HUMAN RIGHTS IN A WORLD OF STATES
GLOBAL NORMS AND THE EVOLUTION OF POLITICAL SPACE

by

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B.Arts Sc. McMaster University, 2000

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

in

THE FACULTY OF GRADUATE STUDIES

(Department of Political Science)

We accept this thesis as conforming
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August 2001

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Vancouver, Canada

Date _August 31, 2001_

DE-6 (2/88)

— Abstract —

This inquiry explores the tension between state sovereignty and universal human rights. Research is based on the foundational question: are state sovereignty and human rights reconcilable within the framework of international society? This question is then divided into three discrete questions, along the topics of normative theory, international organization and norm change, which are dealt with in three respective chapters. Chapter One problematizes the moral purpose of the sovereign state, how it has changed and continues to change over time, and how global norms of human rights have introduced constraints on state sovereignty, both de jure and de facto. Global norms of human rights are essentially gaining power because the protection of the fundamental unit of political agency—the individual human being—is the present most effective means to ensure the fundamental values of political equality and diversity in the international realm. Chapter Two follows by explaining how changes in the moral purpose of the state translate into changes in international organization. This chapter reveals that both centralized and decentralized authorities structure international society. The case of international law and the International Criminal Court (ICC) is used to provide empirical evidence of structures of international vertical and horizontal legitimacy that fall into the latter typology and thereby structure international political behaviour. Chapter Three surveys the question of human rights entrepreneurship. It builds upon the successes and shortcomings of existing constructivist discourse to show how human rights entrepreneurs can induce norm change through the pedagogical techniques of norm life cycles. This thesis attempts to offer a more accurate conceptual account of change in international relations.

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Completion of this thesis will mark the completion of my degree and hence the end of my yearlong journey at UBC. To borrow from Dickens, "It was the best of times, it was the worst of times," so began his famous book. This year has been the best of times in terms of some of the things that I've learned in terms of both my field of study and myself as an individual. In the span of a year I have also had the pleasure of travelling several times in the name of academic business. And in the first half of my stay here, I was pushed to both my mental and physical limit in a way that, in retrospect, was a great triumph in itself. Yet this year has also been the worst of times because of some of the sacrifices that I have had to consciously make. Although the journey has taken me only a year, it feels far longer as I now feel much older. This journey has also proven to be the worst of times simply from the instances of profound disappointment that have led me to question my academic path for the first time in my life. Ultimately, it is only because of the passion I hold for my research topic as well as the companionship of several individuals that I have been able to journey thus far and will continue to do so for the future.

First, I would like to thank my supervisor, Brian Job, for his incessant support and encouragement. Despite his busy schedule, I have always found Brian to be extremely approachable and understanding. I will surely miss his fatherly warnings and concerns during my next few years at Aberystwyth. Second, I would like to thank my second reader, Max Cameron. Although his course is commonly referred to as "the gatekeeper" for good reason, it was surely the most rigorous and intense course I have ever taken. It was also a pleasure working for him and getting to know Faby, Gabrielito and Honey-Bunny. Third, I

would like to thank Mark Manger for comments on certain sections of this thesis. Mark is undoubtedly a talented young individual and I look forward to being his colleague in the near future. I would also like to thank Mark for his assurances throughout the year, whether at the pool table or over a glass of vintage Bordeaux, that made getting through this year so much easier. Last, but certainly not least, I would like to thank my parents, Edward and Catherine Lui. Their moral support is simply insurmountable for me to express by words alone.

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Andrew Lui
August 27, 2001
</div>

— Introduction —

Human rights have now become an intrinsic part of the discourse and diplomacy of international relations. Human rights have achieved what Jack Donnelly terms "international normative universality" in that the vast majority of the world's states now accept—in practice, in rhetoric, or as ideal standards—the validity of human rights as a normative principle.[1] The plethora of human rights treaties, documents, organizations and ministries illustrate this fact.[2] Unfortunately, human rights success stories have too often been overshadowed by failures to prevent human rights atrocities. What remains is a stark disparity between the universal theory of human rights and the international practice of human wrongs. While the twentieth century witnessed an era of unprecedented human destruction, there are no guarantees that similar occurrences will never again stain the chronicles of humankind. The essential aim of this inquiry is to examine specific facets of this disparity in hopes of offering a clearer picture of the existing and potential constraints that deny millions of individuals around the world the basic opportunity to live a life of dignity.

Specifically, this inquiry deals with issues relating to a larger dilemma in international relations—the paradox between universal human rights and state sovereignty.[3] It is increasingly being recognized, for instance, that "Governments are the primary

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[1] Jack Donnelly, <u>Universal Human Rights in Theory and Practice</u>, (Ithaca: Cornell University Press, 1989), 2.

[2] See Stephen D. Krasner, <u>Sovereignty: Organized Hypocrisy</u> (Princeton: Princeton University Press, 1999), 105.

[3] J. Samuel Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms", <u>Millennium: Journal of International Studies</u> 27, no. 2 (1998), 229; also see Martha Finnemore, <u>National Interests in International Society</u> (Ithaca: Cornell University Press, 1996), 71; and Mervyn Frost, <u>Ethics in International Relations: A Constitutive Theory</u> (Cambridge: Cambridge University Press, 1996), 126 and 137.

'guarantors' of rights, but also among their primary violators."[4] This paradox is further

compounded with the problem of dealing with the tension between human rights and state

sovereignty in the international realm. On the one hand, "International relations underwent a

fundamental change from 1945 to 1970 in the sense that human rights ceased to be generally

considered a matter fully protected by state sovereignty;"[5] on the other hand, "the sovereign

state is the single most important macrostructure determining the lives that people live"[6]

because of its inherent power to effect either progressive or detrimental outcomes on the lives

of its citizens. This paradox exacerbates the disparity between the theory and practice of

human rights because of the way in which that lack of clear rules regarding human rights

violations confuses and constrains activists, theorists and diplomats alike. The fundamental

question that must be asked is: are state sovereignty and universal human rights reconcilable

within the framework of international society? Problematizing this paradox is the foundation

or starting point of this research endeavour.

Yet framing this basic question is an enormous task. It thus becomes necessary to

divide the foundational question into several discrete questions in order to provide insight

into the larger one. The paradox can essentially be approached from a normative perspective,

and international-organization perspective, and a norm-change perspective. Respectively,

this inquiry asks: what is the moral purpose of the state and how is its role in international

society changing because of the growing salience of global norms of human rights; what

empirical effects do such changes have on international organization; and, how and by whom

are such changes being induced? Each of these three questions will be explored in the

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[4] Margaret Keck and Kathryn Sikkink, Margaret Keck and Kathryn Sikkink, "Transnational Advocacy Networks in International and Regional Politics," International Social Science Journal 51, no. 159 (1999): 94.
[5] David P. Forsythe, The Internationalization of Human Rights (Lexington, MA: Lexington Books, 1991), 17.
[6] Georg Sørensen, "IR Theory After the Cold War," in The Eighty Years' Crisis: International Relations 1919-1999, ed. Tim Dunne, Michael Cox, and Ken Booth (Cambridge: Cambridge University Press, 1998), 92.

succeeding chapters. Two basic assumptions will remain constant throughout this inquiry. First, an international society approach provides the conceptual framework for the entire project. It will become evident that this approach is essential for understanding the effects of global norms of human rights because it offers more explanatory power than other schools of international relations. Second, this project aims to reject some of the static or tautologous aspects of international relations. A better conceptual understanding of change in international relations will therefore result after discarding the many under- or narrowly-problematized terms and processes within the field.

Chapter One then proceeds with an ethical question. It argues that human rights are not only compatible with state sovereignty, but they are also co-evolving in a relationship of mutual constitution. By problematizing the moral purpose of the state and the institution of state sovereignty, this preliminary chapter takes issue with fundamental flaws in the absolute pluralists' belief that world politics centres on the prior existence of an international order of sovereigns states. In attempting to "justify the global covenant,"[7] for instance, Robert Jackson asserts that his "great-great-grandchildren will live in a political world that would still be familiar to us, that would still be shaped politically by state sovereignty."[8] But this assertion is not an important or even an interesting one. The more critical question to be asked concerns how the moral purpose of the state is changing. I therefore reject the pluralists' basis of international order as the starting point of world politics and social agency in favour of Bull's framework of world order, which is both morally and ontologically prior to international order.

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[7] The title of the concluding chapter of Robert H. Jackson, <u>The Global Covenant: Human Conduct in a World of States</u> (Oxford: Oxford University Press, 2000).
[8] Ibid., 424.

In addition, a world order approach upholds the view that the individual is the primary social and political agent. I thus argue that human rights have emerged and are growing in power because they aim to protect the individual as the fundamental agent in world politics. As Ignatieff states: "Rights regimes exist not to define how lives should be led, but to define the condition for any kind of life at all, the basic freedoms necessary to the enjoyment of any kind of human agency. Agency is the key idea in rights. The word 'agency' just means the capacity of individuals to set themselves goals and accomplish them as they see fit."[9] As such, I disagree adamantly with Jackson's belief that the physical diversity of human individuals provides justification for the global covenant and the integrity of pluralism.[10] Though diverse in their physical attributes, human individuals are equal in the agency they possess. Since societies are not created equally in terms of resources, geography or history, protecting the equality of individual human agency is imperative for allowing diversity to truly flourish. The basic units of equality must therefore be protected. Ultimately, protecting the individual as the basic political actor simultaneously protects both the equality and diversity necessary for the elusive pursuit of the good life.

Chapter Two follows by uncovering how changes in the moral purpose of the state translate into empirical changes in international organization. This chapter argues that human rights are increasingly seen as a legitimate function of international society. As such, the global human rights regime has produced structural changes in international organization by changing the relationship between state and non-state actors. The structure of international society is thus being altered not by changes between the dominant unit-types, but interrelationally between various unit-types within the system. Furthermore, since the

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[9] Michael Ignatieff, The Rights Revolution (Toronto: House of Anasi Press Limited, 2000), 23.
[10] See Jackson, The Global Covenant, 401-2.

protection of human rights is increasingly seen as a legitimate function of international society, the structures that are emerging centre on international legitimacy. I therefore posit the term *international vertical legitimacy* to describe the structure between sub-state, state and supra-state polities that jointly determine the range of acceptable behaviour with regard to human rights. Pressure to conform to international human rights standards subsequently comes from both above and below the state apparatus. Similarly, a structure of *international horizontal legitimacy* exists among the members of the international society of sovereign states. Adherence to global norms not only proves that a state is a legitimate member of the club of sovereign states, but also serves as a social power resource. States that are firmly entrenched within international standards of human rights, for instance, are instantiated as both legitimate members and as norm leaders from which social power may be derived to influence the behaviour of other states.

Evidence of these structures will be drawn from recent developments in international law. Specifically, international customary law will be highlighted to show how global norms of human rights are reflected in the regulative rules of international society and impose obligatory limits on state conduct. In addition, the case of the International Criminal Court will be studied to provide empirical evidence of the two structures of international legitimacy. All of these observations point to a profound implication for international relations theory. Namely, the hierarchy-anarchy dichotomy outlined by Waltz and others is misconceived. Rather than a dichotomy, hierarchy-anarchy exists along a continuum in which authority structures can be both centralized in the classical sense and decentralized according to the extent to which the norms of the system are perceived as legitimate and

practiced. Norms are therefore highly significant because of the way they can act as decentralized authority structures which shape political behaviour.

Chapter Three will study the process of norm change in international relations. Specifically, this chapter addresses the role of actors—or norm entrepreneurs—in the process of generating human rights norm change and under what circumstances change is successfully induced. The existing constructivist literature will be visited as the present most comprehensive school of international relations theory that deals with the subject of norm change and norm entrepreneurship in a rigorous way. Constructivists offer an intriguing look at norm life cycles as well as the norm-change techniques currently employed by norm entrepreneurs and transnational advocacy networks. I charge, however, that the constructivist account of norm entrepreneurship is currently incomplete. What needs to be added to the constructivist project is a more thorough conceptualizing of social power and international society.

By building upon the constructivist models offered by Price, Sikkink, Finnemore and others, I also identify several strengths and weaknesses in both the theory and practice of human rights entrepreneurship. Their success, for instance, stems largely from proficiency in disseminating information and creating transnational networks. Advances in information and communications technologies aid this process by lowering the transaction costs of networking, speeding up the time involved in networking, and by creating virtual political communities that connects individuals in novel ways that often transcend traditional politico-territorial boundaries. Unfortunately, human rights entrepreneurs have had relatively limited success in 'resonating' human rights norms with existing institutions of state sovereignty—especially in Southern or Eastern regions of the world. Entrepreneurs need also employ

argumentative rationality more frequently in invoking the extensive body of domestic, regional and international laws that could provide significant leverage and social power for their moral claims. Nonetheless, such discussions regenerate new possibilities of thinking about progress in a world of states.

The old philosophy assigned to man an entirely
incorrect standpoint in the world by making him
into a machine within the world, a machine which as
such was meant to be wholly dependent on the world
or on external things and circumstances; in this way
it made man into an almost passive part in the
world. – Now the *Critique of Pure Reason* appeared
and allotted man a thoroughly *active* existence in the
world. Man himself is the primordial creator of all
his representations and concepts and ought
to be the unique author of all his deeds.
— Immanuel Kant

— Chapter One —

State Sovereignty Meets Human Rights:
The Evolution of Moral Purpose in World Order

International relations fails chronically in foresight. As a field of political study, IR remains unable to grasp fundamental issues of change or social evolution. International relations thus lacks many of the conceptual tools to problematize conflicts of both theory and practice. The friction between universal human rights and state sovereignty, for instance, is evidence of the field's inability to resolve a collision of international norms that is culpable in mitigating global human inequality. As J. Samuel Barkin notes, "There is a clear tension between human rights, defined as the rights of individuals primarily against the state, and sovereignty, defined as the right of the state to do as it sees fit within its jurisdictional domain."[1] In other words, although individual human beings are accorded universal rights under international law, such rights directly contradict the prevailing rules of statehood and non-interference in domestic affairs. Yet scholars in this debate are faced with another formidable paradox since "the modern state has emerged as the principle threat to the enjoyment of human rights *and* the essential institution for their effective implementation and enforcement."[2]

Seemingly, this issue has caused a division between those who defend a pluralist conception of international society, wherein sovereign states form the essential and

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[1] J. Samuel Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms", Millennium: Journal of International Studies 27, no. 2 (1998), 229; also see Martha Finnemore, National Interests in International Society (Ithaca: Cornell University Press, 1996), 71; and Mervyn Frost, Ethics in International Relations: A Constitutive Theory (Cambridge: Cambridge University Press, 1996), 126 and 137.

[2] Jack Donnelly, "The Social Construction of Human Rights," in Human Rights in Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge, Cambridge University Press, 1999), 86; emphasis added.

sacrosanct basis for international order, and those who tend towards a solidarist vision premised on the existence or potential existence of global mores. Pluralism, according to Hurrell, is defined as the conception of international society that achieve coexistence through the ethics of political difference, primarily through rudimentary rules such as state sovereignty and territorial integrity.[3] Solidarism is defined as the conception of international society "in which the interests of the whole form the central focus rather than the independence of the states of which it is made up."[4] Unfortunately, this tension has led to a futile dichotomy between scholars who purport the triumph of one camp over the other. Pluralists, for instance, defend the primacy of the sovereign state as the present and future basis for international organization from which all other principles are derived. Solidarists assert that the growing strength of global norms and practices point to new forms of organization that signal the eventual demise of the state. Few scholars recognize that sovereignty and human rights need not exist on competing trajectories in a winner-take-all fashion.

The failure of previous studies in this debate essentially stem from an erroneous over-emphasis on description rather than explanation, or on the present rather than the nature of change, coupled with a unilinear faith in social evolution. As Holsti points out, the question of change in international relations remains an underproblematized and poorly understood issue area in international theory.[5] Pluralists such as Jackson, for instance, concentrate on describing the norm of state sovereignty and its various implications while they have thus far

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[3] Andrew Hurrell, "Society and Anarchy in the 1990s," in International Society and the Development of International Relations Theory, ed. B. A. Roberson (London: Pinter, 1998), 25-26.

[4] Ibid., 26.

[5] Kalevi J. Holsti, "The Problem of Change in International Relations Theory," (Working Paper No. 26) (Vancouver: Institute of International Relations, The University of British Columbia, 1998), 1; also see John Gerard Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," International Organization 47, no. 4 (1993), 143-144.

failed to explain or analyze the foundations upon which this grundnorm is dependent. Absolute pluralists evidently fail to capture how the norm of sovereign is changing as a result of growing pressures from other international norms.[6] And while Amstutz claims that "the moral legitimacy of the existing world order has been challenged because of its failure to protect human rights," little attention has been focused upon exploring the underpinnings of moral legitimacy in some of the world's most fundamental institutions that would explain from where this challenge is being mounted.[7] Essentially, what must be investigated is how the norms of state sovereignty and human rights are evolving over political time and space through mutual interaction.

Thus, it is not enough to say, as Jackson does, that the sovereign state has and will remain the central unit of international organization for the foreseeable future. Few scholars would disagree. The more critical question to be explored is how the "moral purpose"[8] of the state is changing. In the past, state sovereignty may have trumped human rights claims absolutely. Global norms of human rights have, however, gained considerable strength such that they can no longer be muted by appeals to state sovereignty alone. International normative universality attests to this claim.[9] Yet human rights need not destroy the basis of state sovereignty since states or alternate intermediary polities of high degrees of internal organization are paramount for guaranteeing human rights in praxis. What is more likely happening is a redefinition of the role of the state in international society.

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[6] I use the term absolute pluralism here to mean a pluralist view which rejects the possibility of solidarism in international society altogether. See note 3 for a definition of pluralism.

[7] Mark R. Amstutz, International Ethics: Concepts, Theories, and Cases in Global Politics (Lanham, MD: Rowman & Littlefield Publishers, 2000), 169.

[8] This term is borrowed from Christian Reus-Smit, The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations (Princeton: Princeton University Press, 1999). I use the term here to describe the constitutional normative structure underpinning the objective and role of the state in international society, "providing the justificatory foundations for the organizing principle of sovereignty and informing the norm of procedural justice."

[9] Jack Donnelly, Universal Human Rights in Theory and Practice, (Ithaca: Cornell University Press, 1989), 2.

This redefinition follows from the fact that sovereign states and all other political organs are social expressions of some underlying moral purpose. They are created and maintained to serve a political end that is based on core social values. As the moral purpose of international society is subject to the trials and inventions of social agents, so too are its prescriptive expressions of order and organization. The moral purpose of the state is hence subject to change. In many ways, global norms of human rights are growing in power precisely because they challenge the moral purpose of the state and offer the hope of fulfilling the promise of equality, amidst diversity, that state sovereignty denies. Ultimately, the framework for attaining these fundamental values of political diversity and equality can best be created by acceding that individual human beings are the fundamental units of political agency.

First, this chapter attacks the fundamental problems of the pluralist literature. Absolute pluralists inherently privilege a selective interpretation of world order in which sovereignty and the states system is seen as inflexible and absolute. I thus reject Jackson's Aristotelian principle that states and international boundaries are the essential elements from which human agency is derived.[10] Jackson's logic is reversed. I thus adhere to Hedley Bull's conception of world order, which is both morally and ontologically prior to the international order that absolute pluralists uphold, because it affirms that social institutions are derived from the agency of human individuals. Second, the institution of state sovereignty will be explored to show how it has changed over political time and space to reflect changes in the moral purpose of international society. Problematizing this narrowly theorized institution will allow for a better understanding of international evolution as a

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[10] See Robert H. Jackson, "Boundaries and International Society," in International Society and the Development of International Relations Theory, ed. B. A. Roberson (London: Pinter, 1998), 169. Compare with Aristotle, The Politics, trans. Carnes Lord (Chicago: University of Chicago Press, 1984).

whole and vice versa. Third, examining state sovereignty's dynamic with global norms of human rights will provide insight into how ostensibly conflicting international norms may propitiate. It will be shown that human rights have become intrinsic to the function of the state in international society while international society is necessary for the protection of universal human rights. Human rights and international society, or justice and order, should therefore be seen as inseparable. In this process, I trace developments in Bull's literature from his initial conjecturing on world order, to his scepticism of a world order approach, and finally to his thoughts on justice and human rights in international society. Indirectly, this chapter therefore aims to provide clarity on Bull's thoughts regarding related issues. Fourth, I bridge the sovereignty-human rights divide by calling for a rejection of a unilinear faith in social evolution. The co-evolution of human rights and state sovereignty must therefore be understood as such. Overall, this chapter aims to bring conceptual clarity to the contentious issues of human rights and sovereignty while providing the background for future studies on the notion of change in international relations.

