Over the past decade, transnational networks have grown from a fringe topic in legal scholarship to a major area of research. A wide range of scholars has explored the rise of networks in areas as diverse as antitrust regulation, criminal law, environmental protection, and judicial decision-making. In this essay, I provide a brief overview and intellectual history of the topic as a way to set the stage for the remainder of this symposium.

In contemplating transnational networks, or transgovernmental networks (the difference turns on the relevant members of the network, but the two phrases are often interchangeable), it is helpful to think about how this phenomenon developed and to ask what has driven its growth. What are the empirical factors that have influenced the growth of networks in different areas? And how (and why) has academic interest in this area developed over time?

The study of transnational relations dates back at least to the 1970s (and in many respects we can trace the idea of networks back far longer). In the postwar period, governments increasingly began to cooperate on many formerly-domestic policy issues. The mid-level officials who typically led these efforts often composed the nodes in a network, though they likely did not think of themselves this way. Political scientists, in turn, increasingly started to think outside of realist paradigm with its state-centric focus, especially in the emerging area of international relations known as “international political economy,” and instead began to consider the sub-state interactions that developed and coordinated policy in these areas. In this era, Robert Keohane and Joseph Nye were among the first to really identify and analyze transgovernmental and transnational relations. Operating on a parallel though distinct track, transnational legal process scholarship in this period also challenged state-centricity. This research discussed how some government-to-government legal interactions occurred below the state level, rather than

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1. This essay is adapted from a speech given at SMU Law School on November 7, 2008.

2. ROBERT O. KEOHANE AND JOSEPH S. NYE, TRANSNATIONAL RELATIONS AND WORLD POLITICS (1972).
simply foreign ministry-to-foreign ministry, and drew attention to these processes and actors. In short, academic analysis in this period reflected real world changes in how international relations and international law were conducted and organized.

During the 1980s and 1990s, academics continued to pay attention to the activities of networks but often used slightly different terms. Many political scientists in this period focused on what are called "epistemic communities": communities of experts who have a policy interest (and influence) in a particular area. Epistemic communities have been most commonly identified in the realm of the environment. For example, in the run-up to the United Nations Earth Summit in Rio de Janeiro in 1992, some believed that a transnational group of scientists and advocates were developing epistemic networks and then attempting to use these networks to push global policy in certain directions.

Whatever the label, it was clear by the 1990s that transnational and transgovernmental networks were increasingly significant in international relations. In general, in this period, social scientists and lawyers alike recognized that there was extensive contact and collaboration taking place among mid-level national officials. This contact was at a much more significant level than in the past. This observation was particularly true among the advanced industrialized democracies, and unsurprisingly the bulk of analysis in this area has focused on these states. This focus continues today.

There are a few central drivers behind the broad development of transnational networks in the postwar era. One very obvious driver was the rise of a more interdependent world economy. As the international economy bounced back after 1945, integration and interdependence accelerated, and what is now recognized as globalization began to develop. World trade and investment expanded dramatically, and national economies became much more intertwined.

This era also witnessed an enormous and related new need for regulatory cooperation, in part because domestic regulation was a central part of the postwar vision of "embedded liberalism," to use John Ruggie's famous phrase. It was a vision that included free trade and significant economic interaction amongst the countries of the West. But, unlike the late 19th century, another period that featured high levels of openness and economic interdependence, it also included a domestic regulatory state that was powerful and robust. That combination created scope for conflict over regulatory policy because domestic regulation often affected international competitiveness. And this conflict, in turn, created the possibility of cooperation across jurisdictions. At a very basic level, this combination of factors drove a substantial amount of transgovernmental cooperation.

Other related factors were also influential. Trade in the postwar period was different than trade in the nineteenth century. Whereas the earlier period primarily featured interindustry trade, the postwar era featured significant amounts of what economists call "intra-industry trade." One example would be German cars competing with Japanese cars in the same market. When sellers compete in the same industry, and consumers in the same market have the option of buying a German, Japanese, or American car, the regulatory differences that affect the competitiveness of those industries become more salient and

3. Henry Steiner and Detlef Vagt, Transnational Legal Problems (1968)
significant. Again, such competition creates the potential for conflict and, therefore, cooperation. The bottom line is that national regulatory differences increasingly translated into competitive differences, and this shift began to affect what regulators wanted and how they worked, or clashed, with their counterparts abroad.

Third, a more globalized world also meant that many national government agendas could only be realized by going international. This reality was especially apparent by the 1970s and 1980s in areas like transnational criminal law and cooperation. Criminal networks became a huge part of the postwar economy, and drug traffickers began to operate on a global scale in the 1970s and 1980s. To tackle them, national law enforcement bodies also had to work on a global scale. This dynamic developed and accelerated over time, pushing transgovernmental cooperation along.

After the fall of communism, the Western model of an embedded regulatory free market state spread further, which also had a facilitative effect on transgovernmental cooperation. Currently, more countries are adopting rules and regulations that look increasingly Western. Thus, there is more room for regulation to spread, more room for cooperation, and more scope for larger networks.

Fourth, and finally, is the role of technology. When one considers networks and how they operate, regardless of whether the members are government officials, or private actors, one certainty is that they are peer-to-peer systems where individual users are scattered around the world. Participants communicate through systems like email and telephones, and they are able to fly places with ease. All of this technology makes it possible for networks to thrive because it enables participants to communicate easily, regularly, and at a distance. These technological innovations cannot be ignored in any assessment of the rise of networks.

