

# Social Change in World Politics: Secondary Rules and Institutional Politics

by

Mark Raymond

A thesis submitted in conformity with the requirements  
for the degree of Doctor of Philosophy

Department of Political Science  
University of Toronto

© Copyright by Mark Raymond 2011



Library and Archives  
Canada

Published Heritage  
Branch

395 Wellington Street  
Ottawa ON K1A 0N4  
Canada

Bibliothèque et  
Archives Canada

Direction du  
Patrimoine de l'édition

395, rue Wellington  
Ottawa ON K1A 0N4  
Canada

Your file Votre référence  
ISBN: 978-0-494-78093-0

Our file Notre référence  
ISBN: 978-0-494-78093-0

#### NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

---

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

#### AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

---

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

# Canada

المنارة للاستشارات

# Abstract

Social Change in World Politics: Secondary Rules and Institutional Politics

Mark Raymond

Doctor of Philosophy

Department of Political Science

University of Toronto

2011

This study fills what has long been recognized as a major gap in the field of International Relations (IR): an account of when and how change occurs in the structure of the international system. Attempts to create social change, to create or to alter intersubjectivity, are relatively common; the crucial question is why some attempts succeed while most fail. I argue that social change is itself a rule-governed social activity, which I term institutional politics, and that attempts to create social change are more likely to succeed if they are pursued in a manner consistent with what H.L.A. Hart called secondary rules, or rules about rules. This central hypothesis is investigated in three cases: the emergence of great power management following the Napoleonic war, attempts to ban war as an instrument of state policy in the inter-war period, and the period of institutional contestation instigated by the 11 September 2001 terrorist attacks. Available evidence in all three cases provides strong overall support for the central hypothesis and for the other core expectations of my theory. In addition to achieving important descriptive and explanatory advances with respect to the dynamics and morphology of the international system, the study makes significant contributions to the constructivist literature in IR; namely, it suggests a basis on which to improve conceptual consolidation and comparability, and it moves beyond a primary focus on norm promoters to include explicit theorization of the evaluative acts of their audiences. The most important policy implication of the study is the need for explicit

renovation of the contemporary international system's stock of secondary rules, to counter a decline in their legitimacy among a much more heterogenous set of members.

## Acknowledgments

This study would not have been possible without the assistance and support of a great many people. I have benefited from the guidance and constructive criticism provided by Steven Bernstein and Emanuel Adler. In addition to his insightful substantive comments, I am very grateful to David Welch for his patience and for his friendship. Tim Gravelle and Josh Bowen were both good enough to read draft versions of parts of the study, a task far beyond the requirements of friendship. Debts of thanks are likewise owed to Charmaine Stanley and Wendy Hicks. Any remaining errors despite their suggestions are purely my responsibility. I cannot fully express my gratitude for the lifetime of support and encouragement I have received from my parents, Alan and Elva; I can merely say that they continue to inspire me. Most of all, I want to thank my wonderful wife Kate, for standing by me and for changing my life in ways I never thought possible.

# Table of Contents

Abstract .....	ii
Acknowledgments .....	iv
Table of Contents .....	v
Introduction .....	1
Chapter 1: System, Structure and Social Institutions .....	12
1 Introduction .....	12
2 The Social Nature of Structure: Reviewing the IR Literature .....	13
2.1 Neorealism .....	14
2.2 Neoliberal Institutionalism .....	21
2.3 Classical Realism .....	26
2.4 Critical Approaches .....	35
2.4.1 <i>World-Systems Theory</i> .....	36
2.4.2 <i>Critical Theory</i> .....	42
2.4.3 <i>Feminist International Relations Theory</i> .....	47
3 The Institutional Structure of World Politics .....	50
4 Conclusion .....	60
Chapter 2: The Social Practice of Institutional Politics: A Theory of Social Change .....	62
1 Introduction .....	62
2 Conceptualizing Change .....	63
2.1 Social Change as Institutional Change .....	65
2.2 Social Change as Political Process .....	70
2.3 Institutional Politics as Social Practice .....	78
3 Secondary Rules: Rules about Changing the Rules .....	80
3.1 Creating Intersubjectivity .....	81
3.2 Secondary Rules .....	87
3.3 Operationalizing the Theory .....	101
Chapter 3: The Social Practice of Change: Institutional Politics and the Social Construction of Great Power Management, 1815-22 .....	110

1	Introduction .....	110
2	Social Structure: The Rules of the Game .....	112
2.1	Primary Rules: From Balance to Concert .....	112
2.2	Secondary Rules: Diplomacy and International Law.....	118
3	The Congress of Vienna and the Concert System, 1815-22 .....	123
3.1	The Vienna Settlement: the Creation of Great Power Management.....	123
3.2	The Concert System: the Evolution of Great Power Management.....	130
3.2.1	<i>The Holy Alliance and the Quadruple Alliance.....</i>	131
3.2.2	<i>The Conference of Aix-la-Chapelle .....</i>	135
3.2.3	<i>The Conferences of Troppau and Laibach .....</i>	148
3.2.4	<i>The Conference of Verona .....</i>	155
4	Conclusion.....	168
Chapter 4: Banning War: Institutional Politics in the Inter-war Period.....		170
1	Introduction .....	170
2	Primary Rules: War as a Means of Conflict Resolution .....	173
3	Secondary Rules.....	183
4	Institutional Politics.....	185
4.1	Precursors to Locarno.....	186
4.2	The Locarno Agreements.....	195
4.3	The Kellogg-Briand Treaty.....	216
5	Conclusion.....	255
Chapter 5: Contemporary Institutional Politics: Al Qaeda and the West, Post 9/11 .....		258
1	Introduction.....	258
2	Primary Rules.....	263
3	Secondary Rules.....	279
4	Institutional Politics.....	294
5	Conclusion.....	352
Conclusion.....		356
Bibliography.....		367

# Introduction

This study is primarily concerned with explaining change in the international system. My search for the answer to this question was affected by a question I heard eminent international relations scholar James N. Rosenau pose as part of a conference panel held in the Munk Centre for International Studies at the University of Toronto. Rosenau recounted his habit of asking the very general question: “Of what is this an instance?” I was inspired to ask that same question of change in the international system. At one level, my answer is that change in the international system is an instance of change in social institutions. This is, of course, recognizable to scholars of international relations as an avowedly social constructivist answer. In what follows, I will attempt to defend my choice of this approach but, for the moment, more remains to be said about the overall nature of my argument, its significance, and the organization of this study.

Pressing Rosenau’s question further, I believe that social change is itself an instance of the creation and/or alteration of intersubjective knowledge. This is primarily because patterned, system-level change seems impossible to explain by reference to change in the subjective understandings or beliefs of any one actor – no matter how powerful. The relevant questions, then, are: (1) how is intersubjective knowledge created or changed; and, crucially, (2) what accounts for the success of some such attempts and the failure of others?

These questions have no particular or direct connection to international relations, and even less connection to the North American academic discipline of International Relations (IR) – at least prior to its partial ‘constructivist turn’.<sup>1</sup> Instead, it is my contention that the artificial

---

<sup>1</sup> The useful practice of distinguishing the empirical world of international relations from the academic discourse of International Relations was first suggested in Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford, U.K.: Clarendon, 1990).



separation between international relations and other realms of social life has obscured more than it has illuminated, and that it ought therefore be abandoned. International relations, like domestic and municipal politics, is an instance of human political activity. While these various types of politics are distinct in many ways, they also share much in common – most fundamentally, they involve processes of making collective decisions about issues deemed important by participants.

At each level, participants often seek to shape the rules and institutions that constitute their social lives and regulate their behavior; they are also called on to respond to such attempts by their fellow participants. The most basic insight about such processes is that they are not random. At the domestic level, protest rallies, petitions, public information campaigns, debates, boycotts, law-making, and (in modern democracies) voting are broadly understood and accepted mechanisms for altering social rules and institutions. At the international level, analogous mechanisms are perhaps less formalized, less restrictive, and almost certainly less well understood by the general public – but they do, nevertheless, exist. In the modern international system, such mechanisms are found primarily in specialized niches of diplomacy and international law.

Thus, my position is that there are ‘rules about changing the rules’. These meta, or secondary, rules constitute a distinctive social practice of rule-making that I refer to as institutional politics.<sup>2</sup> Practices of rule-making are, I believe, present in every human social context of any significant density; however, the *content* of the generic practice has varied widely over both space and time. Tribal practices of rule-making in various parts of the world are distinct from each other, as well as from rule-making in the context of a modern industrial

---

<sup>2</sup> In Chapter 2, I distinguish institutional politics from positional or distributional politics, which does not entail contestation of social rules or institutions.

democracy, which is in turn distinct from rule-making in the contemporary international system. The specific content of rule-making practices in any particular social context is provided by what legal philosopher H.L.A. Hart referred to as ‘secondary rules’.<sup>3</sup>

By virtue of constituting the practice of institutional politics, these rules play a vital role in determining the success or failure of individual proposals for social change. This is because, in most situations, actors will evaluate others’ proposals for change according to the requirements of the relevant secondary rules as they understand them. Thus, proposals for social change advanced in a manner consistent with relevant rules are (all things equal) more likely to be accepted, and thus to achieve intersubjective status, than those advanced in a manner inconsistent with secondary rules. This focus on explaining the reaction of the audience is, I believe, of major importance to any attempt to explain the creation or alteration of intersubjectivity – and therefore also to any attempt to explain patterned social change at the system level.

The argument advanced here is neither univariate nor deterministic. To attempt either sort of explanation on a subject so complex and broad as social change, even when restricted to the international system, would be foolhardy. Rather, I present a likelihood argument that acknowledges the potential importance of factors beyond the influence of secondary rules in determining the success or failure of particular attempts to alter social rules or institutions. Despite these important limitations of my theory, I nevertheless believe that this study represents a significant advance in understanding the dynamics and morphology of the international system.

The study is, first, an ‘existence proof’ identifying the vital yet overlooked social practice of institutional politics. I approach this task on both a theoretical (Chapters 1-2) and empirical

---

<sup>3</sup> H.L.A. Hart, *The Concept of Law* (Oxford, U.K.: Clarendon Press, 1994).

(Chapters 3-5) level. At one level, then, this study is an important descriptive advance in our understanding of the international system and its operation. Further, I seek to demonstrate empirically the importance of secondary rules (and thus the practice of institutional politics) to explaining the success or failure of particular attempts to change social rules and institutions. I examine three cases: (1) the social construction of great power management in the aftermath of the Napoleonic Wars; (2) the creation of a rule against the use of force, except in cases of self-defence, as enshrined first in the Kellogg-Briand Pact; and (3) contestation of the international system by al Qaeda in the period immediately following the 9/11 attacks. These cases each consist of multiple attempts to alter social rules and institutions – some of which failed and some of which succeeded. Overall, I find considerable support for the core expectations of my theory: proposals for social change were typically presented and evaluated according to relevant secondary rules; properly presented proposals were more likely to be accepted than improperly presented ones; deviations from accepted practices of rule-making and rule interpretation were consistently met with an expected range of discursive responses including denial, justification and criticism; and, especially in the final case, disagreement over secondary rules resulted in acrimonious discourse and an inability to conduct a joint process of rule-making.

My confidence in these findings is enhanced by the deliberate selection of both important and difficult cases for my theory. All three of the cases examined touch centrally on issues of international security. The expectation of mainstream IR theories is that such cases are least amenable to the influence of ideational factors. In the realm of ‘high politics’, at least in cases where the ‘strategic context’ indicates a potential threat, considerations of material power and interest prevail.<sup>4</sup> Contra these expectations, the empirical evidence clearly shows rule-guided

---

<sup>4</sup> The final salvo in the absolute vs. relative gains debate established the importance of strategic context for determining whether state behavior could be expected to conform to the expectations of neorealists or those of

behavior as well as concern on the part of key actors with the standards of appropriateness for conduct in rule-making and rule interpretation established by relevant secondary rules. Actors knowingly engaged in practices of institutional politics, and this social practice clearly shaped the ultimate outcome in each of the three cases examined. Further, the cases I have selected stand out for their importance even among the universe of possible cases involving contestation of rules and institutions related to international security. The construction of practices of great power management marked a critical step toward the modern system of active, multilateral collaboration in the day-to-day governance of the international system; indeed, the world's oldest inter-governmental organization (the Central Commission for the Navigation of the Rhine, or CCNR) was established by the Final Act of the Congress of Vienna. Likewise, the Kellogg-Briand Pact's rule against the use of force except in cases of self-defence was preserved in the Charter of the United Nations, and marked a clear diminution of the sovereign prerogatives of modern states. Finally, the 9/11 attacks are part of a sustained challenge to the basic practices of the international system. While al Qaeda and its supporters may lack the capacity to attain their stated goals, they have already managed to prompt controversial responses by the United States – some of which constitute further proposals to change key international rules and institutions. In addition, the contentious, fractured public dialogue between Islamic fundamentalists and officials embedded in the international system highlights the risk of a possible breakdown in intersubjective agreement on the legitimacy of contemporary international practices of rule-making and rule interpretation. If institutional politics occurs in, and shapes the outcome of, such crucial cases in international relations, it seems reasonable to conclude that the practice is

---

neoliberal institutionalists. Joseph M. Grieco, "Understanding the Problem of International Cooperation: The Limits of Neoliberal Institutionalism and the Future of Realist Theory," in *Neorealism and Neoliberalism: The Contemporary Debate*, ed. David A. Baldwin (New York, N.Y.: Columbia University Press, 1993); Robert O. Keohane, "Institutional Theory and the Realist Challenge after the Cold War," in *Neorealism and Neoliberalism: The Contemporary Debate*, ed. David A. Baldwin (New York, N.Y.: Columbia University Press, 1993).

able to operate in less contentious cases, with the important proviso that this may change if intersubjective agreement on the legitimacy of current practices is allowed to deteriorate further.

