

domestic politics in many states have shifted away from democracy and toward authoritarianism. All of these trends will undoubtedly infuse further conversations about participation in global governance as scholars take up the questions this volume invites.

In the end, this is a nuanced volume that offers modest but important knowledge gains, doing so with an exemplary scholarly integrity and reflectiveness that other projects might aspire to emulate. This is a wonderfully dialogic project that oscillates between primary studies, editorial evaluation of the studies, outside critique, and supplemental essays to backfill blind spots. It interacts with its own limitations and reviews itself as it goes, illustrating a reflexive process the subject organizations themselves might productively employ. It is rich with useful reflection and seeds for future research. And the book's careful attention to the institutions and processes of global governance carries an implicit vote of confidence about the importance of these institutions. This is especially the case as the book focuses on financial institutions battered by an economic crisis and health institutions discredited by a pandemic. The book stands as an invitation to continue to invest in these institution and other mechanisms of global governance: to study, reform, and refine them; enhance their representativeness; and resist their privatization. It will surely seed further normative and empirical work aimed at facilitating these aims.

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The Everyday Makers of International Law: From Great Halls to Back Rooms. By Tommaso Soave. Cambridge, UK: Cambridge University Press, 2022, Pp. xix, 342. Index.
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Tommaso Soave's book, *The Everyday Makers of International Law*, sets itself an important goal: to expose the community responsible for the

production of international judicial decisions; to foreground the background, as he says (p. xi). Soave, assistant professor at the Department of Legal Studies at the Central European University, argues that the host of actors other than judges that partake in the work leading up to a judicial decision—counsel, legal bureaucrats, academics and others—play such a decisive role in generating that decision that upon investigation one eventually comes to realize that “[a]stonishingly, international judges . . . play a relatively minor role” in their own jurisprudence (*id.*).

International lawyers, per Soave, regard judicial decisions as holy scriptures and are reluctant to investigate their processes of production lest their sanctity vanish upon inspection (pp. 4, 14). For this reason, arguably, only the decision itself (the output) ends up attracting serious consideration, never the input (p. 13). Soave characterizes this situation as reflecting “a conspiracy of silence” (pp. 139, 150) among not only the international judicial community but also academics and commentators who “carefully avoid questioning the inner working of international courts, fret to ask uncomfortable questions, and tend to take official discourse at face value” (p. 138). Soave likens the scholarly reluctance to explore the judicial process to the three wise monkeys, choosing not to speak, hear, and see international judicial bureaucrats (p. 140). One possible explanation for this situation, he says, is that academics researching the international legal system have a stake in it: investment treaty scholars often serve as either counsel or adjudicators, and European law scholars work for institutions strategically committed to the European Union's expansion. “The contiguity between the bench and the academe poses an ‘obstacle for independent and clear positioning,’” he concludes (pp. 151–52). But—and this is the book's central argument—input is everything. Arguments raised by litigating attorneys, preparatory memos drafted for judges by their assistants, and conversations over coffee or beer among judicial bureaucrats significantly affect the outcomes of particular judicial decisions.

Soave's account is focused on the intricate relationship between international judges and

arbitrators and their clerks. The latter are responsible for much of the heavy lifting involved with judicial work. They summarize case files that identify and resolve key factual and legal dilemmas, they sit through oral hearings, they do legal research of the issues, and they even draft legal opinions. The memos they prepare produce an “anchoring effect,”¹ which structures and determines, to a large extent, the judges’ views toward the factual and legal issues at hand (p. 171). While the degree of delegation of judicial authority to judicial bureaucrats may vary depending on judges’ personal preferences and institutional arrangements, the impact of the more junior lawyers’ work is tremendous.

To defend these claims, Soave provides a detailed account of “the social structures, the professional relationships, the shared assumptions, the tacit understandings, and the sites of struggle that make up the international judicial field” (p. 6). In other words, he compiles a minutely detailed description of the different stages of an international legal dispute, told from the perspective of his protagonists: (relatively) junior lawyers who work as assistants to international judges, arbitrators, and litigating attorneys.