Moral Purpose in World Order

All social and political constructs are created or endowed with an underlying moral purpose. In his axiomatic work on order in world politics, The Anarchical Society, Hedley Bull avers that "The order which men look for in social life is not any pattern or regularity in the relation of human individuals or groups, but a pattern that leads to a particular result, an arrangement of social life such that it promotes certain goals or values."[11] Order is thus produced as a derivative of underlying social values designed to achieve certain ends. In

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[11] Hedley Bull, The Anarchical Society: A Study of Order in World Politics, 2nd edition, forward by Stanley Hoffman (New York: Columbia University Press, 1977), 3-4.

other words, moral purpose is constitutive of order. Social institutions are merely those

organizing principles and entities that are endowed with the responsibility to fulfill normative

goals or beliefs. International order must therefore be rejected as an adequate analytic

framework. Investigating the institution of state sovereignty within the confines of

international order, which assumes the prior existence of a society of states, simply lends

itself to tautology. Thus, the basis of this inquiry rests upon Bull's conception of world

order:

> World order is more fundamental and primordial than international order because the
> ultimate units of the great society of all mankind are not states (or nations, tribes,
> empires, classes or parties) but individual human beings, which are permanent and
> indestructible in a sense in which groupings of them of this or that sort are not. This
> is the moment for international relations, but the question of world order arises
> whatever the political or social structure of the globe. World order, finally, is morally
> prior to international order. . . . It is necessary to state at this point, however, that if
> any value attaches to order in world politics, it is order of all mankind which we must
> treat as being of primary value, not order within the society of states. If the
> international order does have value, this can only be because it is instrumental to the
> goal of order in human society as a whole.[12]

A critical inquiry into the institution of state sovereignty must therefore begin with an

examination of a prior basis for order—world order—in which the most basic units of

agency—human individuals—are central to its analysis. World order is both morally and

ontologically prior to international order. It is the starting point for any critical analysis of

institutional moral purpose.

Erroneously, absolute pluralists contend that order in world politics begins with the

prior existence of the state. Jackson, for instance, explicitly disagrees with Bull's framework

of world order. In defence of an order premised on clearly defined territorial boundaries, he

claims that:

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[12] Ibid., 21.

> I disagree with Hedley Bull where he writes: 'World order is more fundamental and primordial than international order . . .' The fundamental point of international society is the good life of human beings on the planet as they endeavour to construct it in historical time. Human beings are not significant as primordial entities; they are significant as historical agents who construct social and political communities within which far more than a primordial existence hopefully is available. The fundamental point of international boundaries is that they provide a framework within which humans anywhere on the planet can attempt to build their local good life according to their own values and capacities. Some will succeed, some will fail, but everybody will have the chance if boundaries and the corollary rule of non-intervention are respected.[13]

First, Jackson completely misconstrues Bull's position. Notice that Bull makes no mention of the primordial or Hobbesian existence of the human individual to which Jackson is referring. Bull's statement is simply an essentialist one through his recognition of the individual as the fundamental unit of all social life. Jackson's position is actually similar to Bull's in referring to the individual human being as the principal social and political agent. Yet Jackson's mistake is regrettably common. The discipline of international relations seemingly takes for granted the centrality of the sovereign state as the most basic and indispensable unit of world politics. Hence, scholars such as Jackson erroneously castigate any conception of order which denies complete primacy to the international order of sovereign states. Second, territorial boundaries and their corollary rules have always been punctuated by incursions such as war and colonialism or imperialism. Human beings are subsequently born into bounded politico-territorial entities, marked by the fortunes or misfortunes of social and historical circumstance, that endow them with disproportionate opportunities to build their vision of the good life. Hence, not everybody had or 'will have the chance' because boundaries and their corollary rules are often highly contended or even highly arbitrary. The fact that past incursions have had such deleterious and enduring effects on world politics therefore makes Jackson's pluralist argument in full support of the status

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[13] Robert H. Jackson, "Boundaries and International Society," 169.

quo rather dubious. Calls for justice therefore impinge on Jackson's wishful vision of the perfectly functioning machinery of an international society of territorially defined states. The pluralist advocacy of international order must consequently be rejected in favour of a world order approach.

Order in world politics is evidently achieved through a variety of institutions beyond the sovereign state. Defined by Keohane, institutions are "persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain activity and shape expectations."[14] The international society of socially constructed states is simply one of them. All institutions, it must be stressed, are the products of human agency. If an institution is to be created, altered, or transformed, it will be through the purposive action of human beings. Institutions are purposive entities that are constituted by social, and hence moral, values To say that institutions conceive other institutions is to remove human agency from the equation altogether and render life virtually meaningless. This is the absolute-pluralist's fundamental mistake. Rather than recognizing that politics is predicated on the existence of a world order in which human agents have socially and historically constructed the existing institutions and practices, pluralists regard international order as the starting point of all political life. To the pluralist, human agency is derivative of international order while the protection of human rights is relegated merely as a function or choice of each sovereign state. Yet this choice is not one that the sovereign state has the power to make. Afterall, the state is comprised of individual human beings. Should individuals strive to make the protection of individual human rights part of their political agenda, as is already

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[14] Robert O. Keohane, "The Analysis of International Regimes: Towards a European-American Research Programme," in Regime Theory and International Relations, ed. Volker Rittberger (New York: Oxford University Press, 1993), 28; also compare to Alexander Wendt and Raymond Duvall, "Institutions and International Order," in Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s, ed. James N. Rosenau and Ernst-Otto Czempel, (Lexington, MA: Lexington Books, 1989), 60.

being done, then so too must the state follow suit as an expression of the *contrat social*. What unfortunately evades scholarly debate is a study of the social values and moral purpose which constitutes the fundamental institutions of international society as a whole. This inquiry addresses this failure by studying two of the discipline's most misunderstood institutions, sovereignty and human rights, by using Bull's conception of world order as its analytic framework.

The State and Sovereignty in International Society

Although the concept of sovereignty is firmly entrenched within the discipline of international relations, there is surprisingly little consensus as to what sovereignty really is. The pluralist assumption of international order has ostensibly hidden the concept of sovereignty from analytic scrutiny. As such, the terms "sovereignty" and "state sovereignty" tend to be used synonymously in a rather peculiar, unproblematic way. But why must this necessarily be so? As Jean Bethke Elshtain asserts, "*State* and *sovereignty* do not form an unproblematic unity."[15] Essentially, it is imperative for international relations scholarship to become critical of the way in which sovereignty and statehood remain narrowly problematized within the discipline. Andrew Hurrell emphasizes, for instance, that "sovereignty has always been a socially constructed and evolving norm and never as rigidly conceived as those who talk glibly of 'a Westphalian model' would suggest." [16] Sovereignty—especially state sovereignty—has always required qualification according to the circumstance of political time and space.

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[15] Jean Bethke Elshtain, New Wine and Old Bottles: International Politics and Ethical Discourse (Notre Dame, IN: University of Notre Dame Press, 1998), 10.
[16] Hurrell, "Society and Anarchy in the 1990s," 37; also see Paul Taylor, "The United Nations in the 1990s: Proactive Cosmopolitanism and the Issue of Sovereignty," Political Studies 47, Special Issue (1999), 563.

Sovereignty is merely an abstraction that has endured transformation from various institutional forms over the past several hundred years—itself a relatively novel social invention.[17]   Institutional sovereignty has ranged from papal sovereignty, monarchical sovereignty, territorial sovereignty and popular sovereignty, while originally stemming from the European context to become the rule of political organization around the world.[18]   The complexity of sovereignty is evidenced by Stephen Krasner's categorization of contemporary sovereignty into four typologies: international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty.[19]   Jackson has also distinguished between negative sovereignty and positive sovereignty to describe the difference between a state's juridical independence and its ability to provide substantively for the goods and services for which the state is entrusted. Still, others scholars such as Alan James distinguish between jurisdictional and political sovereignty.[20]   The important point is that sovereignty is a term that invariably requires accompanying adjectives. It has held different meanings in different political situations and different political eras.[21]

Sovereignty must therefore be seen as an instrumental institution, a regulative rather than constitutive rule, that is part of a grander experiment in purposive social organization.[22] As Reus-Smit asserts, sovereignty is "an organizing principle, no more or no less. It is a principle that specifies *how* power and authority will be organized, a principle that mandates territorially demarcated, autonomous centers of political authority. There is nothing in the

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[17] Ken Booth, "Security in Anarchy: Utopian Realism in Theory and Practice," International Affairs 67, no. 3 (1991): 542.

[18] Stephen D. Krasner, "Sovereignty," Foreign Policy 122 (Jan/Feb 2001): 21-22.

[19] Stephen D. Krasner, Sovereignty: Organized Hypocrisy (Princeton: Princeton University Press, 1999), 3-4.

[20] Alan James, "The Practice of Sovereign Statehood in Contemporary International Society," Political Studies 47, Special Issue (1999): 457-59.

[21] See James N. Rosenau, Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World (Cambridge: Cambridge University Press, 1997), 218.

[22] For a detailed discussion on constitutive and regulative rules, see John Gerard Ruggie, Constructing the World Polity: Essays on International Institutionalization (New York: Routledge, 1998), 27.

principle of sovereignty, though, that specifies *why* power and authority should be organized

in such a fashion."[23]   To elaborate, sovereignty is "artificial and historical; there is nothing

about it that is natural or inevitable or immutable.   Sovereignty is a juridical idea and

institution."[24]   In sum, sovereignty has no inherent value in and of itself.   It is a strictly

instrumental, regulative institution that serves an underlying value system.[25]   Uncovering

what this value system is—why power and authority should be organized in such a fashion—

is one of the main goals of this inquiry. Reus-Smit thus admonishes that:

> Unless embedded within a wider complex of higher-order values, the principle of
> sovereignty cannot alone provide the state with a coherent social identity, nor has it
> done so historically.   Sovereignty, like individual liberty, is not a self-referential
> value capable of independently providing actors with substantive reasons for action.
> To begin with, sovereignty has no purposive content.   Without reference to some
> other high-order values it cannot independently inform plans of action or strategies to
> achieve them.   Furthermore, the principle of sovereignty provides an inadequate
> justificatory basis for action. . . . Similarly, when states are forced internationally to
> justify their actions, there comes a point when they must reach beyond mere
> assertions of sovereignty to more primary and substantive values that warrant their
> status as centralized, autonomous political organizations.[26]

In short, international relations must begin to think beyond the narrow purview of

international order that pluralists prescribe as the basis of all social and political life. State

sovereignty is the product of an underlying moral purpose, held by social agents in the

context of *world order*, that warrants further scholarly inquiry and debate.   The critical

questions that necessarily arise are: what are the high-order values—the underlying

normative foundations or moral purpose—upon which the present international order of

sovereign states is predicated?; and, how is sovereignty, as state sovereignty, still serving the

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[23] Reus-Smit, The Moral Purpose of the State, 159.
[24] Jackson, "Sovereignty in World Politics," 432; also compare with Jens Bartelson, A Geneology of Sovereignty (Cambridge: Cambridge University Press, 1995), 3.
[25] Reus-Smit, The Moral Purpose of the State, 7.
[26] Reus-Smit, The Moral Purpose of the State, 29-30.

moral purpose of international society? Such questions can best be answered by studying

sovereignty in juxtaposition to an alternative institution: global norms of human rights.

State Sovereignty meets Human Rights

As previously identified, there is a clear tension between state sovereignty and human

rights that scholars of international relations remain unable to resolve. This tension is

exacerbated by the pluralist rejection of world order that maintains a static fiction of

sovereignty. As Barkin notes, "International Relations theory has had difficulty reconciling

the concepts of sovereignty and human rights primarily because it tended to take sovereignty

as a given, as a legal absolute, not as something that can vary over time."[27] Walker identifies

an additional problem: "Spatially, the principle of state sovereignty fixes a clear demarcation

between life inside and outside a centred political community."[28] There is thus a tension

between universality and particularity in the international realm. Although human rights are

clearly universal in international law, their protection is limited to the particular state in

which an individual belongs. Consequently, "the theory of state sovereignty is an ethical

principle that denies the applicability of ethical principles beyond a certain bounded space."[29]

This tension remains unresolved, however, because of the way in which pluralists fail to see

that human rights need not destroy the basis of state sovereignty or international order. They

erroneously purport that the world politics can only accommodate *either* state sovereignty or

human rights in their dichotomous, rigid forms.

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[27] Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms", 231.
[28] R. B. J. Walker, Inside/Outside: International Relations as Political Theory (Cambridge, Cambridge University Press, 1993), 62.
[29] Ibid., 66.

In particular, sovereignty is most commonly upheld as dichotomous and absolute whether for parsimony or elegance. Sovereignty is thus seen as a binary value—a polity is either sovereign or not at all—while its very existence creates and sustains international order in the first place. As previously shown, however, sovereignty is not as permanent as pluralists believe and "should be viewed as a variable rather than as a constant."[30] To equate sovereignty to a dichotomous and absolute variable simply renders international relations stagnant. To view sovereignty as an inflexible entity that can be attained with a given finality is to reject the possibility of change in international life altogether. The state and international order would hence become the only conceivable end wherein the conceptualization of discontinuity and change in world order would become impossible.

Failure to understand sovereignty in this light is ultimately where Bull's work on order becomes problematic. Although he uncovers the framework of world order, Bull fails to see its full moral and conceptual implications. Near the conclusion of The Anarchical Society, for instance, Bull ostensibly rejects the idea of an international society altogether in favour of a states-system discourse. He writes that "The states system provides the present structure of the political organisation of mankind, and the sense of common values and interests that underlies it—meagre though it is and inadequate as it is likely to prove in relation to long-term challenges to world order—is the principle expression of human unity or solidarity that exists at the present time, and such as we may entertain for the emergence of a more cohesive world society are bound up with its preservation and development."[31]

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[30] J. Samuel Barkin and Bruce Cronin, "The State and the Nation: Changing Norms and the rules of Sovereignty in International Relations," International Organization 48, no. 1 (1994): 108; for an argument arguing that sovereignty is, in fact, a dichotomous and absolute variable, please see James N. Rosenau, Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World (Cambridge: Cambridge University Press, 1997), 222.
[31] Bull, The Anarchical Society, 284.

This rejection of world order and the blurred use of states system and international-society is a curious (and unfortunate) development in Bull's literature. Bull thus goes on to claim that the praxis of universal human rights would necessarily destroy the foundations of international order:

> Carried to its logical extreme, the doctrine of human rights and duties under international law is subversive to the whole principle that mankind should be organised as a society of sovereign states. For, if the rights of each man can be asserted on the world political stage over and against claims of his state, and his duties proclaimed irrespective of his position as a servant of a citizen of that state, then the position of the state as a body sovereign over its citizens, and entitled to command their obedience, has been subject to challenge, and the structure of the society of sovereign states has been placed in jeopardy.[32]

A virtually identical view is memoralized by Jackson, written twenty-three years after Bull, who asserts that if the:

> . . . humanitarian approach is taken to its logical conclusion states lose their normative standing and are reduced to being merely instrumentalities for protecting human rights and providing for human welfare on a cosmopolitan (world-wide) scale. States are political machinery, utilitarian arrangements. States are no longer political communities in their own right; national societies have no significant moral *status*, and citizenship has no pre-emptive rights and duties attached to it. An exclusively cosmopolitan ethic would have in mind a singular community of all human beings—a *civitas maxima*—without any rival or intervening communities including nation-states. In that vision world politics is a *universitas*.[33]

Both authors purport that the realization of universal norms of human rights would signal the demise of international order in a highly destructive and undesirable way. The premise of Bull's argument is essentially based on a hierarchy of order over human justice. Bull admonishes, for instance, that "If international society were really to treat human justice as primary and coexistence as secondary . . . then in a situation in which there is no agreement

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[32] Hedley Bull quoted in Kathryn Sikkink, "Transnational Politics, International Relations Theory, and Human Rights," <u>Political Science and Politics</u> 31, no. 3 (1998): 517.

[33] Robert H. Jackson, <u>The Global Covenant: Human Conduct in a World of States</u> (Oxford: Oxford University Press, 2000), 175.

as to what human rights are or in what hierarchy or priorities they should be arranged, the result could only be to undermine international order."[34]

Yet the above statements rest upon fallacious reasoning. While sovereignty is not a dichotomous or absolute variable, the concept of order most certainly is not either. There is no reason to assume that, if the warnings of Bull or Jackson were to be taken to *their* logical conclusions, a world that places great value on justice and human rights will create a vacuum of order that commands the death of sovereign statehood. In effect, Bull and Jackson misunderstand the foundations of universal human rights. If human rights in their universal conception are to be realized—encompassing the full array of civil, political, social and economic rights—intermediary polities of high degrees of both order and efficacy are essential. Few scholars would deny that the state is not the most likely candidate to fulfill this role. Although civil and political rights are granted to protect individuals from the potential abuses of the state, social and economic rights are those rights which the state must provide to all individuals within its domain. As Donnelly aptly notes, "Human rights are thus not only concerned with preventing state-based wrongs. They also require the state to provide certain goods, services and opportunities."[35] In short, while civil society offers the promise of civil and political freedom from the state, the state is ultimately the only source for guaranteeing the social and economic rights of its citizens. These rights cannot be offered or guaranteed by civil society, or any other alternate political entity, in any meaningful capacity. Functioning states that adhere to the norms of international society are thus essential for the protection of human rights. Rather than planting the seeds of chaos and disorder as most pluralists believe, the praxis of universal human rights therefore has the

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[34] Bull, The Anarchical Society, 85.
[35] Jack Donnelly, "The Social Construction of Human Rights," in Human Rights in Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 87.

potential to engender a greater degree of world order because of its requirements for good governance, ecumenical principles, and coordination between state and non-state actors.

Furthermore, while human rights and the sovereign state can co-exist, so too can universal human rights within an international society of states. Although, the world may be shifting towards what Booth describes as the "logical polity of a world order which would foster community, security and emancipation" in "a global 'community of communities' within a much looser state framework,"[36] there is no reason to conclude that human rights cannot be both understood and practiced within this society. In fact, the international society of sovereign states is presently essential for the effective implementation of human rights. Donnelly therefore notes, "sovereign states remain the central mechanism by which contemporary international society seeks to implement internationally recognised human rights, as is underscored by the very modest incremental growth in the scope and powers of multilateral human rights institutions in recent years."[37] Human rights protection within an international society of states, whether mitigated by multilateral treaties or international customary law, appears to be the present most effective approach for ensuring global norm compliance.

The question that thus arises is whether or not the principle of universal human rights can accommodate political diversity. The answer is: absolutely. Curiously, Bull changed his posture towards justice in international society significantly from his earlier writings. The language of international society is thus evident in his later writings on justice. In the 1983-84 Hagey Lectures, Bull states that "whatever rights are due to states or nations or other

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[36] Ken Booth, "Dare Not to Know: International Relations Theory Versus the Future," in International Relations Theory Today, ed. Ken Booth and Steve Smith (University Park, PA: The Pennsylvania State University Press, 1995), 344.

