CHANGE IN NWO PANEL SIZE

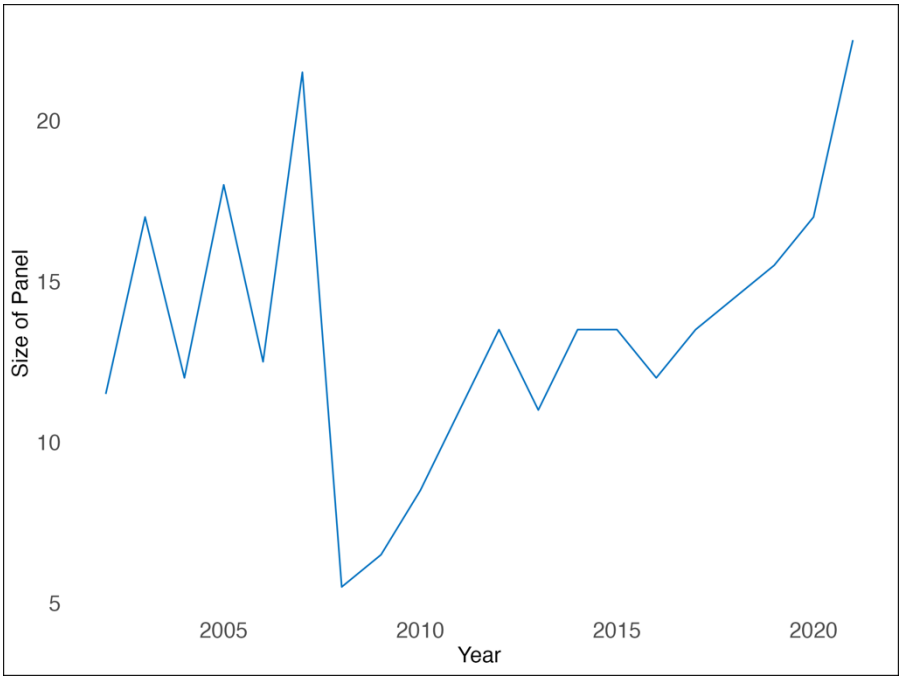


FIGURE 4: CHANGE IN ERC PANEL SIZE

One corollary of this growth is that larger panels have allowed for assessors from a broader spectrum of disciplines to be involved in the decision-making process, as we show below. In enlarging panels, the apparent preference of the ERC and the NWO has been to broaden the disciplinary expertise of the panelists, rather than to increase the number of panelists from "core" disciplines, such as law and political science. This observation leads us to our data on panel composition.

In our data set, over one quarter of panelists were legal academics (general/domestic, international, or EU lawyers), attesting to the fact that lawyers are generally well represented on assessment panels.[70] In NWO panels, lawyers represented 38.4% of the panelists, whilst in the ERC, they accounted for 22.1% of the panelists. When the ERC and NWO data are aggregated, lawyers are slightly ahead of political science and international relations scholars in terms of representation on panels, with the latter cumulatively accounting for 22.4% of panelists on average. In NWO panels, lawyers significantly outnumbered political science/international relations scholars, which constituted just 15.9% of panelists; in ERC panels, this trend was reversed with political science/international relations scholars marginally outnumbering lawyers (27.9% versus 22.1%).

The dominance of lawyers, political scientists and international relations scholars is unsurprising given that the panels deal in large part with applications from those disciplines. However, our aggregated data also show that there is significant diversity in subject-matter expertise on the panels: on average, 11.8% of panelists come from disciplines that, in our view, are remote to law, such as theology, urban planning, and film studies.[71] This was particularly pronounced in ERC panels, in which panelists from such disciplines accounted for 17.1% of the panelists.