In addition to advancing descriptive understanding of the international system and explanatory understanding of its dynamics, this study also makes three significant contributions to the constructivist IR literature. First, as I argue in Chapter 2, the existing constructivist literature identifies a number of mechanisms and processes – such as norm creation, social learning, strategic social construction, socialization, and others – that are all essentially instances of the creation or alteration of intersubjective knowledge. The establishment of a clear common denominator is a necessary first step to generating more complete discussion of the relationship between these various concepts, in order to maximize the comparability of existing and future constructivist empirical research and to avoid theoretical duplication. Further, insofar as all of the mechanisms and processes constructivists identify are actual social facts rather than purely theoretical abstractions or assumptions, we require an account of how socially competent actors know how to engage in them in the first place. My account of the generic social practice of institutional politics constituted by secondary rules fills this niche; that is, secondary rules are logically prior to the effective functioning of any of the mechanisms or processes constructivists have identified. Second, my argument highlights the promise of recent constructivist scholarship focusing on the importance of social practice in human life.<sup>5</sup> It does so by providing a theoretical account of how socially knowledgeable agents engage in mutually intelligible practices of making and interpreting social rules that are vital to understanding the causal mechanisms associated with social change. The key theoretical innovations in this argument are

---

<sup>5</sup> Emanuel Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations* (New York, N.Y.: Routledge, 2005); Vincent Pouliot, *International Security in Practice: The Politics of Nato-Russia Diplomacy* (Cambridge, U.K.: Cambridge University Press, 2010).

that changing social rules is itself a rule-governed social activity, and that the key to understanding such processes is to focus not simply on norm entrepreneurs, but also on the evaluative acts of their audiences. Third, in providing an explicitly constructivist explanation of social change, I seek to help counter the unfortunate and inaccurate perception that constructivism is either better or only able to explain social continuity – that it unavoidably privileges structure over agency.<sup>6</sup> Insofar as such misconceptions exist, they are due less to problems with constructivism or constructivists than to the Herculean effort required to achieve even partial acceptance within the academic discipline of International Relations – to show that norms and rules, or social structures, had independent effects on behavior, identity and interests. Even though the process of securing a home for constructivism in IR – much less fully understanding the nature and effects of social structures – remains incomplete, constructivists can and should press forward to show the full range of applications and implications of their approach for the study of international relations – to solve important problems and to attempt to answer big questions. It is in that spirit that I have written what follows, and I can only hope that the reader feels I have had some small measure of success.

My final objective in this introduction is to briefly discuss the plan of the study. The first two chapters contain the conceptual and theoretical arguments, while the final three chapters comprise case studies that illustrate the theory's application. Chapter 1 begins by presenting the argument that an essentially constructivist understanding of the social nature of 'structure' in the international system is consistent with a broad range of IR scholarship, and then proceeds to

---

<sup>6</sup> The notion that constructivism privileges structure over agency, and is thus at least potentially limited in its ability to explain social change, was noted as a challenge for constructivism in important early constructivist works. See, for example: Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998); Jeffrey T. Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization* 55, no. 3 (2001). While subsequent constructivist work has, in my view, convincingly demonstrated that such worries are misplaced, there remains a need for further consolidation and development of constructivist gains. This point will be further developed in Chapter 2.

expand upon existing constructivist work in order to provide a theoretical foundation for my position that the structure of the international system is comprised of social institutions. Chapter 2 contains the heart of my theoretical argument. Proceeding from my understanding of structure the chapter conducts a discussion of what is meant by change in the international system, and defends my position that change in the international system necessarily entails change in its institutional structure. Since changing social institutions, in turn, requires altering the intersubjective agreements that constitute them, any adequate theory of change in the international system must present an account of why some such attempts succeed while others fail. The remainder of Chapter 2 takes up this task. I argue that altering intersubjectivity is a rule-governed social activity engaged in knowingly by actors in a myriad of contexts; it is a distinct mode of political action I refer to as institutional politics, in contrast to positional or distributional politics. The central claim of my theory is that attempts to create social change pursued according to the relevant secondary rules governing the practice of institutional politics in a given context are more likely to succeed than those pursued in violation of those rules. The chapter concludes by discussing various methodological concerns relevant to my theory, and by specifying more fully its expected observable implications.

Chapter 3 examines the social construction of the Concert system in the aftermath of the Napoleonic Wars. My investigation finds substantial empirical support for the conclusion that statesmen employed secondary rules constituting a clear practice for making and interpreting social rules in order to moderate the conflict potential of the international system. They accomplished this task by establishing new practices of active multilateral conflict management that accorded special rights and responsibilities to Great Powers. Such institutional devices survived the formal Concert system, and continue to inform current state practice. While other

accounts have noted the institutional innovations of 1815, none have identified the role of a structured practice of rule-making in accounting for the outcome.<sup>7</sup> Finally, the chapter is noteworthy for introducing the basic form employed in the subsequent case studies. It begins by briefly contrasting the initial and final rules governing international behavior, as well as the critical secondary rules relevant to the case. The final section of the case demonstrates the role of secondary rules in the institutional politics associated with the observed change in primary rules, thus demonstrating the explanatory power of my theory of social change.

Chapter 4 revisits the standard interpretation of the inter-war period as a momentous failure of statecraft resulting from liberal or ‘utopian’ policies. The Kellogg-Briand Pact fundamentally altered the international system by rendering war illegal except in cases of self-defence; this new rule survived the Second World War and is enshrined in clearly recognizable form in the Charter of the United Nations. Equally interesting, this outcome was not the initial intention of either of the two men whose names it bears, nor of their governments. Instead, I show that it is attributable in large part to tactical efforts by both the French and American governments to entrap the other in a disadvantageous bargain by manipulating and taking advantage of secondary rules. Further, the treaty prompted remarkably consistent responses from a broad array of states. Not only did the treaty gain near-universal acceptance, states routinely identified the same potential concerns with the text and, most notably, reached similar evaluative conclusions on issues of concern. The treaty also prompted socially competent replies from two relative newcomers to the international system (Japan and the Soviet Union) despite

---

<sup>7</sup> Such accounts include G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton, N.J.: Princeton University Press, 2001); Henry A. Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 2nd ed. (London, U.K.: Phoenix Press, 2000); Sir Harold George Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822* (London, U.K.: Constable & Co., 1946); Paul W. Schroeder, *The Transformation of European Politics, 1763-1848* (Oxford, U.K.: Oxford University Press, 1994).



their relative lack of familiarity with relevant secondary rules and despite particular concern on the part of the treaty's negotiators that the Soviet Union would respond in a disruptive manner.

Finally, Chapter 5 highlights the continuing policy relevance of my theory by examining the most high-profile ongoing instance of institutional politics: the attempt by al Qaeda to refashion the international system via a coordinated strategy of terror attacks and discursive messages, and the corresponding response of the Bush administration. While this case of institutional politics remains incomplete, I examine its initial period – from al Qaeda's initial "Declaration of Jihad" in 1996 to the period immediately preceding the initiation of the Iraq War in March 2003. From a methodological standpoint, this decision is defensible because it allows the evaluation of several discrete proposals for alteration in the rules and institutions comprising the international system. Substantively it is appropriate because the Iraq War effectively created a digression in institutional-political debate, shifting attention toward the legitimacy of the American response rather than al Qaeda's alternate vision of the international system. My central finding in this case is that institutional politics were substantially inhibited by a 'Tower of Babel' effect; each side relied almost exclusively on its own culturally prescribed secondary rules, preventing meaningful engagement. This highlights both the robustness of the generic practice of institutional politics, as well as the danger for the stability of the international system if greater consensus on secondary rules cannot be reached.



# Chapter 1: System, Structure and Social Institutions

## 1 Introduction

The goal of this study is to conceptualize and explain what is commonly referred to by the international relations (IR) literature as ‘systems change’. I will argue in Chapter 2 that this common terminology is, in fact, partially responsible for the discipline’s lack of consensus on questions of fundamental change. The problem of ‘systems change’ is more productively recast as the study of ‘institutional politics’, distinguished from ‘positional’ or ‘distributional’ politics. On this view, explaining fundamental change in world politics is a matter of identifying the conditions that make successful institutional contestation more likely. Nevertheless, an account of the world political system is a necessary prerequisite to explaining either systems change or successful institutional contestation. The task of this chapter is to provide such an account, to serve as a foundation for the subsequent moves in my argument.

The world political system can best be understood as comprising a structure and a set of units. Such a starting point is broadly consistent with a wide array of IR theories, including neorealism, neoliberal institutionalism, the English School, critical theory and feminism. More controversial are my assertions that the problem of fundamental change necessitates a focus on the structure of the world political system as dependent variable (or the explanandum), and that the structure of the world political system is comprised of intersubjectively shared social institutions.

The chapter is divided in two primary parts. In the first, I show that a constructivist understanding of the social nature of structure is consistent with a broad range of IR scholarship. This task is approached through dialogue with major systems-theoretical arguments in IR, which

I divide into four categories: (1) neorealism; (2) neoliberal institutionalism; (3) classical realism; and (4) critical approaches. In the second part of the chapter, I develop and expand upon existing constructivist work in order to provide a clear, concise explication of my argument defining the structure of the world political system in terms of social institutions.

## 2 The Social Nature of Structure: Reviewing the IR Literature

I argue that social institutions comprise the structure of the world political system. Specifically, I follow Christian Reus-Smit in defining institutions as “stable sets of norms, rules, and principles that serve two functions in shaping social relations: they constitute actors as knowledgeable social agents, and they regulate behaviour.”<sup>8</sup> Equating structure with social institutions is effectively a middle-ground position that seeks to avoid pitfalls stemming from definitions equating structure either with sovereignty or with culture. Defining structure in terms of anarchy or sovereignty overlooks important differences between historical instances of systems of sovereign states, as well as important potential sources of change.<sup>9</sup> On the other hand, ‘culture’ is too broad to be analytically useful and leaves us without clear, *a priori* criteria for determining which parts of ‘culture’ truly matter in international relations.

I argue both that a social conceptualization of structure must be present in any satisfactory theory dealing with the social world, and that such a conceptualization is in fact consistent with a broad variety of IR theories. This synthetic argument is facilitated by a

---

<sup>8</sup> Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton, N.J.: Princeton University Press, 1999), 12-13. Reus-Smit’s definition, in turn, follows Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in *International Regimes*, ed. Stephen D. Krasner (Ithaca, N.Y.: Cornell University Press, 1983), 2. Reus-Smit understands regimes as a subset of social institutions.

<sup>9</sup> These observations are similar to arguments made, respectively, by Christian Reus-Smit and by John Ruggie. See Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*; John Gerard Ruggie, “Political Structure and Dynamic Density,” in *Constructing the World Polity: Essays on International Institutionalization* (New York, N.Y.: Routledge, 1998).

distinction between the social structure of the world political system and the physical environment in which it is embedded. Cast in this light, the dispute between materialist and social accounts of structure amounts essentially to an empirical question about the determinacy of the material environment. As material environments rarely seem to dictate unique solutions to social problems, considerable and theoretically critical scope for human political choice remains.<sup>10</sup> Material determinacy is thus best treated as a limiting case, as a theoretical asymptote, rather than as the baseline for theory construction.

## 2.1 Neorealism

Though I treat them separately here, it is important to highlight the remarkable convergence between neorealist and neoliberal institutionalist IR scholarship. This convergence has been noted by scholars outside of, as well as inside, these communities.<sup>11</sup> I argue that the neorealist and neoliberal institutionalist conception of structure is internally inconsistent. Though “neo-neo” theorists separate structure and institutions, this analytical move is unconvincing. Further, I argue that such scholars have counterproductively distanced themselves from the insights of classical realists. The neo-neo theories thus require substantial revision with respect to one of their own core concepts; their own internal logic suggests that those amendments take the form of a synthesis with the constructivist conception of structure developed in this chapter.

---

<sup>10</sup> I take this observation to be in keeping with the spirit of Alexander Wendt’s ‘rump materialism’. See Alexander Wendt, *Social Theory of International Politics* (Cambridge, U.K.: Cambridge University Press, 1999).

<sup>11</sup> An external critique can be found in Ruggie, “What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge.” Internal acknowledgement of convergence is found in Robert O. Keohane and Lisa L. Martin, “Institutional Theory as a Research Program,” in *Progress in International Relations Theory: Appraising the Field*, ed. Colin Elman and Miriam Fendius Elman (Cambridge, M.A.: MIT Press, 2003).

Kenneth Waltz defines a system as comprising a “set of interacting units” and a “structure that makes it possible to think of the units as forming a set as distinct from a mere collection.”<sup>12</sup> However, he posits that “structure is an abstraction”; therefore, “it cannot be defined by enumerating material characteristics of the system.”<sup>13</sup> Waltz’s deductive-nomological conception of theory and his materialist ontology thus lead him to define structure by stipulating its content. Since structure is not material, it is necessarily in the realm of theoretical assumptions that “enable us to make sense of the [material] data.”<sup>14</sup> As a result, Waltz’s approach is at most capable only of explaining outcomes given a set of initial conditions (of which structure is a part) and not of explaining change in those conditions. It is also apparently asocial, including only material facts and theoretical assumptions – leaving no room for ideational factors or intersubjectivity.

Waltz, drawing on Durkheim, stipulates a structure with three components: (1) “the principle by which the parts are arranged”; (2) “specification of the functions of formally differentiated units”; and (3) the distribution of the units’ relative capabilities.<sup>15</sup> His argument is that the lack of a centralized authority capable of ensuring states’ security (anarchy) constitutes a self-help system, in which actors are driven to engage in ‘balancing’ behaviour or risk being selected out. He also makes a subsidiary argument that bipolar systems are likely to be more stable than multipolar ones, because the two powers are likely to be roughly equal in capability

---

<sup>12</sup> Kenneth N. Waltz, *Theory of International Politics* (Boston, Mass.: McGraw-Hill, 1979), 40.

<sup>13</sup> *Ibid.*, 80.

<sup>14</sup> *Ibid.*, 10.

<sup>15</sup> *Ibid.*, 81-82.

and because they are not reliant on allies in their balancing efforts.<sup>16</sup> For my purposes, the first argument is more important.

In a brief discussion of the causal mechanism linking anarchy and state behaviour, Waltz asserts that “structure affects behaviour within the system, but does so indirectly... through *socialization* of the actors and through *competition* among them [italics added].”<sup>17</sup> Given his materialist ontology, his reliance on notions of socialization and competition are odd – even incongruous – choices. Further, Waltz’s assumption of competition among actors *presupposes* their internalization of roles *vis-à-vis* other actors in the system, either as rivals or, in the worst case, as enemies. In Wendt’s terms, Waltz assumes that actors are egoists – a quality that is in fact a learned, *contingent* trait.<sup>18</sup>

Anarchy is more than the theoretical abstraction of an IR theorist; it is a social *fact*. Indeed, even in Waltz’s account, anarchy must have some autonomous existence outside the realm of theory.<sup>19</sup> How can actors be socialized to a structure that is merely a theoretical assumption? Though Waltz is right to talk of socialization, such a mechanism necessarily requires a wider ontology inclusive of social facts, which are generated by intersubjective agreement among the actors. Indeed, the core of anarchy in the modern world political system stems from an explicit agreement among European rulers in the Peace of Westphalia.<sup>20</sup> The set

---

<sup>16</sup> On both the consequences of anarchy and the virtues of bipolarity, see Ch. 6.

<sup>17</sup> Waltz, *Theory of International Politics*, 74.

<sup>18</sup> *Ibid.*, 103-05.

<sup>19</sup> The same can be said of John Mearsheimer’s explication of ‘offensive realism’, which begins from Waltzian premises. Mearsheimer himself notes that the primary difference between the two arguments is over the extent to which the system compels states to be risk averse with regard to potential competitors. See John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York, N.Y.: W.W. Norton, 2001), 21.

