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Recommended Citation

Susan Block-Lieb, *Global Scripts in Transnational Legal Orders and Governance*, 18 Ann. Rev. L. Soc. Sci. 81 (2022)

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Global Scripts in Transnational Legal Orders and Governance

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Annu. Rev. Law Soc. Sci. 2022. 18:81–99

The *Annual Review of Law and Social Science* is online at lawsocsci.annualreviews.org

<https://doi.org/10.1146/annurev-lawsocsci-111621-125416>

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Keywords

global scripts, governance, polity, transnational legal order, TLO theory, recursivity

Abstract

Global scripts—the rules, norms, and standards in international texts, and the tacit assumptions that surround and give meaning to them—exist on numerous issues (finance, trade, economic development, climate change, education, human rights, and gender equality), at every level of engagement (international, national, local), and at every phase of recursive norm construction and contestation. Case studies involving global scripts appear across a wide range of scholarship—considering sociological, anthropological, or sociolegal perspectives, or on international political economy, international organizations, international relations, or law and development—but because they are focused on one piece of the puzzle at a time, variation exists regarding the definition of global scripts, the distinction between legal and policy scripts, and how explicitly scripts get articulated through and with reference to law. Enhanced theorization of global scripts holds promise for connecting legal to sociolegal scholarship precisely because global scripts and scriptwriting extend beyond the realm of law and lawmaking; it would enable deeper exploration of whether, how, and why a broad range of texts and practices influence behaviors.

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INTRODUCTION

Although broad agreement exists that law and lawmaking international organizations (IOs) enable globalization along multiple issue areas (Halliday & Osinsky 2006), and through a wide range of forms (Abbott & Snidal 2000, Block-Lieb 2019, Shaffer & Pollack 2010), sociolegal scholars have only recently begun to study the role of global scripts in this process. The concept of a global script extends beyond law; it covers both “the rules, norms and standards described in written legal documents, but also extends to the ideals, doctrines and tacit assumptions that surround and give meaning to the written laws and regulations” (Gillespie 2012, p. 29, n. 1). It is, in other words, a concept that refers to texts, statements, and practices; the context in which these are considered; and the consequences of this combination on behaviors. A gathering momentum of interdisciplinary scholarship shows how global scripts emerge and demonstrates that they reflect a politics of lawmaking and anticipate a politics of law implementation (e.g., Block-Lieb & Halliday 2017, Broome & Seabrooke 2021, Gillespie 2012, Halliday et al. 2010, Kentikelenis & Seabrooke 2017, Seabrooke & Sending 2020).

Sociologists and sociolegal scholars have theorized the emergence and implementation of internationally accepted norms as an incremental or layered process that is negotiated recursively at multiple levels of cooperative and competitive interaction. Layered negotiations that occur among networks of actors and organizations over time are often messy. Numerous entities get involved in producing a multiplicity of texts and other records. Comprehending this process is aided, according to the literature on global scripts, by attention that extends beyond legal texts and norms to include their surroundings and hidden meanings, their context and subtext (Gillespie 2012, Perry-Kessaris 2012).

At an international level, states, intergovernmental organizations (IGOs), international non-governmental organizations (INGOs), and other entities interact and, may eventually, produce “dominant policy scripts” around a “transnational policy paradigm” (Babb 2012, p. 269; Broome & Seabrooke 2021, p. 371), such as the Washington Consensus (Babb 2012, Babb & Kentikelenis 2021, Spence 2021). Dominant scripts may emerge either within or among IOs (Block-Lieb & Halliday 2017, Kentikelenis & Seabrooke 2017). Norm emergence may involve further episodes of interaction engaged in interactive and iterative processes referred to as “recursive” (Halliday & Carruthers 2007). Scripts produced at international levels may incorporate technical or invented terms that require bricolage or translation for national and local implementation (Campbell 2004, p. 71). Translation and gap filling may occur through interpreters—practitioners of one sort or another—who rework global scripts through rhetorical strategies to reimagine another more comprehensible vernacular form (Carruthers & Halliday 2006; Gillespie 2012; Merry 2003, 2005). Alternatively, in recursive fashion, contestation may upset previous settlement on scripts (e.g., Babb & Kentikelenis 2021).

Two concrete examples may help clarify the complex role of global scripts in norm emergence and elaboration. Following the Asian Financial Crisis, the world’s largest economies organized as a club of nations—then called the G-22—to reconsider actions previously imposed by the International Monetary Fund (IMF) and World Bank at the height of the crisis as conditions to rescue financing. The G-22 mostly ratified legal reform packages pressed by these international finance institutions (IFIs), referring to these policies collectively as efforts to improve “Global Financial Architecture” through revision of domestic laws governing, for example, financial institutions, capital markets, corporate governance and accounting standards, and corporate insolvency practices. Within a short time, the Financial Stability Board was created to facilitate transnational engagement on this broad range of reform efforts. The board worked together with the Organization for Economic Coordination and Development (OECD) and an alphabet soup of transnational networks of regulators, market actors, professional associations, and civil society to produce

hundreds of concrete proposals—some policy or position papers; some high-level principles and recommendations; other more lawlike legislative guides, model laws, and guides to enactment (Block-Lieb & Halliday 2017, 2022; Halliday & Carruthers 2007; Sheng 2009). While each aspect of regulatory reform holds significance standing alone, viewed as a whole—as a global script centered on reforming the financial architecture—the reforms can be understood and justified as moving toward common, comprehensive, and comprehensible objectives. Currently, decades after the emergence of the Global Financial Architecture project, the G-20 and numerous IGOs and INGOs continue to produce texts and review national practices. Global scripts have figured throughout these interactions. Scholarly analysis of scripts produced through the financial architecture project enables insights otherwise impossible if international law (IL) scholars looked for precise obligations subject to international enforcement.