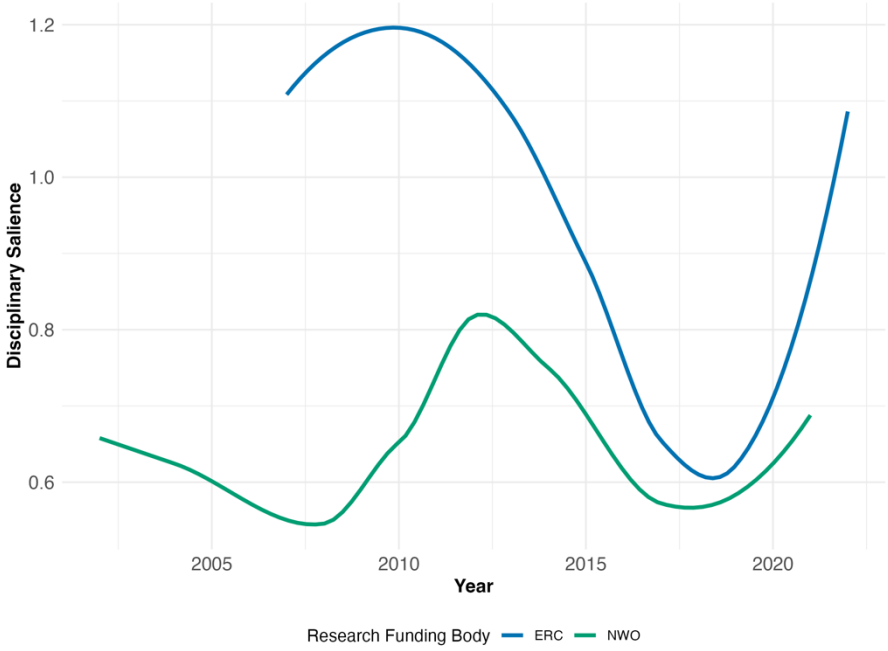
Our second measure of panel composition, disciplinary salience, allowed us to measure the relative proportion of panel members from "salient" disciplines, which we hypothesize would privilege the use of non-doctrinal methods and/or interdisciplinary substance when assessing international law projects. Figure 5 shows that the average disciplinary salience of panel members has varied over time with a notable decrease in both NWO and ERC data around 2018. The average disciplinary salience was 0.8 overall, with 0.849 for ERC panels and 0.622 for NWO panels, meaning that ERC panels had a higher relative proportion of panelists from salient disciplines, as compared with NWO panels. The fluctuations depicted in Figure 5 show that applicants face quite a bit of uncertainty with respect to their target audience, as the relative proportion of

70. In our data set of 1117 panelists, there were 225 general/domestic lawyers, 70 international lawyers, and 36 EU lawyers.

71. We define these as scholars from geography/urban planning, engineering, communication, science studies (*methoden en technieken*), logistics and planning, theology/religion, literature, film/media/culture studies, organizational studies, ethics, movement science, innovation sciences, health sciences, and computer science.

panelists from salient disciplines has varied significantly in practice and would be difficult to predict from year to year.

FIGURE 5: DISCIPLINARY SALIENCE OF PANEL MEMBERS



C. Does the Composition of the Panel Influence Funded Projects?

To test the hypothesis that we outlined in Section I.D above, we carried out linear regression analyses on the approach of funded projects and the composition of ERC and NWO panels. In line with our hypothesis, our analysis found a statistically significant (albeit small) correlation between projects employing non-doctrinal legal methods and the percentage of political scientists/international relations scholars on the panels.[72] However, contrary to our expectations, the opposite was true for the interdisciplinary approach of funded projects, which showed a slightly negative correlation with the percentage of political scientists and international relations scholars on panels.[73] Disciplinary salience was not significantly correlated with the approach of funded projects in any way.

72. The presence of political science/international relations scholars was significantly correlated to the use non-doctrinal methods, holding constant the use of doctrinal research, the nationality of the applicant, disciplinary salience, and the affiliation of panel members, $\beta = 0.0194$, $p < 0.01$.

73. The presence of political science/ international relations scholars was significantly correlated to the use non-doctrinal methods, holding constant the use of doctrinal research, the nationality of the applicant, disciplinary salience, and the affiliation of panel members, $\beta = -0.0146$, $p = 0.0155$.

The results suggest that political science and international relations panelists prefer projects that draw on *methods* common in other disciplines but not necessarily on the *substantive approach* of those disciplines. Why might this be? One explanation might be that panelists are more critical of projects that attempt to engage with concepts and theories with which they are well-versed through their own research, but that they nevertheless recognize the potential benefits of utilizing non-doctrinal methods to explore issues in international law. When read in conjunction with our findings regarding the persistence of doctrinal methods in international law projects, this suggests that panels show some deference to the discipline-specific methods of legal projects and that they recognize the autonomy of international law as a discipline. According to our findings, for example, a doctrinal and quantitative analysis of cross-citations of human rights treaty bodies is more likely to attract funding than an ethnographic study of the International Court of Justice.