<sup>20</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, Third ed. (New York, N.Y.: Columbia University Press, 2002), 31. A large literature on sovereignty and the development of the European state system now exists in IR; while this literature concurs on the importance of Westphalia, it also points out (correctly) that Westphalia was not a ‘magic’ moment of institutional creation. Rather, what we know today as ‘sovereignty’ is

of rules, norms and principles descended from this agreement govern claims to legitimate statehood, and act as a basic regulatory framework, prescribing and proscribing state behaviour. Sovereignty has acquired an institutional quality. This quality is obscured in Waltz's model by a materialist ontology and by Waltz's conception of theory, but this does not change the underlying (social) reality.

Further, Waltz is aware of additional social institutions co-existing with anarchy. Though he asserts that states are 'like units', his final chapter is concerned with "the management of international affairs" by great powers. He asserts that great powers cannot "behave as ordinary states because that is not what they are. Their extraordinary positions in the system lead them to undertake tasks that other states have neither the incentive nor the ability to perform."<sup>21</sup> Waltz lists four such tasks, in descending order of importance: "transforming or maintaining of the system, the preservation of peace, and the management of common economic and other problems."<sup>22</sup>

The argument does not offer an explanation of the logic that leads great powers to engage in such tasks, but two broad alternatives seem apparent. They may do so because they understand such behaviour to be *appropriate* to great powers, or because they perceive such behaviour to be in the *interest* of great powers. An explanation motivated by a logic of appropriateness contradicts the neorealist position that self-interested actors in anarchy must be

---

the product of a longer historical development – entailing many instances of what I will refer to as the social practice of institutional politics. For rich views on sovereignty see, among many others: Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999); Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*; Thomas J. Biersteker and Cynthia Weber, "The Social Construction of State Sovereignty," in *State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge, U.K.: Cambridge University Press, 1996); Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton, N.J.: Princeton University Press, 1994); Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton, N.J.: Princeton University Press, 2001).

<sup>21</sup> Waltz, *Theory of International Politics*, 199.

<sup>22</sup> Ibid.



primarily concerned with relative gains; however, a purely interest-based argument renders the ‘great power’ category redundant. If states are truly ‘like units’, the only difference between great powers and secondary states is their relative material capability. But, if this is true, there is no reason to expect (as Waltz does) great powers to have interests different from those of other states. Any state in a similar position of dominance would thus behave similarly; further, great powers behave identically to all other states – simply taking advantage of opportunities to safeguard or improve their relative power positions. On this reading, the category of ‘great power’ has no analytical content; it is simply an arbitrary qualitative descriptor of a state’s relative material power position. Aside from its inconsistency with Waltz’s claims about the nature of great power status, such an interpretation ignores the obvious meaning that actors themselves impute to the category of ‘great power’. As in the case of anarchy, the ‘structure’ implicated in great power behaviour is also constituted by intersubjective understandings – in this case, understandings that link material power with a historically contingent and contested mix of rights and responsibilities beyond those imparted by mere ‘stateness’.

The argument thus far has demonstrated Waltz’s implicit reliance on two social institutions in his structural account of world politics: anarchy, and great power management. Support for the notion of international structure as composed of social institutions can also be found in the work of Robert Gilpin. Like Waltz, Gilpin conceives of the system primarily in terms of its capacity to affect actor behaviour.<sup>23</sup> The two authors also employ a similar definition of a system; Gilpin adopts Mundell and Swoboda’s formulation: “an aggregation of diverse entities united by regular interaction according to a form of control.”<sup>24</sup> The ‘form of

---

<sup>23</sup> Robert G. Gilpin, *War and Change in World Politics* (Cambridge, U.K.: Cambridge University Press, 1981), 25-26.

<sup>24</sup> Quoted in *ibid.*, 26.

control' is analogous to Waltz's notion of structure, which I have argued is composed of social institutions. Further, Gilpin identifies the same two institutions Waltz relies on.

Gilpin argues that "control over or governance of the international system is a function of three factors": (1) "the distribution of power among political coalitions"; (2) "the hierarchy of prestige among states"; and (3) "a set of rights and rules that govern or at least influence the interactions among states."<sup>25</sup> The distribution of power corresponds roughly to Waltz's notion of anarchy and his resulting balancing hypothesis, while the hierarchy of prestige corresponds to great power management. Though I contend that it is an error to separate rights and rules from anarchy and great power management, I initially leave this objection aside.

Gilpin is careful to dismiss the view that anarchy entails chaos; rather, "the relationships among states have a high degree of order... although the international system is one of anarchy (i.e., absence of formal governmental authority), the system does exercise an element of control over the behavior of states."<sup>26</sup> However, rather than deriving balancing behaviour directly from anarchy, Gilpin places emphasis on the role of property rights (and their international analogue, sovereignty) in generating states' concern for their security. He asserts that "the control and division of territory constitute the basic mechanism governing the distribution of scarce resources among the states in an international system."<sup>27</sup> In addition to the distribution of power created by anarchy/sovereignty, Gilpin acknowledges the role played by great powers in managing world politics: "to some extent the lesser states... follow the leadership of more powerful states, in part because they accept the legitimacy and utility of the existing order."<sup>28</sup>

---

<sup>25</sup> Ibid., 29-30.

<sup>26</sup> Ibid., 28.

<sup>27</sup> Ibid., 37.

<sup>28</sup> Ibid., 30.

In fact, rights and rules play a central role in anarchy and in great power management. According to Gilpin, the legitimacy enjoyed by great powers is dependent on three factors: (1) victory in the previous hegemonic war and the attendant opportunity to dictate the structure of the peace settlement; (2) promotion of public goods; and (3) the existence of “ideological, religious, or other values common to a set of states.”<sup>29</sup> Each relies on intersubjectively held ideas about the rights and responsibilities concomitant with great power status – as well as on intersubjective agreement on which states are accorded such status. Similarly, even in domestic society, the enjoyment of property rights is dependent partially upon intersubjective agreement on rules of appropriate behaviour – there is little reason to believe that respect for such rights is solely predicated on expected utility calculations dominated by the prospect of governmental action in all but the most limiting cases. In world politics, the absence of reliable third-party enforcement serves only to enhance the importance of intersubjective agreement on the legitimacy of sovereign rights. Thus, anarchy and great power management are comprehensible only as intersubjectively agreed bundles of rules, norms, and principles.

Though neorealists are generally uninterested in the language of social institutions and its resulting research agenda, their arguments in fact rely on stipulated descriptions of the rules, norms and principles that comprise key social institutions in world politics. This strategy of assuming social institutions rather than making them key objects of inquiry both reflects and suggests the neorealist belief that these institutions either do not exist (Waltz) or are unchanging and unalterable (Gilpin). Relying on social institutions while rendering them either exogenous or unfit objects of inquiry significantly hinders understanding of the social world.

---

<sup>29</sup> Ibid., 34.

## 2.2 Neoliberal Institutionalism

Institutionalist scholarship attempts to rectify the neorealist argument regarding the implications of anarchy for international cooperation by introducing ‘institutions’ as a significant variable. However, the promise inherent in this modification of neorealism is undermined by the fact that institutionalism shares with neorealism a problematic theoretical treatment of institutions that recognizes their regulative but not their constitutive role, and that mis-specifies them as non-structural.

Regime analysis is the acknowledged, immediate theoretical progenitor of institutionalism in international relations.<sup>30</sup> Stephen Krasner has provided the authoritative definition of regimes: “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area.”<sup>31</sup> Despite the widespread adoption of this definition, Krasner’s framework is ambiguous on a crucial point; it is not clear whether or not he classifies regimes as having structural properties, or whether structure is composed of social institutions. On the one hand, he introduces the idea of a hierarchy of regimes in which “diffuse principles and norms... condition behavior in specific issue areas.”<sup>32</sup> The most important of these in world politics is sovereignty, which “is not an analytic assumption” but rather “a principle that influences the behavior of actors.”<sup>33</sup> On the other hand, Krasner writes that “it is the infusion of behavior with principles and norms that distinguishes regime-governed activity from more conventional activity, guided exclusively by narrow calculations of interest.”<sup>34</sup> If

---

<sup>30</sup> See Lisa L. Martin and Beth A. Simmons, "Theories and Empirical Studies of International Institutions," *International Organization* 52, no. 4 (1998).

<sup>31</sup> Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," 1.

<sup>32</sup> *Ibid.*, 17.

<sup>33</sup> *Ibid.*, 18.

<sup>34</sup> *Ibid.*, 3.

sovereignty is to be treated as an intersubjective principle basic to world politics, as Krasner's argument implies it must, it is difficult to imagine precisely the non-regime "conventional activity" to which he refers.

Krasner's causal mechanism separates "basic" variables, the neorealist concepts of material power and interest structures, from regimes. Regimes are explicitly cast as "intervening variables" – present in some cases and not in others. Such an argument erects a separation, in my view a false one, between power and interest on the one hand, and principles, norms and rules on the other. Further, even if regimes are somehow non-structural in nature, we are left with a problem. Krasner accepts the neorealist specification of structure (anarchy) while maintaining that sovereignty, which constitutes anarchy, is social in nature. That is, a social rule or principle constitutes an asocial condition. Krasner assigns a clearly secondary status to regimes and social institutions despite his accompanying argument on the fundamental importance (and social nature) of sovereignty.

This secondary status for social institutions relative to 'structural' variables is perhaps explained by briefly examining Krasner's additional work on the question of sovereignty. He argues, persuasively, against "the view that the Westphalian system implies that sovereignty has a taken-for-granted quality"; rather, "the actual content of sovereignty, the scope of the authority that states can exercise, has always been contested."<sup>35</sup> The implication is of a rule-governed system in which contestation of intersubjective meanings is the primary mechanism of change. Yet, according to Krasner, "the driving forces behind the gradual elimination of universal institutions and the predominance of the sovereign state were material, not ideational."<sup>36</sup>

---

<sup>35</sup> Stephen D. Krasner, "Westphalia and All That," in *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, ed. Judith Goldstein and Robert O. Keohane (Ithaca, N.Y.: Cornell University Press, 1993), 235.

<sup>36</sup> *Ibid.*, 261.

The simplest way to reconcile this seeming inconsistency is to understand Krasner to see material factors as determining ideational ones. But, even if Krasner is correct that changes in technology and other material conditions drive social change, his argument seems to insist that such technological changes almost completely obliterate scope for political choices regarding the most effective and most appropriate *responses* to new material circumstances. Such political choices are, in fact, the only possible mechanism for an organized, collective human response to the material world. Further, even if only one ‘correct’ response were available, such choices remain practically and theoretically significant – if only because human responses are rarely optimal, and often simply mistaken.

Thus, the primary problem with Krasner’s work on regimes, sovereignty and social institutions is that he does not consistently apply his insights regarding the social nature of sovereignty, which would require the amendment of the original neorealist understanding of structure Krasner employs. Interestingly, the original volume on regimes contained work by authors who recognized this problem. Oran Young, for instance, explicitly argued that regimes are social institutions and that, due to their role in encouraging common outcomes despite variations among units, “regimes are *social structures* [italics added]”.<sup>37</sup> Unfortunately, Krasner’s response was to explicitly exclude such ‘Grotian’ approaches to regime analysis from the mainstream.<sup>38</sup>

The paradigmatic statement of the institutionalist argument that emerged from regime theory is provided by Robert Keohane’s *After Hegemony*. Like Young and Krasner, Keohane

---

<sup>37</sup> Oran R. Young, "Regime Dynamics: The Rise and Fall of International Regimes," in *International Regimes*, ed. Stephen D. Krasner (Ithaca, N.Y.: Cornell University Press, 1983), 93-94.

<sup>38</sup> Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," 6-10.

relies on a conception of regimes as social institutions.<sup>39</sup> Further, Keohane differentiates norms, rules and principles according to their importance. While narrow, technical rules are easily changed, more fundamental principles and their associated rules and practices are remarkably stable. Within this continuum, regimes are “intermediate injunctions – politically consequential but specific enough that violations and changes can be identified”.<sup>40</sup> This conceptual framework is, in some respects, a promising improvement on neorealism, especially as it recognizes that regimes are “components of systems in which sovereignty remains a constitutive principle.”<sup>41</sup> However, Keohane’s purpose was to demonstrate that “nonhegemonic cooperation... can be facilitated by international regimes.”<sup>42</sup> Similarly, Krasner argues that regimes are best seen as intervening variables that mitigate the effects of the structural, ‘neorealist’ background of the world political system.<sup>43</sup> Thus, institutionalist scholarship, as originally conceived, focused on a fundamentally different problem than that of fundamental change. This focus led to the emulation of standard neorealist practice: holding constant the basic social structure of world politics in order to investigate the effects of regimes on behaviour. While in itself a legitimate methodological decision, this move has had the unfortunate effect of creating a ‘tacit ontology’ in the study of international politics.<sup>44</sup>

The tension between the underlying neorealist assumptions about structure in the international system and the acknowledgement of the social nature of anarchy (as well as the

---

<sup>39</sup> Robert O. Keohane, *After Hegemony* (Princeton N.J.: Princeton University Press, 1984), 57.

<sup>40</sup> *Ibid.*, 59.

<sup>41</sup> *Ibid.*, 63.

<sup>42</sup> *Ibid.*, 50.

<sup>43</sup> Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables,"

<sup>44</sup> On the concept of tacit ontology, see Wendt, *Social Theory of International Politics*, 340. See also Ruggie and Kratochwil, "Epistemology, Ontology, and the Study of International Regimes."

importance of other social institutions) remains evident in recent scholarship by prominent institutionalists. Much of this literature remains primarily concerned with the effects of institutions on state behaviour, a question that is conducive to understanding social institutions as structural in nature, but that precludes explanation of change, since the fundamental nature of world politics is taken for granted in such studies.<sup>45</sup> One recent effort by Robert Keohane and Lisa Martin shows signs of regression in the institutionalist literature with respect to the understanding of social institutions as structural in nature. In the context of responding to neorealist claims that institutions are epiphenomenal, since the form of institutions is taken to be determined by neorealist 'structural' variables, Keohane and Martin invoke agency theory in order to carve out space for institutions to maintain their autonomy.

The primary difficulty with this move is that Keohane and Martin abandon the distinction between organizations and institutions. They assert that agency theory "recognizes explicitly that organizations are acting entities with leaders who have institutionally-affected interests of their own" and that this "has often been obscured by the emphasis of institutional theory on structures of rules."<sup>46</sup> Because "principals often find it useful to endow agents with discretion, and agents typically have superior information, at least about some issues", the potential exists for organizations to behave autonomously and thus have autonomous impacts on international relations.<sup>47</sup> This conflation of organizations and institutions is endemic in the chapter. The authors first claim that institutions "can take the form of formal intergovernmental or nongovernmental organizations, international regimes, and informal conventions." In the same

---

<sup>45</sup> Liliana Botcheva and Lisa L. Martin, "Institutional Effects on State Behavior: Convergence and Divergence," *International Studies Quarterly* 45 (2001).