Transnational engagement on issues of climate change presents another example of scriptwriting on complex global policy issues. Numerous actors are engaged in developing international, transnational, national, and subnational laws and lawlike norms and policies to address environmental issues, including climate change. The United Nations convened several diplomatic conferences on the environment and created the UN Environmental Program and Commission on Sustainable Development, which together produced multiple multilateral treaties on environmental issues (e.g., Bodansky et al. 2007, Rajamani & Peel 2021, Teixeira 2021). One of these conventions, the UN Framework Convention on Climate Change, is the parent treaty to the Kyoto Protocol and Paris Accord. The framework convention also birthed the UN Secretariat on Climate Change, which facilitates ongoing intergovernmental negotiations on the environment, as well as collection and analysis of climate change information and other aspects of implementing obligations in the Kyoto Protocol and Paris Accord. Distinct from efforts through UN and UN-related entities, a range of INGOs and NGOs have engaged in lawmaking and standard-setting initiatives, all encoded in textual scripts of various kinds. In addition, multilateral environmental agreements established institutional arrangements, such as a Conference of the Parties or Meeting of the Parties, ostensibly empowered to develop treaty obligations based on less-than-unanimous national consent (Bodansky et al. 2007, Rajamani & Peel 2021, Teixeira 2021). The G-20 recently joined this fray, including its working and engagement groups that meet and prepare texts for national leaders' ratification. Like the financial architecture project, IL scholarship may view transnational engagement on the environment as mostly a failure because few of the resulting texts constitute precisely stated enforceable obligations. Viewed through the lens of global scripts, however, scholars offer more nuanced findings—for example, analysis of climate change activism as caught between “reduction for all” and “environmental justice” scripts in tension (Beer 2016).

Global scripts exist on numerous issues (finance, trade law, economic development, climate change, education, human rights, and gender equality, including freedom from domestic violence), at every level of engagement (international, national, local), and at every phase (diagnosis, lawmaking, diffusion and implementation, reaction, and pushback) of recursive norm construction and contestation. Although references to global scripts appear across a wide range of scholarship—focused on sociological, anthropological, or sociolegal perspectives, or international political economy, IOs, international relations, or law and development—much of this scholarship involves case studies. Because this literature addresses one piece of the puzzle at a time, variation exists regarding the definition of global scripts, the distinction between legal and policy scripts, and how explicitly scripts get articulated through and with reference to law.¹ Problematically, global

¹Divergence in the concept of a global script parallels dissensus within institutional sociology as to related concepts of institutional, cultural, opinion, and performance scripts (Iglesböck & Schüßler 2019).

scripts are said to declutter and coordinate international norm production and implementation, yet scholarship conceptualizing the role global scripts play in international norm implementation is, itself, disconnected and uncoordinated.

This article argues that clearer theorization of global scripts is needed, and not solely to draw connections among case studies. Actors at all levels of transnational engagement have redoubled efforts to tackle issues that have defied resolution, such as financial regulation, climate change, burdensome sovereign debt loads, and taxation of multinational corporations. These efforts have produced steady growth in a wide range of interrelated texts produced through interrelated networks of private and public actors and monitoring mechanisms. Because many of these texts would not constitute law in the eyes of lawyers or legal scholars, this proliferation of texts along a range of normative categories challenges existing theorizations on IL and IO. Emerging interdisciplinary scholarship directs focus away from texts and toward empirical assessment of the effects of texts on behaviors (Abebe et al. 2021, Shaffer & Ginsburg 2012). But empirical inquiries often stop their analysis at findings on behavior, without further exploration of the causal links between text and action. Enhanced theorization of global scripts holds promise for connecting legal to sociolegal scholarship precisely because global scripts and scriptwriting extend beyond the realm of law and lawmaking; it would enable deeper exploration of whether, how, and why a broad range of texts and practices influence behaviors on the ground.

This review article reveals variation along interrelated themes. Existing scholarship variably describes global scripts as constructive tools, governance tools, or recursive tools, depending on whether emanating from sociolegal theories of law and globalization, governance theories, or transnational legal order (TLO) theory. In addition to distinguishing global scripts based on their purposes, scholars note the location and processes through which scripts develop. They may also analyze the form scripts take, although analysis of scripts' formal qualities may differ between legal and policy texts and statements. In reviewing this literature, this article uncovers foundations for future theoretical and empirical work; it begins an exploration of the role that global scripts play in connecting texts and their translations to behaviors around the world.

GLOBAL SCRIPTS: THEIR PURPOSES AND VARIATIONS

Growing scholarly attention to global scripts notes their presence—because of, or in the form of, texts produced by IOs or other transnational contexts. First employed by sociologists to describe convergence by states around rationalized cultural and institutional order, the term global scripts was intentionally borrowed from earlier scholarship on sociological theories of knowledge and of organizational institutionalism (OI). Whether inscribed in texts or merely common knowledge, actions that are scripted or that follow a script are understood as based on community-wide comprehension of cultural influences and, thus, as distinct from rational choices or efficiency calculations (see Berger & Luckmann 1967).

The institutionalization of scripts is understood to depend on their legitimacy, especially with scripts that guide rather than record conduct (Igelsböck & Schüßler 2019). Because the legitimation of scripts rests on communication of a shared perception, script production is described as a discursive process (Berger & Luckmann 1967, Luckmann 2002, Suchman 1995). OI scholars emphasize the role of linguistic or communicative processes in the legitimation of scripts through organizational vocabulary (e.g., Meyer & Rowan 1977), storytelling (e.g., Lounsbury & Glynn 2001), rhetorical strategies (e.g., Suddaby & Greenwood 2005), and framing activities (e.g., Fiss & Zajac 2006, Kaplan 2008).

Questions of legitimacy also dominate scholarship on global scripts. If scripts produced by international actors purport to assert consensus on “how things are done” on a worldwide basis (Meyer et al. 1997, p. 150), what explains compliance with these “transfers of encoded knowledge”

by states and their citizens (Gillespie 2012, pp. 29–30)? What justifies the leap from cognitive scripts on “how things are done” to behavioral scripts on “how things ought to be done”?