How might we explain the difference between the lack of any measurable impact of disciplinary salience, as contrasted with the (statistically significant) effect of the percentage of political scientists and international relations scholars on the approach of projects? One explanation might be that panelists from disciplines that we coded as "mildly salient" engage to a limited extent with international law projects and thus exercise little influence over the decision-making process compared to political scientists and international relations scholars, with the latter taking the lead in the assessment of international law projects.

IV. IMPLICATIONS OF THE FINDINGS

Our data suggest that international law projects that attract ERC and NWO funding have evolved significantly over the course of the past 20 years. To a certain extent, the conclusions that we can draw from this study regarding the exercise of strategic anticipation are limited by the data accessible to us. But one conclusion that can be drawn from our findings is that non-doctrinal methods are on the rise.

The findings discussed in Part III provide empirical support for the proposition that international legal research is shifting (or has shifted) towards the use of non-doctrinal legal methods. Scholars who have asserted the existence of an "empirical turn" in international legal scholarship have indeed identified a trend, at least within the microcosm of projects selected for funding in the Netherlands and Europe. As we note in Part I, this might be attributable to a range of factors, such as the increase in methods training for international law academics or online courses. But the fact that the composition of panels correlates with the use of non-doctrinal methods provides support for our hypothesis that external research grants may also play a role in promoting the use of non-doctrinal methods in international law scholarship.

The implication here is that NWO and ERC applicants may be increasingly embracing non-doctrinal legal methods, and the selected projects may simply

reflect this overall trend. Applicants may be adjusting their research methods according to what is widely perceived to be the preferences of funding bodies, or the panelists who serve the funding bodies. It is also possible that highly visible commentary on the "empirical turn" in international legal scholarship, published in leading international law journals, has contributed to or helped fuel a sense among international legal scholars that empirical research represents the future of international legal scholarship or is to some degree expected.

At the same time, our findings do not support the assertion that international legal research, within the context of NWO or ERC funding schemes, is becoming increasingly interdisciplinary, although the data do show a steady level of interdisciplinarity in general. Contrary to our expectations, international law projects have not evolved to resemble political science or international relations projects in every respect. Instead, mixed-methods projects that have doctrinal research as an element and which draw on concepts and theories from international law scholarship have fared best. To our minds, this could show two things about the strategic anticipation of international law scholars: either they (correctly) perceive that funding bodies still appreciate doctrinal research and public international law topics, or—what we consider to be more likely—scholars exercise *partial strategic anticipation*, modifying elements of their project (such as the inclusion of non-doctrinal methods) to anticipate what they think panels would appreciate.

Whilst our findings support the idea that international law scholars exercise at least partial strategic anticipation, the true extent of this effect is likely to be much greater. For every international law project that is funded by external funding bodies, many more applicants are unsuccessful. The research agenda of unsuccessful applicants is often shaped by the research that goes into putting together a funding proposal, and hence the strategic anticipation that shaped that project is likely to seep into researchers' unfunded, supposedly autonomous research agenda.

It must be acknowledged, however, that other factors may be contributing to the shift demonstrated by the data. One possibility is that panels increasingly show some bias in favor of projects that involve non-doctrinal methods. As discussed above, the social science backgrounds of many panel members could contribute to a preference for non-doctrinal methods. An underlying preference for non-doctrinal methods could also be exacerbated by an apparent tendency among doctrinal legal scholars not to explain their research methodology as explicitly and in as much detail as legal scholars employing non-doctrinal methods. Relatedly, it may also be easier for panelists from a range of academic disciplines to assess the methodology of a given project, as opposed to the project's substantive contents and relationship to an existing body of scholarship, which may lie well beyond the expertise of all of the panel members. This could be true not only for social scientists evaluating international law projects, but also for legal scholars with expertise in other areas of the law.

The possibility that the character of proposed projects has shifted has a number of potential implications that merit further reflection. If international

legal research in the Netherlands and Europe involves non-doctrinal methods and interdisciplinary approaches to the extent represented by the selected projects, what does this mean for the study of international law? If the selected projects are roughly representative of the applicant pool, then this would potentially mean that doctrinal legal research is no longer as "mainstream" as it was 20 years ago; it is not necessarily the dominant research method employed by international legal scholars today. This would represent a remarkable shift in research methods among international legal scholars, given that most legal academics in the Netherlands and in Europe as a whole do not have formal academic training, such as a graduate-level university degree, in another discipline, such as social sciences. Legal academics can, of course, develop empirical research skills during and after their graduate studies, but questions nevertheless remain about whether legal academics are somewhat disadvantaged by their comparatively incomplete or haphazard training. Questions also arise about whether legal education ought to be evolving in order to more adequately meet the apparent demand for empirical research skills.