<sup>46</sup> Keohane and Martin, "Institutional Theory as a Research Program," 102.

<sup>47</sup> Ibid.



paragraph, they insist that “following Douglass North, we conceive of organizations as actors or ‘players’ and institutions as rules that define how the game is played.”<sup>48</sup> These two statements are incompatible. Further, the conflation of institutions and organizations directly contradicts the definition of institutions that animates Keohane’s 1984 work, *After Hegemony*. A preferable response that allows the preservation of the distinction between organizations and institutions, and thus preservation of the structural nature of social institutions, is to argue instead that the neorealist structural variables are themselves reliant on social institutions.

### 2.3 Classical Realism

Theorists of international relations routinely distinguish classical from structural or neorealism.<sup>49</sup> Waltz’s *Theory of International Politics*, the seminal neorealist text, was itself a conscious departure from ‘traditional’ approaches to the study of IR – a departure intended, *inter alia*, to advance the field’s understanding of ‘structure’ and its role in social life. However, neorealism has instead obscured the important insights of classical realists such as E.H. Carr and Hans Morgenthau into the nature and role of structure. The realist canon more broadly conceived lends additional support to my argument that neorealists and neoliberals have mis-specified social institutions as non-structural in nature.

One initial difficulty is that neither Carr nor Morgenthau explicitly employ the concept of social institutions; however, this difficulty can be overcome by recalling that institutions are

---

<sup>48</sup> Ibid., 78.

<sup>49</sup> See, for example, Randall L. Schweller, "The Progressiveness of Neoclassical Realism," in *Progress in International Relations Theory: Appraising the Field*, ed. Colin Elman and Miriam Fendius Elman (Cambridge, Mass.: MIT Press, 2003). See also: Richard K. Ashley, "The Poverty of Neorealism," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York, N.Y.: Columbia University Press, 1986); Robert O. Keohane, "Realism, Neorealism and the Study of World Politics," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York, N.Y.: Columbia University Press, 1986).

composed of norms, rules and principles, and that institutions have an inherently intersubjective nature. Unlike the notion of social institutions, these more fundamental concepts figure prominently in both Carr's *Twenty Years' Crisis* and Morgenthau's *Politics Among Nations*.

Both Carr and Morgenthau conclude that the problem of peaceful change is one of negotiation, persuasion and bargaining. That is to say, it is a *political* problem. Understood in these terms, their arguments castigating inter-war utopianism take on a new light. The fallacy in such positions was not the impossibility of the goal but the impracticability of the means. Fundamental change in social structure cannot be the result of a hastily erected body of international law that contradicts the basic practices of the extant social system; rather, negotiation, bargaining and persuasion must take as their starting point the existing structure of social institutions – including considerations of power.

Carr develops several basic social theory propositions about the generic nature of politics and of social facts. These propositions are vital to understanding his more specific arguments about world politics and about peaceful change. The best starting point is Carr's claim that "Aristotle laid the foundation of all sound thinking about politics when he declared that man was by nature a political animal."<sup>50</sup> As such, man has two basic impulses: "egoism, or the will to assert himself at the expense of others" and "sociability, or the desire to co-operate with others, to enter into reciprocal relations of good will and friendship with them, and even to subordinate himself to them."<sup>51</sup> Feelings of sociability are vital to social cohesion: "no society can exist unless a substantial proportion of its numbers exhibits in some degree the desire for cooperation and mutual good will."<sup>52</sup> However, Carr makes clear that such feelings are necessary but not

---

<sup>50</sup> Edward Hallett Carr, *The Twenty Years' Crisis*, 3rd ed. (New York, N.Y.: Palgrave, 2001), 91.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

sufficient to guarantee social cohesion. He claims that “in every society some sanction is required to produce the measure of solidarity requisite for its maintenance; and this sanction is applied by a controlling group or individual in the name of society.”<sup>53</sup> This fundamental tension between egoism and sociability, power and morality, runs throughout Carr’s book.

On this view, the fundamental problems of social order are to maximize the degree of sociability while applying necessary sanctions in the least coercive way possible, and providing means for social change. Further, Carr’s argument recognizes that the solution of such fundamental problems of social order is inherently political; that is, concerned with the creation and maintenance of intersubjective agreement. He writes that “the art of persuasion has always been a necessary part of the equipment of political leaders.”<sup>54</sup> Indeed, “contemporary politics are vitally dependent on the opinion of large masses of more or less politically conscious people”.<sup>55</sup> This empirical concern with persuasion and public opinion is consistent with Carr’s criticism of the utopians for their neglect of “the assumptions of the ordinary man about international morality.”<sup>56</sup> The result was a politically unworkable system of international law and morality that flatly contradicted existing social practices.

With specific reference to international politics, Carr identifies two major devices connected to the solution of the fundamental problems of social order: international morality and international law. I will argue that both satisfy the definition of social institutions. Further, I argue that Carr does not adequately recognize the institutional nature of ‘power politics’ itself. While Carr’s approach clearly conceives of social institutions playing structural roles in world

---

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., 120.

<sup>55</sup> Ibid., 121.

<sup>56</sup> Ibid., 135.

politics, it does not clearly and consistently apply its basic principles and therefore incompletely specifies the world political system.

Carr's introduction of the concept of international morality unmistakably establishes it as intersubjective social fact. According to Carr, "the fact that national propaganda everywhere so eagerly cloaks itself in ideologies of a professedly international character proves the existence of *an international stock of common ideas* [italics added], however limited and however weakly held, to which appeal can be made, and of a belief that these common ideas stand somehow in the scale of values above national interests."<sup>57</sup> The importance of the requirement that such ideas be intersubjectively held is reinforced by Carr's recognition that "so long as statesmen, and others who influence the conduct of international affairs, *agree* [italics added] in thinking that the state has duties, and allow this view to guide their action, the hypothesis remains effective."<sup>58</sup> Ultimately, Carr concludes that "there is a world community for the reason (and for no other) that people talk, and within certain limits behave, as if there were a world community."<sup>59</sup>

This last claim leads to the next crucial point. International morality, on Carr's view, is not simply a collection of empty rhetorical platitudes. Rather, he claims that "a state which does not conform to certain standards of behaviour... will be branded as 'uncivilized'."<sup>60</sup> The common ideas that comprise the rules, norms and principles of international morality clearly act to regulate behaviour in world politics. The more difficult determination is whether international

---

<sup>57</sup> Ibid., 130.

<sup>58</sup> Ibid., 139.

<sup>59</sup> Ibid., 147.

<sup>60</sup> Ibid., 141. This discourse of 'civilization' has been explored by a small but important literature in international relations. See: Gerrit W. Gong, *The Standard of Civilization in International Society* (London, U.K.: Clarendon, 1984); Edward Keene, "A Case Study of the Construction of International Hierarchy: British Treaty-Making against the Slave Trade in the Early Nineteenth Century," *International Organization* 61, no. 2 (2007); Jacqueline Best, "Civilizing through Transparency: The International Monetary Fund," in *The Global Standards of Market Civilization*, ed. Leonard Seabrooke and Brett Bowden (London, U.K.: Routledge, 2006).

morality is related to the constitution of actors as “knowledgeable social agents,” the second of the two roles Reus-Smit attributes to institutions.<sup>61</sup> Here, Carr reports his understanding of the contemporary practices of states: “A new state, on becoming, in virtue of *recognition* [italics added] by other Powers, a member of the international community, is assumed to regard itself as automatically bound, without any express stipulation, by the accepted rules of international law and canons of international morality.”<sup>62</sup> Thus, the rules of international morality (and of international law, discussed below) are considered partially constitutive of state identity by states themselves.

Carr’s identification of the necessary role of recognition in justifying legal claims to state identity establishes the constitutive role of international law in world politics as well as its relevance to applying and interpreting rules (this latter subject is addressed in more depth in the next chapter). Subject status under international law is imparted via recognition by other states, which entails their intersubjective agreement on the status of the entity claiming statehood. However, intersubjective agreement is vital to international law in a more fundamental sense. While international law provides the rule structure that constitutes state identity, this rule structure is itself constituted by a prior intersubjective agreement. Indeed, Carr recognizes that “every legal system presupposes an initial political decision, whether explicit or implied, whether achieved by voting or by bargaining or by force, as to the authority entitled to make or unmake law.”<sup>63</sup> Such agreement is essential to the efficacy of law, and the survival of political community; “no community could survive if most of its members were law-abiding only through

---

<sup>61</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 12-13.

<sup>62</sup> Carr, *The Twenty Years' Crisis*, 142.

<sup>63</sup> *Ibid.*, 166.

an ever-present fear of punishment.”<sup>64</sup> Further, subject status entails acceptance of regulatory limits on behaviour determined by the substantive content of international law. As with international morality, Carr’s analysis of international law recognizes the constitutive and regulatory roles of socially constructed and intersubjectively agreed sets of rules, norms and principles. Therefore, Carr’s account of international law and international morality is consistent with Reus-Smit’s definition of social institutions. Again, Carr also foreshadows the importance of agreements on standards for rule making and rule interpretation.

With regard to the synthesis I aim at here, the most difficult part of Carr’s argument is his claim that “the alleged ‘dictatorship of the Great Powers’... is a fact which constitutes something like a ‘law of nature’ in international politics.”<sup>65</sup> This passage is fundamentally ambiguous; it appears to admit at least two plausible readings. The first is the more standard realist reading premised on a tight analogy between the natural and social worlds, allowing confidence in deductive-nomological methods. However, this reading squares poorly with Carr’s apparent understanding of international law and morality as significant institutions in world politics and with his appreciation of historical contingency. The more consistent reading of the passage imparts significance to the words “something like”, thereby denoting the centrality and enduring character of the ‘Great Powers’ as a managerial institution in contemporary world politics, while remaining sensitive to the social nature and resulting historical contingency of that institution.

It is difficult to adjudicate definitively between these two readings, other than to say that the second appears more consistent with the overall reading of Carr’s classic advanced here. However, this provisional conclusion has an important implication. It serves as a reminder that the state system, or at least the rules governing the use of force in that system (including ‘power

---

<sup>64</sup> Ibid., 164.

<sup>65</sup> Ibid., 99.

politics'), are ontologically identical to Carr's conceptions of international law and morality. They are social institutions, and therefore historically contingent.

Morgenthau's treatment of 'power politics' is in some ways more problematic than Carr's, as it is predicated on strong assumptions about human psychology. Morgenthau asserts that "the tendency to dominate... is an element of all human associations, from the family through fraternal and professional associations and local political organizations, to the state."<sup>66</sup> This premise warrants the conclusion that "international politics, like all politics, is a struggle for power."<sup>67</sup> However, Morgenthau's argument requires two important clarifications. First, he defined power not in the purely materialist terms common to subsequent realist arguments; rather, he recognized the inherently social nature of power. Power itself is defined as "man's control over the minds and actions of other men." More specifically, "by *political* power [italics added] we refer to the mutual relations of control among the holders of public authority and between the latter and the people at large."<sup>68</sup> Therefore, "political power is a psychological relation between those who exercise it and those over whom it is exercised." By definition, a psychological relation between multiple individuals is social, or intersubjective. Accordingly, the political struggle for power in Morgenthau's argument cannot be understood wholly in material terms.

Second, Morgenthau is equally clear that the political struggle for power is neither unlimited nor unbounded. Since "power is a crude and unreliable method of limiting the aspirations for power on the international scene", societies develop normative systems whose

---

<sup>66</sup> Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, Brief ed. (New York, N.Y.: McGraw-Hill, 1993), 37.

<sup>67</sup> *Ibid.*, 29.

<sup>68</sup> *Ibid.*, 30.

functions “has been to keep aspirations for power within socially tolerable bounds.”<sup>69</sup> For Morgenthau, these normative systems are composed of rules, which are distinguished according to the type of associated sanction: rules of ethics are enforced by “pangs of conscience”; violation of societal mores cause “unorganized society” to react “with spontaneous demonstrations of disapproval, such as business boycott, social ostracism, and the like”; and violation of law causes “organized society” to react “in the form of a rational procedure with predetermined police action, indictment, trial, verdict, and punishment”.<sup>70</sup>

Morgenthau is clear about the importance of such rules. He writes that “social life consists overwhelmingly of continuous reactions, which have become largely automatic, to the pressures society exerts upon its members through its rules of conduct.”<sup>71</sup> Thus, his argument clearly satisfies the first aspect of Reus-Smit’s definition of social institutions. Sets of norms, rules and principles serve to regulate actor behaviour. It is less clear whether Morgenthau envisages a constitutive role for institutions. His reliance on claims about the immutable nature of human psychology suggests that he does not. This reading is reinforced by the claim that “both domestic and international politics are a struggle for power, modified only by the different conditions under which this struggle takes place”.<sup>72</sup> The basic nature of human psychology, and thus of politics, is independent of the institutions that restrict the means of political contestation. On the other hand, Morgenthau qualifies his claim that interest is “an objective category” by noting that the kind of interest determining political action in a particular period of history

---

<sup>69</sup> Ibid., 219-20.

<sup>70</sup> Ibid., 220-21.

<sup>71</sup> Ibid., 222.

<sup>72</sup> Ibid., 37.



depends upon the political and cultural context.<sup>73</sup> This argument suggests that Morgenthau sees psychological factors as indeterminate of behaviour. While humans are necessarily egoists, their specific preferences are shaped, or constituted, by institutions.

Morgenthau provides two historical contrasts of note. First, he argues that the difference between Bismarck and Hitler was that Hitler “did not recognize the social framework within whose limitations international politics had operated from the end of the Thirty Years’ War virtually to his own ascent to power.”<sup>74</sup> The recognition of Westphalia’s significance should not be surprising. Morgenthau is in extensive company when he claims that “the modern system of international law is the result of the great political transformation that marked the transition from the Middle Ages to the modern period of history.”<sup>75</sup> These passages serve to make two points. First, the contrast identifies attitude toward the structure of social institutions as the relevant difference between the conservative Bismarck and the radical Hitler. Second, Morgenthau identifies a social construction (international law) both as the product of a systems change and as constitutive of the changed system.

The second historical contrast demonstrates that international law and the principle of sovereignty are not entirely constitutive of the world political system. Morgenthau argues that nationalism fractured the moral unity of the society of sovereign states. Accordingly, “nations no longer oppose each other, as they did from the Treaty of Westphalia to the Napoleonic Wars, and then again from the end of the latter to the First World War, within a framework of *shared beliefs* and *common values* [italics added], which imposes effective limitations upon the ends and means of their struggle for power.” The shift was “from one genuinely universal system to a

---

<sup>73</sup> Ibid., 10-11.

<sup>74</sup> Ibid., 227.