Soave adopts an unconventional method for elaborating his descriptive argument. Rather than provide an empirical “account of the everyday lives of the legal experts who populate international courts and tribunals” (p. ix), he asks the reader to suspend disbelief as he chooses a different methodological path: the use of “plausible fiction” (p. xi). The book’s seventeen chapters segue among multiple storylines set in five different fictionalized international dispute settlement proceedings taking place before the International Court of Justice (ICJ), the World Trade Organization (WTO) Appellate Body, the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR), and an investor-state arbitral panel. At each, we are presented with a different protagonist, a junior to mid-level judicial bureaucrat, and a corresponding superior. These include

Sophie, who clerks for ICJ Judge Lehmann (and Sophie’s girlfriend Norma); Matteo, a lawyer at the WTO secretariat assisting the literarily resurrected Appellate Body, working under the supervision of secretariat director Bjorn, and assisted by intern Michelle; Carlos, a lawyer working for the famed arbitrator and academic Professor François Gal; Aphrodite, working for the secretariat of the ECtHR, forever in the shadow of the Court’s Jurisconsult Adam; Soledad, head of a secretariat team at the Inter-American Court, whose superior is an unnamed judge-rapporteur, as well as several others playing somewhat smaller roles.

The organization of the chapters follows the sequencing of a legal dispute: with the exception of the opening and concluding chapters, the storyline follows the typical steps of an international litigation: the decision to embark on the proceedings and engagement of a legal team; the preparation of the parties’ filings; and the case’s processing by judicial bureaucrats who summarize the parties’ arguments, prepare internal memoranda, and examine state conduct, evidence, factual and legal issues; and finally, the court’s deliberations and drafting of the final judgment.

Soave explains that this genre-bending approach allows him to harness his own experience as a litigating attorney for a U.S. law firm and as a legal officer at the WTO, coupled with the results of “ethnographic fieldwork, desk research and interviews” (p. xvi) he conducted, without betraying his interviewees’ confidence or revealing what must remain undisclosed due to professional confidentiality obligations (pp. xii, xiv). He explains: since he could not “demonstrate my hypotheses by solid proof, I would come up with another solution, however ‘*boiteuse et bricolée*’” (p. xvii). As he acknowledges, this approach requires a large degree of trust in the narrator (p. x).

Soave’s account is informed by semi-structured interviews with twelve judicial bureaucrats from four different international judicial institutions: the ICJ, the ECtHR, the IACtHR, as well as lawyers assisting arbitral panels. He further interviewed five lawyers acting as counsel in

¹ Citing DANIEL KAHNEMAN, THINKING, FAST AND SLOW 119–28 (2013).

international arbitrations (in both state-state and investor-state disputes). About two-thirds of his interviewees were junior to mid-level professionals and a third were senior practitioners. Soave explains his choice of interviewees by noting that he “expected judges, arbitrators, and government representatives to be tight-lipped” and therefore focused his search on private attorneys, clerks, and court-bureaucrats (p. xiv). Arguably, this mode of interviewee selection represents a certain bias that may also have impacted the picture Soave ends up drawing. Soave’s preference for speaking to junior judicial bureaucrats may have either followed from an initial point of departure regarding the importance of their contribution to judicial processes, or it may have affected his understanding of the judicial process, leading him to attach a significant, possibly excessive, weight to the role that these actors play.

As mentioned, Soave’s argument is framed as a rebuttal to what he sees as a mainstream regard for judicial decisions as the product of courts perceived as unitary actors (p. 15). In his introduction, he urges a shift in analytical focus of scholarship on international decisions along two dimensions: The first dimension concerns the identity of the actors involved in the process. He explains that a judicial decision is a product of symbolic struggle between members of the international judicial community composed of “agents, counsel, advisors, court officials, specialized scholars, and the like” (p. 16). For Soave, the interactions among the community of professionals around judges *are* the judicial process, and the process is inexplicable without them. Discounting their contribution is not only misleading, but also intellectually dishonest, and, as already mentioned, possibly motivated by scholars’ stake in the system.