[37] Donnelly, "The Social Construction of Human Rights," 93.

actors in international relations they are subject to and limited by the rights of the international community. The rights of sovereign states, and of sovereign peoples or nations, derive from the rules of the international community or society and are limited by them."[38] Explicitly, Bull reinforces the idea that sovereignty is a conditional variable contingent upon the norms of international society. More intriguing is Bull's shift on the issue of human rights itself. He eventually accepted the existence and definition of human rights as defined, not by traditions of natural law, but by conceptions of imagined communities of common moral awareness.[39] He propounds that "In the sense of rights established by some *a priori* moral rule that can be shown to be objectively valid, there are no human rights. . . . If our conceptions of human rights are rooted not, as the eighteenth century declarations proclaimed, in the nature of things but only in our attitudes and preferences this does mean that our choice of them is capricious or arbitrary. The moral attitudes we take up are the authentic expression of the ways of life we lead, and reflect our own history and character."[40] Notice that Bull rejects a teleological definition of human rights while recognizing the constitutive character of moral purpose. Bull's thinking therefore progressed significantly in his advocacy of a transcultural, solidarist vision of human rights in the absence of essentialist grounds of human nature.[41]

Bull did, however, remain sceptical that a consensus on the definition or means to achieve universal standards of human rights was possible. Yet based on his

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[38] Hedley Bull, Justice in International Relations, 1983-84 Hagey Lectures, University of Waterloo (Waterloo, ON: University of Waterloo Press, 1984), 11; also see Taylor, "The United Nations in the 1990s," 564.
[39] Nicholas J. Wheeler and Tim Dunne, "Hedley Bull and the Idea of a Universal Moral Community: Fictional, Primordial or Imaged?," in International Society and the Development of International Relations Theory, ed. B. A. Roberson (London: Pinter, 1998), 51.
[40] Ibid.
[41] Ibid.

conceptualization of moral purpose in world order, he dismisses lack-of-consensus as a valid

reason to reject the universality of individual human rights altogether:

> The validity of our beliefs about human rights does not depend on the amount of consensus that exists in favour of them: legal rules may be valid only if they are based on consent or consensus, but moral rules are not. The view that all human beings are entitled to the individual rights that we in the West enjoy cannot be dismissed as mere 'chauvinism and bias,' even if . . . chauvinism or self-congratulatory policies are sometimes fed by it. . . . The Western doctrine of human rights is not a static one: it is radically different today from what it was even 20 or 30 years ago, and it continues to develop. . . . Individual human rights, as Henkin points out, have not always been accorded a central place in Western tradition and today it is increasingly difficult to distinguish between what in the world is Western and what is not. Even if the historical record did show that individual human rights were the unique property of the West, it would not follow that they should be.[42]

Subsequently, Bull began to acknowledge the importance of human rights in international

relations, premised on universal moral precepts. Although somewhat sceptical of the

possibility of achieving global consensus on human rights issues, Bull believed that attempts

to form such a consensus are morally imperative. Hence, he cautiously advocates the need

for placing greater moral and political value on the rights of the individual:

> . . . given the developing liberal tradition of the Western democracies, some degree of commitment to the cause of individual human rights on a world scale must follow. Our own moral premises require it. The world society of individual human beings entitled to human rights as we understand them exists only as an ideal, not as a reality; but if it is our ideal, this must help to shape our policy. If we are faithful to the bases of the liberal tradition in the West, we have to recognise that international law and international morality, in the narrow sense of the legal and moral rules recognised by states in their dealings with one another, have only a subordinate or derivative value. What is ultimately important has to be reckoned in terms of the rights and interests of the individual persons of whom humanity is made up, not the rights and interests of the states into which these persons are now divided.[43]

What Bull seemingly recognized in his later years is that justice is a principal determinant of

order. Justice and order are inseparable. Excluding human rights from the calculus of world

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[42] Hedley Bull, "The Universality of Human Rights," Millennium: Journal of International Studies 8, no. 2 (1979): 159.
[43] Bull, Justice in International Relations, 13.

order is both incomplete and highly problematic. Systemic violations of human rights, as one

may imagine, are synonymous with disorder and widespread human suffering. Ultimately, to

allow such suffering is to invite disorder in international society.

Diversity, Equality and the Re-Evolution of International Norms

In many ways, the tension between state sovereignty and human rights, or between

order and justice, inevitably speaks to the balance between political diversity and equality.

As Hurrell correctly points out, "the tradition of international society speaks to the

fundamental moral dilemma of reconciling the universal with the particular and of resolving

the tension between the pluralism and diversity that is such a fundamental characteristic of

human life and the moral need to forge an overlapping consensus around which both the

rights of individual human begins can be protected and the interests of humankind as a whole

be safeguarded."[44]   The subject of human rights is evidently best understood within the

framework of international society and world order described previously. Yet human rights

norms need not destroy the basis of state sovereignty, or the fabric of political diversity that

history has witnessed thus far. What is simply occurring is a *re-evolution* of the meaning of

sovereignty as a function of shifting foundations of moral purpose. Change in the value of

sovereignty appears to be additive, increasing the complexity and grey areas of international

politics, rather than discontinuous, dialectical or transformational since sovereignty is a

definitively foundational or fundamental institution.[45]

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[44] Hurrell, "Sovereignty and Anarchy in the 1990s," 36.
[45] For typologies of concepts of change, see Holsti, "The Problem of Change in International Relations Theory," 11-16. For a definition of foundational institutions, see Ibid., 25; similarly, for a definition of fundamental institutions, see Reus-Smit, The Moral Purpose of the State, 14.

The purpose and genealogy of sovereignty provide evidence for this claim. According to Alan James, the dividends of state sovereignty are twofold: first, sovereignty is significant to the maintenance of international order; and second, the constitution of a discrete politically bounded space allows the members of its community to enjoy independent self-government.[46] Notice that James' dividends need not apply specifically to political organization under sovereign states. Sovereignty is therefore more malleable than most scholars care to admit. It has changed, and will continue to change, within its global political environment to serve its basic purposes. And as Reus-Smit points out, the absolute pluralist basis of sovereignty has shifted accordingly from its European origins towards cosmopolitan principles that uphold the sanctity and rights of the private individual.[47] He thus arrives at the following conclusion: "The moral purpose of the modern state lies in the augmentation of individuals' purposes and potentialities, in the cultivation of a social, economic and political order that enables individuals to engage in the self-directed pursuit of their 'interests'."[48] What is presently happening is *purposive* change, which "involves a redefinition of the moral purpose of the state, leading to shifts in the meaning of sovereignty and procedural justice."[49] It is hence no surprise that the rise of human rights coincides with the historical waning of the international communitarian ethos.

International society is therefore witnessing the growing salience of the human being as the most fundamental of all political units. While states and other political communities are inherently disparate, endowed with significantly different histories and resources, human

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[46] Alan James, "The Practice of Sovereign Statehood in Contemporary International Society," 473.
[47] Reus-Smit, The Moral Purpose of the State, 123; see page 7, table 1, for an excellent overview of the evolution of sovereignty across ancient Greece, renaissance Italy, absolutist Europe and the modern society of states.
[48] Ibid.
[49] Ibid., 164.

individuals are fundamentally equal in their social potentials. The individual human being is therefore the foundation of all social and political equality. As Louis Henkin states:

> The human rights idea has provided a principle counter-current to persisting state values. It is the idea of our times, the only political idea that has earned universal (at least nominal) acceptance. The universalization of human rights idea has contributed to a universal, if modest, human rights culture. Internationalization of this idea and the growing body of international human rights law have penetrated state societies and have injected specific human values into inter-state politics and law and into the life of international institutions.[50]

Global norms of human rights are gaining in strength precisely because of their universal moral foundations. Thus, human rights are here to stay. They have weathered, and continue to weather, strong and persistent challenges that have only added to their moral and intellectual vibrancy.[51] They are now a permanent fixture in the political discourse of international relations.

I therefore directly challenge Jackson's purported claim that: "Today the legal status of human beings in international law, as expressed by the law of human rights, is something that has been erected by sovereign states and could also, at least in principle, be dismantled by them."[52] Such a scenario, however, is extremely unlikely. Indeed, it is impossible. Just as there exists a "conservative bias"[53] shrouding the institution of state sovereignty, a similar one upholds the idea of human rights—an idea that, in historical terms, is only slightly newer than the sovereign state. Though it may be argued that sovereign states are older and more fundamental than human rights, the point is, to reiterate, that human rights need not destroy the basis of the international society of states. Human rights are adding to the function of the

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[50] Louis Henkin, "Law and Politics in International Relations: State and Human Values," Journal of International Affairs 44 (1990): 207.

[51] See Florini, "The Evolution of International Norms," 367-87 for an overview of the evolution of international norm lifecycles through a biological analogy.

[52] Robert H. Jackson, "The Political Theory of International Society," in International Relations Theory Today, ed. Ken Booth and Steve Smith (University Park, PA: The Pennsylvania State University Press, 1995), 111.

[53] Jackson, "Sovereignty in World Politics," 434.

state in international society while international society is necessary for the protection of human rights. Even in principle, human rights cannot be dismantled just as the wheel cannot be un-invented and the Rubicon cannot be uncrossed.

In short, there is both the room and the need for human rights in the international society of sovereign states. Rather than limiting the political diversity of international society, human rights outline the essential conditions under which diversity can flourish. As Freeman notes, universal human rights help to define the "rules under which people who pursue diverse goals in a complex, rapidly changing and highly interdependent world might hope to live in dignity and peace."[54] Both state sovereignty and human rights norms are merely the expressions or vehicles with which international society uses to protect both diversity and equality simultaneously. Although sovereignty was erected in the Westphalian context to help promote equality between diverse political communities, its service is far from complete. Westphalian sovereignty has thus been forced to capitulate from its European or Judeo-Christian exclusivity to a norm which has encapsulated the world in a more meaningful way. But there are limits to the extent that the institution of sovereignty can deliver equality. While sovereignty can grant legal equality to political communities, political communities are inherently disparate in geography, history and resources. These disparities, translated into material and social power, have thus been used to distort the ability of the sovereign club of states to grant the equality it once promised. Thus, Bull aptly recognized that the fundamental units of political equality and social agency are not political communities, but individual human beings. Human rights represent more than a fleeting discourse *en vogue*. They have become a permanent fixture in the discourse of international affairs precisely because individual rights are essential for completing the promise of both

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[54] Michael Freeman, "Human Rights, Democracy and 'Asian Values'," The Pacific Review 9, no. 3 (1996), 358.

political diversity and equality that state sovereignty leaves unfulfilled. They are essentially two inseparable pathways necessary for international society's elusive pursuit of the 'good life.'

Conclusion

Ultimately, the emergence and growing power of global norms of human rights reflects the need to ensure equality amidst diversity in world order. Rather than destroying the basis of state sovereignty, human rights and the international society of states should be seen as inseparable institutions involved in a relationship of co-evolution. Strangely, the 1648 Treaties of Westphalia are often remembered as having ratified the norms of state affairs that were already in European existence. More accurately, however, Westphalia "marked some kind of watershed, given definition to the political shape of Europe, embodied a rudimentary community of interests among its rules and provided for a modicum of order in an inter-state system in which power is dispersed."[55] The birth of sovereign statehood as codified in 1648 thus marks a significant turning point in the evolution of world order. It is conceivable, and indeed desirable, that the same significance be one day attributed to the emergence of global norms of human rights—perhaps stemming from the date of the Universal Declaration's creation.

Upon critical reflection, ethical inquiry "is not a repository of principles awaiting application; it is an ongoing historical practice."[56] All social and political institutions are hence subject to persistent historical practice, and are susceptible to change as its underlying normative foundations of moral purpose also change. Donnelly thus emphasizes that

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[55] Geoffrey Stern, The Structure of International Society: An Introduction to the Study of International Relations, 2nd edition (London: Pinter, 2000), 75.
[56] Walker, Inside/Outside, 51.

"Human rights are not just abstract values, but a set of particular social practices to realise those values."[57] Only through social and political praxeology can individual human beings invest their agency into creating a world order that more closely resembles a global vision of the good life. It therefore becomes evident that "The discourse of human rights is potentially crucial to human history because it is part of the language of the human species' self-creating emancipation from natural and societal threats."[58] Hence, one of the most remarkable contributions that global norms of human rights have made on the history of human civilization lies in its expression of the sharpening of moral purpose in world order. As we look further into this debate with the issues of international law and statecraft, let us therefore end with a reminder of E. H. Carr's aphoristic call: "The old world is dead. The future lies with those who can resolutely turn their back on it and face the new world with understanding, courage and imagination."[59] For understanding, courage and imagination will surely be needed if the future entails greater respect for human rights and fewer instances of human wrongs.

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[57] Donnelly, "The Social Construction of Human Rights," 79.

[58] Ken Booth, "Three Tyrannies," in Human Rights in Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 31.

[59] Edward Hallett Carr, Conditions of Peace (New York: The MacMillan Company, 1942), 280.

Man is born free, and he is everywhere in chains. . . . How did this transformation come about? I do not know. What can make it legitimate? That question I think I can answer.

— Jean-Jacques Rousseau

— Chapter Two —

The Social Constitution of Legitimacy:
Sovereignty, Human Rights and International Organization

The unit-of-analysis problem gives rise to a strange debate indeed. Whereas other fields in the social sciences study several unit-types and the interrelations between them, the study of unit-types in IR other than the sovereign state can be seen as problematic. International relations is ostensibly more concerned with the abstraction of state sovereignty as a means to order territorial demarcations than with the quality of a state's right to rule. Consequently, legitimacy remains a tacit and underproblematized dimension of international theory. While Ann Florini argues that "Norms are obeyed not because they are enforced, but because they are seen as legitimate," scholars of international politics have devoted little attention to uncovering how norms or institutions acquire legitimacy in the first place.[1] How, exactly, do the primary actors of international relations—sovereign states—acquire *and* maintain political legitimacy? How does a sovereign state become *il*legitimate or *un*sovereign? Although the "*societas* of states is the most exclusive political club in the world and has been so for several centuries,"[2] it is rather curious that the international club of sovereign states lacks clear rules for ejection.[3] What IR scholarship therefore lacks is an explanation of how legitimacy is constituted and re-constituted in international society. This chapter therefore builds on the previous one by examining how changes in the understanding of the moral purpose of the state effect empirical changes in international organization.

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[1] Ann Florini, "The Evolution of International Norms," International Studies Quarterly 40, no. 3 (1996): 365.
[2] Robert H. Jackson, "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape," Political Studies 47, Special Issue (1999): 449.
[3] See Roth, Brad R. Roth, Governmental Illegitimacy in International Law (New York: Oxford University Press, 1999).

This failure becomes especially apparent when examining contemporary debates in human rights.[4] To borrow from Donnelly, the international normative universality of human rights has forced some states' claim to legitimacy to fall under profound scrutiny.[5] Thus, as Barkin argues, "sovereignty cannot be fully understood without examining its bases of legitimacy, and that the emergence of human rights norms as an integral part of the practice of international relations cannot be fully understood simply as a constraint on absolute sovereignty, but rather must be addressed as a new element in the nature of sovereignty itself."[6] Respect for and the protection of human rights is increasingly seen as a legitimate function of the international society of states. As argued previously, human rights and state sovereignty norms are evolving towards a relationship of mutual constitution. Rather than dichotomizing sovereignty and human rights, or treating one as subordinate to or derivative of the other, IR scholarship must begin to think of what implications this mutually constitutive relationship has on international organization. Such is the task of this chapter.

Unfortunately theorists of international organization commonly mistake the relations between states as the only determinants of international structure. Spruyt, for instance, argues that the principle unit-types of international politics impose a particular structure of interunit behaviour, such that structural change can only be induced by a change in the

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[4] See David P. Forsythe, The Internationalization of Human Rights (Lexington, MA: Lexington Books, 1991), 17; and Martha Finnemore, National Interests in International Society (Ithaca: Cornell University Press, 1996), 71; and Mervyn Frost, Ethics in International Relations: A Constitutive Theory (Cambridge: Cambridge University Press, 1996), 126 and 137; and J. Samuel Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms," Millennium: Journal of International Studies 27, no. 2 (1998), 229; and Georg Sørensen, "IR Theory After the Cold War," in The Eighty Years' Crisis: International Relations 1919-1999, ed. Tim Dunne, Michael Cox, and Ken Booth (Cambridge: Cambridge University Press, 1998), 92.
[5] For a definition of international normative universality, see Jack Donnelly, Universal Human Rights in Theory and Practice, (Ithaca: Cornell University Press, 1989), 2.
[6] Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms," 231.

prevalent unit-types of the system.[7]   I contend that structural

change can also be induced interrelationally. In other words, structural change can occur, not

only by a complete transformation of the prevalent unit-types of the system, but also by a

change in the social relations between the prevalent unit-type and other unit-types. A

particular structure is thus being imposed on state behaviour by the growing prominence and

power of epistemic communities and international bodies. The global human rights regime is

consequently redefining the role of the state as well as the rules and composition of

international organization. International respect for human rights has become such a

generally accepted function of international society that adherence to global norms of human

rights is now a means for states to garner legitimacy and hence social power.

This proposition has several implications for international organization. States are

compelled to respect international standards of human rights because of two basic structures

of international legitimacy: one vertical and one horizontal. The global human rights

regimes, comprised of actors at the sub-national, national and supra-national levels, can

induce state conformity by pushing norm-violating states under the international spotlight

and applying vertical pressure concertedly "from above" and "from below."[8] Similarly,

horizontal pressure can be exerted from other states since being a legitimate member of the

international society increasingly involves respecting global human rights norms. These

structures indicate that while the role of the contemporary state may be changing, its

importance will remain since legitimacy will serve to solidify the position of the state as the

intermediating polity between the global network of epistemic communities and international

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[7] Hendrik Spruyt. The Sovereign State and Its Competitors (Princeton, N.J.: Princeton University Press, 1994), 5 and 17.
[8] Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in The Power of Human Rights: International Norms and Domestic Change, ed. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 5.

bodies. Moreover, structures of international legitimacy provide evidence that international order is constituted not by a hierarchy-anarchy divide, but along a hierarchy anarchy continuum. Rather than being created solely by centralized authority in the classical sense, international order in world politics can also derive from decentralized sources according to the degree to which social norms are seen as legitimate and observed in practice.

This inquiry will advance the above arguments in five sections. First, it is necessary to bring conceptual clarity to several fundamental yet poorly understood definitions such as norms, legitimacy and sovereignty. These concepts are intrinsically related to one another in the way they help form decentralized authority structures in the international arena. Second, the evolving relationship between human rights and sovereignty will be examined in the context of the body of international law that has emerged since the latter half of the twentieth century. Evaluating the substance of human rights and sovereignty within this context is critical since international law reflects and institutionalizes global norms in the absence of centralized authority. Third, the case of the 1997 Rome Statute for the establishment of an International Criminal Court (ICC) will be introduced as empirical evidence to test the extent to which international customary law with regard to human rights is entrenched in international politics. Analytic data on those states which have ratified the Statute will also be included to provide empirical insight into the effects of human rights on international organization and how decentralized authority structures function in international society. Fourth, a discussion on the hierarchy-anarchy problematique will follow. Acknowledging the profound effect that norms and decentralized authority structures have on international organization ultimately creates new possibilities for IR research. It is also hoped that this

study of human rights in international organization will add to the discipline's understanding of change or evolution in international society as a whole.

Global Norms and the Social Constitution of Legitimacy

According to Spruyt, norms are moral rules that "distinguish moral from immoral actions and behaviors.   They are internalized guidelines that substantively inform preferences. Norms are not derivative of exogenously postulated (material) interests but are independent determinants of preferences and behaviors."[9] Norms thus shape behaviour by delineating what is, and is not, considered acceptable conduct. Sikkink similarly notes that "Norms have a quality of 'oughtness' that sets them apart from other kinds of rules. Norms involve standards of 'appropriate' or 'proper' behavior. We recognize norm-breaking behavior because it generates disapproval or stigma."[10] The point to emphasize is that norms are derived from moral precepts which are constitutive of behaviour. They form a "matrix of constitutive principles that govern the behaviors of members of a given social group."[11] Adherence to norms lends predictability and credibility to the existing members of the group, while entrants or potential entrants must adhere to such norms as a *sine qua non* condition for entry and recognition.[12] Identifying and analyzing norms in international politics is therefore considerably important since members of international society are compelled to conform, or at least pay tribute to, the rules of the whole.

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[9] Hendrik Spruyt, "The End of Empire and the Extension of the Westphalian System: The Normative Basis of the Modern State Order," International Studies Review 2, no. 2 (2000): 67.

[10] Kathryn Sikkink, "International Human Rights Law and Practice in Latin America," International Organization 54, no. 3 (2000): 650; also see Florini, "The Evolution of International Norms," 364; also see Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," International Organization 52, no. 4 (1998): 891-92.

[11] Spruyt, "The End of Empire and the Extension of the Westphalian System," 68; also see Daniel Philpott, "Westphalia, Authority, and International Society," Political Studies 47, Special Issue (1999): 567.

[12] Ibid., 568.

The study of legitimacy is hence essential for an understanding of norms in international society. Although legitimacy can pertain to either actors or behaviours, this inquiry focuses on the latter conception. In this sense, legitimacy is a poorly understood abstraction. Philpott asserts, for instance, that the constitution of legitimacy in international society rests upon a foundation of norms that is both legitimate and practiced.[13] Barkin and Cronin similarly add that institutional legitimacy is accorded when "the institutional forms are appropriate and right," while legitimacy is eroded when the principles upon which it rests are challenged or rejected.[14] Yet such definitions are over-simplistic at best. Clearer benchmarks are needed in order to generate empirical criteria assessing international legitimacy. What, for instance, are the norms of appropriateness or rightness upon which legitimacy rests? Is legitimacy a binary function or are there degrees of legitimacy? Or, more simply, what makes norms legitimate?