Sociological scholars initially conceived “nation-states as more or less exogenously constructed entities” and proposed that construction occurred through “global scripts” crafted at international levels (Meyer et al. 1997, p. 150). These scholars viewed global scripts as constructive tools exerting influence on states, as well as on individuals and organizations operating at local levels within states, such that “the many individuals both inside and outside the state who engage in state formation and policy formulation are enactors of scripts rather more than they are self-directed actors” (p. 150). Scholarly focus on “an enactment dimension” was intentionally oversimplified and left open possibilities for further “elaboration” of scripts through interactions among “states, organizations and individuals” (p. 151). Subsequent scholars accepted this invitation to explore scripts’ powers to “elaborate.” For example, Gillespie (2012, p. 31) discredits the notion that “the key dynamic is between global scripts and states”; relying on theories of social constructionism, he emphasizes “dialogical exchanges” among actors in recipient states’ domestic regulatory spaces, where domestic “observers draw from a common reservoir of normative and cognitive assumptions to reconfigure the meaning of global scripts” and, through this engagement, “confer legitimacy on certain global scripts” and construct their standardized and universal “legal and regulatory meaning.”

When viewing global scripts as constructive tools, scholars emphasize scripts’ consequences—the convergence of state and local practices around translations of global scripts. This perspective mostly leaves scriptwriting unexamined. Other scholars, such as Broome & Seabrooke (2021), instead describe global “policy scripts, templates and benchmarks” as “governance tools” IOs use in attempting to “govern the world economy.”² They look to understand how global scripts are written, how IOs “replicate particular bodies of knowledge, policy languages, and norms,” as a means of understanding complex webs of authority exercised through IOs (p. 369). They focus less on the law and policies that IOs make and more on the processes through which scripts are conceived of and produced within IOs. Rather than assume IOs’ ease in converging around existing consensus, the view of global scripts as governance tools explains how IOs diagnose and resolve contestation over shifting views and conflicting interests.

Halliday and coauthors combine these perspectives, viewing global scripts as recursive tools emanating across multiple levels of transnational norm production. They describe global scripts sometimes narrowly as validating the legitimacy of an IO’s lawmaking authority (Halliday et al. 2010) and at other times more broadly as “a stylized formal document that prescribes how a group of actors. . . should interact with each other” (Carruthers & Halliday 2006, p. 535). When using the term narrowly, this group may refer to diagnostic texts prepared by one IO for consumption by another IO—what Broome & Seabrooke might call governance tools.³ When using the term broadly, they may instead view global scripts as enabling the production and diffusion, implementation and institutionalization, of law and lawlike norms across all levels of transnational interaction and over the *longue durée*—what Gillespie, Meyer, and others might recognize as constructive tools. More than simply combining the governance and constructivism of global scripts, these scholars identify

²Seabrooke, Halliday, and their various coauthors mostly focus on global scripts that coordinate economic, commercial, and financial laws and practices (see also Liu 2021). Global scripts are not limited to economic issues or even to law. Others emphasize efforts to coordinate on noneconomic issues such as human rights and basic legal rights (see, e.g., Halliday et al. 2021).

³Broome & Seabrooke (2021, p. 373) refer to global scripts as legitimated through “recursive recognition”—“cycles of affirmation that legitimate particular forms of policy knowledge” among IOs that affirm or seek affirmation of work product. To Broome & Seabrooke, recursivity occurs at international levels of decision-making, whereas Halliday and his coauthors refer to recursivity as cutting across all levels of engagement.

anticipatory aspects of scripts used as recursive tools—the ability of global scripts to communicate and coordinate behaviors across levels of transnational interaction by predicting reactions and drafting responsively (Block-Lieb & Halliday 2017, pp. 227–64). Anticipation is partly a consequence of process—of who participates in scriptwriting—but also the result of scripts’ formal attributes when produced through inclusive representation. These scholars simultaneously emphasize scriptwriting, subsequent reception of scripts by an intended audience, and scriptwriters’ anticipation of audience response incorporated in the initial script.

When employed as governance tools, global scripts explore the inner workings of IGOs and INGOs engaged in scriptwriting (whether lawmaking or standard setting). When employed as constructive tools, scripts enable connections between transnational scriptwriters and local actors. As recursive tools, these links are tightened—writers anticipate performers’ diverse needs with stage direction; performers commission texts to resolve identified problems.

Scholars rely on global scripts as tools applicable to divergent theories of international norm emergence and implementation—a multifunctional Swiss Army knife that accomplishes distinct tasks depending on the user. There is broad agreement in this literature: on the need to assess the legitimacy of global scripts and scriptwriting and, therefore, the process, form, and rhetoric through which scripts are produced. The sections below consider, in greater detail, intellectual origins and intersections in this scholarship on global scripts.

GLOBAL SCRIPTS IN WORLD POLITY AND OTHER SOCIOLEGAL SCHOLARSHIP

World polity (WP) scholarship describes the role of global scripts in coordinating nations toward a convergent world society (see, e.g., Boli & Thomas 1999, Meyer et al. 1997). This literature contends that nation-states look to scripts enacted through IOs for confirmation of global expectations and international best practices. Nations that follow global scripts signal compliance—or an interest in appearing to comply—with expectations of world society.

WP scholarship, thus, views IOs as engaged in “scriptwriting” to communicate shared global practices and to “disciplin[e] and rationaliz[e] the chaotic uncertainties of social environments, facilitating the creation of articulate rule systems” (Drori & Meyer 2009, p. 31). Scripts are understood to emerge through reproduction or “enactment” of preexisting world culture, rather than the production of norms by “self-directed actors” (Meyer et al. 1997, p. 150). The processes through which global scripts emerge, and the form they take, rarely feature in WP scholarship because scripts are understood to emerge organically through acculturation; the purposes and form of intentionally crafted scripts are less important than their presence (Beckfield 2010, Jupille et al. 2013, Rautalin et al. 2021; but see Hironaka 2014). The legitimacy of global scripts is mostly presumed in WP scholarship—if global scripts merely transcribe cultural expectations and practices, the question of whether such scripts should be followed does not arise, as the transcription includes only broadly followed practices. Relationships among IOs and states may be viewed as networks of interconnected actors that can be mapped (Beckfield 2010, Hughes et al. 2009; see also Kim 2020).