<sup>75</sup> Ibid., 253.

multiplicity of particular moral systems claiming, and competing for, universality.”<sup>76</sup> Not only does this argument underscore the importance of nationalism, it also differentiates historical periods of stability and change. Periods of stability, such as that extending from the end of the Thirty Years’ War to the start of the Napoleonic Wars and from 1815-1914, are associated with broad intersubjective agreement on beliefs and values. In contrast, the breakdown of such agreements is associated with attempts to fundamentally change the world political system.

While it is important not to overstate the importance or the value of classical realist arguments, their awareness of the rule-governed nature of human social life, and of the importance of social institutions to the question of change, stands in sharp contrast to the work of American neorealists such as Kenneth Waltz and Robert Gilpin. A broad view of the realist tradition offers more promising theoretical tools for addressing the question of change than does the narrow focus on the neorealist tradition common to the North American IR community. This interpretation of classical realism also lends support to recent interest in the development of a ‘realist constructivism’.<sup>77</sup>

## 2.4 Critical Approaches

The category of ‘critical approaches’ to IR is admittedly a broad one. The common thread uniting such theories is a dual concern with exposing the relations of domination inherent in the current structures of the world political system, and with developing alternatives. Perhaps

---

<sup>76</sup> Ibid., 242.

<sup>77</sup> For instance: J. Samuel Barkin, "Realist Constructivism," *International Studies Review* 5, no. 4 (2003); J. Samuel Barkin, "Realist Constructivism and Realist-Constructivisms," *International Studies Review* 6, no. 2 (2004); Janice Bially Mattern, "Power in Constructivist Research," *International Studies Review* 6, no. 2 (2004); Patrick Thaddeus Jackson and Daniel H. Nexon, "Constructivist Realism or Realist-Constructivism?," *International Studies Review* 6, no. 2 (2004); Richard Ned Lebow, "Constructive Realism," *International Studies Review* 6, no. 2 (2004); Jennifer Sterling-Folker, "Realist-Constructivism and Morality," *International Studies Review* 6, no. 2 (2004).

the most well-known formulation of this concern is Robert Cox's distinction between problem-solving theory and critical theory.<sup>78</sup> Indeed, Ann Tickner argues that "the goal of feminist theories is similar to that of critical theory as defined by Cox."<sup>79</sup> In this section, I argue that the theoretical approaches pioneered by Immanuel Wallerstein and Robert Cox explicitly understand the structure of the world political system to be, at least in significant part, social in nature. Further, I argue that a social conceptualization of structure is consistent with feminist IR scholarship.

#### 2.4.1 *World-Systems Theory*

Wallerstein's classic treatise, *The Modern World System*, is self-consciously a study of social change; however, it is a mistake to read Wallerstein as providing a purely materialist account of such processes. While I engage briefly in this section with Wallerstein's argument regarding the process of social change, my primary purpose is to demonstrate the structural understanding of social institutions that informs world-systems scholarship.

The core concept in Wallerstein's work is the 'world-system'. Wallerstein is clear that "a world-system is a social system"; specifically, he argues that such social systems have "boundaries, structures, member groups, rules of legitimation, and coherence."<sup>80</sup> This list of components can be collapsed to the earlier definition of a system in terms of its structures and units. Member groups clearly correspond to the system's units, as opposed to its structures. Rules of legitimation, insofar as they constitute agents and regulate behaviour, clearly perform

---

<sup>78</sup> Robert W. Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," in *Approaches to World Order*, ed. Robert W. Cox and Timothy J. Sinclair (Cambridge, U.K.: Cambridge University Press, 1996), 88-90.

<sup>79</sup> J. Ann Tickner, *Gendering World Politics* (New York, N.Y.: Columbia University Press, 2001), 32.

<sup>80</sup> Immanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York, N.Y.: Academic Press, 1974), 347.

the structural roles attributed to institutions by Reus-Smit. Further, as I will show, Wallerstein's set of structures in the modern world system is clearly comprised of social institutions. In contrast, boundaries and coherence seem to function here as analytic properties. Systems may exhibit these characteristics, but they are not social phenomena in the same way as actors and structures.

More generally, Wallerstein has defined a world-system as "an integrated zone of activity and institutions which obey certain systemic rules."<sup>81</sup> Note here that Wallerstein apparently disaggregates institutions and rules. In Reus-Smit's definition, which I adopt for the purposes of my study, rules are an important component of institutions. I argue that the most plausible reconciliation of these two positions is to understand Wallerstein to have in mind the rules that establish and control relations *between* individual social institutions. Thus, rules are present at two points in his definition; they both comprise social institutions and govern their interaction. This interpretation preserves the social character of institutions, which I will show is shot through Wallerstein's work.

Wallerstein identifies the specific modern world-system as a capitalist world-economy – jointly constituted by the capitalist economy and the system of sovereign states, which exist in a symbiotic relationship.<sup>82</sup> He is clear that "a capitalist world-economy is a collection of many institutions, the combination of which accounts for its processes, and all of which are intertwined with each other." Among these institutions are states and sovereignty, firms and markets, households, classes, and status groups.<sup>83</sup> This list of examples bolsters my argument that

---

<sup>81</sup> Immanuel Wallerstein, *World Systems Analysis: An Introduction* (Durham, N.C.: Duke University Press, 2004), 17.

<sup>82</sup> *Ibid.*, 24.

<sup>83</sup> *Ibid.*

Wallerstein has in mind a conception of institutions which is compatible with that advanced by Reus-Smit. Each example is either a set of rules, norms and principles (e.g., markets, sovereignty), or a collective identity governed by intersubjectively agreed-upon rules (e.g., firms, states). Wallerstein's modern world-system is thus a social one – a world which, despite the plurality of political units, allows for the evolution of the “common cultural patterns” that Wallerstein refers to as the “geoculture.”<sup>84</sup>

Further, these social phenomena are irreducible to the material world. Responding to the Marxist claim that the intersubjective, or cultural, aspects of human life are epiphenomena of material production relations, Wallerstein argues that geoculture is not superstructure but, instead, should be thought of as “underside, the part that is more hidden from view... but the part without which the rest would not be nourished.” It is “the cultural framework within which the world-system operates.”<sup>85</sup> This point is vital. For Wallerstein, social institutions play a role independent of the material relations of production, and thus cannot be said to be epiphenomenal.

In the remainder of this section, I briefly review Wallerstein's understanding of two critical institutions in the modern world system, as well as some of his insights into the historical, and thus contingent, nature of social systems. The purpose of this analysis is to strengthen my argument that Wallerstein should be understood as articulating a social conceptualization of structure.

For the purposes of my argument, the two most salient features of Wallerstein's work are his thoughts on the system of sovereign states and his notion of hegemony. In both instances, Wallerstein explicitly advances claims that are central to constructivist scholarship and that

---

<sup>84</sup> Ibid., 23.

<sup>85</sup> Immanuel Wallerstein, "Introduction: The Lessons of the 1980s," in *Geopolitics and Geoculture: Essays on the Changing World-System* (Cambridge, UK: Cambridge University Press, 1991), 11.

presuppose the centrality of intersubjectivity. With respect to the genesis of the international system, he writes that the Peace of Westphalia “codified certain rules of interstate relations that set limits to as well as guarantees of relative autonomy.” Further, he notes that “those rules were later elaborated and expanded under the rubric of international law.”<sup>86</sup> According to Wallerstein, the “fundamental” feature of sovereignty is that “it is a claim, and claims have little meaning unless they are recognized by others.”<sup>87</sup> He is also careful to differentiate between recognition of a claim and respect for it, arguing that actual respect for the claim is “in many ways less important” than its formal recognition. Ultimately, on this view, “sovereignty is more than anything else a matter of legitimacy.”<sup>88</sup>

Intersubjectivity is also vital to Wallerstein’s account of a central change in the character of sovereignty – the emergence of nationalism. Echoing recent constructivist work, Wallerstein identifies the shift from dynastic to popular sovereignty as a major turning point in the development of the international system.<sup>89</sup> He classifies nations as “social creations” and argues that “states have a central role in their construction.”<sup>90</sup> Through public schools, service in the armed forces and “public ceremonies”, states have inculcated collective national identities that provide “the minimal cement of state structures.”<sup>91</sup> Sovereignty was, from its nascence, inherently social; similarly, change in this social structure necessarily entails social change.

---

<sup>86</sup> Wallerstein, *World Systems Analysis: An Introduction*, 42.

<sup>87</sup> *Ibid.*, 44.

<sup>88</sup> *Ibid.*

<sup>89</sup> Recent constructivist scholarship on this point includes: Mlada Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture* (Princeton, N.J.: Princeton University Press, 2002); Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.

<sup>90</sup> Wallerstein, *World Systems Analysis: An Introduction*, 54.

<sup>91</sup> *Ibid.*

Though sovereignty, and its corollary anarchy, set the stage, Wallerstein argues that the balance of power results from “the competition between strong states and the efforts of semiperipheral states to increase their status and their power.”<sup>92</sup> Among the great powers, the specific objective is hegemony. Paralleling Gilpin, Wallerstein argues that the declining relative returns from hegemony imply that “the hegemonic power must divert itself into a political and military role, which is both expensive and abrasive.”<sup>93</sup> Over time, the result is recurrent hegemonic war for control of the system. Just as Gilpin’s argument acknowledged the social component of hegemony, Wallerstein writes that:

“what allows us to call them hegemonic is that for a certain period they were able to establish the rules of the game in the interstate system, to dominate the world-economy (in production, commerce, and finance), to get their way politically with a minimal use of military force... and to formulate the cultural language with which one discussed the world.”<sup>94</sup>

Thus, hegemony represents a temporary (and often coerced) agreement to deviate partially from the formally anarchic character of international politics. For my purposes the critical point is that the deviation – like anarchy itself – is the product of intersubjective agreement, even if such agreements are conditioned by considerations of military force.<sup>95</sup>

To this point, my analysis has focused on demonstrating the importance of intersubjectivity and social institutions to Wallerstein’s conception of the modern world-system and its normal operation. However, his insights into the mechanisms of social change, or the dynamics of the modern world-system, lend further support to my interpretation of his position on structure. Crucially, Wallerstein understands the reproduction and the evolution of the world-system as different results of the same underlying processes. Particularly, he argues that

---

<sup>92</sup> Ibid., 57.

<sup>93</sup> Ibid., 58.

<sup>94</sup> Ibid., 57-58.

<sup>95</sup> An argument similar to Wallerstein’s, though from broadly ‘liberal’ premises, is made in Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*.

“households serve as the primary socializing agencies of the world-system”, in that “they seek to teach us, and particularly the young, knowledge of and respect for the social rules by which we are supposed to abide.”<sup>96</sup> However, households are not simply the conduit for structural influence on the individual; Wallerstein explicitly states his belief that “households also socialize members into rebellion, withdrawal, and deviance.”<sup>97</sup> This perspective suggests that explaining change is a matter of determining the conditions under which households socialize their members to pursue change, and the conditions under which such attempts are successful at the system level.

With respect to the first question, Wallerstein argues that the nature of socialization by households is determined “largely” by “how the secondary institutions frame the issues for the households”; in turn, the success of such framing efforts “effectively depends on the relative homogeneity of the households.”<sup>98</sup> For my purposes, the important point is that Wallerstein expects pressures for change to rise as societal cohesion declines. Whether or not there is a straightforward relationship between homogeneity and pressures for change, the dynamic is a social one – individuals and households are shaped by, and respond to, social institutions.

The second question is perhaps the more crucial one. When do pressures for change, and attempts to create it, translate into actual changes at the system level? Wallerstein’s answer to this question is based on a dialectical reading of history. He insists that social systems are inescapably historical, that they “pursue their historical life within the framework and constraints of the structures that constitute them, following their cyclical rhythms and trapped in their

---

<sup>96</sup> Wallerstein, *World Systems Analysis: An Introduction*, 37.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.



secular trends.”<sup>99</sup> The development of these trends over time is taken to inevitably pose problems the system cannot effectively solve, prompting systemic crisis. As such points, “the system bifurcates”; it is “faced with two alternative solutions for its crisis, both of which are intrinsically possible.”<sup>100</sup> This moment of indeterminacy, in which “the members of the system collectively are called upon to make a historical choice about which of the alternative paths will be followed”, sits uneasily with the apparent inexorability of the system’s unfolding trends.<sup>101</sup> Further, it is not immediately obvious either that a crisis would have precisely two possible solutions or that these solutions would necessarily be recognized by the relevant actors. What is important for the moment is that the stakes in such debates involve “what kind of new system will be *constructed* [emphasis added]”, and that the actual collective choice “is inherently unpredictable.”<sup>102</sup> Wallerstein’s account of the dynamics of the modern world-system thus requires an understanding of social structure consistent with my argument defining it in terms of social institutions.

#### 2.4.2 *Critical Theory*

Robert Cox’s distinction between problem-solving and critical theory, mentioned above, signals his explicit concern with the problem of social change. Cox’s delineation of the method of historical structures as an avowedly critical theory demonstrates that he adopts a more clearly constructivist approach to studying social change than any of the authors surveyed thus far. Accordingly, I will briefly make the case that Cox is essentially a constructivist – though one

---

<sup>99</sup> Ibid., 76.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid., 76-77.

with particular normative commitments – before addressing two potential problems with my interpretation. The first potential problem surrounds Cox’s apparent distinction between ideas and institutions; the second stems from the relationship between the material and the social worlds – from Cox’s materialism.

The central organizing concept in Cox’s work is that of ‘production’. His conception of production is social in two primary ways: first, production explicitly includes the creation of intersubjective meaning; second, production of the material necessities of human life is significantly shaped by social factors. Cox explicitly argues that “work produces both the physical and the social and moral conditions for satisfying human needs.” This entails “the making of symbols and social institutions that make possible the cooperation among people required” to meet physical needs.<sup>103</sup> In addition to acknowledging the production of social facts and intersubjective knowledge, Cox understands the impact of the social world on both the production and distribution of material goods. This is the second sense in which his conception of production must be understood as ‘social’. On this view, “the social context of production determines *what* kinds of things are produced and *how* they are produced.”<sup>104</sup> Further, the same “structure of social power” and the concomitant processes of political struggle over its content shape “the distribution of the rewards of production.”<sup>105</sup> This conceptualization of production sees social structures as both produced by, and to some extent productive of, human action. As in constructivist work, agency and structure are inextricably bound together. This position on the

---

<sup>103</sup> Robert W. Cox, *Production, Power and World Order: Social Forces in the Making of History* (New York, N.Y.: Columbia University Press, 1987), 13.

<sup>104</sup> *Ibid.*, 11.

<sup>105</sup> *Ibid.*, 11-12.

relation of agents and structures via production has important implications for Cox's explanation of social change.