Unfortunately, most definitions of legitimacy centre on an internal or endogenous perspective. Ian Hurd, for instance, defines legitimacy as the "normative belief by an actor that a rule or institution ought to be obeyed."[15] Hurd's definition is incomplete. As Roth notes, legitimacy involves both an internal and an external perspective.[16] Hurd focuses solely on the endogenous aspect of legitimacy in assuming that actors are free to determine whether or not rules 'ought' to be adhered to without accounting for how 'oughtness' is shaped by social circumstance. The social aspect of legitimacy is especially important when dealing with the legitimacy of international norms. This inquiry therefore focuses mainly on a study of norms and behaviours according to *international legitimacy*, defined as the

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[13] Philpott, "Westphalia, Authority, and International Society," 567.

[14] J. Samuel Barkin and Bruce Cronin, "The Rules of Sovereignty: Changing Norms and the Rules of Sovereignty in International Relations," International Organization 48, no. 1 (1994): 128-29.

[15] Ian Hurd, "Legitimacy and Authority in World Politics," International Organization 52, no. 2 (1999): 381.

[16] Roth, Governmental Illegitimacy in International Law, 19.

exogenous recognition by the existing members of international society that a norm or behaviour is normatively acceptable. In other words, there is no essentialist variable within a political entity or act that can serve as a sufficient condition for legitimizing a particular political practice. Legitimacy, in this sense, is a social phenomenon.

Sovereignty acquires its currency as a legitimate rule of international politics because it serves to delineate between distinct bodies of authority over some specified domain of political space.[17] As Krasner notes, however, the concept of state sovereignty—based upon the rule of according sovereign status to political entities with juridical autonomy—has never been universally honoured.[18] A disparity exists between state sovereignty in principle (*de jure*) and in practice (*de facto*).[19] State sovereignty norms have always been subject to periodic manipulations and violations since its inception in the seventeenth century.[20] Although state sovereignty is a legitimate institution of international politics, it can be permeable to other norms and institutions in certain instances which also have claims to legitimacy. The global human rights regime presents such a challenge. According to Forsythe, "International relations underwent a fundamental change from 1945 to 1970 in the sense that human rights ceased to be generally considered a matter fully protected by state sovereignty."[21] The international human rights regime is therefore "an example of the fact that Westphalian sovereignty has always been characterized by organized hypocrisy."[22]

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[17] See R. B. J. Walker, Inside/Outside: International Relations as Political Theory (Cambridge: Cambridge University Press, 1993), 169-74; and James A. Caporaso, "Changes in the Westphalian Order: Territory, Public Authority, and Sovereignty," International Studies Review 2, no. 2 (2000): 9-10.

[18] Krasner, Sovereignty: Organized Hypocrisy (Princeton: Princeton University Press, 1999), 8.

[19] Christopher M. Ryan, "Sovereignty, Intervention and the Law: A Tenuous Relationship of Competing Principles," Millennium: Journal of International Studies 26, no. 1 (1997): 85.

[20] J. Samuel Barkin, "Resilience of the State: The Evolution and Sustainability of Sovereignty," Harvard International Review 22, no. 4 (2001): 44.

[21] Forsythe, The Internationalization of Human Rights, 17.

[22] Ibid., 125.

A study of norms and institutions in international politics must therefore account for competing claims to legitimacy. Sovereignty and legitimacy are generally seen as binary functions—a polity is either sovereign and legitimate or not at all. Whether in theory or practice, international relations lacks the ability to both comprehend and articulate degrees of legitimacy. A consensus is therefore missing over how competing claims to legitimacy are resolved. Not surprisingly, a "conservative bias"[23] prevents the discipline from thinking about how a polity becomes *un*sovereign or *il*legitimate. Yet when does a failed state actually fail to become a sovereign and legitimate entity in the eyes of international society? Issues of humanitarian intervention, globalization or interferences of other forms subsequently hold an uneasy position in international relations. The genocides and atrocities of the postwar era have generated such stigma and outrage that such acts are in clear violation of the norms of international society. I therefore charge that it is neither useful nor practical to ask whether or not it is acceptable for international society to break with the norm of state sovereignty and interfere in the domestic affairs of a state. The critical question that must be asked is *when* is it acceptable to do so.

Essentially, legitimacy is a social power resource from which political bodies garner justificatory claims for their actions. Power, in simplest terms, is the ability to make an actor do something that they would not normally do. Social power can be distinguished from material power in the sense that social power resources are determined by the relations between actors rather than by the material distribution or relative capabilities of the actors. As evidenced by the contemporary juxtaposition of state sovereignty and human rights norms, claims to legitimacy often compete for social leverage. This competition can resolve itself through a rather dialectical process. It appears, for instance, that global norms of

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[23] Jackson, "Sovereignty in World Politics," 434.

human rights and sovereignty are now embedded in a relationship of mutual constitution such that "International human rights have become constitutive for modern statehood; they increasingly define what it means to be a 'state' thereby placing growing limits on another constitutive element of modern statehood, 'national sovereignty.'"[24] As Barkin adds, "A state in the post-Cold War world is, thus, legitimated less by its relationship with a given piece of territory, and more by its ability to ensure the political rights of its citizens."[25] And although he admits that there still exists a disparity between the theory and practice of human rights, "the normative and discursive structure is clearly significantly stronger than was the case a decade ago, and can provide a legitimation of state practice to support human rights internationally."[26] The following sections will test the extent to which these claim are true by analyzing developments in international law since the latter half of the twentieth century as a reflection of changes in the global normative environment.

Sovereignty and Human Rights in International Law

The historical record provides evidence that global norms of human rights have served to both deepen and broaden minimum standards of governance in international affairs.[27] Ken Booth and Tim Dunne maintain, for instance, that the growing post-war corpus of human rights standards, conventions and organizations is illustrative of an

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[24] Thomas Risse and Stephen C. Ropp, "International Human Rights Norms and Domestic Change: Conclusions," in The Power of Human Rights: International Norms and Domestic Change, ed. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 236; also see Paul Taylor, "The United Nations in the 1990s: Proactive Cosmopolitanism and the Issue of Sovereignty," Political Studies 47, Special Issue (1999): 564-65.
[25] Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms," 249.
[26] Ibid.
[27] David Welch, "Morality and the National Interest," in Ethics in International Affairs, ed. Andrew Valls (Lanham, MD: Rowman and Littlefield Publishers, 2000), 6.

emergent global human rights culture.[28] All of these changes have created subsequent shifts in the way the individual is viewed in international society. While authority once granted rights to individuals, the contemporary era increasingly deems that individual rights are asserted against authority.[29] This trend is hence reflected in international law.[30] Under numerous human rights treaties, the individual is a legal subject entitled to the procedural right to access international tribunals in the pursuit of justice.[31] Humanitarian and human rights law have also grown in international importance with the burst of intrastate conflicts that have permeated the post-Cold War era.[32] IR scholarship, however, remains strangely oblivious to the world of international law. [33] Yet international legal institutions cannot be avoided in testing the claim that adherence to global norms of human rights is a means for state legitimation in international society.

Law essentially serves two functions: it reflects the social and normative values of a given society while imparting order and predictability to its subjects. According to Sikkink, law must be interpreted as the formal expression of social values and norms.[34] Similarly, Nardin states that "law is best understood as a system of noninstrumental or moral practices that have hardened into rules, and in which institutions for declaring and applying rules have evolved or been instituted."[35] In this regard, law is reflective of social norms and values. Law therefore does not constitute social norms of values but is constituted *by* them as a

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[28] Ken Booth and Tim Dunne, "Learning Beyond Frontiers," in Human Rights in Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 304.

[29] Dorothy V. Jones, "The Declaratory Tradition in Modern International Law," in Traditions of International Ethics, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), 58.

[30] Forsythe, The Internationalization of Human Rights, 35.

[31] Dacyl, "Sovereignty Versus Human Rights," 153.

[32] Ryan, "Sovereignty, Intervention and the Law," 77.

[33] Kenneth W. Abbott, "International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts," American Journal of International Law 93, no. 2 (1999): 364.

[34] Sikkink, "International Human Rights Law and Practice in Latin America," 652.

[35] Nardin, "Legal Positivism as a Theory of International Society," in International Society: Diverse Ethical Perspectives, ed. David. R. Mapel and Terry Nardin (Princeton: Princeton University Press, 1998), 19.

means of formal regulation. Following in defence of the positivist tradition of international law, Simma and Paulus argue that "Only by being normative can law preserve a balance between its transformative force, which does not accept reality as it is, and its roots in social reality."[36] International law therefore represents more than just a prescriptive body of formal rules, but also acts as a political vehicle used by norm entrepreneurs to generate purposive change along moral precepts.

Second, law also seeks to balance moral visions of justice with the practical need for order. Following a liberal institutionalist logic, law creates a system of common rules that conveys behavioural norms and perceived expectations to all.[37] The definition of an institution, as provided by March and Olsen, is "a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations. Such practices and rules are embedded in structures of meaning and . . . interpretation that explain and legitimize particular identities and the practices and rules associated with them."[38] As Charney further explains,

> As is true of all societies, the international community has a need for rules to impart a degree or order, predictability and stability to relations among its members. The rules of the system also permit members to avoid conflict and injury, and promote beneficial reciprocal and cooperation relations. They may even promote values of justice and morality. The international legal system is supported not only by states' interests in promoting individual rules, but also by their interests in preserving and promoting the system as a whole. Thus, states collectively and severally maintain an interest in encouraging law-abiding behavior.[39]

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[36] Bruno Simma and Andreas L. Paulus. "Symposium on Method in International Law—The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View," American Journal of International Law 93, no. 2 (1999): 307.

[37] Also see Barkin and Cronin, "The Rules of Sovereignty," 128-29.

[38] March and Olsen quoted in Kurt Burch, "Changing the Rules: Reconceiving Change in the Westphalian System," International Studies Review 2, no. 2 (2000): 185.

[39] Jonathan I. Charney, "Universal International Law," in American Journal of International Law 87, no. 4 (1993): 532.

International order is therefore predicated on the very existence of international law as a regulative institution. The international society of states is a legal construction.[40] In other words, "international society exists to the extent that states understand themselves to be related to one another as subjects of common rules—a common law—defining the terms of their coexistence."[41] It would be a mistake, however, to equate the effectiveness or ineffectiveness of international law as the yardstick to test the existence of international society altogether.[42] By and large, the norms formalized in international law form the foundational basis of state interaction.

Ryan notes that international law, as regulated by the collective members of international society, has always in some form or other served to limit the autonomy of individual state action and to uphold "the principle that governments cannot act with absolute impunity within their borders."[43] Legal experts such as M. Cherif Bassiouni add that "It has grown out of the recognition that traditional sovereignty-based arguments against the recognition or application of internationally protected human rights are no longer valid because of the vast array of applicable treaties, the customary practices of states, and the legally binding nature of general principles of international law which, in this context, represent the convergence of treaties, customs, national legislation, and *jus cogens*."[44] Specifically, international customary law trumps all claims to sovereignty and non-interference. The domain of law classified as *jus cogens* specifies that there are customary

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[40] Barry Buzan, "From International System to International Society: Structural Realism and Regime Theory Meet the English School," International Organization 47, no. 3 (1994): 346.
[41] Nardin, "Legal Positivism as a Theory of International Society," 20.
[42] David R. Mapel and Terry Nardin, "Introduction," in International Society: Diverse Ethical Perspectives, ed. David R. Mapel and Terry Nardin (Princeton: Princeton University Press, 1998), 4.
[43] Ryan, "Sovereignty, Intervention and the Law," 80-81.
[44] M. Cherif Bassiouni, "Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions," Duke Journal of Comparative and International Law 3, no. 2 (1993): 238.

principles in international society so basic that no state or individual can justify failure to adhere to them.[45]   The three primary documents of jus cogens include The Genocide Convention, the Convention Against Torture and the International Convention on the Suppression and Punishment of the Crime of Apartheid.[46]   As Nardin comments, "International law proper—general law applying to all (present and future) members of international society—is therefore *always* customary law.   Customary international law regulates the relations of states in the absence of explicit agreement, prescribes procedures for reaching agreements and determining their validity, and limits what states may do by making treaties . . . It follows that the society of states is defined by general recognition of customary international law as authoritative, not by common interests or shared goals."[47] Essentially, customary international law therefore mediates international political behaviour within the condition of anarchy. It is the institution which prescribes the behaviour norms of states in the absence of formal treaties or hierarchical authority structures.

There is also evidence to support the argument that the Universal Declaration of Human Rights has also passed from declaratory to international customary law.[48] Since the Universal Declaration has achieved near unanimous endorsement by the international society of, it has therefore become an expression of the common values of international society such that it necessarily enters into the domain of international customary law.[49] According to Finnemore, although the constitutive character of norms may be novel to international relations theorists:

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[45] Ibid., 86.

[46] Ibid.

[47] Nardin, "Legal Positivism as a Theory of International Society," 21; emphasis added.

[48] For a genealogy of the declaratory tradition in international law, see Dorothy V. Jones, "The Declaratory Tradition in Modern International Law," in Traditions of International Ethics, eds. David R. Mapel and Terry Nardin (Cambridge: Cambridge University Press, 1992).

[49] Thomas Buergenthal, "The Normative and Institutional Evolution of International Human Rights," Human Rights Quarterly 19, no. 4 (1997): 706; and Ryan, "Sovereignty, Intervention and the Law," 89.

> The notion that norms, understandings, and discourse shape state behavior is hardly news to many outside political science. International legal scholars have known this: norms are their bread and butter. At the international level norms *are* the law. Customary international law exists only when states share an understanding that compliance with some rule of behavior is necessary and appropriate. Customary international law exists only where there is a norm.[50]

Despite the fact that the drafting of the Universal Declaration in 1948 precluded the input of the plethora of states present today, the accession of international norms into customary law rarely, if ever, occurs under universal approval.[51] Yet unanimity is not a necessity by any means. Once established, "the international legal system has the authority to legislate universal norms, notwithstanding the objections of some states."[52] It is thus simply incorrect by standards of contemporary international law to insist that human rights belong under the exclusive jurisdiction of domestic law and politics.[53] International standards of human rights are forcing a re-evaluation of the limits of state sovereignty while making prescriptive claims about how governments may treat their own citizens within their own borders.[54]

In practice, however, much controversy still exists over the interpretation of international human rights law with regards to state sovereignty. As Ryan notes, "it has become clear that international society has been faced with competing principles under international law. On the one hand, individual states have international legal obligations to protect human rights on their territories. On the other hand, international society has had difficulty enforcing these obligations on violating states, since international law, by upholding the concept of sovereignty, has generally recognised state autonomy of action in

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[50] Finnemore, National Interests in International Society (Ithaca: Cornell University Press, 1996), 139; also see Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," International Organization 52, no. 4 (1998): 916.

[51] Charney, "Universal International Law," 536-38.

[52] Ibid., 542.

[53] Dacyl, "Sovereignty Versus Human Rights," 140.

[54] Also see Douglass Cassel, "A Framework of Norms: International Human-Rights Law and Sovereignty," Harvard International Review 22, no. 4 (2001): 60.

'internal' matters."[55] The critical question thus becomes under what circumstances do claims to either state sovereignty or human rights have legal precedence over the other.

Though absolute pluralists would hope to denounce the primacy of international customary law in defence of state sovereignty norms, there lacks an internationally recognized definition of sovereignty.[56] While scholars of international relations "often refer to 'Westphalian sovereignty' as an ideal form of the state, one that has complete domestic autonomy and can do whatever it wants within its borders," such an "ideal form has never existed historically; states have never had either the ability or the authority to engage in completely autonomous domestic policy."[57] Crawford also adds clarity to the issue in propounding that "International law discourse has never—except perhaps for a short period at the height of positivism in the late 19th and early 20th centuries—encouraged the idea that state sovereignty is absolute.[58] Thus, world order is clearly *not* constituted by any purported legal doctrine of state sovereignty. An absolutist interpretation of state sovereignty would clearly contradict the purposive elements of law and render international life static by failing to recognize political authority aside from the state.[59] If a system of absolute state sovereignty truly existed, for instance, the extensive bodies of law that presently bind states today would not be possible.[60] Absolute state sovereignty does not reflect the reality of sovereignty as an institution that has always been constrained by the dynamics of international law.[61]

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[55] Ryan, "Sovereignty, Intervention and the Law," 80-81.
[56] Cassel, "A Framework of Norms,"60.
[57] Barkin, "Resilience of the State," 43.
[58] Crawford quoted in Janina W. Dacyl, "Sovereignty Versus Human Rights: From Past Discourses to Contemporary Dilemmas," Journal of Refugee Studies 9, no. 2, (1996): 155.
[59] Ryan, "Sovereignty, Intervention and the Law," 86.
[60] Also see Charney, "Universal International Law," 530.
[61] Christopher M. Ryan, "Sovereignty, Intervention and the Law," 84.

Thus, while Jackson may insist that "Human rights became prominent in international discourse in the second half of the twentieth century but they have not achieved the same standing as the procedural norms of state sovereignty,"[62] it may only be that the procedural or regulative norms of human rights simply lag behind the constitutive ones. Aspirations to formalize individual human rights into international institutions were first advanced in the early postwar years. The introduction of human rights to international politics subsequently resulted in the creation of declarations and dialogue on human rights issues, as well as the enactment of constitutional amendments by some national supreme courts that conferred precedence to human rights treaties over domestic norms.[63] Hence, the responsibilities that states have towards their own citizens have grown considerably. Although aspirations for the establishment an international criminal court did not materialize at first, the reintroduction of the idea with the 1997 Rome Statute of the International Criminal Court rekindles hope that individual human rights will be further institutionalized in international law in the future. The ICC therefore presents a remarkable case for empirical analysis.

The International Criminal Court (ICC) and International Vertical Legitimacy

While the idea of a permanent International Criminal Court stems from the postwar trials such as Nuremberg and Tokyo, the Court is only now in the making following the adoption of the 1997 Rome Statute.[64] The promotion of individual human rights is central to

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[62] Robert H. Jackson, The Global Covenant: Human Conduct in a World of States (Oxford: Oxford University Press, 2000), 17.

[63] Thomas Buergenthal, "Modern Constitutions and Human Rights Treaties." Columbia Journal of International Law 36, no. 1-2 (1997): 215.

[64] Ved P. Nanda, "The Establishment of a Permanent International Criminal Court: Challenges Ahead," Human Rights Quarterly 20, no. 2 (1998): 414; For the complete text and proceedings of the Rome Statute, see M. Cherif Bassiouni, The Statute of the International Criminal Court: A Documentary History (Ardsley, NY: Transnational Publishers, 1998) or United Nations, Rome Statute of the International Criminal Court. (U.N. Doc. A/CONF 183/9). [http://www.un.org/law/icc/statute/romefra.htm], 1999.

the Court's mandate of prosecuting acts of genocide, war crimes, and crimes against humanity including sexual violence.[65] Though the Statute falls under the domain of treaty law, the essential idea of the Court is itself an extension of the existing body of customary law that aims to protect human rights.[66] Thus, the institutionalization of the ICC serves as an attempt to better guarantee those legal obligations already existing under international law.[67] Although the Rome Statute is not without its limitations and imperfections, the present conception of state sovereignty will invariably change once the Court is created.[68] The ICC essentially aims to: achieve justice, end impunity, help end conflicts, remedy the deficiencies of ad hoc tribunals, indict when national criminal justice institutions are unable or unwilling to act, and defer future war criminals.[69] In effect, the ICC will have the ultimate authority over the national judicial proceedings of any state party to the ICC, or on any state after direct referral by the UN Security Council.[70] No state will be immune from the jurisdiction of the ICC with the exception of only those members of the Security Council that have not ratified the Rome Statute.

Yet what is even more intriguing about the ICC concerns the process and players involved in generating support for the Court. Middle-power states and non-governmental organizations (NGOs) have played crucial roles in the developments leading to the Rome Statute and the subsequent attempts to persuade governments to both sign and ratify the

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[65] See John R. Bolton, "Courting Danger: What's Wrong with the International Criminal Court," The National Interest 54 (1998-99): 60-71; and Mahnoush H. Arsanjani, "Developments in International Criminal Law—The Rome Statute of the International Criminal Court," American Journal of International Law 93, no. 1 (1999): 22-43; and Darryl Robinson, "Redefining 'Crimes Against Humanity' at the Rome Conference," American Journal of International Law 93, no. 1 (1999): 43-57; and Danesh Sarooshi, "The Statute of the International Criminal Court," International and Comparative Law Quarterly 48, no. 2 (1999): 396-401; and UN, "Setting the Record Straight: The International Criminal Court."

[66] Nanda, "The Establishment of a Permanent International Criminal Court," 414.

[67] UN, "Setting the Record Straight."

[68] Also see Philippe Kirsch and John T. Holmes, "The Birth of the International Criminal Court: The 1998 Rome Conference," Canadian Yearbook of International Law 36 (1998): 3-39.