To summarize, one can argue that there are two basic ideas at the core of the rise of networks: one is globalization, and the other is the internet. These are also two buzzwords, particularly of the 1990s, but they are very important in this context. The internet can stand in for all the communicative technologies that are so important to the operation and growth of the network model, and globalization can stand in for interdependence and the pressures it creates to cooperate across borders on areas of shared policy frameworks—in other words, the pressures to create networks.

Against this backdrop, starting in earnest in the 1990s and then accelerating into this decade, there has been significant amount of scholarly attention paid to the development of networks. Many questions have guided this research. What do networks do? What is their significance? Many of the people who have worked on those issues in recent years are participating in this symposium. We see this interest manifested in a whole range of substantive areas; again, many of them represented in this symposium. Competition policy has been very important, as has securities regulation, criminal law, environmental law, judicial networks, legislative networks, and so on.

In the rest of this essay, I would like to discuss what the important questions have been and what I think they are now, and touch on why transnational networks are significant from a broader perspective. There are a few things to recognize in this regard. One is the institutional backdrop, as it were. The traditional way that lawyers, political scientists, and policy makers have thought about international cooperation has been through what is sometimes called “liberal internationalism.” We can also understand it as the “treaty-international organization” model.
In the postwar period, we saw hundreds of international organizations created. The most obvious and important is the United Nations, but there are many others: the World Bank; the International Monetary Fund (IMF); the International Postal Union, which is quite old; the World Health Organization; International Maritime Organization, and so on. They all shared a common model and approach: to create a centralized bureaucracy that was global in reach with a treaty at the core and a set of member-states who contributed governance, staff, and funding. These organizations had buildings, officials, and letterhead.

The network model can be seen as a challenge, an alternative, to the treaty-international organization model. If you think about how governments can address policy differences across borders, differences with another state, they have three chief options. One is to negotiate about that difference, through a treaty perhaps, and develop shared rules and an associated organization. The second option is to apply domestic law extraterritorially and unilaterally. We often see that happen, particularly in the competition realm, where the United States has been fairly aggressively unilateral. A third option is to develop a network or to engage in a network and to then cooperate in a more informal, flexible, and less legalized manner.

Much of the thinking about networks has reflected the analytic structure discussed above: that networks represent a new and different way to cooperate that contrasts with traditional international organization. This focus makes the study of networks an important aspect of the broader study of global governance and international law. But it is also a topic that lends itself to narrower debates drawn from specific policy areas, such as the environmental regulation. In any event, the same central questions tend to arise in the study of networks. What are the advantages of this new approach? What does it mean? If we look broadly at the scholarship on this topic, there have been two main lines of inquiry.

The first line of inquiry is: what are the effects of networks? What difference do they really make when compared to alternative forms of cooperation? Is the rise of transgovernmental or transnational networks somehow a challenge to traditional international organizations? Anne-Marie Slaughter wrote a piece about ten years ago in Foreign Affairs called The Real New World Order, and her argument was that the real new world order is not going to look like the United Nations treaty-international organization model that has dominated international cooperation for decades. Instead, the world is going to look more and more like a networked world.

Is that really true? Critics have questioned this vision on empirical grounds. In fact, they argue, networks have limited utility and are important only in areas of "low politics." This phrase is not necessarily meant to be pejorative, but political scientists and foreign policy experts consider "high politics" to be matters of national security, war, and peace. Securities regulation, for example, is considered "low politics." Is it the case that networks only matter in low politics? If so, the world order will not really be a networked one. Or are networks something that can, and do, matter on all levels of politics, high and low?


Related to the question of the effects of networks is a set of questions about how they operate. Who participates in these networks and why? What draws them in? What do they want? Do networks promote policy convergence? In a world where many robust networks are operating, do we see more convergence in policy across nations, or more divergence? Typically, we would expect to see more convergence because that is part of the incentive to create and participate in networks. That assertion has to be empirically tested, however.

The second line of inquiry is really more normative: How accountable, transparent, and responsive are networks? If we accept the idea that transnational networks are an increasingly large part of the architecture of the international system today, we still need to know if they are desirable. Are networks something we should welcome? Or do they threaten traditional politics in some undesirable way, challenging sovereign control, for example? Are networks just regulators from government agencies interacting with their peers abroad in a semi-covert—though not always secret—manner? Are they subject to enough political control at the top? Or are they somewhat wayward, running their own mini foreign policy? Perhaps accountability is an issue we can solve through deft adaptation of administrative law, or through ordinary domestic administrative rules. Or perhaps networks somehow submerge or disguise the exercise of power. These questions are all central to assessing the normative appeal—and policy response—to the rise of networks.

In my own research, I have observed networks that involve the United States—which has very well-developed regulatory systems and very sophisticated Non-Governmental Organizations—interacting with countries and individuals from jurisdictions with less-developed regulatory systems. The result is often the export of American regulation. This export involves substantive rules as well as the procedures and institutions through which these rules are applied. And because of the role of "network effects"—the kind of lock-in we see from adopting a shared standard, as with computer software and telephone networks—the diffusion of American-style regulation is not likely to be fleeting. Is networked cooperation another way, therefore, to exert American power, or is it on balance a more collaborative alternative to extraterritoriality and traditional international treaty-making? A network implies more equality among members, but is that really the case? These latter kinds of questions all go to the core issue of whether the development and growth of networks is desirable and whether, either way, it something we want to somehow control more overtly.

In conclusion, networks are a central frontier in international legal research because they are a central development in international cooperation. They are likely to remain central to international law and relations in the years to come. Understanding what effects network have, and how they comport with established and developing principles of good governance, is a critical task for contemporary international lawyers. This symposium is a wonderful step toward better understanding of these difficult questions.