For Cox, change is defined in terms of alterations to social structures made by human agents via conflictual social processes. This understanding is reflected in his definition of "historical structures" as "persistent social practices, made by collective human activity and transformed through collective human activity."<sup>106</sup> Such transformations, or historical changes, are inherently intersubjective; they are "the result of conflicts, in which the emergence of a new form of consciousness leads to a shift in power relations which makes this new form of consciousness supreme over the erstwhile dominant form of consciousness."<sup>107</sup> Thus, change is simply a particular result of the generic production processes endemic to human social life. Change occurs when, rather than reproducing existing social structures, the outcome of interaction is that new structures are produced.

On Cox's view, structure does not determine action; rather, its role is to "constitute the context of habits, pressures, expectations, and constraints within which action takes place."<sup>108</sup> Cox identifies three such structures: social relations of production, forms of state, and world order. Further, Cox also identifies "structures of structures linking together these levels in systems that have had a certain stability for a certain duration."<sup>109</sup> Each of the structures is comprised of material capabilities, ideas and institutions. The content and relation of these three categories is crucial to understanding Cox's conception of structure, and thus to my argument that his conception of structure is a social one. Accordingly, I will first take up the relationship

---

<sup>106</sup> Ibid., 1.

<sup>107</sup> Robert W. Cox, "On Thinking About Future World Order," 77.

<sup>108</sup> Robert W. Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," 97.

<sup>109</sup> Cox, *Production, Power and World Order: Social Forces in the Making of History*, 395.

between ideas and institutions in Cox's work before commenting on his position regarding the relationship of the material and the social worlds.

I argue that institutions are *comprised* of intersubjective ideas; however, Cox is careful to delineate them.<sup>110</sup> This distinction in Cox's work rests on his understanding of institutions as bureaucratic organizations – the formal, often inter-governmental organizations emphasized by neoliberal institutionalists. At one level, then, this is a difference of nomenclature; however, I argue that the inclusion of collective agents within a definition of structure conflates agents and structures, and thus ought to be avoided. This is not to say that inter-governmental organizations are not important; rather, it is merely to say that they are not properly understood as structural in nature.

Cox's self-identification as a historical materialist and his inclusion of material capabilities in his definition of structure necessarily raise the question of the relationship of the material and social worlds – particularly in light of my argument that his conception of structure is a social one. I argue that the relationship between the material and the social in Cox's historical materialism is *not* one of material determinism; the mix of material and social factors is an *empirical* question. This claim is buttressed by Cox's comments on how we should understand the impact of technology on society. In contrast to the more determinist claim that technology has its own inherent logic to which humans can only react, he argues that we should “see technology as being shaped by social forces at least as much as it shapes these forces.”<sup>111</sup> The compatibility of Cox's historical materialism with his commitment to taking intersubjectivity seriously is made more explicit when he writes that “historical materialism sees in conflict the process of a continual remaking of human nature and the creation of new patterns

---

<sup>110</sup> Ibid., 22-28.

<sup>111</sup> Ibid., 21.

of social relations which change the rules of the game and out of which... new forms of conflict may be expected ultimately to arise.”<sup>112</sup> Concern with social conflict and process, as well as the ‘rules of the game’, requires recognition of the autonomous impact of social factors in human life.

While Cox is correct to treat the relationship between material and social factors as an empirical – and thus contingent – question, social structure and the material world should be conceptually separated. My reasoning is that the two are logically distinct. The material environment seems rarely to impose unique solutions to social problems. And, even in the limiting cases where it does so, there is no automatic mechanism that ensures humans will collectively recognize these constraints and conform to them in constructing social arrangements. Politically, *representations* of the constraints posed by the material world are often more important to determining the outcome than is ‘objective’ knowledge of those constraints – if, indeed, such objective knowledge is possible. Again, as with institutions, adopting the stance I suggest does not require treating material factors as unimportant. The interaction between social structure and the material environment is clearly an important one. My argument is only that distinct variables should be treated separately, so that their interactions can be properly studied and understood.

The basic assumptions and approach in Cox’s work are thus compatible with my conceptualization of social structure as composed of social institutions. He understands structure to include intersubjective ideas, and to play both constitutive and regulative roles with respect to human agents. Further, there are grounds to amend his conception of structure to exclude material capabilities and organizations without rendering these factors unimportant in the study

---

<sup>112</sup> Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," 95.

of international relations. Organizations are agents rather than structures, and the material world is a logically distinct explanatory factor mediated in its social impact by intersubjective understandings and representations of it.

### 2.4.3 *Feminist International Relations Theory*

Like the other critical theories reviewed here, feminist IR explicitly recognizes the importance of both intersubjectivity and social construction in the study of world politics. Thus, there are inherent affinities between feminist and constructivist approaches. In the more recent of her two books attempting to bridge the gap between the mainstream and feminist IR communities, J. Ann Tickner argues that feminism “understands individuals’ behavior as embedded within a network of structures that are socially constructed.” Further, “these structures, rather than states, are the key units of analysis.”<sup>113</sup> Gender itself is such a structure. As a concept, it is taken to refer to “a set of culturally shaped and defined characteristics associated with masculinity and femininity.”<sup>114</sup> These “gender structures are socially constructed, historically variable, and upheld through power relations that legitimize them.”<sup>115</sup> Though gender structures form the basis for feminist research, Tickner emphasizes that gender “must be understood as a component of complex interrelationships having to do with class, race, and culture.”<sup>116</sup> Thus, feminist work should not be read as proposing monocausal explanations, or as positing that the structure of the world political system is constituted solely by gender hierarchy. The important point is that feminists, despite their considerable diversity, are

---

<sup>113</sup> Tickner, *Gendering World Politics*, 132.

<sup>114</sup> J. Ann Tickner, *Gender in International Relations* (New York, N.Y.: Columbia University Press, 1992), 7.

<sup>115</sup> Tickner, *Gendering World Politics*, 5.

<sup>116</sup> *Ibid.*, 134.

committed to a view of social and political life premised on the reality, importance and structural quality of social institutions.

The remainder of this section briefly examines the intersubjective notion of hegemonic masculinity undergirding patriarchy, and the relevance of patriarchy to the contemporary international system. Tickner argues that “socially constructed gender differences are based on socially sanctioned, unequal relationships between men and women”.<sup>117</sup> These relationships are informed by a background conception of masculinity shared intersubjectively by men and women alike. This ‘hegemonic masculinity’ is “a socially constructed cultural ideal that, while it does not correspond to the actual personality of the majority of men, sustains patriarchal authority and legitimizes a patriarchal political and social order.”<sup>118</sup> One primary mechanism is the construction of binary oppositions between valued characteristics (designated as masculine) and less valued characteristics designated as feminine.<sup>119</sup> Such gendering “is a mechanism for distributing social benefits and costs.”<sup>120</sup> In historical terms, such binary oppositions have also functioned as a means of restricting women to the private sphere. Christine Sylvester notes that “patriarchal society conditions women to be primarily household caretakers rather than keepers of the tools, symbols, and offices of the public sphere.”<sup>121</sup> Thus, in addition to its effects on identity formation, gender has effects on individuals’ life chances as well as on the social practices in which individuals engage – on the social structure in which they live.

---

<sup>117</sup> Tickner, *Gender in International Relations*, 6.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid., 7-8.

<sup>120</sup> Tickner, *Gendering World Politics*, 134.

<sup>121</sup> Christine Sylvester, *Feminist International Relations* (Cambridge, U.K.: Cambridge University Press, 2002), 169.

It is for this reason that feminists claim hegemonic masculinity and the patriarchy it legitimizes are vital to understanding the operation of the contemporary international system. Tickner argues that this is true both at the level of the concepts and categories employed in thinking about and practicing international politics, and of the practical policy problems confronted by decision-makers. At a basic level, “concepts central to international relations theory and practice, such as power, sovereignty, and security, have been framed in terms that we associate with masculinity.”<sup>122</sup> As a result, “ethnic conflict, poverty, family violence, and environmental degradation” can all “be linked to the international system.”<sup>123</sup> These problems, then, cannot be solved “until the hierarchical social relations, including gender relations” that constitute the international system “are reorganized and substantially altered.”<sup>124</sup> Thus, on a feminist perspective, change in the international system is a matter of change in the social institutions that structure it.

This reading of feminist IR theory buttresses the argument I have sought to advance in this section – that conceptualizing the structure of the world political system in terms of social institutions is consistent with an array of major approaches in contemporary international relations theory. The presence of intersubjectivity and social institutions as important structural factors in a diversity of theories suggests, further, that these phenomena are inescapable. Talking about international relations without reference to social institutions is as impossible as talking about chemistry without the periodic table. Accordingly, I conclude this chapter by reviewing, and expanding upon, the relevant constructivist literature.

---

<sup>122</sup> Tickner, *Gender in International Relations*, 18.

<sup>123</sup> *Ibid.*, 127.

<sup>124</sup> *Ibid.*



### 3 The Institutional Structure of World Politics

I have argued that the structure of the world political system should be understood in terms of social institutions. This argument is consistent with recent theoretical statements drawing on both constructivism and the English School. In the remainder of this chapter, I delineate and make the case for this approach more fully. Any acceptable definition of social institutions must acknowledge two central attributes: the intersubjective quality of social institutions, and their structural properties. The case for the institutional approach to structure rests primarily on two justifications: (1) the need to specify theoretical statements as completely as possible, and in an operationally viable manner; and (2) the need to disaggregate variables so as to avoid conflation of analytically separate phenomena – whether institutions are studied as independent or dependent variables, as subjects or objects.

Recent works have advanced different definitions of social institutions. According to Reus-Smit, institutions “are generally defined as stable sets of norms, rules, and principles that serve two functions in shaping social relations: they constitute actors as knowledgeable social agents, and they regulate behavior.”<sup>125</sup> Kalevi Holsti defines institutions in terms of common practices, norms and rules, and ideas. On his view, institutions are “indicated” by “patterned practices, or practices that are routinized, typical, and recurrent.”<sup>126</sup> They are based on “coherent sets of ideas and/or beliefs that describe the needs for the common practices and point out how certain social goals can be achieved through them.”<sup>127</sup> Finally, he articulates an important role for rules; institutions, via rules, “prescribe how the critical actors or agents should behave, under

---

<sup>125</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 13.

<sup>126</sup> Kalevi J. Holsti, *Taming the Sovereigns: Institutional Change in International Politics* (Cambridge, U.K.: Cambridge University Press, 2004), 21.

<sup>127</sup> *Ibid.*

what conditions they can do certain things, what types of activities and actions are proscribed, and what protocols and etiquette should be observed in various circumstances.”<sup>128</sup> Similarly, Barry Buzan argues that primary institutions are “durable and recognised practices rooted in values held commonly... and embodying a mix of norms, rules and principles.”<sup>129</sup> The first common feature of each of these definitions is the social, or intersubjective, nature of institutions. This is reflected in Reus-Smit’s observation that “unless there is a minimum, baseline agreement among society’s members about how rules of coexistence and cooperation should be formulated, no basis exists for collective action or the resolution of conflict, let alone the formulation of substantive principles of justice.”<sup>130</sup> Institutions exist, and function, by virtue of intersubjective agreement.

In order for social life to function, people must have an essentially compatible understanding of the system in which they operate. There is a necessary level of intersubjective agreement on the nature of the world (including the nature of world politics). Two related points are important here. First, intersubjective agreement as to either the nature of the world political system (fact) or the legitimacy of that system (value) exists within historically contingent and variable tolerances; no intersubjective agreement is monolithic or permanent. Further, intersubjective agreement on fact does not necessarily imply agreement as to the value consequences of the fact in question.

Second, much of what is understood as ‘politics’ contests precisely these intersubjective notions of the system, both factual and normative. This sphere of institutional politics,

---

<sup>128</sup> Ibid., 23.

<sup>129</sup> Barry Buzan, *From International to World Society?* (Cambridge, U.K.: Cambridge University Press, 2004), 181.

<sup>130</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 33.

analogous to constitutional politics at the domestic level of analysis, was neglected in the study of international relations prior to the emergence of constructivism. The mainstream IR community has instead been largely concerned with positional and distributional conflicts that take the system's underlying structure for granted. While such problems remain a legitimate and important part of the study of world politics, they cannot be allowed to manifest as a 'tacit ontology', excluding the study of conflicts and of instances of cooperation driven by institutional politics. In fact, pure distributional politics may well represent a limiting case of high intersubjective agreement on the nature and legitimacy of the 'rules of the game'. In the real world of human experience, winning by changing the rules of the game to one's benefit (one possible motivation for actors engaging in institutional politics) is a common strategy.

The second common element in recent definitions of social institutions relates to their structural properties. Barry Buzan notes, correctly, that "in common usage, 'institution' can be understood in quite specific terms as 'an organisation or establishment founded for a specific purpose', or in more general ones as 'an established custom, law, or relationship in a society or community'."<sup>131</sup> Both Reus-Smit and Holsti also understand institutions primarily in the latter sense. This commitment to conceptualizing institutions in constitutive or structural terms stands in sharp contrast to the recent move by neoliberal institutionalists toward a principal-agent conception of the relationship between states and institutions. This is not to say that studying international organizations as actors in world politics is invalid or uninteresting; rather, it is to insist on the maintenance of clear analytical separations between agents and structures – despite their mutually constitutive relationship.

---

<sup>131</sup> Buzan, *From International to World Society?*, 163.

Equating structure with social institutions is a middle-ground position that seeks to avoid difficulties associated with productively defining structure either in terms of sovereignty or in terms of culture. Asserting the need to extend our specification of the world political system beyond a simple focus on sovereignty is not a novel argument. Hedley Bull, for instance, recognized the existence of five key institutions: the balance of power, international law, diplomacy, great power management, and war.<sup>132</sup> In contrast, Holsti distinguishes foundational institutions (sovereignty, territoriality, and fundamental rules of international law) from process institutions (diplomacy, trade, colonialism and war).<sup>133</sup> Similarly, Buzan identifies sovereignty, territoriality, international law, diplomacy and the balance of power as primary institutions.<sup>134</sup> In more general terms, Reus-Smit argues that various historical instances of sovereign state systems have evinced widely divergent institutional practices. He argues that actors' motivations and practices can be explained only by resort to the constitutional structure governing the system in question. Particularly, the two crucial factors are intersubjectively shared ideas about the moral purpose of the state and the appropriate norm of pure procedural justice.<sup>135</sup>

Despite their differences with regard to the relevant list of social institutions, all four authors agree that defining the international system purely in terms of what Waltz calls the ordering principle of anarchy (itself the corollary of state sovereignty) is an unwarranted oversimplification.<sup>136</sup> Waltz justifies his move by telling us that structure, with respect to the

---

<sup>132</sup> Bull, *The Anarchical Society: A Study of Order in World Politics*, 71.

<sup>133</sup> Holsti, *Taming the Sovereigns: Institutional Change in International Politics*, 24-27.