[69] UN, "Rome State of the International Criminal Court: Overview."

[70] UN, "Setting the Record Straight."

treaty. The initial request to resume work on the establishment of an international criminal court, for instance, was initiated by Trinidad and Tobago in the United Nations General Assembly in December 1989.[71] Furthermore, the NGO network known collectively as the Coalition for the Establishment of an International Criminal Court, which comprises nearly 300 grassroots organizations, has been critical in generating international support for the ICC.[72] The so-called "epistemic communities" comprised of non-governmental bodies and specialists, largely devoted to the advocacy of social goals, have become increasingly prominent political actors for law-making consultation.[73] Power politics and interest-based utilitarian arguments therefore fail to explain the momentum behind the ICC.

Nonetheless, the Rome Statute is indicative of how international law reflects change in the international normative environment. As Fromkin notes, "The Rome treaty illustrates the flexibility of international law in allowing itself . . . to be used by policymakers who aim at elevating the ethical standards of international behavior."[74] The Statute is evidently forged from moral precepts, which have significantly strengthened the existing body of international criminal law. First, this strengthening serves to further entrench the idea that the individual is a veritable actor of international affairs. Criminal trials explicitly target individuals rather than states or other organizations. Second, international criminalization has had positive political implications in helping to strengthen the currency of international norms against genocide, war crimes, and crimes against humanity in the domestic sphere. As Abbott notes, "Characterizing conduct as criminal links emerging norms to established legal values,

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[71] Ibid.

[72] Nanda, "The Establishment of a Permanent International Criminal Court," 427-28.

[73] Oscar Schachter, "The Decline of the Nation-State and Its Implications for International Law," Columbia Journal of International Law 36, no. 1-2 (1997): 13; also see Buergenthal, "The Normative and Institutional Evolution of International Human Rights," 703-4.

[74] David Fromkin, "International Law at the Frontiers," World Policy Journal 15, no. 4 (1998-99): 59.

increasingly their legitimacy; it motivates individuals and groups attuned to legal issues, including national judges; and it gives politicians 'neutral' cover for potentially unpopular actions. Criminalization also supports the penetration of international norms into national legal systems."[75] In other words, the deepening of human rights standards into formal international institutions helps to impart state responsibilities. International law therefore structures state behaviour: "international legal institutions can be 'teachers of norms,' shaping how governments and citizens perceive particular conduct."[76]

While a minimum number of sixty party-states is required for the Rome Statute to enter into force, thirty-seven states have ratified the treaty as of August 31, 2001. According to Finnemore and Sikkink, sixty states, or roughly one third of the total number of states in the world, is the minimum requirement for a "critical mass" or "tipping point" to occur.[77] What is intriguing, however, is the composition of states that have ratified the Statute thus far.

Table 2.1 States Party to the Rome Statute with Respective HDI Indicators

/174	HDI Value	HDI Rank	Country	Ratification Date
N/A	N/A	N/A	Andorra	04-30-01
3	N/A	N/A	Marshall Islands	12-07-00
	N/A	N/A	San Marino	05-13-99
Low	0.252	174	Sierra Leone	09-15-00
3	0.380	165	Mali	08-16-00
	0.416	155	Senegal	02-02-99
Medium	0.556	129	Ghana	12-20-99
14	0.569	127	Lesotho	09-06-00
	0.592	123	Gabon	09-20-00
	0.593	122	Botswana	09-08-00
	0.663	110	Tajikistan	05-05-00
	0.697	103	South Africa	11-27-00
	0.736	81	Paraguay	05-14-01
	0.769	66	Fiji	11-29-99

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[75] Abbott, "International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts," 375.
[76] Ibid.
[77] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 901.

	0.770	65	Venezuela	06-07-00
	0.777	58	Belize	04-05-00
	0.793	51	Dominica	02-12-01
	0.793	50	Trinidad and Tobago	04-06-99
	0.795	49	Croatia	05-21-01
	0.797	48	Costa Rica	06-07-01
High	0.833	37	Antigua and Barbuda	06-18-01
17	0.837	35	Argentina	02-08-01
	0.899	21	Spain	10-24-00
	0.903	19	Italy	07-26-99
	0.903	20	New Zealand	09-07-00
	0.908	16	Austria	12-28-00
	0.908	17	Luxembourg	09-08-00
	0.911	15	Denmark	06-21-01
	0.911	14	Germany	12-11-00
	0.917	12	France	06-09-00
	0.917	11	Finland	12-29-00
	0.925	7	Belgium	06-28-00
	0.925	8	Netherlands	07-17-01
	0.926	6	Sweden	06-28-01
	0.927	5	Iceland	05-25-00
	0.934	2	Norway	02-16-00
	0.935	1	Canada	07-07-00

Source: For ratification status see UN, "Statute of the International Criminal Court: Ratification Status."
For HDI indicators see UNDP, Human Development Report 2000, 157-160. HDI indicators listed are
1998 figures.

The "norm leaders" of ICC ratification evidently come from a wide array of cohorts.[78]
Western or OECD countries evidently do not monopolize the ratification process as
relativists might expect. Both Canada and Sierra Leone, for example, have ratified the
statute. While the former country sits at the very top of the ladder in terms of 1998 HDI
Ranking, Sierra Leone sits at the very bottom of the 174 countries listed in the UN index.
Curiously, although several Asian countries have signed the Rome Statute, few countries
from the region have ratified it. This finding could possibly result from implications in the
regional security architecture, the nature of each country's domestic politics, or from
relatively weak NGO or epistemic-community structures. Unfortunately, the exact reason
behind the lack of Asian participants is currently unknown and requires further analysis.

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[78] See Martha Finnemore and Kathryn Sikkink, "Norm Dynamics and Political Change," International
Organization 52, no. 4 (1998): 893-95, who define a norm leader as a state that accedes to an emergent norm
before critical mass or the tipping point occurs.

There must, however, be an ultimate reason why so many states of different socio-economic dispositions are acceding to the establishment of an international body that would effectively limit the power of their own domestic organs and ostensibly infringe on their sovereign jurisdiction. This reason can best be surmised by re-visiting the concept of legitimacy. Drawing from Holsti, Sørensen notes that "political community is based on two types of legitimacy: vertical legitimacy, the connection between state and society, the notion that the state elite and its institutions have a right to rule; and horizontal legitimacy, defining the membership and the boundaries of the political community of people."[79] Yet Sørensen's typology of vertical and horizontal legitimacy, which centres ostensibly on the domestic sphere, fails to capture the constitution of legitimacy in an international sense. I therefore posit the term *international vertical legitimacy* to describe the structure between political agents of different strata (non-state, state, and inter- or supra-state polities) that defines how legitimacy is constituted, thereby determining the range of behaviours and norms that are considered legitimate by standards of international society. State behaviour is structured in this context because the boundaries of international vertical legitimacy set the domain of acceptable conduct. Thus, international vertical legitimacy is defined as the notion of exogenous recognition by the vertical strata of international actors that a norm or behaviour is normatively acceptable. Similarly, I define *international horizontal legitimacy* as the notion of exogenous recognition by the existing club of sovereign states that a norm or behaviour is normatively acceptable. State behaviour is also induced by this structure because of the way in which the members of the club of sovereign states exert social pressure on one another.

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[79] Sørensen, "Sovereignty: Change and Continuity in a Fundamental Institution," 599.

Figure 2.1 Conceptual Model of Vertical and Horizontal Axes of Legitimacy in International Society
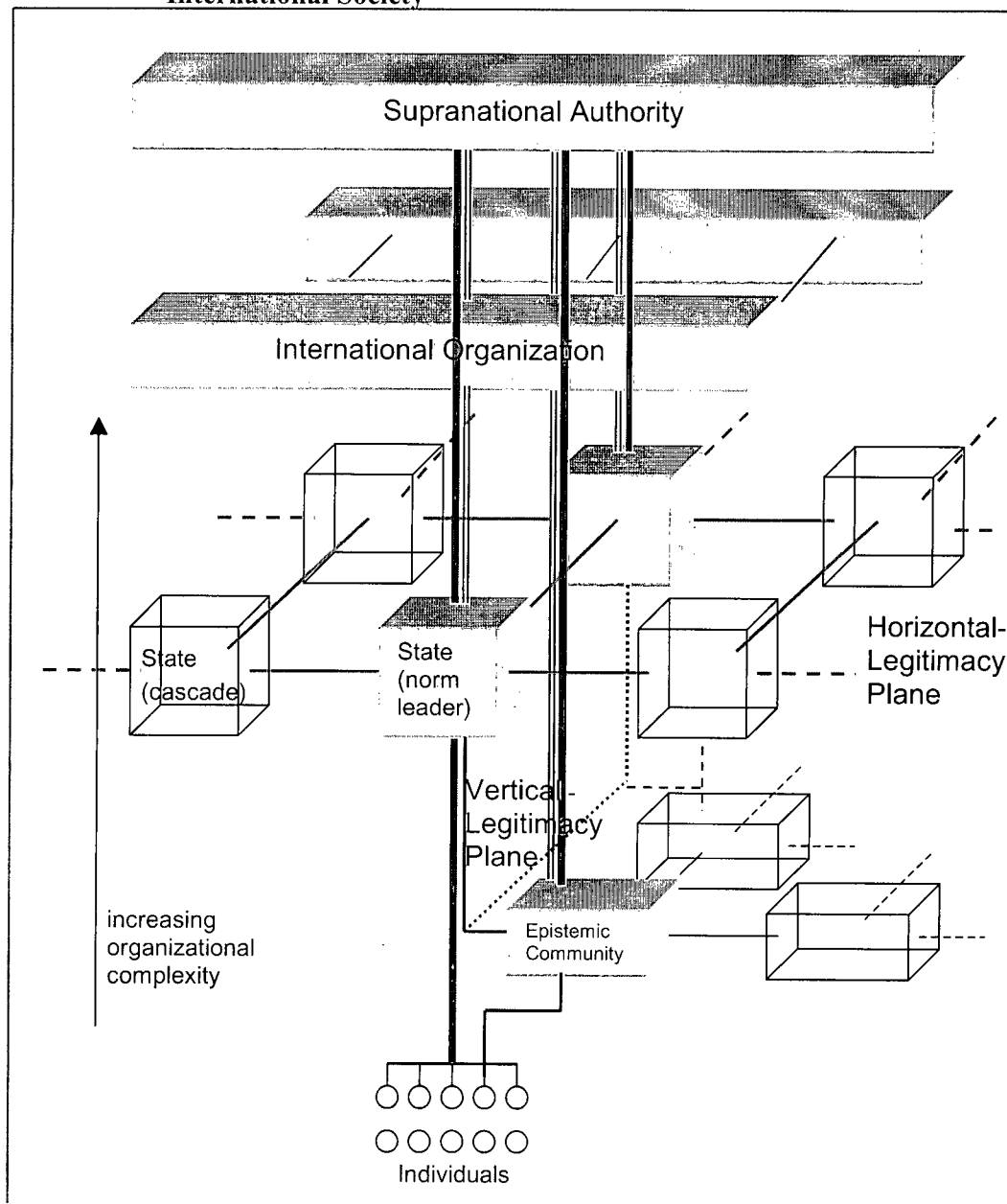
The ICC provides empirical evidence for the existence of both structures of international legitimacy. Vertically, state representatives formed an international forum under the intergovernmental auspices of the United Nations. A state representative in the UN General Assembly, for instance, put forward the request to revive work on an international

court. The Rome Statute was hence drafted with the invaluable aid of numerous non-state actors such as NGOs and epistemic communities such as the Coalition for the Establishment of an International Criminal Court and the International Commission of Jurists (ICJ). Although it is beyond the scope of this inquiry to study how NGOs and epistemic communities obtain international recognition and legitimacy as political actors, many of these polities possess the expertise, resources and desire to play an active role in this process. Inclusion of epistemic communities can also lend credence to political activities since the NGOs and professionals that comprise them tend to come from a variety of countries, perspectives and disciplines in a way that helps to ensure political diversity. Tolley's study of the ICJ, for instance, reveals that the NGO's success stems from its ability to build effective coalitions, prepare expert recommendations or drafts, create and maintain personal contacts with national leaders, and conduct administrative follow-up to amend juridical 'grey areas' and shortfalls.[80]   The ICJ has thus successfully promoted the cause of human rights at the national, regional and global levels because it has established itself as a credible, enduring, expert source on the niche of international human rights law.

Regardless, NGOs and epistemic communities are also performing the task of persuading states to both sign and ratify the statute. This process is even fuelled by the numerous international human rights treaties and covenants already in place that provide the niche or *raison d'être* from which the NGOs launch their campaigns.[81]   Once fully enacted, this process will give birth to the ICC, a supranational body divested with superior juridical authority over all international actors in the persecution of genocide, war crimes and crimes against humanity. The state is ultimately embedded at the core of this international vertical

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[80] Howard Tolley, Jr., "Popular Sovereignty and International Law: ICJ Strategies for Human Rights Standard Setting," Human Rights Quarterly 11, no. 4 (1989): 580-82.
[81] Buergenthal, "The Normative and Institutional Evolution of International Human Rights," 711.

structure as the intermediating structure. The individual and individual human rights are the focus of this process. It is important to note that this structure is not determined principally by state interaction as Spruyt would suggest. Rather, the structure is derived relationally between the various unit-types of non-state, state, and inter-state or supra-state actors. While the state remains at the core of this structure, its role is also determined by the international vertical legitimacy that dictates what it means to be a legitimate actor in international society. Thus, it is the essential argument of this chapter that global norms of human rights have a profound effect in prescribing the constitutive basis for legitimate authority, while the structure of international vertical legitimacy serves to enforce the centrality of the sovereign state—albeit a particular kind of state—within the global political hierarchy.

In many ways, the primary beneficiaries of international legitimacy structures are middle-power states rather than the traditional hegemons. First, the proposed establishment of the ICC adds to the relational power of non-hegemonic states because the Court, in treating its party states with juridical equality, serves to create a more level playing field by extending the reach of international juridical authority. The structure of the ICC therefore attempts to resolve the endemic problem of relative gains in international relations.[82] The only states to enjoy impunity will be the permanent members of the UN Security Council, with the exception of France after having ratified the Rome Statute in June 2000, which have the power to block Security Council referrals to the ICC with their veto power. In addition, the ICC's principle of complementarity, or the notion that the Court will assume jurisdiction when national courts are unable or unwilling to rule, enforces the state's centrality in the new

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[82] For a discussion of international cooperation and power-based theories, see A. M. Weisburd, "Implications of International Relations Theory for the International Law of Human Rights," <u>Columbia Journal of International Law</u> 38, no. 1 (1999): 94-96.

international vertical hierarchy.[83] In effect, the ICC will establish a framework for both the procedural and substantive limitations on the legitimate exercise of power in international juridical spheres of influence.[84] Hegemonic powers have evidently been extremely slow in acknowledging the potential benefits of the ICC for international society.[85] Not surprisingly, no 'pariah' states have signed or ratified the Rome Statue, while France remains the only nuclear-power state to have ratified the statute.[86] Thus, the development of the ICC has not been induced by superpower interest, but *despite* superpower disapproval.

Second, international legitimacy can provide a constitutive basis for a state's acceptance in international society that protects them from unwarranted foreign interference and gives credence to their pleas for foreign assistance.[87] As Finnemore and Sikkink note, "international legitimation is important insofar as it reflects back on a government's domestic basis of legitimation and consent and thus ultimately on its ability to stay in power."[88] Weak states commonly lack legitimacy because they may encounter strong domestic opposition that prevents them from securing internal legitimacy, or they may fall under international scrutiny after fraudulent elections or political disruptions that are marked by systemic state violence. Not surprisingly, states such as Sierra Leone and Tajikistan have thus been quite forward in ratifying the Rome Statute although they lack the political machinery such as accountability, political stability, or rule of law to fulfill even basic juridical functions. Although their commitment to the ICC may be questionable, their ratification of the Rome

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[83] Arsanjani, "Developments in International Criminal Law," 24-25.

[84] See Roth, Governmental Illegitimacy in International Law, 55-56.

[85] See David J. Scheffer, "The United States and the International Criminal Court," American Journal of International Law 93, no. 1 (1999): 12-22; also see Aryeh Neier, "Waiting for Justice: The United States and the International Criminal Court," World Policy Journal 15, no. 3 (1998).

[86] See UN, "The Statute of the International Criminal Court: Ratification Status."

[87] Also see Kalevi J. Holsti, "War, Peace, and the State of the State," International Political Science Review 16, no. 4 (1995): 332.

[88] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 903.

Statute nonetheless helps to further the cause of international justice by bringing the ICC one step closer to existence while demonstrating that party-states can in fact come from a host of dispositions.

Tangible commitments or movements toward democracy serve a similar function in collective recognition.[89] Most of the former Eastern bloc states, for instance, have made significant shifts toward the liberal values of Western Europe.   While the strategic importance of the Third World state or quasi-state has evaporated with the end of Cold-War polarity, such states need new means to affirm their international stature.[90] In many ways, these states are now searching for their post-Cold War identities. In such a context, respect for global norms of human rights increasingly constitutes what it means to be a good international citizen.[91]   Compliance with internationally recognized norms would subsequently demonstrate to the international community that a state has adapted to the global social environment and 'belongs.'[92] These observations provide evidence for Wendt and Duvall's claim that "the powers and interests of state actors on a given level of international structuration—in a given international institution—are constituted by, and are therefore inseparable from, their participation and position in that institution."[93]

Pertinent for the analysis of the legitimation of post-authoritarian regimes, Roth uncovers a significant observation regarding the relationship between legitimacy and power. He cites, for instance, that "A regime's need to establish legitimacy is rooted not in

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[89] Schachter, "The Decline of the Nation-State and its Implications for International Law," 23.
[90] See Reisman, "Sovereignty and Human Rights in Contemporary International Law," 863; and Krasner, Sovereignty: Organized Hypocrisy, 121; and Christopher Clapham, "Sovereignty and the Third World State," Political Studies 47, Special Issue (1999): 537.
[91] Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms," 249; also see Jackson, The Global Covenant, 125.
[92] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 903-6.
[93] Alexander Wendt and Raymond Duvall, "Institutions and International Order," in Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s, ed. James N. Rosenau and Ernst-Otto Czempel (Lexington, MA: Lexington Books, 1989), 60-61.

aspirational norms, but in the practical difficulties of exercising power. Running a political order requires securing varying degrees of cooperation, obedience and acquiescence from those who could otherwise frustrate the scheme."[94] Legitimacy thus becomes a social power resource. Much of the groundwork for the proliferation of human rights in the latter half of the twentieth century therefore stems not only from the tragedies of war and genocide witnessed during the Second World War, but also from the processes of decolonisation and the demise of the Soviet bloc as regimes scrambled to solidify both internal and external legitimacy, and hence the means to power. Buzan thus adds that:

> The ending of the cold war removed the obscuring distraction of superpower rivalry, leaving a clearer picture of the postcolonial global international society constructed in terms of concentric circles of commitment. A small number of pariah states are partially excluded by the refusal of many others to accord them diplomatic recognition. A few states such as North Korea and Myanmar (Burma) place themselves on the outer fringes of international society by accepting little more than the basics of diplomatic recognition and exchange. In the middle circles one finds states such as Argentina, China, and India that seek to preserve high levels of independence and select quite carefully what norms, rules, and institutions they accept and what they reject. In the core one finds the main generator of and support for the global network of regimes.[95]

This statement gives credence to the idea an international-horizontal-legitimacy structure in which the states of international society vie for the social power to sit within the innermost circles. True, states also vie for material power and capabilities. But states are not merely billiard balls void of social histories, identities or goals. There is thus an inherent *social hierarchy* within international society that warrants more careful analysis of social power resources and how social power is both acquired and wielded. Such analysis forces a serious look at the nature of international organization along the hierarchy-anarchy debate.

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[94] Roth, <u>Governmental Illegitimacy in International Law</u>, 41.
[95] Buzan, "From International System to International Society," 349.

The Anarchy Problematique, International Organization and Punctuated Equilibrium

Kenneth Waltz asserts that international order can be dichotomized into either anarchy or hierarchy—it is one or the other. Although he recognizes that "All societies are mixed," "organized segmentally or hierarchically in greater or lesser degrees" by the social division of labour between unit-types, he rejects classifying hierarchy-anarchy along a continuum or increasing the number of possible categories because "that would be to move away from a theory claiming explanatory power to a less theoretical system promising greater descriptive accuracy."[96] The case of the ICC, however, presents strong justification to re-evaluate Waltz's dichotomy. Not only does the ICC suggest that hierarchy exists amidst anarchy according to the social division of labour that Waltz describes, but the principles of self-help and survival-maximization fail to *explain* why so many states of different stature are acceding to the Rome Statute. In other words, if we assume that the present system is anarchic, how do we explain why any rational, self-interested sovereign political entity would seek to establish a supranational institution which would effectively enforce constraints on the exercise of domestic autonomy? How do we explain non-self-interested or morally guided behaviour at all? A hierarchy-anarchy dichotomy fails to explain or describe contemporary international organization.