WP scholars may refer to global scripts with general reference to texts produced by an IGO. For example, Jupille et al. (2013) refer to regional trade agreements as employing “scripts of modernity.” Studying 50 years of the Economic Surveys promulgated by the OECD, Rautalin et al. (2021, pp. 10–14) saw revision in the language and logic of these scripts, which initially worked through a “rhetoric of economics” but shifted over time toward a “rhetoric of consulting” and “popular oratory.” Following in the footsteps of Meyer, Thomas, and others, WP scholars like Jupille, Rautalin, and their coauthors concentrate on the top-down acculturation occurring through enactment of

global scripts. Distinct from Meyer and his cohorts, these scholars view scripts literally and study the effects on states of specific texts promulgated by IOs rather than the effects of more ephemeral messaging.

Most WP scholarship considers the role of global scripts in culturally constructing states in top-down fashion, although they agree that “states, organizations, and individuals also contribute to the content and structure of world culture” (Meyer et al. 1997, p. 151). Subsequent scholars, whether immersed in or merely cognizant of WP scholarship, focus on local actors’ engagement with global scripts from the bottom up. For example, relying on theories of social construction, Gillespie (2012, p. 31) critiques law and development literature for its failure to comprehend “local networks of meaning” developed through elaborations on global scripts. He finds evidence of state, nonstate, and hybrid actors’ involvement in “localizing global scripts” (Gillespie & Peerenboom 2009).

These and other case studies also engage with a vast literature on international law and anthropology (Merry 2006a). Merry and her coauthors have written extensively about intermediaries that “translate” international laws on gender-based human rights into the vernacular of individuals and organizations, working, at local levels, to adapt and implement treaties and other texts (Merry 2003, 2005, 2006b; see also, e.g., Berry 2003). A related literature studies the diffusion of complex and technical international laws at local levels (see, e.g., Dobbin et al. 2007, Pierotti 2013). Although this scholarship focuses explicitly on the role of intermediaries and their work, it also often implicitly engages with the vernacular scripts that these intermediaries develop and rely on to connect the global to the local (Merry 2006b).

GLOBAL SCRIPTS AND GOVERNANCE LITERATURE

Global Governance

Like WP scholarship, global governance (GG) scholarship rejects realists’ exclusive focus on nation-states and national interests and relies on global scripts to explain international coordination. Governance scholarship conceives of global ordering in broader, less top-down, and less formal constructs than a WP focus (Rosenau 1995). Constructed over multiple levels of transnational interaction, global scripts are understood in governance scholarship as intentional products of epistemic contestation (Igelsböck & Schüßler 2019).

Unlike WP scholarship, which concentrates on top-down or bottom-up construction of a polity of acculturated nation-states, GG scholarship mostly concentrates horizontally on the role of global scripts and organization at international levels (Lopez-Claros et al. 2020)—within and across IOs, and on the internal operations of IOs (Broome & Seabrooke 2021, Kentikelenis & Seabrooke 2017, Seabrooke & Sending 2020). In focusing on scripts produced within IOs, these commentators advance not only scholarship on global scripts but also that on the interior workings of IGOs. Earlier scholarship viewed IGOs as bureaucracies whose international civil servants claim rational-legal authority (Barnett & Finnemore 2001), but this more recent scholarship on intra-organizational scriptwriting finds scripts written through the combined efforts of an organization’s staff and board of directors (Kentikelenis & Seabrooke 2017), by IO staff working in conjunction with outside professional consultants (Seabrooke & Sending 2020), or between an IGO and organizations of private actors (Broome & Seabrooke 2021). This scholarship finds traces of, and contestations between, distinct epistemic influences (see also, e.g., Barnett & Finnemore 2001, Chorev 2012, Rautalin et al. 2021).

GG scholarship raises important questions about the production of global scripts and other governance tools (Broome & Seabrooke 2021, Seabrooke & Sending 2020). The focus is more on the process of this production, and the legitimacy of these processes, than on the form of global scripts or on subsequent effects scripts have on state and local actors. Substance matters, process

matters, but the formal qualities of these scripts do not figure in the analysis other than to establish epistemic influence through reference to rhetoric. Similarly, this scholarship tends to ignore how global scripts are received and interpreted at national and local levels once produced through global governance.

Transnational Governance

Unlike WP and GG scholarship, which focus on the central role of IGOs and states in the construction of international norms, TNG scholarship refers “to processes in which nonstate actors adopt rules that seek to move behavior toward a shared, public goal in at least two states” (Roger & Dauvergne 2016, p. 416). States’ involvement rarely figures in TNG scholarship.

Although TNG scholarship focuses nearly exclusively on production of transnational rules and regulations governing private actors,⁴ global scripts feature here as well (see, e.g., Djelic & Sahlin-Andersson 2006, Drori & Meyer 2006, Drori et al. 2009). When viewed through the lens of TNG, global scripts constitute texts written by INGOs about the behaviors and practices of private actors. Because state involvement is absent, these global scripts are not legal scripts. They are, however, viewed as constructive tools for the management of behaviors—“scientized tools through which world culture is shaped via IOs and the technocrats that work through them” (Igelsböck & Schüßler 2019).

Given public actors’ absence, the legitimacy of policy scripts produced through TNG is a central concern in TNG scholarship (see, e.g., Held & Koenig-Archibugi 2005), as is examination of the scriptwriting process (see, e.g., Peters et al. 2010). Case studies abound regarding private standard setting and rulemaking (see, e.g., Djelic & Sahlin-Andersson 2006, Hale & Held 2011, Koenig-Archibugi & Zürn 2006, Levi-Faur 2012). Multi-chaptered books detail the bylaws and internal workings of a broad range of private-focused organizations—e.g., the International Accounting Standards Board, International Association of Insurance Supervisors, or International Conference on Harmonization of Technical Requirements for Registration of Pharmaceutical Products.