As for the second dimension, Soave argues that the normative weight of the contribution of judicial bureaucrats to international litigation and jurisprudence is substantial albeit unseen. For this reason, he suggests a shift in focus from norms to practices: judicial decisions are determined not only by legal rules and principles, but more so by “a myriad of socio-professional *practices*” (p. 18). By exposing the practices

surrounding the work of international adjudication and describing them in detail, Soave claims to describe the everyday life of international lawmaking.

While Soave provides an eye-opening level of detail that convincingly supports his thesis regarding the significant contribution of judicial bureaucrats to the final product of the judicial decision, his larger claim that in doing so he also provides a description of the everyday life of those responsible for the making of international law is somewhat of an exaggeration. Soave’s book is at the same time broader and narrower than this aspiration.

It is broader because in effect he describes the judicial process in much more detail than necessary merely to make his point about the role of judicial bureaucrats. His intricate depiction of what international adjudication looks like up close is an interesting, mostly compelling, and vivid illustration of the day-to-day of litigation attorneys and judicial clerks. That said, his descriptions sometimes tend to be long-winded, and the narrative so dense with storylines, characters and details that some readers may lose the connection to the overall argument (e.g., pp. 93–94, Chapter 7). For example, do readers really need to know how many WTO lawyers hold a G7, as opposed to a G8, position? (p. 108) Or that WTO documents are pre-formatted to Verdana font, size 9, line-spacing 1.5? (p. 157).

At the same time, his book is too narrow to fully depict the everyday life of international law. Soave is interested in lawyers. But lawyers are not the sole occupiers of the professional ecosystem around judges. Soave makes a choice to not take into account additional actors who certainly have access to and interact with judges, including administrative assistants and other non-lawyer bureaucrats. He considers administrative work, even that done by lawyers, to not be determinative of legal outcomes (p. 114). This seems a naïve position. Certainly, a judge’s lifelong administrative secretary has his ready ear, possibly more so than a recent law graduate serving as a temporary intern; and interpreters and

translators play a key role in multilingual criminal trials, to name but two examples.²

Moreover, can the everyday of international law really be said to occur strictly within the confines of international, interstate litigation that is the heart of this book? In fact, I would argue, the practice and evolution of international law takes place every day, everywhere. International law's "making, interpretation, implementation, development and breaking"³ is not limited to Western-educated lawyers representing nation states or working for international tribunals. Rather, the making of international law often, indeed primarily, occurs outside of international courthouses, including in consumer boycotts (for instance, on palm-oil products), in public consultations (for instance, on the fate of formerly colonized territories), and in mundane decision making by low-level national regulators (for instance, issuing regulations on attracting foreign investors). Admittedly, each of these activities, mentioned in passing by Soave, may eventually culminate in the international litigation context Soave evocatively describes. But conflicts may also be resolved due to productive and effective working relations between peer civil servants in different countries that may lead to the resolution of tensions way before they crescendo into full-blown international legal disputes.⁴ Arguably, these activities are no less, and perhaps much more, the everyday life of international law than the sexy, intriguing, and rather exceptional process of international litigation.

² Freya Beatens, *Unseen Actors in International Courts and Tribunals: Challenging the Legitimacy of International Adjudication*, in LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION 1 (Freya Beatens ed., 2019); Guy Fiti Sinclair, *Unseen and Everyday: International Secretariats Under the Spotlight*, 116 AJIL UNBOUND 378 (2022); Leigh Swigart, *Unseen and Unsung: Language Services at the International Criminal Court and Their Impact on Institutional Legitimacy*, in LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION, *supra*, at 272.

³ Tamar Megiddo, *Methodological Individualism*, 60 HARV. INT'L L.J. 219 (2019).

⁴ Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1 (1992).