Hierarchy-anarchy as an over-simplistic dichotomy arises from Waltz's account of political structures. To Waltz, international structure is defined by: 1) the ordering principle of the system; 2) the specification of functions of differentiated units; and, 3) the distribution of capabilities across units. He argues that the international system is an anarchic one that is comprised of functionally undifferentiated states, which vary only in their abilities to carry out those functions. For the most part, Waltz's theory of international politics provides a

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[96] Kenneth N. Waltz, Theory of International Politics (New York: McGraw Hill, 1979), 114-15.

useful framework for conceptual analysis. Yet there are several problems with Waltz's idea

of structure that need to be addressed. Waltz purposely omits agency from his theory of

international politics because he argues that unit-level analysis is inherently reductionist.[97]

Wendt counters, however, "One problem with Waltz's formulation of the unit-level/structural

distinction, therefore, is that it 'reifies' structure in the sense of separating it from the agents

and practices by which it is produced and reproduced, which makes it difficult to assess the

extent to which the effects of structure are sensitive to variation in the properties or

interactions of units."[98] Wendt further argues that "From the perspective of international

relations theory, the most important weakness of neorealism's individualist approach to the

agent-structure problem is that it fails to provide a basis for developing an explicit theory of

the state. . . . it neglects the irreducible social content of many individual-level predicates."[99]

In other words, Waltz ignores how structures are socially or ideationally created in treating

international organization structures as ontologically prime.[100] Unit-level analysis thus

proves necessary in some instances to explain state behaviour that is anomalous to his

structural account. Thus, this inquiry essentially adopts Wendt's idea of structure, which is

used to define the material *and* ideational relations between actors that shapes political

behaviour.

Thus, the main problem with Waltz's three determinants of structure is found in the

latter one that describes the distribution of capabilities. Capabilities are only part of the

equation in explaining international structure. In arguing that "Power is estimated by

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[97] Waltz, Theory of International Politics, 60-67.

[98] Alexander Wendt, Social Theory of International Politics (Cambridge: Cambridge University Press, 1999), 146.

[99] Alexander Wendt, "The Agent-Structure Problem in International Relations Theory" International Organization 41, no. 3 (1987): 342.

[100] Ibid.

comparing the capabilities of a number of units," Waltz ignores the phenomenon of social

power, which allows actors to make others do something that they would not normally do

without resorting to the material resources that are implicit in Waltz's argument. Estimates

are always based on social presuppositions not only about capabilities, but also about the

social intentions of others.   Waltz therefore explicitly ignores "ideology, form of

government, peacefulness, bellicosity, or whatever" from his analysis of structure despite the

influence that such characteristics have on shaping political behaviour.   The ideological

rivalry of the Cold War, for instance, substantiates this claim. Yet the problem with this third

postulate goes deeper. Waltz states that "Structures are defined, third, by the distribution of

capabilities across units," by which power is estimated, such that "Changes in this

distribution are changes of system whether the system be an anarchic or a hierarchic one."[101]

But since the estimation of power is a social phenomenon, perceived changes in the

distribution of power could easily lead to "changes of system." Such a perceived change in

the perceived distribution of power occurred following the end of the ideological polarity of

the Cold War. Thus, one could deduce from Waltz's postulates that the present era marks a

change of system from Cold War era.

More aptly, international order should be seen as existing on a hierarchy-anarchy

continuum. Wendt proposes international order is structured, not merely by the absence of

authority or centralized authority, but by *de*centralized authority. Drawing from the notion of

Kantian anarchy, de facto rule of law "limits what states can legitimately do to advance their

interests. . . . And since legitimate constraint on power is the basis for 'authority,' this raises

the intriguing possibility that what the Kantian culture creates is *de*centralized authority—an

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[101] Waltz, Theory of International Politics, 101.

'internationalization of political authority' in Ruggie's words."[102] As Wendt further argues, decentralized authority suggests that hierarchy-anarchy is constituted not only by the centralization of power, but also by the "the degree of authority enjoyed by the system's norms."[103] Decentralized authority according to a hierarchy-anarchy continuum thus gives credence to a framework of international society comprised of implicit structures of international hierarchies. What IR currently lacks are comprehensive studies of the degree of authority enjoyed by international norms.

A starting point would be to problematize the degree of legitimate authority possessed by states. The concept of sovereignty remains severely underproblematized precisely because the constitution of legitimate authority in international society is largely ignored. This is strange since sovereignty is entails "supreme legitimate authority within a territory."[104] And as Barkin adds, "External sovereignty refers to the extent to which a state is recognized by other states as the legitimate authority within its borders."[105] Although Caporaso is correct in noting that authority, which he defines as the recognized right to rule, is dependent not only on legitimacy but also on coercion, legitimate authority serves as the most socially acceptable basis of rule within the international society of states.[106] The acquisition of legitimate authority, for instance, was the concern of such early political philosophers as Jean Bodin and Thomas Hobbes when writing near the inception of the Westphalian order.[107] The question of legitimate authority must therefore be revived in the post-Cold War era.

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[102] Wendt, Social Theory of International Politics, 146.
[103] Ibid., 308.
[104] Philpott, "Sovereignty: An Introduction and Brief History," 356.
[105] Barkin, "Resilience of the State," 42.
[106] Caporaso, "Changes in the Westphalian Order," 8-9.
[107] Krasner, "Sovereignty," 21.

Significant international political changes followed the demise of the Cold War including new arrangements of actors and rules, and a questioning of the basis of constitutional authority.[108] According to Taylor, there is evidence of some reformulation amongst the various members of international society concerning how sovereignty itself is constituted.[109] There is an obvious disparity, for instance, between having the means to rule and the right to rule. As Sørensen observes, "the modern state is both strong and weak: strong in regulative, control, and surveillance capacities; weak in that it depends on the legitimacy stemming from popular support."[110] The sovereign state thus lacks autonomy over its own legitimation in international society. Since state sovereignty has always been subject to normative constraints, states have always been constrained by the need for legitimacy.[111] As such, "States' need for certain institutional structures to legitimate themselves can act as a significant constraint on states' final authority over their internal affairs."[112] Legitimacy must therefore be perceived as a necessary condition for having the 'right to rule.'

Ultimately, Barkin may be correct in his assertion that "the internationalisation of human rights can be seen as an evolution of the constitution of sovereignty" because of the way in which adherence to and the protection of human rights can help to secure international legitimacy.[113] Global norms of human rights have thus begun to "replace territorial legitimation as a defining feature of the constitution of legitimate sovereignty in

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[108] Philpott, "Westphalia, Authority, and International Society," 566.
[109] Taylor, "The United Nations in the 1990s," 558.
[110] Georg Sørensen, "Sovereignty: Change and Continuity in a Fundamental Institution," Political Studies 47, Special Issue (1999): 599.
[111] Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms," 230.
[112] Ibid., 232.
[113] Ibid., 229.

international relations."[114] In effect, contemporary states are viewed increasingly as political

entities that possess not only sovereign rights, but also sovereign responsibilities. An actor's

maintenance of international legitimacy requires that party states adhere to the generally

accepted norms of international justice.[115] As Ryan postulates, "A state which turns against

its population either militarily or through the systematic deprivation of basic human rights

may forfeit its claim to both domestic and international legitimacy."[116] Human rights are

therefore an increasingly constitutive component of sovereign statehood within the

international society of states. To be a full member of international society mandates that

club rules be respected.

These findings point to the fact that international organization does not proceed in a

unilinear fashion.[117] Following an evolutionary model, several forms or institutional

arrangements can evolve and coexist at the same time. Particular evolutionary forms are

eventually selected according to environmental necessity. Spruyt asserts that this selection

process occurs predominantly through phases of punctuated equilibrium:

> At particular critical junctures, the environmental conditions change to such an extent
> that a reordering of the constitutive units of the international system takes place. . . . It
> involves more than simply the reordering of material interests. Individuals put
> forward rival perspectives on how social arrangements should be structured and what
> should count as legitimate order. Once such change has occurred, a period of relative
> stability sets in. Institutional arrangements follow the paths that were laid out in
> those times of reordering. Once they have established a particular form of
> organization, political actors and social groups are reluctant to surrender their
> positions. Change will only occur if contenders' relative position becomes strong
> enough to allow the formation of new political coalitions that can effectively
> challenge the old order.[118]

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[114] Ibid., 246.

[115] Barkin and Cronin, "The Rules of Sovereignty," 113.

[116] Ryan, "Sovereignty, Intervention and the Law," 87.

[117] For a definition of unilinearity, see Hendrik Spruyt, The Sovereign State and Its Competitors: An Analysis of Systems Change (Princeton: Princeton University Press, 1994), 4 and 18.

[118] Spruyt, The Sovereign State and Its Competitors, 186-87.

As is commonly noted, war was essential in the making of the state. It served as the punctuated equilibrium that solidified the state as the central political actor of international politics around the world. Similarly, the tragic instances of genocide and other mass atrocities of human wrongs, first during World War II and most recently in the aftermath of the Cold War, are serving as the punctuated equilibriums that give impetus to the global human rights regime. While some may point to the ending of wars as the moment that allows a temporary flare for discussions on justice, I contend that it is actually the atrocities and contradictions of war that awaken the need for greater rights and freedoms.[119] Though the creation of a permanent international criminal court was not successful in the ruins of the Second World War, the need for seeds for establishing the court have finally come to fruition with the contradictions that existed during the Cold War as well as the genocides, war crimes and crimes against humanity that have ridden the period after its demise. Any serious speculation on the future of international political organization must therefore include global norms of human rights in its analysis because of the critical effects of norms on international structure.

Conclusion

Global norms of human rights, in gaining credence as a constitutive basis of legitimate authority in world politics, creates a web of international vertical and horizontal legitimacy that serves to enforce the centrality of the state within a hierarchy of actors. Fundamental concepts in international relations such as sovereignty, legitimacy, authority, and hierarchy-anarchy, must guard against unilinearity, or dichotomy. Numerous

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[119] Also see Kathryn Sikkink, "The Evolution of International Human Rights: Visions Seen" <u>Political Science Quarterly</u> 114, no. 3 (1999): 526.

international regimes effectively create hierarchical webs that structure social relations both within and between the various unit-types. Most notably, social structures are determined not only by material resources and capabilities, but also by social power resources. Legitimacy is one such example. International order is therefore characterized by a hierarchy-anarchy continuum in which authority can be either centralized or decentralized. International human rights law, for instance, can be either decentralized through customary or treaty law or centralized through supranational organizations such as the ICC.

Through decentralized authority structures, adherence to and the protection of global norms of human rights are increasingly a means to acquire legitimacy in international society, and hence the means to social power. Middle-power states and even post-conflict or post-authoritarian states have acceded to the Rome Statute and many other international human rights documents precisely because of how such social structures determine legitimate conduct. Social power can then be used as protection against the undue influence of foreign hegemons or to simply persuade international society that one is a deserving member of the club of sovereign states and all the rights and privileges therein. Finnemore and Sikkink note, that although states may enter such agreements for initially instrumental reasons, the norms that the agreements embody are eventually internalized over time. Krasner also provides insight into the process in stating that "conventions, even though they are entered into voluntarily and even though they have no provisions for enforcement, can alter domestic authority structures by introducing external sources of legitimacy."[120] This progression will be elaborated upon in the following chapter. Regardless, such trends ultimately point to the fact that organizations, norms and institutions are all subject to change and the processes of social evolution.

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[120] Krasner, Organized Hypocrisy, 121.

Global norms of human rights and state sovereignty norms have weathered strong challenges over the course of their lifetimes and are now conjoined in a dynamic relationship of mutual constitution. Just as the 1648 Treaties of Westphalia marked a watershed in global political organization, such an observation—now virtually uncontested—stands true only in hindsight.[121] In other words, it was far from obvious in the mid seventeenth century that the modern, sovereign state would eventually come to be a universal form of political organization because the process of solidifying the Westphalian arrangement took decades if not centuries. The same can be argued for human rights. While it may not be obvious that the 1948 Universal Declaration marks a watershed of any sort at the moment, it is too soon to dismiss the Declaration in passing. Furthermore, the lack of empirical evidence to validate the significant of the human rights regime does not dismiss the regime's importance given their relative novelty as a social enterprise. Nor does the international perpetuation of human wrongs destroy the arguments made here. If a rule were not periodically broken, the rule need not exist in the first place. Simply because a crime is committed, for instance, does not invalidate the existence or the importance of the institutions which uphold the social norms stigmatizing the crime.[122] Global norms of human rights are truly significant for both the normative and institutional foundations of world order.

In short, both sovereignty and human rights are here to stay. Although international relations has still to develop a framework of when acts of 'human wrongs' forfeit a state's claim to non-intervention,[123] sovereignty and human rights continue to evolve and structure

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[121] Geoffrey Stern, The Structure of International Society: An Introduction to the Study of International Relations, 2nd edition (London: Pinter, 2000), 75.

[122] Hedley Bull, The Anarchical Society: A Study of Order in World Politics, 2nd edition, forward by Stanley Hoffman (New York: Columbia University Press, 1977), 131-34.

[123] Nicholas J. Wheeler and Tim Dunne, "Hedley Bull and the Idea of a Universal Moral Community," in International Society and the Development of International Relations Theory, ed. B. A. Roberson (London: Pinter, 1998), 51.

international order because of their efficacy as social institutions. Sovereignty empowers a society of individuals to organize themselves without undue interference from foreign influences. Human rights empower the individual against oppression by society. Both are fundamental components of contemporary political organization which can only be understood meaningfully in relation to the other. To conclude, a metaphor inspired by Hedley Bull: although order in international society may indeed by depicted by the fashion in which a set of books are arranged on a shelf, the more important aspect of this portrait actually concerns the nature of the books themselves.[124] For it is the nature of the books which captures the more truthful representation of the maturity and collective knowledge of the system, rather than the material entity which is used to store the material knowledge-containers. Thus, as the system matures, so too will the collection and organization of the books themselves. One cannot help but ponder how the future might require a complete remodelling, redesign or renovation of the shelf upon which the selection of books rest. Ultimately, the discourse of human rights is therefore a better reflection of the maturity of international society than the arrangement of sovereign states, which itself merely serves as an organizing principle for those conceptions and entities that the world's collective actors consider to be of true importance.

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[124] Bull, The Anarchical Society, 3.

The test of our progress is not whether we add more to the
abundance of those who have much; it is whether we
provide enough for those who have too little.
>   —Franklin Delano Roosevelt

People are the common denominator of progress.
So . . . no improvement is possible with unimproved people,
and advance is certain when people are liberated and
educated.
>   —John Kenneth Galbraith

— Chapter Three —

Human Rights and Norm Entrepreneurship:
Thinking of Progress in a World of States

Human rights have become a permanent fixture in the political landscape of international affairs.[1] Yet how the "game of common humanity"[2] is played—its social rules and the international actors that comprise the game—remains a poorly understood domain of international theory. While the previous chapter examined global norms of human rights structure international behaviour, this chapter provides insight into how and by whom norm change is induced in the first place. As Stammers notes, "dominant discourses from both proponents and opponents of human rights are not analytically equipped to grasp the way in which ideas and practices in respect of human rights have been socially constructed in the context of social movement challenges to extant relations and structure of power."[3] Subsequently, the process by which social agents confront, challenge, and seek to alter the existing structures of power presently remains beyond the grasp IR literature. Who are the agents that are driving the process of norm change? What are their motivations and goals? What explains their success or failure? Although Finnemore and Sikkink may be correct in saying that norms "are actively built by agents having strong notions about appropriate or

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[1] David R. Mapel and Terry Nardin, "Convergence and Divergence in International Ethics," in <u>Traditions of International Ethics</u>, ed. David R. Mapel and Terry Nardin (Cambridge: Cambridge University Press, 1992), 318.

[2] Ken Booth, "Human Wrongs and International Relations," <u>International Affairs</u> 71, no. 1 (1995): 120; also see Mark R. Amstutz, <u>International Ethics: Concepts, Theories, and Cases in Global Politics</u> (Lanham, MD: Rowman & Littlefield Publishers, 1999), 83.

[3] Neil Stammers, "Social Movements and the Social Construction of Human Rights," <u>Human Rights Quarterly</u> 21, no. 4 (1999): 981.

desirable behavior in their community,"[4] how exactly does the "power of principles"[5] catalyze change in international political behaviour?

These questions essentially test the existing boundaries of international relations theory. Empirically, the sheer power of human rights in effecting substantive global change directly contradicts the neo-realist's state-centric emphasis on power and anarchy as well as the material, micro-economic rationale of neo-liberal institutionalism.[6] The fundamental problem with both theories is that they are premised on the false assumption that identities and interests are exogenous, given, and constant.[7] Constructivists have thus sought to address these shortcomings. As Ruggie states:

> Constructivists seek to push the empirical and explanatory domains of international relations theory beyond the analytical confines of neo-realism and neo-liberal institutionalism in all directions: by problematizing states' identities and interests; by broadening the array of ideational factors that affect international outcomes; by introducing the logically prior constitutive rules alongside regulative rules; and by including transformation as a normal feature of international politics that systemic theory should encompass even if its empirical occurrence is episodic and moves on a different time line from everyday life.[8]

Checkel adds that constructivism is "an approach to social inquiry based on two assumption: (1) the environment in which agents/states take action is social as well as material; and (2) this setting can provide agents/states with understandings of their interests (it can 'constitute' them)."[9] Moreover, "From a constructivist perspective, international structure is determined

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[4] Martha Finnemore and Kathryn Sikkink, "International Norms Dynamics and Political Change," International Organization 52, no. 4 (1998): 896.
[5] Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in The Power of Human Rights: International Norms and Domestic Change, ed. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 9.
[6] See Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," International Organization 52, no. 3 (1998): 613-14.
[7] John Gerard Ruggie, Constructing the World Polity: Essays on International Institutionalization (New York: Routledge, 1998), 13-14.
[8] Ibid., 27.
[9] Jeffrey T. Checkel, "The Constructivist Turn in International Relations Theory," World Politics 50, no. 2 (1998): 325-26.

by the international distribution of ideas. Shared ideas, expectations, and beliefs about appropriate behavior are what give the world structure, order and stability."[10] Subsequent constructivist studies have shown, from a body growing body of empirical evidence, that states' identities and international norms shape their interests and behaviour.[11] Finnemore and Sikkink, for instance, have done initial work in this issue area, having developed a theory of norm life cycles. They argue that norm entrepreneurs are essential in inducing political change through a process of strategic social construction.[12] Similarly, Richard Price has shown how norm entrepreneurs have sought to socialize states into accepting and practicing international standards of behaviour.[13] Constructivist accounts for norm formation thus offer a promising research avenue by which to explore the power of international norms in the post-Cold War era.

I contend, however, that the present constructivist literature on norm change is incomplete on two grounds. First, it generally denies the importance of power in structuring behavioural outcomes. As a result, both Price and Finnemore and Sikkink have placed an erroneous overemphasis on the role of the ideational and moral persuasion in inducing international norm change. Second, constructivists need to be more explicit in framing world order as an international society rather than an international system. Though Risse and Sikkink aptly note that the processes of norm socialization presupposes the existence of an international society, constructivists have thus far failed to fully realize the implications of an international society framework.[14] Consequently, constructivists have failed to produce a truly systemic theory of norm change. Finnemore and Sikkink, for instance, concentrating

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[10] Finnemore and Sikkink, , "International Norm Dynamics and Political Change," 894.
[11] Ruggie, Constructing the World Polity, 13-14.
[12] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 910.
[13] Price, "Reversing the Gun Sights," 638.
[14] Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices," 11.

mainly on a dichotomous interplay between domestic and international actors. By implication of the structures of international legitimacy described in the previous chapter, however, the political web of international society is far more complex than constructivists currently admit. And although Finnemore and Sikkink recognize that the completion of norm life cycles is not an inevitable process, constructivists nonetheless fall victim to a singular analysis of only those norms which are successful while ignoring norms that are either unsuccessful of simply ethically deplorable.[15] A stronger emphasis on social relations structured by power and international society is therefore needed to strengthen the advances of constructivism in IR theory.