The possibility that doctrinal legal research could no longer form the mainstream or dominant research method of international legal scholars raises further questions about whether this would be a desirable state of affairs. Is it desirable for legal scholars to shift away from their legal training as academics? Perhaps the functions and merits of doctrinal legal research ought to be the subject of further reflection by legal scholars. The fact that lucid explanations and studies of doctrinal legal research are so few in number suggests that legal scholars could do more to articulate and refine the methods of their own discipline. If funding bodies are indeed having the effect of encouraging legal scholars to look beyond their own disciplines to the extent suggested by our data, then perhaps it is time to consider the detrimental consequences this could have for the study of law from within the discipline.

On a final and broader note, the outsized importance of external research funding appears to be prompting a partial change of course in the Netherlands, if not in other European countries. In 2022, the Dutch government began making substantial funds available for grants for individual researchers, with the goal of stimulating research and diminishing the pressure to submit grant proposals and the work involved in doing so.[74] This funding is distributed not through the NWO, but directly by individual faculties at Dutch universities, which employ less formal and involved selection processes as compared with those of the NWO and the ERC. Because faculties distribute the funding, this means that decision-making about legal projects is more likely to be in the hands of legal academics. This development has the potential to go some way towards liberating researchers at Dutch universities from the need to strategically anticipate the preferences of NWO panelists, where lawyers form a minority of the panelists.

74. *See Bestuursakkord 2022 Hoger Onderwijs en Wetenschap* (2022 Administrative Agreement on Higher Education and Science), MINISTERIE VAN ONDERWIJS, CULTUUR EN WETENSCHAP (Ministry of Education, Culture, and Science) (July 14, 2022), https://open.overheid.nl/documenten/ronl-fcd6dcb389dae70bfc3f39317ee1cf2672b302ba/pdf [https://perma.cc/9TNQ-WL5P].

CONCLUSION

This Article has approached the broad question of whether international legal scholarship has changed by examining one particular microcosm: the projects selected for funding by the ERC and the NWO. Our quantitative study of this question in the context of these external funding bodies demonstrates that there has indeed been a shift in the character of funded projects over the last decade, with a marked increase in the use of non-doctrinal legal methods among successful applicants. The data show that while successful applicants continue to use doctrinal legal research methods, non-doctrinal research methods are on the rise. The use of interdisciplinary approaches, however, has remained fairly constant. Thus, while successful applicants have increasingly adopted the methods of other disciplines, they have not necessarily adopted their perspectives, theories, and concepts.

This Article has further provided some explanations for these findings and also offered some reflections on the broader implications for the study of international law. One possible explanation is that the successful applicants are representative of a larger applicant pool that is engaged in the exercise of strategic anticipation. In other words, ERC and NWO panels may be seeing an overall increase in applications that propose the use of non-doctrinal legal methods, which the applicants perceive to be meeting the demands or expectations of panels that invariably include social scientists. Another explanation, which is supported by our data analysis, is that panelists with higher percentages of social scientists and international relations scholars are more likely to prefer projects that resemble projects in their own fields, due to their use of non-doctrinal research methods. These two explanations are not mutually exclusive, but instead are complementary and very likely both at play here. Other plausible explanations, which our study does not test, include the influence of prominent scholarship on the "empirical turn" in the international legal field, and the increased availability of tools for the self-study of empirical methods.

Our findings suggest that funding bodies, like the NWO and the ERC, do indeed play a role in shaping the direction of international legal scholarship. These findings prompt further questions about whether it is desirable for the selection of large-scale projects in international law to be determined by panels that consist largely of non-subject-matter experts. In addition, the trend demonstrated by our research raises questions about the potential consequences of the widespread use of mixed methods, meaning both doctrinal and non-doctrinal legal methods, given that legal scholars typically only have formal training in the former. Our research has also led us to observe that the methods, merits, and drawbacks of doctrinal legal scholarship are ripe for discussion. We hope that this Article will contribute to an ongoing dialogue about how international legal scholars approach their research, why they gravitate towards certain research methods, and what this means for the study of international law.