Despite the number and granularity of these case studies, TNG scholarship is mostly unconcerned with the formal qualities of global scripts produced through international nonstate organizations and transnational regulatory networks. Who regulates through TNG matters more than the form of the rules produced by these private regulators. TNG scholars may emphasize the informality of the rules, the “softness” of their regulatory mode, and the likelihood that private organizations produce “arrangements, standards, rankings, monitoring frames,” but rarely anything more specific (Djelic & Sahlin-Andersson 2006, pp. 5–6).

GLOBAL SCRIPTS IN TRANSNATIONAL LEGAL ORDER AND RECURSIVITY THEORIES

Whereas TLO and related theories relying on a concept of recursivity may assume global scripts’ existence in a given order, one branch of this scholarship explicitly considers scripts as a pivotal locus of action and significance. A TLO is defined as “a collection of formalized legal norm and associated organizations and actors that authoritatively order the understanding and practices of

⁴Roger & Dauvergne (2016, p. 416) define “transnational rules” as “rules that link private nonstate actors, such as businesses, NGOs, and individuals” and exclude rules produced through intergovernmental negotiations that “aim to shape government policies.” Transnational rules are not divorced from public law and public actors in that TNG is understood as “embedded in and supported by other modes of governance” (Djelic & Sahlin-Andersson 2006, p. 6).

law across national jurisdictions” (Halliday & Shaffer 2015, p. 11). TLO theory is premised on three key elements: (a) first, the notion that a TLO looks to create order in an effort to resolve some “problem” through “legal” means;⁵ (b) second, that a TLO is legal if it has “legal form, is produced by or in connection with a transnational body or network, and is directed toward or indirectly engages legal bodies”; and (c) third, that a TLO is transnational if it “orders social relationships that transcend the nation-state” (p. 20). Legal ordering is understood by TLO theorists to work through a recursive process that addresses “the vertical and horizontal interactions of different arenas in which transnational legal norms are made, implemented, and applied” (p. 40). More than recursive interaction among international, national, and local sites of engagement, TLO theory assesses the effects of an emergent TLO over time in terms of whether it has institutionalized, in the sense that “normative understandings of appropriate behavior become stabilized” and “are taken for granted” (p. 42), which Halliday & Shaffer (2015, pp. 42–54) describe as the consequence of “normative settlement” and issue alignment.

Like WP, GG, and TNG theorists, TLO theorists emphasize the socializing that IOs rely on to construct order through global scripts and other texts (Halliday et al. 2010, Halliday & Block-Lieb 2012, Shaffer 2012).⁶ TLO theory insists that wholly top-down approaches must be abandoned in favor of more open hypotheses about the impetus and drivers of legal change. In TLO and recursivity theories, pressure for change may come from any direction—above (from IOs and IGOs), below (from states, nonstate organizations, individuals, and cities), and horizontally (from actors at a single level of action, such as IO to IO, state to state, and city to city) (Halliday 2009). TLO and recursivity theories do not privilege any particular direction of impetus; they remain agnostic until research reveals which actors are driving the production and adaptation of global scripts in a given issue area and historical moment (Halliday & Shaffer 2015). Scholars employing TLO theory analyze the recursive interaction of public and private entities—nation-states, IGOs, INGOs, global professional service firms, and individuals—across multiple levels of involvement (Block-Lieb & Halliday 2017, Carruthers & Halliday 2006, Halliday & Shaffer 2015).

Scholarship on TLOs and global scripts expansively addresses numerous issue areas—on insolvency, secured transactions, international transportation, and international taxation law; on monetary and financial policies, food safety, climate change, and an array of issues pertaining to human rights (Halliday & Shaffer 2015); and on constitution making (Shaffer et al. 2019), fiduciary law (Davis & Shaffer 2020), criminal justice (Shaffer & Aaronson 2020), privacy and speech, including data and disinformation (Kaye & Shaffer 2021), and “basic legal freedoms” (Halliday et al. 2021).

Because TLO scholarship focuses on recursive interactions among international, national, and local actors, its case studies consider both the influence of IOs on states and practitioners and the influence of states and practitioners upon IOs. For example, Block-Lieb & Halliday (2017) engaged in a global ethnography of lawmaking within UNCITRAL (UN Commission on International Trade Law, an IGO) and observed interactions among international civil servants, delegations of member and observer states, and delegations from various nonstate organizations, such as IFIs, professional associations, and regional organizations. In an earlier study, Halliday & Carruthers (2009) observed and analyzed the reactions of IFIs to the Asian Financial Crisis of 1998 and their interactions with states and found that national politicians and local practitioners worked both to assist and to undercut, to facilitate and to foil, the efforts by IFI legal staff to advance the structural law reforms on which crisis lending was conditioned. Examination of

⁵Although TLO theory broadly conceives of “law” and “legal” orders in this context, it intentionally excludes consideration of social, political, religious, and economic ordering (Halliday & Shaffer 2015, p. 11).

⁶For distinctions between TLO theory and WP and other theories of international law and organization, see Halliday & Shaffer (2015, pp. 21–28).

recursive interactions enables study of contestation, e.g., between state actors within the global arena, including contests between authoritarian and democratic regimes (Halliday et al. 2021).

Process matters in TLO theory—not just the processes followed by, within, and among INGOs and NGOs in their construction of global scripts (Halliday et al. 2013), but also those followed at national and local sites of implementation and enforcement (Carruthers & Halliday 2006, Halliday & Shaffer 2015). TLO theory looks beyond top-down influences to consider contestations from the bottom-up (Carruthers & Halliday 2006), as well as among IOs with overlapping jurisdiction (Block-Lieb & Halliday 2017). “It assesses how the production and implementation of transnational legal norms among international, transnational, and local lawmakers and law practitioners dynamically recursively affect each other” (Halliday & Shaffer 2015, p. 38).