This chapter will proceed by first discussing the constructivist groundwork on norm entrepreneurship developed by Price, Finnemore, Sikkink and others. Their theories of socialization and norm life cycles will be discussed in detail. Second, the two shortcomings of the present constructivist literature will be explored. Though constructivism provides a substantial contribution to the study of norms in international relations, further advances are hindered by a failure to adequately incorporate power and an international society approach in its analysis. Other aspects of the constructivist research agenda that merit further analysis will also be highlighted. Third, the implications of these findings will be discussed with regard to the issue of progress in international relations. Technological developments such as the Internet, for instance, have opened the range of possibility and political manoeuvre. Ultimately, it is hoped that the conceptual developments outlined in this chapter, as well as previous ones, will lend itself to a greater understanding of how global norms of human rights structure the social relations of actors in international society.

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[15] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 895.

Norm Entrepreneurs and Political Change

The study of norm change has now become a common research area in international relations. Social agents are increasingly being recognized as the main generators of norm change. However, the process by which norm entrepreneurs—defined by Florini as "an individual or organization that sets out to change the behavior of others"[16]—effect international political outcomes remains ambiguous. Others have attempted to clarify this process in developing a more rigorous definition of norm entrepreneurs since an agent could seek to induce behavioural change in others without having the intention or effect of producing *norm* change. More specifically, norm entrepreneurs "seek to change the utility functions of other players to reflect some new normative commitment."[17] Norm entrepreneurs—or "transnational moral entrepreneurs" in Nadelmann's terminology— "mobilize popular opinion and political support both within their host country and abroad; they stimulate and assist in the creation of like-minded organization in other countries; and they play a significant role in elevating their objective beyond its identification with the national interests of their government."[18] Norm entrepreneurs "attempt to convince a critical mass of states (norm leaders) to embrace new norms" and "are critical for norm emergence because they call attention to issues or even 'create' issues by using language that names, interprets, and dramatizes them."[19]

Although norm entrepreneurship can be engaged by a host of actors, international nongovernmental organizations (INGOs), epistemic communities or transnational civil society are often at the forefront of leading calls for norm change. According to Price,

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[16] Ann Florini, "The Evolution of International Norms," International Studies Quarterly 40, no. 3 (1996): 375.
[17] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 914.
[18] Ethan A. Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society," International Organization 44, no. 4 (1990): 482.
[19] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 895; Ibid., 897.

transnational refers to "interactions across national boundaries where at least one actor is a nonstate agent," while transnational civil society is used to denote "a set of interactions among an imagined community to shape collective life that are not confined to the territorial and institutional spaces of states."[20] To scholars such as R. J. Vincent, the level and vibrancy of transnational civil society is the best indicator for the expression of a world society based on common humanity.[21] Yet identifying the role and function of a norm entrepreneur is only the first step in explaining how, when and why norm change occurs. As such, "Norm entrepreneurship is usually necessary, but it is never sufficient" for explaining the process of norm change as a whole.[22]

Finnemore and Sikkink thus provide a useful framework of norm life cycles. Successful norm life cycles essentially consist of three successive stages: norm emergence, norm cascade and internalization (see Figure 3.1 below). The introduction and contestation of new normative ideas into the existing political arena is the subject of the first stage. The transition from the first and second stage is invariably punctuated by a threshold or tipping point that occurs "After norm entrepreneurs have persuaded a critical mass of states to become norm leaders and adopt new norms."[23] In the sense, norm leaders are defined as those states that accede to an emergent norm before tipping or critical mass occurs. The second stage is characterized by a norm cascade in which the tipping event is followed by norm imitation or bandwagonning. Internalization follows imitation, during which the norm

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[20] Price, "Reversing the Gun Sights," 615; compare with the definition of 'world civil society' offered by Gordon A. Christenson, "World Civil Society and the International Rule of Law," Human Rights Quarterly 19, no. 4 (1997): 731.
[21] R. J. Vincent, Human Rights and International Relations (Cambridge: Cambridge University Press, 1986), 102.
[22] Florini, "The Evolution of International Norms," 375.
[23] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 901.

becomes part of the actor's identity rather than a mere instrument for bargaining or a means to deflect political criticism.

Figure 3.1 Finnemore and Sikkink's Norm Life Cycle
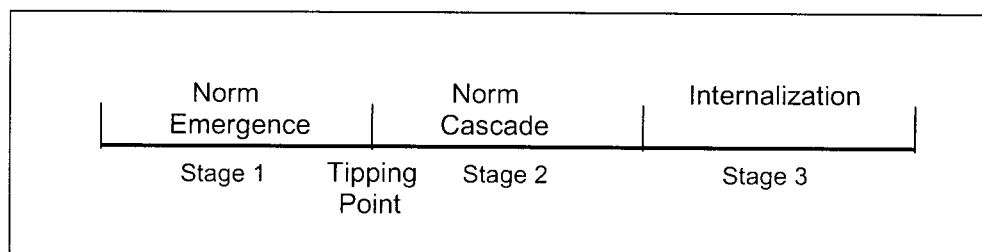
Norm Emergence		Norm Cascade		Internalization	
Stage 1	Tipping Point	Stage 2		Stage 3	

Excerpted from Finnemore and Sikkink, "*International Norm Dynamics and Political Change*," 896.

Norm emergence can occur for a variety of reasons. As noted in previous chapters, a sustained period of social contradiction or catastrophe often creates a viable environment for political and normative contestation to occur. For instance, the human catastrophes of World War II and the social contradictions of the Cold War created much of the international normative momentum for human rights treaties such as the 1948 Universal Declaration of Human Rights or the 1997 Statute of Rome. The critical question for IR theory, however, lies in uncovering the secret behind tipping points.

As Finnemore and Sikkink note, "Although scholars have provided convincing quantitative empirical support for the idea of a norm tipping point and norm cascades, they have not yet provided a theoretical account for why norm tipping occurs, nor criteria for specifying a priori where, when, and how we would expect it."[24] They therefore propose two general assertions about when a critical mass of norm leaders induces norm tipping:

> First, although it is not possible to predict exactly how many states must accept a norm to 'tip' the process, because states are not equal when it comes to normative weight, empirical studies suggest that norm tipping rarely occurs before one-third of the total states in the system adopt the norm. . . . It also matters which states adopt the

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[24] Ibid.

norm.   Some states are critical to a norm's adoption; others are less so.   What constitutes a 'critical state' will vary from issue to issue, but one criterion is that critical states are those without which the achievement of the substantive norm goal is compromised.[25]

Thus, for Finnemore and Sikkink, critical mass and critical states are imperative for tipping to occur.   One third of the total states in the system, roughly sixty states, is thus the benchmark that was reached before a cascade effect occurred with the Ottawa Treaty on the ban of anti-personnel land mines, and is also the figure needed for the International Criminal Court to enter into effect.

Moreover, constructivists argue that the norm life cycle is structured by processes of socialization, defined by Risse and Sikkink as the "process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behavior which then lead to changes in identities, interests, and behavior" (see Figure 3.2 below).[26]

Figure 3.2 Finnemore and Sikkink's Stages of Norms

	Stage 1 Norm Emergence	Stage 2 Norm Cascade	Stage 3 Internalization
Actors	Norm entrepreneurs with organization platforms	States, international organizations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
Dominant Mechanisms	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Excerpted from Finnemore and Sikkink, "*International Norm Dynamics and Political Change*," 898.

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[25] Ibid.

[26] Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices," 11.

Each stage is characterized by specific actors, motives and dominant mechanisms. Norm entrepreneurs acting on ideational motives seek to influence behaviour through persuasion during the first stage. States and international organizations will subsequently seek to legitimacy, reputation and esteem, through the processes of socialization during the cascade stage. Finally, domestic institutions will internalize the norm such that it becomes part of the state's identity.

Since the tipping point and the subsequent processes of socialization are critical for the success of norm entrepreneurship, Price and other constructivists have concentrated efforts on uncovering the factors that help actors induce norm change. Price thus identifies four pedagogical techniques commonly employed by the norm entrepreneur: 1) generating issues by disseminating information; 2) establishing networks to generate broad support, thereby bringing state and society together; 3) grafting—i.e. a "combination of active, manipulative, persuasion and the contingency of genealogical heritage of norm germination"—a new norm onto existing norms; and, (4) through a transnational Socratic method whereby civil society calls upon states to justify their positions, reversing the burden of proof and "thereby legitimizing political space for change."[27] The processes by which norm entrepreneurs have generated issues through discourse and the media, as well as their ability to form highly effectively transnational advocacy networks across the globe, is well documented. Unfortunately, the latter two processes are not.

Grafting and burden-of-proof are therefore highly innovative concepts in international theory that advance the disciplinary understanding of international norm dynamics. As stated by Finnemore and Sikkink, "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and

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[27] Price, "Reversing the Gun Sights," 617.

perceptions of interest."[28] The relative success or failure of an emergent norm consequently

depends on its ability to 'graft' onto or resonate with the existing norm structures. The

delegitimization of anti-personnel land mines, for instance, "hinged crucially on the grafting

of moral opprobrium from other delegitimized practices of warfare."[29] Similarly, burden-of-

proof or argumentative rationality[30] repoliticizes "areas of activity that [have] been all-too-

well monopolized by states"[31] by forcing state authorities to justify their positions as socially

acceptable members of international society. Argumentative rationality maintains that

"treaty rules regulate conduct, not because of the threat of sanctions for violation—which are

in fact uncommon—but rather through a process of discourse in which states must justify

actions arguably governed by a treaty in terms of the rules of the treaty."[32] Thus, states that

initially accede to international norms for the mere sake of instrumentality—whether

informally in rhetoric or formally in treaties—often find themselves caught in the 'hypocrisy

trap.' As Müllerson describes, "in the domain of human rights—where morality plays an

important role and governments seldom want to be seen as outrightly immoral—some

governments, which pay only lipservice to human rights or which try to use the issue as an

instrument against their political adversaries, may find at the end of the day that their

behaviour has nonetheless led to the emergence of certain norms and even practices which

may really start to affect governments' policy. International human rights standards are not

just pieces of paper. They have the capacity to create expectations on the part of individuals

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[28] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 897.
[29] Price, "Reversing the Gun Sights," 628.
[30] For a description of argumentative rationality, see Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices," 12-13.
[31] Price, "Reversing the Gun Sights," 638.
[32] A. M. Weisburd, "Implications of International Relations Theory for the International Law of Human Rights," Columbia Journal of International Law 38, no. 1 (1999): 100.

and peoples as well as on the part of other governments—expectations which they may find difficult to resist."[33]

Constructivist scholars have therefore laid the foundations for studying international norm change. The concepts of norm life cycles and socialization—particularly with under-analyzed aspects such as grafting and argumentative rationality—provide important insights into the relationship between international norms and political change. Specifically, a constructivist framework underscores the critical nature of ideational factors in norm emergence and identity-based socialization processes in norm institutionalization. While constructivism presents a significant contribution to international relations theory, the following section explores a few deficiencies of the research project which, once addressed, could engender future advances toward the construction of an empirically-based, middle-range theory of international norms dynamics.

Constructivism: Incorporating Power and International Society

Present constructivist literature suffers from two major, interrelated problems: it fails to adequately conceptualize aspects of power and to incorporate lessons from an international society framework. Both of these shortfalls ultimately hinder the constructivist project's acceptance as a veritable theory of international relations as current debates in the field suggest. Power is largely absent, for instance, throughout Finnemore and Sikkink's description of norm life cycles. This absence is a critical flaw for several reasons. First, constructivism has failed to develop a causal theory for how the motives of actors translate into *em*powerment, i.e. social power. In other words, what legitimizes the actor or norm entrepreneur as a normative authority in the first place? Second, and related to the first, the

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[33] Rein Müllerson, <u>Human Rights Diplomacy</u> (London: Routledge, 1997), 35.

constructivist account of moral persuasion is a rather tenuous one. In stating that persuasion is the dominant mechanism by which norm entrepreneurs seek to induce political change, Finnemore and Sikkink fail to rigorously develop a causal mechanism for how persuasion— which they define as "the process by which agent action becomes social structure, ideas become norms, and the subjective becomes intersubjective"[34]—by means of altruism, empathy or other ideational reasoning translates into social influence, (again) i.e. social power. Is it possible to discern specifically under what conditions persuasion becomes a political force? Is it at least possible to create a causal mechanism that proves persuasion, and not any other variable, is the single variable responsible for inducing a behavioural outcome? Similarly, is it possible to create a causal mechanism to show how reputation or esteem—which "suggests that leaders of states *sometimes* follow norms because they want others to think well of them, and they want to think well of themselves"[35]—effects actual political behaviour? The constructivist's treatment of persuasion must be made more rigorous.

I therefore contend that a more explicit treatment of social power needs to be adopted in the constructivist literature. Further evidence of this failure surfaces when incorporating the concept of international vertical legitimacy into the equation. Human rights INGOs garner their legitimacy as international actors because they not only 'resonate' with their existing norm structures of Western or norm-friendly states, but also because they possess the social power to identify and *de*legitimize those states that fail to live up to their treaty obligations as well as the standards of international customary law. Power, put simply, is the ability to make someone do something which they would not otherwise do. Constructivists

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[34] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 914.
[35] Ibid., 903; also see Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices," 8; emphasis added.

must hence begin to analyze those cases in which social power causes a behavioural change in those states which would not otherwise live up to their human rights responsibilities, rather than simply concentrating on those cases involving preaching to the converted. In other words, constructivists must be able to discern between the circumstances where social power exists, thus having an affect on behaviour change, and where it does not.

Curiously, Finnemore and Sikkink's description of strategic social construction recognizes the shortfall of constructivism, but the authors either fail to realize the implications of this shortfall or choose not to develop the idea of social power any further. They state, for instance, that norm entrepreneurs

> . . . engage in something we would call 'strategic social construction': these actors are making detailed means-ends calculations to maximize their utilities, but the utilities they want to maximize involve changing the other players' utility function in ways that reflect the normative commitments of the norm entrepreneurs. The first half of the process fits nicely in a rational game-theoretic framework. The second half does not. This suggests that instead of opposing instrumental rationality and social construction, we need to find some way to link those processes theoretically.[36]

Finnemore and Sikkink evidently fail to see that the process which involves utility-maximization by 'changing the other players' utility function" is a social-power process if it occurs instrumentally. They essentially fail to link the 'social construction' of the entrepreneur's identity or normative commitment with the 'strategic' aspect involving utility calculation under the neorationalist model. This failure stems from an inability to recognize that the utility maximization involved in norm entrepreneurship does not parallel microeconomic market relations in which an actor chooses between various options to optimize goals such as profit. Rather, the utility maximization involved in changing others' preferences is inherently relational. Power is inseparable from this process if one actor instrumentally alters the structure of the game or the identities of the other actors such their

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[36] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 910.

preferences, perceived expectations and behaviours also change. In other words, power must replace the neorationalist model in the constructivist account of norm entrepreneurship. Only if this process were void of instrumentality would it also be void of power calculations. If *all* actors of the game were subject to the same incentive or identity distortions as the other actors, for example, then such changes would be caused by structure and not agency or power.

The second major, interrelated failure of constructivism is that is needs to be more aware of its grounding in an international society approach over an international systems approach. As previously noted, the process of socialization presupposes the existence of a society. Norm life cycles are therefore contingent on the identities and interests of the various actors that comprise the society throughout the cycle. Power in any given society is thus relational. Yet the current constructivist discourse reflects a distorted picture of how power functions in the international realm. In stating that "norms emerge and are promoted because they reflect not only the economic and security interests of dominant members of international society but also their moral interests and emotional dispositions," for instance, Nadelmann ignores a host of empirical studies on emergent norms and norm cascades that either centred on non-dominant members of international society or occurred despite superpower disapproval.[37] The study of the ICC conducted in the previous chapter, in which middle- and even weak-power states have acceded to the Statute of Rome despite superpower disapproval, therefore discredits Nadelmann's claim.

Risse and Sikkink fall into the identical trap. However, in arguing that "the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors, who manage to link

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[37] Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society," 524.

up with international regimes, to alert Western public opinion and Western government," the authors plunge into the slippery slope and tyranny of relativism.[38] Their statement essentially negates the possibility that non-Western governments and public opinion—however they define the term Western—could also have an important impact on the success of transnational advocacy networks. Similarly, their argument erroneously lends credence to cultural relativists who purport that human rights are exclusively Western by arguing that human rights movements around the world are only successful if they coordinate with Western governments and public opinion.[39] One need only think of the many recipients of the prestigious Nobel Peace Prize, who have lobbied for progressive change on behalf of some underprivileged or victimized cohort of humanity, that are citizens of non-Western states. Moreover, the constructivist analysis of Risse, Ropp and Sikkink presently excludes major-power analysis and those cases in which transnational advocacy networks failed to induce domestic norm socialization in which comparable situations produced successful outcomes.[40] A more nuanced international society approach, which accounts for the interests, identities and social power of each actor in relation to others therefore presents more conceptual import than the existing constructivist literature currently offers. Within their international society context, normative entrepreneurs and social movements aim to "make power visible,"[41] to challenge power, and to open the doors for the repoliticization of legitimate space.

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[38] Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices," 5.

[39] For a discussion of the typologies of cultural relativism, see Jack Donnelly, Universal Human Rights in Theory and Practice (Ithaca, NY: Cornell University Press, 1989), 109-110.

[40] In reference to Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink, eds. The Power of Human Rights: International Norms and Domestic Change (Cambridge: Cambridge University Press, 1999).

[41] Melucci quoted in Stammers, "Social Movements and the Social Construction of Human Rights," 989.

These conceptual shortfalls ultimately hinder the constructivist project potential as an empirically-based, middle-range theory of international relations. At present, constructivism fails in causal analysis. Kowert and Legro thus expose several areas of the project that merit additional research, including the need to address a causal theory of identity construction.[42] Wendt similarly notes that "constructivists have often devoted too much effort to questions of ontology and constitution and not enough effort to the causal and empirical questions of how identities and interests are produced by practice in anarchic conditions."[43] In tackling these problems, the constructivist project should also speak to the following six criteria which Vasquez states that all theories of international relations should exhibit: 1) accuracy; 2) falsifiability; 3) capability to evince great explanatory power; 4) progressive as opposed to degenerating in terms of their research programmes; 5) consistent with what is known in other areas; and be 6) appropriately parsimonious.[44] Constructivist attempts to develop a causal theory of identity formation of moral persuasion should therefore use these criteria as guidelines. International relations theory therefore faces the challenge of theory construction.[45]

This challenge is unfortunately one that Ruggie has shied away from. He states, for instance, that "constructivism is not itself a theory of international relations, the way that balance-of-power theory is, for example, but a theoretically informed approach to the study of international relations."[46] Theory construction is evidently something that Ruggie thinks

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[42] Paul Kowert and Jeffrey Legro, "Norms, Identity, and Their Limits: A Theoretic Reprise," in The Culture of National Security: Norms and Identity in World Politics, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996), 469 and 483-95.
[43] Alexander Wendt, "Anarchy is What States Make of It: The Social Construction of Power Politics," International Organization 46, no. 2 (1992): 425.
[44] Vasquez, "The Post-Positivist Debate," 230.
[45] Ibid., 234.
[46] Ruggie, "What Makes the World Hang Together?," 879-80.

constructivists should avoid.   The stance of the constructivist project is confirmed by

Checkel, who asserts that:

> . . . constructivism remains a method more than anything else. The central challenge
> for these scholars is theory development.   Having demonstrated that social
> construction matters, they must now address when, how, and why it occurs, clearly
> specifying the actors and mechanisms bringing about change, the scope conditions
> under which they operate, and how they vary across countries. To accomplish this
> task, constructivists must integrate their insights and assumptions with middle-range
> theory.   Otherwise, the empirical ad hocism that plagues their current work will
> remain.[47]

Constructivists, and indeed all theories of international relations, need to guard against ad

hoc interpretivism that seeks merely to describe or justify the politics of the past. Making

constructivism a more rigorous social scientific enterprise is therefore a task that its

proponents should take seriously.

Human Rights Entrepreneurship

The developments and shortfalls of the constructivist project provide insight into the

realm of human rights entrepreneurship. This insight can then be used to further expound a

theory of norm change in international relations, which presently remains premature.

Following Price's four pedagogical techniques, human rights entrepreneurs seek to induce

norm change by generating issues, establishing transnational networks, grafting and through

the discourse of argumentative rationality. While they have proven highly successful in the

former two techniques, human rights entrepreneurs have unfortunately had more limited

success in the latter two.   Understanding the successes and deficits of human rights

entrepreneurship can ultimately help to equip transnational advocacy networks with more

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[47] Ibid., 325.

optimal means to further the cause of international human rights protection while decreasing the prevalence of human wrongs.