<sup>134</sup> Buzan also suggests the importance of various derivative or secondary institutions; among these are: trade, human rights, colonialism, nationalism, and (at least potentially) ecological stewardship. See Buzan, *From International to World Society?*, 182-83.

<sup>135</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 31.

<sup>136</sup> Waltz, *Theory of International Politics*, 88.

international system, is “the system-wide component that makes it possible to think of the system as a whole.”<sup>137</sup> He is explicit that “structure is *not a collection of political institutions* but rather the arrangement of them [italics added].”<sup>138</sup> Thus, Waltz appears to define structure in terms incommensurate with the definition I advance; however, appearances can be deceiving. The problem in fact rests with Waltz’s inappropriate use of the term ‘institutions’. His argument conflates institutions with organizations – particularly, with states. On this reading, Waltz tells us merely that structure is not composed of units or the characteristics of units – an interpretation consistent with his desire to avoid what he calls reductionist theory.<sup>139</sup> Note also that Waltz identifies anarchy as an organizing *principle*. In order for such a principle to have real effects, it must be intersubjectively agreed upon by the actors in question.<sup>140</sup>

Thus, defining the structure of the international system in terms of sovereignty amounts to defining it in terms of a single institution.<sup>141</sup> Aside from its lack of empirical plausibility, such a definition undermines the ability of IR theory to productively deal with the problem of change. The problem is that without a full specification of the world political system, changes may go either undetected or unexplained. Similarly, Reus-Smit argues that constructivists’ overemphasis on sovereignty obscures recognition of other fundamental differences between historical societies of sovereign states.<sup>142</sup> In addition to such analytical problems, failure to identify

---

<sup>137</sup> Ibid., 79.

<sup>138</sup> Ibid., 81.

<sup>139</sup> Ibid., Ch. 2.

<sup>140</sup> The social construction of sovereignty is emphasized by Biersteker and Weber, “The Social Construction of State Sovereignty.”

<sup>141</sup> This approach is also adopted, in slightly differing forms, by: Gilpin, *War and Change in World Politics*; Spruyt, *The Sovereign State and Its Competitors*.

<sup>142</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 5.

potential sites for fundamental change or to recognize the occurrence of such changes negates any potential for positive change.

While accounts of the world political system focusing purely on sovereignty are incomplete, conceptualizing structure in world politics in terms of ‘culture’ is equally undesirable, on the grounds that it is overly expansive. The cultural approach is represented most clearly by Alexander Wendt. Wendt argues that structure is composed primarily of ‘culture’, which consists of common and collective knowledge.<sup>143</sup> Together, these two forms of “socially shared knowledge” help to ensure that social interaction is “relatively predictable over time”; that is, “culture generates homeostatic tendencies that stabilize social order.”<sup>144</sup> This effect operates through shared understandings relied upon by actors in their interactions. Actors draw on prior understandings about the nature of world politics that originate in socially shared knowledge in order to generate the expectations both of themselves and of other actors that constitute their definition of the situation. The question is *which* shared understandings are crucial.

Though Wendt is correct with respect to the importance of intersubjective knowledge, the rubric of ‘culture’ is too broad to provide a basis for theory construction. Particularly, it is difficult to know under Wendt’s classification which parts of culture are integral to world politics. Ultimately, for Wendt, “the deep structure of an international system is formed by the shared understandings governing organized violence, which are a key element of its political culture.”<sup>145</sup> While Wendt is almost certainly correct in identifying the importance of the ‘culture

---

<sup>143</sup> Wendt, *Social Theory of International Politics*, 160-62.

<sup>144</sup> *Ibid.*, 187.

<sup>145</sup> *Ibid.*, 313.

of anarchy' in a particular international system, the basis for moving from 'culture' to these very specific principles, norms and rules is not clear.

What is missing, then, is an explicit basis for the move from Wendt's broad equation of structure with culture to his narrower focus on shared understandings governing organized violence. Without such criteria, defining structure as culture appears to require an *ad hoc* amendment in order to produce a meaningful guide for research. Further, Wendt's amendment brings the analytical focus back to the character of anarchy. Thus, it appears that the effect of Wendt's definition is ultimately similar to defining structure in terms of the single institution of sovereignty. This merely begs the question of what accounts for variation in the character of relations between sovereign states (the culture of anarchy). It seems at least plausible that the culture of anarchy may be partially related to the additional institutions that structure international relations at a given time – or, more fundamentally, that define it as any sort of anarchy in the first place.

If social institutions are to provide an improved basis for conceptualizing the structure of the international system, we have need of a solution to the 'fuzzy set' problem encountered by the 'culture' approach. Which institutions are to be included in the structure of the international system, and which are not? Without a basis on which to make such determinations, gaining analytical traction will be virtually impossible. Solving this problem is facilitated by two observations. The first is that the institutional boundaries of any social system – those that are included in an accurate specification of its structure – are set according to intersubjective agreement among the units that comprise the system. Therefore, institutions must be included or excluded inductively, according to whether relevant actors regard them as pertinent. Second, these institutional contours change over time; specific governance functions can be shifted from

one institution to another, the complexity of institutions can increase or decrease, new institutions can be created, and formerly robust institutions can be abandoned. Clearly, some social institutions at any given time are more relevant to international relations than others. In the contemporary context, multilateralism is almost certainly more important than marriage; however, in sixteenth and seventeenth century Europe this would not have been the case.<sup>146</sup> The institutional boundaries of a social system cannot be specified *a priori* because they are the creations of human agents; furthermore, because the content of a social system's structure is unlikely to generate absolute intersubjective agreement and because it can change over time, the notion of a fuzzy set (in which an element's membership in a set can be assessed continuously rather than dichotomously) is actually the appropriate understanding. The implication is that analysts will have to make empirical judgments regarding the relative importance of specific social institutions at different times (and, potentially, in different places); given the lack of alternatives and the nature of the social world, this is not a problem provided that such judgments are explicit, based on appropriate evidence (more on this in Chapter 2), and subject to scholarly debate. The essential criterion is that the institution in question performs a significant governance function in the social context under investigation.

Specifying the relationships between the various social institutions that comprise the structure of the world political system has also been a major theme in the emerging institution-based constructivist literature. Reus-Smit, Holsti and Buzan each advance alternative answers to this question. The common thread is that some institutions are 'deeper' or more elementary than others, though there remains disagreement on the precise nature of the relation. Reus-Smit argues that institutions can be differentiated in three levels, of increasing constitutive depth:

---

<sup>146</sup> On this point, see Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.



issue-specific regimes, fundamental institutions (e.g., multilateralism and international law), and constitutive structures.<sup>147</sup> Holsti differentiates between fundamental and process institutions.<sup>148</sup> Finally, Buzan suggests that primary institutions in international society be distinguished from the secondary institutions that derive from them; the relation here is one of ‘nesting’, in which “some primary institutions can be understood as containing, or generating others.”<sup>149</sup> My expectation is that relationships between institutions, like the institutions themselves, are socially constructed – and therefore historically contingent. While it may be possible to generalize more substantively about the relationships between institutions, such attempts are beside the point of this study. While a deeper or more ‘basic’ institution may well be more resistant to change, there is no obvious *a priori* reason to expect variation in the means by which such attempts at change are pursued by social actors.

One further point is required, to connect this discussion about determining the content and boundaries of the structure of social systems to the argument pursued in the remainder of this study. Shifts in the institutional structure of a social system, I will argue, are precisely what we should be looking for in order to understand and explain change in the international system. If the institutional structure of the international system were static, it would be meaningless to talk of systems change.

To this point, I have argued that a broad range of IR theories all provide grounds for accepting a conceptualization of structure as composed of social institutions. Since I argue that IR theorists (including neorealists, institutionalists and critical theorists) should understand structure as comprised of social institutions, this begs the question of what happens to the

---

<sup>147</sup> Ibid., 13-15.

<sup>148</sup> Holsti, *Taming the Sovereigns: Institutional Change in International Politics*, 25.

<sup>149</sup> Buzan, *From International to World Society?*, 182.

material variables (e.g., the distribution of power, the global division of labour) regarded as structural by the 'neo' theories and by critical theorists. My argument is twofold. First, neorealists have treated as asocial aspects of the international system that are clearly social – for instance, anarchy. Thus, we must ensure that we properly categorize variables as material or social. Second, truly material variables should be understood as part of the environment in which international politics takes place. A significant advantage of this approach is that it highlights the empirical nature of questions about the determinacy of the material environment.

Approaches that see the material environment as determinative of social outcomes face two primary problems. First, the claim that there is often one unique social solution to a given material problem seems implausible. Such situations are best understood as theoretical asymptotes – not as a baseline for research. Second, even if the claim were rephrased such that the material world was posited as a determinative constraint only in a limiting but crucial case, the argument would need to confront the objection that social realization of that limit would not be automatic. On one hand, the limit may simply not be known. On the other, even if the limit is known in general, the relevant community may not perceive it as applicable in any given case; problem construction at the collective level is a social activity.<sup>150</sup> Thus, it appears that there is a solid case for understanding the relationship between the material environment and the social structure of world politics as one in which there is considerable scope for human political choice. While the relationship between material environment and social structure remains a legitimate avenue of inquiry, this inquiry can and should be conducted on the basis of understanding structure as composed of social institutions.

---

<sup>150</sup> This point is made in Alexander Wendt, "Driving with the Rearview Mirror: On the Rational Science of Institutional Design," *International Organization* 55, no. 4 (2001).

#### 4 Conclusion

In this chapter I have argued that the structure of the world political system is best understood in terms of social institutions. This position is consistent with each of the major international relations theories reviewed here, and with the actual social world. With reference to the constructivist literature, I have argued that an institutional approach is superior to either a simple focus on sovereignty or to an overly expansive cultural approach because it avoids both the omission of important sources and types of change on the one hand, and the failure to specify the specific elements of culture most relevant to international politics. Finally, I have argued that theories of international relations must conceive the relationship between material and social factors in empirical terms, rather than in a deterministic, assumed manner. To do otherwise fails to discriminate between two analytically different objects – the social structure of the world political system, and the material environment in which all social life is set.

Understanding social institutions as the structure of the world political system enables a significant advance in productively engaging the problem of social change. Particularly, such a move clarifies what such change *is*: the creation or alteration of social institutions. In the next chapter, I build on the institutional approach to conceptualizing social structure in order to propose substantial improvements in the discipline's basic approach to the question of fundamental change. Particularly, I argue that 'systems change' is better understood as the outcome of a distinct *type* of politics. Gaining traction on the problem of social change requires the development of theoretical tools better suited for the study of *institutional*, as opposed to *positional* or *distributional*, politics. This shift abandons the change/continuity dichotomy that inevitably poses difficult calibration problems, and allows greater sensitivity to the processual and explicitly *political* dimensions of changes in social institutions. Finally, I suggest a threefold

typology of institutional change, intended to further refine our conceptualization of the dependent variable.

# Chapter 2: The Social Practice of Institutional Politics: A Theory of Social Change

## 1 Introduction

Addressing the problem of change in world politics requires answering three related questions: (1) what changes; (2) what is meant by ‘change’; and (3) when, and why, change occurs. In the first chapter, I presented an argument for understanding the structure of the world political system as comprised of social institutions. In this chapter I build on this initial argument by suggesting that studies of change in world politics are concerned with institutional, or structural, change. As institutions are comprised of socially agreed-upon knowledge, change must be understood as altering such intersubjective agreements. I argue that altering intersubjectivity is a rule-governed social activity engaged in knowingly by actors in a myriad of contexts; in short, it is a social practice – a distinct mode of political action. As such, the problem of ‘systems change’ in the international relations (IR) literature is more productively recast as the study of ‘institutional politics’, distinguished from ‘positional’ or ‘distributional’ politics. On this view, the crucial causal question is why some attempts at institutional contestation succeed while others fail. Ultimately, the question is why, and how, certain ideas acquire intersubjective, institutionalized status. My central claim is that human societies of any significant social density develop ‘rules about changing the rules’. This argument draws on H.L.A. Hart’s classic account of secondary rules.<sup>151</sup> Rather than a ‘free-for-all’ in which the ‘law of the jungle’ prevails, institutional contestation is a relatively ordered process engaged in by agents who have at least some common understanding of the relevant rules. *Ceteris paribus*,

---

<sup>151</sup> Hart, *The Concept of Law*.

attempts to create social change are more likely to succeed if they are pursued within the limits established by relevant secondary rules.

This chapter is divided into two major sections. The first section clarifies the dependent variable in this study – institutional change. It does so by advancing three central arguments about the generic nature of social change: (1) that the study of social change – whether in units, practices or structures – is the study of institutional change; (2) that social change must be understood as a distinct, and explicitly political, process; and that (3) this process is best understood as a social practice for creating and altering intersubjectivity. The second major section, which also proceeds in three parts, develops a theory about why some attempts to create social change succeed while most fail. The first part argues that much of the existing constructivist literature can be understood as centrally concerned with the creation of intersubjectivity, and that any explanation of this phenomenon must account for the role of secondary rules. The second develops the concept of secondary rules, extending Hart’s seminal work and developing a hypothesis about the role of secondary rules in the creation of intersubjectivity that constitutes institutional politics. The chapter then concludes by examining issues relating to the identification of secondary rules and the specific observable implications of my theory. These concluding remarks pave the way for the empirical cases that comprise the remainder of the study.

## **2 Conceptualizing Change**

In this section, I make two central arguments about the generic nature of social change. The first is that social change necessarily involves change in social institutions. The second is that contesting social institutions is precisely the ‘stuff’ of politics, a point which has been

unfortunately overlooked by much of the mainstream IR community. Before proceeding to these two arguments, however, I want to briefly recap some crucial points from Chapter 1. This study understands the structure of social systems, including the world political system, to be comprised of institutions. Institutions, as employed here, are “stable sets of norms, rules and principles that serve two functions in shaping social relations: they constitute actors as knowledgeable social agents, and they regulate behavior.”<sup>152</sup> By fulfilling these functions, institutions structure the social relations of agents. Defining structure in terms of institutions raises two related conceptual issues: the problem of which institutions are to be included or excluded from a specification of the structure of a particular social system, and the issue of the relationships between the institutions that comprise a structure.

The subject of this study is the world political system; institutions are included or excluded from the structure of this system according to whether or not they have been endowed by actors with governance functions. The relevant evidence for such determinations can be drawn only from actual social practices and discourse. This argument rests on the recognition that a structure’s institutional boundaries reflect a virtually always incomplete intersubjective agreement among the system’s actors as to its contours and boundaries. For instance, the administration of American President George W. Bush pursued a vision of the international system that significantly departs from that of other actors – and, indeed, from past American administrations – over the role of the United Nations, the force and content of international law, the role of great powers in governing the system and the acceptability of preventive self-defence.<sup>153</sup> Further, the governance functions socially assigned to a given institution can

---

<sup>152</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 12-13.