Form, too, plays an important role in how TLOs emerge and institutionalize. TLO theory promotes a return by sociolegal scholarship to textual analysis of law and lawlike texts, whether hard or soft international law, including explanatory reports and high-level principles (Block-Lieb & Halliday 2017).

In focusing on form, TLO theory unpacks the details of the texts through which global scripts get written. Scripts work through a range of legal technologies; within these technologies, the texts may employ rhetoric (that is, persuasive language) and differentiate among recommendations according to various rule-types (Block-Lieb & Halliday 2017). Technologies, and the rhetoric and rule-types through which they work, can trigger recursive interactions over time and among actors at international, national, and local levels in that these formal products both reflect and anticipate reactions in distinct locations (p. 228).

Legal and Other Technologies

Block-Lieb & Halliday (2017, p. 230) find that UNCITRAL works across a variety of technologies, in that it drafts conventions for diplomatic adoption, detailed model law and model law provisions, legislative guides that combine explanatory material with recommendations that vary in the detail and direction they provide, and explanatory reports that contain no recommendations.⁷ By contrast, other lawmaking IOs, such as the International Institute for the Unification of Private Law (UNIDROIT), rely on a narrower range of legal technologies—mostly draft international conventions or multilateral treaties, although occasionally also soft laws referred to as principles (Block-Lieb & Halliday 2016). IOs like the World Bank, IMF, or OECD, which do not consider themselves lawmaking organizations but which get involved in crafting global scripts, may produce distinct technologies, such as high-level principles, explanatory or diagnostic reports, and other technologies that are intentionally less legal or lawlike (Block-Lieb & Halliday 2022, Helleiner 2015). Although open-ended, the importance of principles should not be underestimated. In their sweeping review of transnational business regulation, Braithwaite & Drahos (2000, pp. 507–30) emphasized “contests of principles” as a critical component in each of multiple case studies.

Rhetoric

One line of TLO scholarship stresses that language matters within global scripts and that efforts to persuade matter at all levels of transnational engagement. How global scripts are phrased may facilitate efforts to legitimate an IO or network of actors and their work (see Halliday et al.

⁷Block-Lieb & Halliday (2017, p. 230) define legal technologies as “the range of text and other formal products of an international lawmaking organization.”

Table 1 Categories of rule-types within legal technologies

Categories	Rule-type	Rule feature
Imperative	Substantive	“Law shall. . .”
Default rule	Opt-out Opt-in	“In the absence of agreement to the contrary, law shall. . .” “Unless parties explicitly agree, law shall not. . .”
Constraining	Baseline Permissive Norm of minimalism	“Law should at least. . .” “Law may. . .” “Law should not do more than. . .”
Focusing	Architectural Norm of disclosure	“Law should cover these topics. . .” “If there is a law, it should be transparent and clear. . .”
Policy norms	Statements of policy	Statement of policy objectives of law

2021), such as where scripts adopt a rhetoric of self-validation (Halliday et al. 2010, Halliday & Block-Lieb 2012). Rhetoric may also affect the diagnosis of problems to be solved and advocacy regarding proposed solutions to problems. Lloyd & Simmons (2015) describe how a rhetoric of criminalization emerged in global scripts on human trafficking and how reference to this rhetorical framing by IOs affected the framing within the human trafficking TLO, as well as states’ willingness to implement these scripts and the format of such implementation.

Rule-Types

IOs may produce legal scripts containing a wide range of “rule-types” (Block-Lieb & Halliday 2017). Whether IOs enact hard or soft IL, they may draft rules and regulations containing imperative language of obligation or use softer, more permissive language. **Table 1** summarizes these categories of types of rule or recommendations.

Through close reading of draft treaties and international conventions produced by UNCITRAL, Block-Lieb & Halliday (2017, pp. 236–41) found that imperative provisions dominated these legal scripts, but that conventions also contained permissive default rules, which would enable nation-states or private parties to “opt-out” from the treaty provisions. They also found open-ended architectural provisions, for example, provisions in the Rotterdam Rules that allowed for electronic bills of lading to govern conduct but that intentionally did not prescribe technical aspects of what would qualify as digital bills of lading (pp. 236–41). Soft law produced by UNCITRAL might include seemingly imperative provisions, written through “language of obligation” and “precision,” but also more permissive provisions aimed at constraining behaviors (through language of permission or by setting baselines or norms of minimalism) and focusing behaviors (through architectural provisions that outlined what laws should include, without detailing substance, or by setting simple norms of disclosure). Whether constraining or focusing, rules that are not phrased as imperatives offer “reservations of authority” to distinct audiences: They may offer discretion to legislatures (either imperative rule A or B should be adopted in implementing legislation), private parties (with a default rule, private parties may contract around some imperative rule), or courts (legislatures should adopt an open-ended rule, which would enable delegation of discretion to courts) (Block-Lieb & Halliday 2017, p. 234).

Not every IO is as creative as UNCITRAL in their scriptwriting. Recommendations may instead get framed as “high-level principles,” “guiding principles,” or simply “principles,” although what counts as a principle varies depending on the drafting: Some principles provide general, open-ended guidance on proposals for the direction of future law reform, as with architectural

recommendations; others are drafted in the detailed and imperative language resembling a model law (Block-Lieb 2019, Block-Lieb & Halliday 2022). Regardless, different rule-types may be directed to specific audiences and, through this audience-specific messaging, may anticipate and respond to protentional reactions from national and local actors (Block-Lieb & Halliday 2017, pp. 240, 247–50).