Soave explains his focus on this group of lawyers by saying that the community of legal professionals occupying the space of international litigation has become "a synecdoche for the whole international legal profession" (p. 27). In selecting his fictional judicial bureaucrats, Soave makes an effort to render his protagonists diverse from both gender and geographical origin perspectives. Nevertheless, even in his fictional paradise of diversity, he seems unable to imagine the superiors of these bureaucrats as anything other than (mostly European) men. Moreover, although his protagonists come originally from Africa, South America, and Asia, as well as Europe, those to whose background we are privy come from elite classes in their countries of origin and all have studied advanced law degrees in leading academic institutions in the Global North, particularly in the United States. This is also where they built their professional networks with others of a similar background, and have maintained these ties since. As Soave's book shows, this elitism, which he seems unable to get away from even when creating a fictional parallel world, is embedded in the infrastructure of the international judicial system. The internship program at the ICJ was established by a connected New York University professor who recognized the understaffing at the Court and came up with a solution (that coincidentally benefited his students, pp. 118–19). Like many others, one of Soave's bureaucrats, Carlos, an Argentine who completed a law degree at the Sorbonne, was given advice to pursue an LL.M. degree in the United States as a ticket into Investor-State Dispute Settlement (ISDS), and promptly rushed off to Harvard Law School (p. 131). Carlos's mentor, Professor Gal, hired him for his presumed connections to Argentinian elites with the hope that he would attract future arbitration appointments. Gal represents yet another aspect of this dynamic: the revolving door between the bench and academia, counsel and arbitrators, or law firms and judicial clerks (p. 30).

While one can only hope that this depiction of the extreme elitism and closed circle of the international judicial community is incorrect, life

experience suggests otherwise. Education in elite Global North institutions likely remains a crucial entry ticket into international judicial circles. Soave does not engage much with the issue of diversity as a line of inquiry, declaring instead his wish to “[leave] the baggage of privilege and oppression of each character at the door of courts and tribunals” (p. xix). His characters do indeed seem oblivious to these issues, as they make mind-boggling statements on their appointment explainable by their being “in the right place at the right time,” while seamlessly alternating between fluent professional English and equally fluent professional French (p. 120). It is concerning that the elitism of the invisible college is so deeply ingrained that even a fictional story about international law seems unable to shake it off without losing credibility.

What is the role of academics in all of this? Soave does nominally list academics in his argument as one type of actor eventually responsible for a judicial decision (p. 5). But his book does not deliver on this part of the argument. In fact, the only academic among his protagonists (Carlos’s mentor, Professor Gal) is granted the stage as an ISDS arbitrator rather than for his academic contributions. As Sara Dezalay has recently argued convincingly, academic credentials have always served to render certain judicial candidates attractive, although this gravitas has recently been shifting from academia to big multinational law firms.⁵ Of course, Article 38(d) of the ICJ’s Statute offers academics another role: the writings of the most qualified publicists may serve as subsidiary means for identifying the content of international law. By reviewing practice and *opinio juris*, systematizing jurisprudence and treaty law, providing historical context or offering interpretation of international norms, academics may provide meaningful assistance to those responsible for the composition of international judicial decisions.

But Soave’s proposed analytical shift from norms to practice suggests yet another role for academics. His claim is that the content of the

law, however developed by scholars, is only secondary in importance to the actors that populate the international judicial community. Soave’s project therefore brings to light a third, distinct role for academics: making visible the unnoticed mechanisms of the international legal system, such as revealing the role of those judicial bureaucrats so far hidden back stage. Scholarly efforts at unraveling the unseen actors driving the international legal system have broadened considerably in recent years, making significant contributions to our understanding of this system.⁶ To some extent, then, Soave’s argument that judicial bureaucrats remain invisible may be somewhat of an exaggeration.⁷ Nevertheless, *The Everyday Makers of International Law* certainly contributes to enriching this growing body of literature by providing a comprehensive survey of the everyday practice of judicial bureaucrats supporting international court and tribunals.

However, Soave is not content merely to make the point that judicial bureaucrats are important, or even that they are as important as judges in the production of a legal decision. Soave repeatedly characterizes the relationship between adjudicators and judicial bureaucrats as one reflecting an underlying tension and competition for power, in which the latter “vie” for control of the process (p. 171). He further ventures to claim that judicial bureaucrats’ contribution to the process eclipses that of judges. In support of this position, he notes that judicial bureaucrats often serve longer terms than judges, rising through the ranks of the various institutions and are more versed in the jurisprudence of the court; that they are professional appointments, whose competitive recruitment processes are based on professional merit, as opposed to the politically informed appointment of judges (pp. 115–16); that once they have adopted certain assumptions in their framing memoranda to adjudicators, these will “never” be challenged or discussed again (p. 179); that judges delegate fact-finding to their assistants

⁶ Baetens, *supra* note 2.