First, human rights entrepreneurs have had great success in generating issues and establishing transnational networks. Human rights entrepreneurs are increasingly recognized as having been at the forefront of crafting international human rights discourse since the second half of the twentieth century.[48] They are also responsible for initiating many human rights issue-specific campaigns on targeting children's rights, chemical weapons and anti-personnel landmines to restrict the parameters of acceptable warfare, women's rights and labour rights to name only a few.[49] As Keck and Sikkink note, however, international networking is extremely costly.[50] How have human rights entrepreneurs circumvented such costs to create such effective network structures? Similarly, what explains the success of human rights entrepreneurs relative to other transnational advocacy networks? Beyond conventional means, human rights entrepreneurs have grown extremely proficient in creating new political spaces over the Internet. Human rights entrepreneurs are using contemporary developments in information and communications technologies in an unprecedented fashion, thus aiding the speed and efficiency with which transnational coalitions can function. Although the case of the nineteenth century anti-slavery campaign clearly indicates that

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[48] See Howard Tolley, Jr., "Popular Sovereignty and International Law: ICJ Strategies for Human Rights Standard Setting," Human Rights Quarterly 11, no. 4 (1989): 562-63 on a discussion of the role and success of the ICJ in the promotion of domestic, regional and international human rights laws.

[49] See Georgina Ashworth, "The Silencing of Women," in Human Rights and Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge, Cambridge University Press, 1999); Jack Donnelly, "The Social Construction of Human Rights," in Human Rights and Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge, Cambridge University Press, 1999); Gil Loescher, "Refugees: A Global Human Rights and Security Crisis," in Human Rights and Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge, Cambridge University Press, 1999); Price, "A Genealogy of the Chemical Weapons Taboo;" and Price, "Reversing the Gun Sights." Also refer to Center for the Study of Human Rights, Twenty-Five Human Rights Documents (New York: Columbia University Press, 1994) for a survey of various international human rights documents.

[50] Margaret Keck and Kathryn Sikkink, "Transnational Advocacy Networks in International and Regional Politics," International Social Science Journal 51, no. 159 (1999): 93-94.

human rights advocacy networks are nothing new, recent "technological developments do lower the transaction costs of engaging in transnational political activism compared to previous eras, and they facilitate denser political engagement across borders."[51] Information and communications technologies aid human rights advocacy networks with limited resources in monitoring, collating, managing and disseminating information instantly around the world.[52] Finnemore and Sikkink additionally point out that the advents of information and transportation technologies, which have increased global interdependence, have also lead to the homogenization of global norms while accelerating the speed of normative change altogether.[53]

These developments are evolving the boundaries of political space beyond the territorial and into the virtual.[54] Price adds, for instance, that "Another effect of the Internet and telecommunications is the creation of a 'space' for politics occupied by a transnational political community—a space other than that bounded by the territory of the state. These 'virtual communities' of transnational political action are not structured according to hierarchically institutionalized relations of authority based on exclusive territorial boundaries."[55] The creation of virtual communities, especially with regard to transnational civil society, is thus a novel development in international relations that removes from states the former ability to control or maintain supervision over the communication flows of its citizens. As Ron Diebert adds, "By moving around and through political boundaries to influence populations, [virtual communities] not only undermine the connection between

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[51] Price, "Reversing the Gun Sights," 638.
[52] Edward F. Halpin and Steven Hick, "Information: An Essential Tool for Human Rights Work," in Human Rights and the Internet, ed. Steven Hick, Edward F. Halpin, and Eric Hoskins (New York: St. Martin's Press, 2000).
[53] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 909.
[54] See Steven Hick, Edward F. Halpin, and Eric Hoskins, eds. Human Rights and the Internet (New York: St. Martin's Press, 2000).
[55] Price, "Reversing the Gun Sights," 626.

sovereignty and territorially defined populace over which the sovereign authority has ultimate jurisdiction, but also challenge the idea central to the modern world order paradigm that the international states system is the legitimate arena where politics across borders takes place."[56] Virtual communities therefore establish new frontiers in international organization that enables a virtual locus of social power—virtually unstoppable by the means of the most powerful of states—to challenge the long-held principle which privileges the territorial state as the only legitimate authority in international politics. All of these developments offer subsequent avenues by which to further explore the theoretical and practical dimension of contemporary international organization.

In reflection, Axworthy states that "The key is how to maximize the Internet's potential for good as a tool to promote and protect human rights: its use for human rights education, as a means of organizing human rights defenders and getting information on human rights out to the world. This is a technology that is revolutionizing the world. It is changing the equations of power, challenging the conventional channels of communication, distributing and disseminating influence in the broadest possible fashion. It is democratizing the channels—and getting rid of the gatekeepers."[57] As Whaley aptly warns, however, there are definite limits to what the Internet can do for the advancement of human rights, most notably because of the growing 'information gap' that could limit the ability of domestic human rights advocates in 'information poor' countries to join and coordinate with transnational advocacy networks.[58] Both human rights entrepreneurs and international

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[56] Diebert quoted in Price, "Reversing the Gun Sights," 626.

[57] Hon. Lloyd Axworthy, "The Mouse is Mightier Than the Sword," in Human Rights and the Internet, ed. Steven Hick, Edward F. Halpin, and Eric Hoskins (New York: St. Martin's Press, 2000), 16; also compare to Patti Whaley, "Human Rights NGOs: Our Love-Hate Relationship with the Internet," in Human Rights and the Internet, ed. Steven Hick, Edward F. Halpin, and Eric Hoskins (New York: St. Martin's Press, 2000), 31-33

[58] Whaley, "Human Rights NGOs: Our Love-Hate Relationship with the Internet," 34-40; also see Mark E. Hecht and Rodney Neufeld, "The Internet and International Children's Rights," in Human Rights and the

relations theorists must therefore further explore both the triumphs and shortfalls of the Internet

As previously noted, human rights entrepreneurs have unfortunately had limited success in the techniques of grafting and argumentative rationality. Although entrepreneurs have had much success in resonating specific human rights issue-areas in certain states, they have had limited success resonating issues with superpowers, pariah states, or even states within certain geographic regions. As the case of the ICC studied in chapter two indicates, the transnational advocacy network under the framework of the Coalition for the Establishment of an International Criminal Court have had virtually no success in persuading Asian states to ratify the Rome Statute thus far. Both cases of the ICC and the Ottawa Treaty also show that persuading superpowers is a serious problem. Although lack of superpower accession did not prevent the anti-personnel landmine from 'tipping' or norm cascading, superpowers are more often than not the largest producers and stockpilers of landmines, chemical and nuclear weapons as well as similar means of warfare that can pose the greatest danger to international society should such weapons be used. How each case achieved (or hopes to achieve) the critical mass of sixty states for a norm cascade to occur, as well as the composition of party-states that acceded to each statute, warrants further analysis. Such an analysis cannot ignore aspects of social power or international structures such as those mentioned in chapter two.

Internet, ed. Steven Hick, Edward F. Halpin, and Eric Hoskins (New York: St. Martin's Press, 2000); and Marshall Conley and Christina Patterson, "Communication, Human Rights and Cyberspace," in Human Rights and the Internet, ed. Steven Hick, Edward F. Halpin, and Eric Hoskins (New York: St. Martin's Press, 2000); Richard Pierre Claude and Steven Hick, "Human Rights Education on the Internet: Its Day Has Come," in Human Rights and the Internet, ed. Steven Hick, Edward F. Halpin, and Eric Hoskins (New York: St. Martin's Press, 2000).

Previous discussions on the tension between human rights and state sovereignty norms also indicate that human rights entrepreneurs may have had limited success in grafting human rights norms onto the existing norms of state sovereignty. Although it was shown that human rights are being increasingly institutionalized as a function of the contemporary state, Bassiouni notes that "human rights advocates frequently cross into the realm of *lex desirata* with the argument that the moral and ethical merits of a given proposition are sufficient to overcome technical legal arguments. Jurists, however, must rely on appropriate legal techniques to effectively advocate human rights in all legal contexts, whether the jurists are working at the international, regional, or national level." In other words, human rights entrepreneurs must become more stringent in their application of grafting and in their appeal to the argumentative rationality of international law. Employing international-law arguments can not only serve to strengthen the entrepreneur's cause, but can also add to the agent's legitimacy, and hence social power, according to the vertical structures discussed in the previous chapter. Human rights advocates cannot continue to concentrate only on the ethical while ignoring the legal and political.

Finally, norm entrepreneurs must also explore the role of identity in effecting international behavioural outcomes. The virtual political space created by the Internet allows individuals to 'connect' with other individuals around the world in both a virtual and cognitive sense. Human rights violations articulated over the Internet thus allow individuals to feel compassion for 'other' individuals without the barriers of nationality or territory. However, while empathy for others' human rights grievances can transcend social identities, incongruent identities can produce conflicts over human rights principles. As Risse and Ropp aptly note, conflicts over human rights invariably involve the social identities of the

actors involved.[59] Both human rights entrepreneurs and international relations theorists must

therefore problematize how conflicts of social identity can be overcome.   Although

arguments supporting so-called Asian or African values have undergone considerable debate

and are, by and large, discredited by international society, there lacks international initiative

to bridge global social and cultural divides in hopes of creating a more ecumenical and

universal framework of human rights codes and practices.   In other words, there lacks a

sanctioned, permanent forum for international human rights debates to bridge East and West

or North and South.   Such initiatives are necessary if rights are to be more than just

"conveyor belts of liberal ideals, but vehicles for communicative and political exchange, with

the potential for mutual transformation of participants."[60]

Thinking of Progress in a World of States

While norm change and international evolution are issues that scholars remain ill

equipped to handle, the issue of progress in international relations is something that scholars

do not even want to handle. Adler, Crawford, and Donnelly note that human rights and other

normative issues have eluded IR theory because neo-utilitarian models are not designed to

foster concerns about progress—defined in the international realm as "changes in the pursuit

of states' national interests in ways that further *human* interests."[61] This failure partly stems

from IR's reversion away from normative concerns in its positivist pursuit of behaviouralism,

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[59] Thomas Risse and Stephen C. Ropp, "International Human Rights Norms and Domestic Change: Conclusions," in The Power of Human Rights: International Norms and Domestic Change, ed. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 236.
[60] Keck and Sikkink, "Transnational Advocacy Networks in International and Regional Politics," 100-101.
[61] Emanuel Adler, Beverly Crawford, and Jack Donnelly, "Defining and Conceptualizing Progress in International Relations," in Progress in Postwar International Relations, ed. Emanuel Adler and Beverly Crawford (New York: Columbia University Press, 1991), 1-2; emphasis added.

economics, and quantitative science.[62] Positivism and neo-utilitarianism thus support certain

values in and of themselves.[63] As Booth points out, however, value-free 'social science' is

impossible simply because every political position has a moral consequence.[64] Even self-

declared neutrality upholds a moral position. The quest to place international relations in a

category of absolute objectivity and pure science is therefore severely misplaced. Steve

Smith claims that the stagnation of IR theory rests in its susceptibility to serve as a

legitimizing "discourse accepting of, and complicit in, the creation and re-creation of

international practices that threaten, discipline, and do violence to others."[65] IR scholars

remain slow to admit that the world is a social construct capable of being forged by human

volition—even if only in small proportions.

The finale of old eras and the dawning of new ones, however, allow precisely the

opportunity to reflect on the issues of change, evolution and progress. Several indicators

suggest that progress in international relations is nearly as problematic as some scholars

suggest. Finnemore and Sikkink correctly remark that "World historical events such as wars

or major depressions in the international system can lead to a search for new ideas and

norms."[66] And as Price adds, "the development of institutions often consists of rationally

inexplicable events, 'fabricated in piecemeal fashion' out of the vicissitudes of history. As a

result of the marriage of chance occurrences, fortuitous connections, and reinterpretations,

the purposes and forms of moral structures often change in such a way that they come to

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[62] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 889.

[63] Ken Booth and Tim Dunne, "Learning Beyond Frontiers," in Human Rights in Global Politics, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 122.

[64] Ken Booth, "Security in Anarchy: Utopian Realism in Theory and Practice," International Affairs 67, no. 3 (1991): 538.

[65] Steve Smith, "The Self-Images of a Discipline: A Genealogy of International Relations Theory," in International Relations Theory Today, ed. Ken Booth and Steve Smith (University Park, PA: The Pennsylvania State University Press, 1995), 3.

[66] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 909.

embody values different from those that animated their origins."[67] Norms and institutional structures are thus not entirely rigid and path dependent entities. Change in international relations, as in all social life, is an inevitable process.

Though change need not be necessarily progressive, the ability to contemplate how *progressive change* occurs stems on the ability of international relations theory to draw accurate political causalities. Policies with regard to human rights and similar issue areas thus remain tenuous since causation in international relations theory remains a tenuous principle. As Müllerson remarks, "Human rights diplomacy in a narrow sense is often reactive rather than pro-active. It deals with effects without addressing their causes."[68] Scholars and diplomats of international relations are evidently ill equipped with the conceptual and practical tools needed to expand the prominence of humanitarian issues in international affairs. It is subsequently of little surprise that R. J. Vincent concluded that "The promotion of human rights, from the point of view of the morality of states, turns this doctrine inside out. It has tended to mean the attempt by one community, or group of communities, to make particular values general. This is a form of imperialism—the making of several societies one—even if it is restricted to the establishment of basic rights."[69] Rather, I argue that the promotion of human rights in foreign policy is an imperative rather than a form of imperialism. True, the principle of universal human rights is in conflict with the existing norms of state sovereignty. But "this conflict is a necessary one. Democracies are not always right. When majority decisions are unjust, dissenting minorities must have the

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[67] Richard Price, "A Genealogy of the Chemical Weapons Taboo," International Organization 49, no. 1 (1995): 86.
[68] Müllerson, Human Rights Diplomacy, 147.
[69] Vincent, Human Rights and International Relations, 102.

capacity to appeal to a higher law."[70] The same principle holds especially true for non-democracies. Its logic stems from the argument that a society, whether domestic or international, cannot flourish "if its less prosperous members are living in such degraded circumstances that they cannot absorb its social norms and cannot participate in it."[71] As Buzan also notes, "the very act of perceiving international relations in societal terms will itself condition behavior by opening new understandings of what is possible and what is desirable. The idea of society is self-reinforcing inasmuch as consciousness of it helps to consolidate and reproduce its reality."[72] What is needed in IR theory is a precise understanding of causal social-scientific mechanisms, which would then enable instrumental policies for the sake of progressive ends. To reiterate, causality in international relations theory and the study of international phenomena such as global norms of human rights requires conceptual rigour.

Conclusion

In short, constructivist accounts of norm life cycles and international socialization represent an important step in developing a sound middle-range theory of international change. Research in the constructivist project, however, is presently hindered by an erroneous under-appreciation of both social power and the international society approach in the shaping of political outcomes. Addressing these failures of rigour and causation in IR theory as well as the novel developments in international organization catalyzed by the advent of information and communications technologies returns the idea of progress to the

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[70] Michael Ignatieff, The Rights Revolution (Toronto: House of Anasi Press Limited, 2000), 46.

[71] Rhoda E. Howard, Human Rights and the Search for Community (Boulder, CO: Westview Press, 1995), 220.

[72] Barry Buzan, "From International System to International Society: Structural Realism and Regime Theory Meet the English School," International Organization 47, no. 3 (1994): 329.

discipline of international relations. However, it is also critical to realize that "it is one thing to argue that there is a global human rights polity composed of international regimes, organizations, and supportive advocacy coalitions. It is quite another to claim that these global norms have made a real difference in the daily practices of national governments toward their citizens."[73] This fact reminds us that, while the global human rights regimes is making substantial progress in improving the lives and conditions of millions around the world, there still exists a grave disparity between the theory of universal human rights and the international practice of human wrongs.

Unfortunately, this disparity disappears only in utopia, the land of our dreams and visions. Conflict is a permanent fixture of our imperfect lives. As Reinhold Niebuhr stresses, "Politics will, to the end of history, be an arena where conscience and power meet, where the ethical and coercive factors of human life will interpenetrate and work out their tentative and uneasy comprises."[74] It must be stressed, however, that conflict need not always be destructive. With the right conceptual and practical tools—and with time— conflict can lead to periods of reflection and political reorganization in a way that is more conducive to the norms and values of international society as a whole. Thus, Booth emphasizes that "Social inventions like international relations cannot be uninvented over night, but they can be reinvented, over time."[75] Ultimately, human civilization first requires the patience to let progress occur at times when hope may seem like no more than a distant whisper. Second, we need moral vision to guide humankind towards universal goals of

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[73] Risse, Thomas, and Stephen C. Ropp, "International Human Rights Norms and Domestic Change: Conclusion" in The Power of Human Rights: International Norms and Domestic Change, ed. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 235.

[74] Reinhold Niebuhr quoted in Amstutz, International Ethics, 197.

[75] Ken Booth, "Dare Not to Know: International Relations Theory Versus the Future" in International Relations Theory Today, ed. Ken Booth and Steven Smith (University Park, PA: The Pennsylvania State University Press, 1995), 331.

progress and the good life. And last, but not least, we need the acumen and intellectual

rigour to turn the ideational into the material, the virtual into reality.

— Conclusion —

To answer the foundational question of this inquiry, human rights and state sovereignty are not only reconcilable, but are now engaged in a co-evolving relationship of mutual constitution. Recognizing the existence of world order as being morally and ontologically prior to the international order that pluralists maintain is to accept that the individual is the primary agent of the social and political world. Human rights have grown in salience because they protect the individual as the fundamental agent. Though pluralists contend that diversity in international society must be protected, societies are endowed with relatively disparate resources, geography and histories. Both political diversity and equality can therefore best be achieved through the protection of the individual human rights that would allow agency to flourish. The emergence of global norms of human rights thus signals an additive step in humankind's elusive pursuit of the good life. This emergence has since had profound effects on international organization. As demonstrated in the context of international law and the empirical case of the ICC, interrelational structures of international vertical and horizontal legitimacy induce certain behavioural expectations and outcomes on the members of international society. Legitimacy is therefore a social power resource. The effect of social power and international-societal mechanisms on the success or failure of human rights norm entrepreneurship is ultimately where future study is warranted.

This discussion also points to the fact that the Waltzian hierarchy-anarchy dichotomy is misconceived. Conceptualizing international relations as a hierarchy-anarchy continuum containing both centralized and decentralized authority structures paves the way for additional studies. Although norm analysis in international relations is becoming

increasingly popular, how norms translate into structures of decentralized authority remains poorly understood.   As such, contemporary international relations scholarship remains curiously silent about the topic of structure. For example, Spruyt's inability to conceptualize interrelational structural change occurring as a result of changes in the relationships between the prevalent unit-type and other-types is a common mistake which must be corrected.[1] Moreover, the effects of international structures of legitimacy on issue areas other than human rights must also be tested to verify the causality of such structures in inducing behavioural outcomes.

An additional area that requires further research concerns the process of norm entrepreneurship. As noted in Chapter Three, human rights entrepreneurs have been slow to capitalize on grafting techniques involving norm resonance as well as argumentative rationality techniques that make use of existing bodies of law. Why human rights entrepreneurs have not employed these techniques to their full potentials remains unclear. In addition, more research is needed on the precise effects—both the triumphs and the shortfalls—of the Internet on norm entrepreneurship. Comparative studies are needed to analyze why human rights entrepreneurs are relatively more successful at using the Internet as tool for advocacy than other norm entrepreneurs concerning the environment or arms control to name only two. Moreover, there lacks thorough research on the effects of the growing information gap on advocacy techniques. One must ask whether the information gap is truly cause for concern, or whether the more obvious and more basic development problems such as literary and access to clean drinking water, for example, pose greater threats to the enjoyment of human rights. Thus, there are obvious limits to what technological innovation can do for the advancement of humanity.

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[1] Hendrik Spruyt. The Sovereign State and Its Competitors, 5 and 17.

Ultimately, this discussion paints a rather modest picture of the limited insights offered by the instant project. Perhaps Peter Baehr is correct in stating that:

> Nobody ever does enough on behalf of human rights. That is true for governments, for intergovernmental organizations, for national parliaments, for non-governmental organizations, and for private individuals. It is praiseworthy if human rights are accepted in principle, but that is by far not enough. The implementation of these principles should be permanently watched. That should be everybody's task.[2]

In other words, no matter how grand the undertaking or how large and successful the project, the task of human rights protection is never complete in comparison to the many instances of human wrongs that continue to permeate the world.

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[2] Peter R. Baehr, "Controversies in the Current International Human Rights Debate," Human Rights Review 2, no. 1 (2000): 28.

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