Governance Tools

Distinct from global scripts proposing law reform, some TLO scholarship observes governance scripts exchanged between IGOs. These negotiate jurisdictional competence to reduce overlaps and eliminate inconsistencies between organizations. Shaffer & Waibel (2015) observe coordination in the decision-making and organizational cultures within the World Trade Organization and IMF on monetary and trade law policies. Block-Lieb & Halliday find “organizational” and “substantive” meta-texts drafted by UNCITRAL and other IOs (i.e., the World Bank, UNIDROIT, and the Hague Conference on Private International Law) to identify a division of labor or of substantive competence among IOs. Through these meta-scripts, “rival claimants to lawmaking authority” sought “to manage prospects of debilitating conflict”; where conflict could not be resolved, “counter” meta-texts critiqued the jurisdictional claims and substantive proposals of another IO (Block-Lieb & Halliday 2017, pp. 357–58) and may have adopted a self-validating rhetoric that looked to end jurisdictional questions of competence rather than persuade (Halliday et al. 2010). These meta-texts constitute governance tools—scripts identifying, justifying, and detailing the process through which lawmaking and other IOs produce law and lawlike norms. Although these scripts are written by lawmaking IOs, these are policy rather than legal scripts; the scripts did not purport to direct state action or the actions of private parties, whether immediate or eventual, but only to coordinate IO action. Although the scriptwriters were likely to make final texts public, the transparency of the process through which these scripts were produced varied.

TLO theorists have mostly analyzed meta-texts used as interorganizational governance tools, whereas the governance tools studied by Kentikelenis & Seabrooke (2017) focused on intraorganizational scriptwriting. With intraorganizational governance tools, an IO may reveal internal debate as to the direction and scope of its work, including shifts in this regard (Kentikelenis & Seabrooke 2017, Rautalin et al. 2021). Because intraorganizational governance tools are not intended for external audiences, they may intentionally obscure internal debate.

FRONTIERS FOR RESEARCH ON GLOBAL SCRIPTS

Global scripts coordinate actors and their practices on a global scale, and yet their analysis is rarely central to interdisciplinary theories of IL or IOs. This article reviewed this literature along several interrelated axes: the purposive definitions of global scripts; the processes through which global scripts emerge and the legitimacy of these processes; and the form scripts take—how they are formally constructed, with close attention to their rhetoric and, if recommendations are made, their rule-type. This review revealed overlaps, gaps, and disconnects in scholarship on global scripts—not surprisingly. Scholarship that covers a broad range of interdisciplinary and intellectual perspectives through numerous case studies is likely to produce patchy results. Considered together, scholarship referring to global scripts may nonetheless suggest broader possibilities for theorizing about global scripts.

Definition and Purpose

To scholars adopting a sociological or sociolegal lens, global scripts are constructive tools used to converge states around “framing assumptions” about “how things work” on a global scale (Meyer

et al. 1997). To governance scholars, global scripts are governance tools through which international law and policy are conceived of and produced within IOs. To those that rely on TLO theory, global scripts offer recursive tools that anticipate how texts crafted at international levels will be received by national and local actors and, potentially, institutionalized. Each addresses a distinct level and direction of norm emergence and elaboration. Constructive tools work vertically to facilitate interactions among international, national, and local actors, whether top-down or bottom-up. Governance tools focus horizontally within or among organizations, whether IOs or organizations located at national or local levels. Recursive tools combine horizontal and vertical interactions across transnational levels, considered over time.

More than distinguish among definitions of the concept of a global script and the work that each tool accomplishes, it is important also to emphasize their common purpose: to make sense of the proliferation of varied lawlike norms, texts, and mechanisms across transnational settings. And yet, overlaps in distinct visions of the work accomplished through global scripts, in turn, raise questions as to distinctions between scripts and law, as well as distinctions among law, policy, and other normative projects (Halme-Tuomisaari 2016).

Can scholarship on or including references to global scripts be relied on to extend existing legal theories of the transnational beyond law? Even if law is defined broadly to cover all “generalized normative expectations understood and used by actors with a particular context for purposes of constraining and facilitating particular behaviors” (Halliday & Shaffer 2015, p. 11), global scripts extend beyond law to include a wide range of texts, policies, and other engagement. Global scripts both include and supplement law. As with law and lawlike norms, global scripts recognize and promote coordination among and within transnational actors and organizations. Distinct from traditional concepts of law, however, global scripts may be directed to economic, technical, or scientific practices that remain situated outside law and law enforcement. These wider policy statements may prefigure law, in that enactment and enforcement of law is their eventual goal, or they may reject claims that law should resolve a problem on the grounds that markets, technology, or science offers sufficient resolution. Scholarship has begun to struggle with analyzing these new forms of “technopolitical devices” (Ballesterro 2019). Future research should further explore the distinctions, as well as the connections, between legal and policy scripts with global implications.

Process

The legitimacy of global scripts depends importantly on the legitimacy of the process through which scripts emerge and on the organizations and entities engaged in scriptwriting. Scholarship on global scripts often addresses issues of process. And yet most of this process-oriented scholarship is focused on what Meyer et al. (1997, p. 151) call “the enactment dimension”—attention to either top-down or horizontal work on scriptwriting (Block-Lieb & Halliday 2017, Kentikelenis & Seabrooke 2017). When scholars instead focus on “elaboration” of global scripts from the bottom-up (Meyer et al. 1997)—on “dialogic exchanges” among IOs, states, and local organizations and individuals (Gillespie 2012)—process questions are less likely to arise. Rather than focus on the legitimacy of the process through which scripts are produced at international levels, elaborating scholars consider the performance and interpretation of scripts into local vernacular, their diffusion and institutionalization (Berry 2003; Dobbin et al. 2007; Merry 2003, 2005, 2006b; Pierotti 2013). Ethnographic studies of diffusion and translation of global scripts address issues of context and form—rhetoric, narrative, vernacular—and only rarely consider questions of process.

This reluctance to consider questions of process may have begun to change, however. Ballesterro focuses her ethnographic observation on state officials, NGOs, politicians, and activists in Costa Rica and Brazil; she studies their financialization and commodification of water rights, and the

contestation of these processes (e.g., Ballestero 2019). Canfield (2018) builds on ethnographic practices to observe global networks of activists and small-scale producers opposed to so-called Super Bananas. Canfield focuses on process, but on processes situated well outside the convention of lawmaking.