⁷ Sinclair, *supra* note 2; but see Joost Pauwelyn & Krzysztof Pelc, *Who Guards the “Guardians of the System”? The Role of the Secretariat in WTO Dispute Settlement*, 116 AJIL 534 (2022).

⁵ Sara Dezalay, *Legal Knowledge as Social and Political Capital*, 117 AJIL UNBOUND 210 (2023).

and the latter are invested with extensive authority over the evidence presented (p. 191); that their choice of precedents and legal concepts to rely on, which is value-laden and discretionary, constructs the final outcome of the decision (p. 214). Furthermore, on more than one occasion, judges are portrayed as ignorant (p. 174), ill-prepared (p. 260), or uninformed children to be “spoon-fed” by their aides (p. 262) (or worse, as unfamiliar with Bob Dylan! (p. 302)).

These are large—and controversial—claims. Soave’s book provides a compelling analysis that judicial bureaucrats are crucial and highly influential in the adjudication process. However, while one could entertain his additional claim about the relative lack of importance of judges in comparison to life-long senior juriconsults (who Soave deifies as a “higher power,” p. 291), it is hard to accept, even on his narrative, that this is the rule as opposed to the exception with respect to junior lawyers. It is moreover in tension with his own point that assistants are happy to abdicate the exercise of their own final discretion in hard cases, and defer to their judges (pp. 255, 289). The book’s sometimes patronizing belittling of judges and arbitrators seems exaggerated. No doubt, some number of the hundreds of international judges and arbitrators are ill-prepared or even unfit for office; yet a significant share of them likely possess a very high level of doctrinal and professional proficiency that nonetheless justifies the power entrusted in their hands.


While successful in bringing to life the judicial process, Soave’s methodological innovations create certain challenges for his readers, most of whom have never worked as judicial aids at international courts or tribunals, nor served as practicing lawyers at one of the select elite law firms (cartels—or mafia, as Soave refers to them, pp. 55, 63) that tend to appear before such institutions. For these readers, the persuasiveness of the book’s central claims turns on the plausibility of Soave’s fiction—not only as fiction, but as a credible description of international adjudicative processes.

It is therefore unfortunate that one aspect of Soave’s writing style proves particularly problematic. Soave begins by noting his intention to

separate the fictional aspects of his book from scholarly surveys and theoretical arguments by clearly signposting them differently (p. x), but these different strands of the text quite quickly collapse into each other (e.g., at pp. 23, 103, and elsewhere). His protagonists’ travails blend into surveys of multiple lines of literature about the intricacies of international adjudication, legal interpretation, social acculturation and legal habitus, fragmentation, and the profound indeterminacy of law—alongside lengthy forays into doctrinal debates about the interpretation of “likeness” (pp. 224–38) or the prohibition of discrimination on the basis of national origin (pp. 205–06).

This blurring of the boundaries between the different writing styles raises several difficulties. First, it renders it unnecessarily difficult to sharply distinguish Soave’s fiction from his descriptive claims. Second, Soave’s fictional narrative is occasionally riddled with quotations from academic articles and footnotes. These sections consequently seem forced or overly didactic, and at times undermine the credibility of characters and dialogue. Finally, this stylistic approach sometimes seems to suggest that the book’s fictional storylines prove its theoretical claims (e.g., at p. 35). Yet the actions and experiences of fictional characters cannot, of course, provide empirical support for theoretical claims, but only render them more plausible—a reality that Soave himself admits at the outset of his book.

In many instances, Soave’s apparent joy in writing his fictional vignettes is contagious. His text provides a vivid, memorable, and convincing behind-the-scenes description of the everyday life of those responsible for making international judicial decisions. This creative and challenging book brings to light an important set of actors and activities to which the scholarship has only turned its attention in the past decade or so. As any good scholarship, it leaves the reader with a taste for more, highlighting how much more unraveling remains to be done.

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