Future process-oriented scholarship on global scripts should continue to think outside the enactment dimension. It should look beyond IGOs and treaty negotiations and consider the process through which global scripts get elaborated over time. It should consider whether enactment processes create legitimation concerns distinct from those applied when policy scripts are implemented, contested, and potentially institutionalized. Canfield studies the work of food activists; Ballestero studies water activists (see, e.g., Ballestero 2019, Canfield 2018). Along a similar trajectory, Halliday et al. (2021) propose a “theory of mobilization” to understand how the “international law complex” fights for basic legal rights and how its behaviors differ from that of human rights INGOs. Their theory of mobilization inverts traditional processual scholarship focused on enactment of scripts in that it focuses on processes of contestation and destabilization.

Similarly, Ali (2021) writes about UNCITRAL, not from inside UNCITRAL’s lawmaking arena but from the perspective of technical assistance through its Regional Centre for Asia and the Pacific in Incheon, Republic of Korea. Observing conferences and other sessions held there, Ali (2021, p. 8) found regional actors exerting a type of influence she refers to as “decentralized soft law making.” Others look even further outside the IO box. Liu (2021) has written on transactional lawyers’ influence on Belt and Road initiatives, while Paiement & Melchers (2020) consider the inclusion of references to IL in private standard-setters’ Codes of Conduct. Writing on the topic of climate change, Paiement (2020) further emphasizes the role that cause lawyers play in “coproducing” the “construction of transnational narratives” and counternarratives through cause litigation.

Process-oriented research on global scripts could benefit from two promising avenues within sociology. In their study of UNCITRAL and related lawmaking IOs, such as UNIDROIT, Block-Lieb & Halliday (2017, pp. 357–88) propose examination of scriptwriting through “an interactionist version of social ecology theory” (pp. 31–49; see also Durkee 2019). Future work could approach scriptwriting and script reception through the lens of ecology theory.

Process-oriented scholarship on global scripts could find direction from network theory (see, e.g., Beckfield 2010, Hughes et al. 2009; see also Kim 2020). Through measuring and mapping IGO and INGO networks and their interactions, sociologists identify connections among global scriptwriters but have not analyzed the constructive, governance, and recursive tools and structures these connections reveal. Maps of networking point to scholarly resources to mine, but mining will depend on comprehension of the constructive, governance, and recursive tools global scripts provide (see Halliday et al. 2013).

Form

Global scripts get articulated through accumulation of a range of texts and practices—legal and policy scripts. The painstaking work of sorting through and closely examining the form these materials take and analyzing whether form matters to the emergence and implementation of these scripts has begun, but work remains.

Scholars approaching global scripts from a sociological, sociolegal, or law and anthropology perspective have long considered the rhetoric and narrative employed in scripts to translate technical concepts into a vernacular more comprehensible to distinct audiences (see Merry 2006b, Pierotti 2013)—and to the diffusion of “local networks of meaning” accomplished through such translations (see Dobbin et al. 2007, Gillespie 2012). These scholars emphasize the influence of

textual form—language, rhetoric, and aesthetics—on local and national audiences considering post-enactment questions of elaboration, implementation, or contestation. More recent scholarship adds “nuanced accounts of the forms of translation that constitute new regulatory orders of governance” (Canfield 2018, p. 72; see, e.g., Chua 2015, Foster 2014, Hetherington 2014, Zwingel 2012).

References to rhetoric employed in scriptwriting refer to the persuasiveness of form in broadly framed brushstrokes. Other formal analysis of global scripts adopts a more detailed approach, whether applied to law and lawlike norms or to a wider range of texts. Block-Lieb & Halliday (2017) analyzed the wide array of legal technologies produced by UNCITRAL. Each of these technologies offered recommendations written through various rule-types (see **Table 1**). Looking beyond law to review OECD Annual Economic Surveys produced over a 50-year period, Rautalin et al. (2021) found recommendations in recent surveys after the surveys shifted from a rhetoric of economics to a rhetoric of consulting. Writing with Zilberstein and Espeland, Halliday considered additional technologies of fact finding, such as accountability devices, and proposed consideration of technologies of presentation (Halliday et al. 2021). In her field studies, Ballesterro (2019) found that local actors relied on technolegal devices—formula, index, list, and pact—to argue that access to water should be viewed as a human right. Lawlike technologies and devices assist local actors in their bottom-up engagement; although local actors hold no lawmaking authority, they may replicate the form of law when competing with state actors for interpretive authority (see Zumbansen 2012).

Future work should continue this attention to the form of global scripts but look to identify the purpose of form and formal usage. Future work should also strive to understand the relationship between the process of scriptwriting—how scripts are enacted—and how scripts are received by intended audiences as a consequence of form. This scholarly project presents methodological challenges. Close reading of texts combined with ethnographic observations yields depth of understanding but is time-consuming work. Mixed-method approaches that combine textual analysis with observational fieldwork and qualitative interviews enable study of scriptwriting and script reception in search of recursive tools.

CONCLUSION

Global scripts aid in the coordination of texts and practices across national borders. Despite disagreement on how scripts work and what motivates their enactment and implementation, broad consensus exists. Global scripts do not work solely in top-down fashion even when written by IOs (see, e.g., Gillespie 2012, Halliday 2009, Meyer et al. 1997). Global scripts involve diverse actors and organizations from diverse epistemic communities in law-and-policy-making processes (see, e.g., Block-Lieb & Halliday 2017, Gillespie 2012, Kentikelenis & Seabrooke 2017, Rautalin et al. 2021). These scripts mostly eliminate overlap and enable consistency but may also communicate dissent and disruption (Canfield 2018, Halliday et al. 2021). Scripts crafted at an international level may find contestation from national and local actors in their implementation (see, e.g., Carruthers & Halliday 2006, Paiement 2020, Tan 2019). Even where national and local actors agree with global scripts produced at international levels, they may need to translate terminology or concepts in one script into a more comprehensible vernacular set out in another script (Merry 2006b). This scholarly consensus forms a strong foundation for future work on global scripts.

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

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