<sup>153</sup> Bush administration foreign policy is discussed in further detail in Chapter 5.

potentially change over time. The institution of marriage is a useful example; while it had a vital governance role in dynastic Europe, it is of diminished importance to governance of the current international system.<sup>154</sup>

Like the inclusion or exclusion of institutions from a system's structure, the relationships between institutions are determined by intersubjective agreement and the resulting social practice. Recent contributions to the IR literature have argued that these relationships can be understood in terms of primary and secondary institutions, constitutive and regulative institutions, and in terms of levels of constitutive priority.<sup>155</sup> While greater understanding of this issue is desirable, resolving this debate is not necessary for my purposes. The relationships between institutions are historically contingent and socially constructed. Institutional change is therefore a matter of altering the intersubjective agreements that both constitute institutions and determine their relationships. Thus, my theory should be able to explain change in relationships between institutions, rather than treating them as a matter of pre-theoretic assumption.

## 2.1 Social Change as Institutional Change

The starting point of this study is perhaps the dominant conceptual metaphor for the social world – that of a system. The primary virtue of the concept is that it evokes a sense of organization and pattern that resonates with lived human experience. It is not surprising, then,

---

<sup>154</sup> Diana Saco, "Gendering Sovereignty: Marriage and International Relations in Elizabethan Times," *European Journal of International Relations* 3, no. 3 (1997).

<sup>155</sup> See, for example, Buzan, *From International to World Society?*; Holsti, *Taming the Sovereigns: Institutional Change in International Politics*; Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.



that ‘systems’ approaches have a long history – both throughout the social sciences and more particularly within the academic discipline of international relations.<sup>156</sup>

For the purposes of this study I have adopted what I take to be a mainstream definition of a system as comprising a set of units whose interactions occur within, and are regulated by, a structure. This definition clearly reflects the influence of a more basic ontological distinction between agents and structures.<sup>157</sup> Thus, I encourage readers who are sceptical of the ontological status of ‘systems’ but who nevertheless accept the distinction between agents and structures to follow my line of argumentation accordingly.

The first chapter proposed understanding social structures as sets of institutions, and underscored the importance of properly distinguishing institutions from agents (which often take the form of organizations). In contrast, my concern in this section is with conceptualizing social change. If our ontology divides the social world initially between agents and structures, it follows that all social change must entail change in agents, structures, or both.<sup>158</sup> The remaining burden of my argument here is to show that both change in structures and change in agents necessarily entails change in institutions.<sup>159</sup>

---

<sup>156</sup> See, for instance, Bull, *The Anarchical Society: A Study of Order in World Politics*; Morton A. Kaplan, *System and Process in International Politics* (New York, N.Y.: Wiley, 1957); Keohane, *After Hegemony*; Richard N. Rosecrance, *Action and Reaction in World Politics: International Systems in Perspective* (Boston, M.A.: Little, Brown, 1963); Waltz, *Theory of International Politics*; Wendt, *Social Theory of International Politics*.

<sup>157</sup> The issue of the relationship between agents and structures clearly bears on the argument I make here; I address it in more detail in the second major section of this chapter, which deals directly with the causal processes involved in social change.

<sup>158</sup> It is logically possible that change could occur via change in the relationship between static agents and structures. However, this relationship, in the social world, is constituted by rules. That is, according to the argument developed in chapter one, the relationship between structures and agents in a particular system is determined by that system’s structure.

<sup>159</sup> Some ontologies explicitly include social practices as a category in addition to agents and structures. I believe that such ontologies can be incorporated into my argument without undue difficulty, since social practices are constituted by intersubjective rules. Change in social practice, *qua* practice, occurs not by virtue of change in the behaviour of individual agents, but rather by virtue of change in the rules that define the practice. One such

The argument that structural change consists of institutional change leans heavily on my argument for understanding structures as sets of institutions. Recall that institutions were defined as sets of rules and norms. If I am correct that structures are composed of institutions, and if it is also true that the relationship between the institutions comprising a particular structure are similarly determined by socially agreed-upon rules (that is, by institutions), then it follows that change in structures necessarily involves change in institutions.<sup>160</sup>

The more counterintuitive argument is that change in agents also involves structural change. It is important to establish that this position does not violate my insistence on the conceptual distinction between institutions (structures) and organizations (agents). The argument here is not that changes in agents *are* changes in structures; rather it is that changes in agents at the system-wide level *require*, and are thus evidence of, prior structural changes. The restriction of the claim to instances of system-wide change is important to my argument. The reason is that idiosyncratic and isolated changes in individual actors are fundamentally different from patterned, relatively consistent changes among the members of a group. Individual agents can, and often do, make novel identity claims. However, identities are governed by intersubjective rules; ultimately, changing the identity requires securing acquiescence – if not agreement – from other actors both inside and outside the relevant identity group.

Several points serve to demonstrate the rule-governed nature of identities, and that large-scale identity change is, at the level of practice, dependent upon rule change. First, persuading others to adopt a newly created identity requires convincing them to accept its rules – either via instrumental reasoning, ethical argument, or other means. Second, a proposed or claimed change

---

ontology which assigns a crucial place to social practice is developed in Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*.

<sup>160</sup> Ultimately, this claim is true by definition. Later in this section I take up an alternate position on the nature of structural change stemming from a materialist understanding of structure.

to an existing identity will not spread unless other members of the identity-group accept the change to the relevant identity rules. Further, identity claims are socially adjudicated; an actor will not be treated according to the newly altered or created identity unless others, both within and outside of the identity group, have accepted the change. The dimension of external recognition suggests a fourth, and final, point regarding the relationship between rule change and identity change: identity can be imposed by outsiders, as in the case of the 'savage' identity imposed upon colonial peoples by the European empires. This identity was instantiated and reproduced by the rules of colonialism. Macro-level identity changes are thus best understood as indicators of social change in the form of alterations to institutions.

More complex ontologies sometimes include a separate category for social practices. Recent work by Emanuel Adler and Vincent Pouliot has defined social practices as “socially meaningful patterns of action which, in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world.”<sup>161</sup> These practices can be understood either as occupying a meso level between agents and structures, or as simultaneously having both agential and structural properties. For instance, Adler and Pouliot argue both that “practices are both individual (agential) and structural” and that practices are “‘suspended’ between structures and agency”.<sup>162</sup> Regardless of the precise ontological status of social practices, the key point for my purposes here is that practices are ultimately dependent on rules. Without prior agreement on the rules for engaging in a particular practice, agents have no way to engage in the practice competently or to evaluate the competence of performances by other agents. In the same way that identities are rule-governed, so too are practices. While this is not to say that rules of practice are always

---

<sup>161</sup> Emanuel Adler and Vincent Pouliot, "International Practices," *International Theory* 3, no. 1 (2011): 4.

<sup>162</sup> *Ibid.*, 16.

obeyed, patterned changes in practice are almost certainly indicative of changes in intersubjective understandings of the rules of that particular practice – that is, of changes in institutions.

To this point, I have argued that social change requires institutional change. However, it is necessary to clarify two types of possible changes germane to world politics that nevertheless fall outside the ambit of this project. First, I am not concerned here with the changes in relative capability that have been of central concern to neorealists. Such positional or distributional changes often have major policy implications for particular states. My argument is not that such issues are unimportant; rather, I want to suggest that such changes are different in kind from changes in institutions. This argument is the focus of the next subsection of this chapter.

Second, I am only indirectly concerned here with changes to the material environment. Such changes (whether in the form of new technology, changed resource stocks or environmental degradation) are sometimes understood as ‘structural’ in nature.<sup>163</sup> As I argued in chapter one, however, there is a strong case for understanding the material environment as distinct from the social system. This is because the system’s structure is influenced, but not determined, by its material environment. Material conditions, and changes in those conditions, must be socially interpreted and require a socially determined response. Even in an unlikely limiting case where a material condition allows only one possible solution, there is no guarantee that this solution would be recognized or – even if recognized – implemented. Thus, social change cannot be directly determined by change in the material environment.

Whether in response to material changes or not, and whether or not it implicates either actor identities or social practices, social change involves change in institutions. The

---

<sup>163</sup> For instance, neorealists focus on the balance of power, and critical theorists emphasize the global division of labour. Both are often understood in these literatures as material and structural.

intersubjective nature of institutions means that social change can occur only if the intersubjective agreement constituting the institution in question is altered. The circumstances under which such feats occur is the crucial question in the remainder of this study.

## 2.2 Social Change as Political Process

Thus far I have argued that social change should be understood as change in the intersubjective agreements that constitute social institutions. But what is meant by ‘change’? What happens? Change in social institutions can take any of three forms: the creation of new institutions, the alteration of existing institutions, and redistribution of functions among institutions. Ultimately, all three types of institutional change are instances of the same general phenomenon: the creation of intersubjectivity. Individuals change their minds for a multitude of reasons, but explaining change in intersubjective agreements is a question of explaining the same change in *many* minds. This fact suggests the potential presence of a common causal factor external to the individuals involved. Particularly, I argue that the creation or alteration of intersubjectivity is the result of a social, and political, process intended for precisely this purpose. The heart of this process-based understanding of social change is a distinction between two types of political processes: positional politics and institutional politics. This distinction highlights the substantively different nature of these two modes of politics, opening space for greater emphasis on processes of institutional contestation within world politics. Greater analytical space may, in turn, facilitate recognition of the fact that institutional politics is a ubiquitous feature of social life. These two modes of political action are generic to all levels of analysis; thus, potential exists for comparison of similar processes at different levels of analysis, significantly expanding possible points of observation. Finally, a process-based approach to

studying institutional contestation allows investigation of both the conditions and dynamics that account for the success of some attempts and the failure of others.

New institutions may be created either to deal with a newly identified or previously ungoverned problem, or to replace an existing institution for dealing with a previously governed problem. In practice, most instances of institutional creation will likely fall under the second category. Human society has evinced sufficient social density over sufficiently long periods that, even in world politics, few areas remain completely ungoverned. The balance of power, international law, diplomacy, great power management and war (Hedley Bull's list of institutions comprising international society) govern a great deal of conduct in the world political system.<sup>164</sup> Further, Alexander Wendt has shown that even self-help behavior – taken by neorealists as the *sine qua non* of asocial behavior – is itself socially governed.<sup>165</sup> The transition from a medieval heteronymous system to a system of sovereign states represents an example of a new institution replacing an existing one.<sup>166</sup>

Second, change may occur in the content of an existing institution. Whereas creation implies an expansion of vocabulary or categories, alteration implies different meaning or practice within existing categories. That is, despite significant change, actors acknowledge a greater degree of continuity than in the previous case and continue to apply existing nomenclature. Though it may be objected that this is a difference of degree rather than a distinct type of change, I distinguish the two for practical reasons. If any change within an institution is either called a new institution or denied recognition as change, analysis of institutional change will lack nuance

---

<sup>164</sup> Bull, *The Anarchical Society: A Study of Order in World Politics*.

<sup>165</sup> Alexander Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, no. 2 (1992).

<sup>166</sup> Note that my argument here is not functionalist in nature; I accept the point, made both by Hedley Bull and by Hendrik Spruyt, that change is not unilinear. See Bull, *The Anarchical Society: A Study of Order in World Politics*; Spruyt, *The Sovereign State and Its Competitors*.

and sensitivity. The expansion of marriage to encompass same-sex couples is a contemporary example of institutional alteration drawn from domestic politics in the industrial world.

Finally, institutional change may take the form of a new division of labour among institutions. The simplest way to illustrate this type of change is to note the decreasing role of interstate war as an institution governing the world political system. Throughout the nineteenth and twentieth centuries, great power management and international law have arguably come to play increasingly important governance roles. Though these claims are empirical in nature, the important point for the moment is that they illustrate the logical possibility of this type of institutional change.

Each of these three types of institutional change involves creating intersubjective knowledge – in the above examples about the sources and holders of political legitimacy, about the meaning of marriage and the individuals empowered to participate in it, and about proper means of dispute resolution between states. The question, then, is whether there are recurrent patterns of activity associated with the creation of intersubjectivity. It is my argument that there are; that creating intersubjectivity is quintessentially political and that it ought therefore to be of utmost interest to political scientists. In fact, the creation, alteration and manipulation of intersubjective knowledge is one of two basic modes of political behaviour. Most important for my purposes here, it is the mode of politics associated with social change.

Political processes, in both domestic and international politics, can be divided between those that take the nature of the game for granted and those that seek to change the game. Positional, or distributional, politics entails social action within an accepted framework of rules and institutions – that is, within a given social structure. In contrast, institutional politics refers to attempts to change the institutional structure that constitutes and regulates the social context in

question. The distinction is between two groups trying to best each other in a game of basketball (positional or distributional politics), as opposed to a situation in which one of the two groups demand they play football instead (institutional politics).

Much of the mainstream IR literature has focused on positional or distributional politics. The most obvious such example is the neorealist literature, which explicitly takes the nature of international anarchy as constant, in an attempt to explain the relative war propensities associated with different distributions of power.<sup>167</sup> However, the neoliberal institutionalist research programme has also been primarily concerned with positional politics.<sup>168</sup> In arguing that cooperation is possible under anarchy, neoliberal institutionalists essentially argue that neorealists imperfectly understand the existing 'rules of the game'. The issue between the two theories is thus one of description; both are ultimately concerned with explaining actor behaviour within a given institutional context, of which they have different descriptions.

While mainstream theories of IR have focused on positional politics rather than institutional politics, an important clarification is in order. I am not suggesting a rationalist-constructivist 'division of labour' that relegates each mode of inquiry to the investigation of a corresponding mode of political behaviour. It is not the case that positional politics entails merely the study of interests; nor is institutional politics a realm of norms and ideas that is somehow free from considerations of power or interest.<sup>169</sup> On the one hand, intersubjective knowledge constitutes the positional and distributional games actors play – not to mention the

---

<sup>167</sup> Waltz, *Theory of International Politics*.

<sup>168</sup> Indeed, Robert Keohane and Lisa Martin have recently argued that neoliberal institutionalist research should be understood as part of the neorealist research programme. This convergence has also been recognized by John Ruggie. See, respectively, Keohane and Martin, "Institutional Theory as a Research Program"; Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge."

<sup>169</sup> The latter case is made persuasively in Michael N. Barnett and Raymond Duvall, "Power in International Politics," *International Organization* 59, no. 1 (2005).



actors themselves. Thus, constructivist theories and methods are useful in gaining greater understanding of positional politics. On the other hand, identifying the alteration of social institutions as a political activity suggests both goal-driven behaviour on the part of actors, as well as the potential use of power in the pursuit of goals. Nothing in my approach precludes the possibility that a given actor undertakes an attempt to alter social institutions for reasons of gain; similarly, my approach allows for the virtual certainty that changes to social institutions have unintended and unforeseen consequences for the relative well-being of various actors. There is simply little reason to expect that benefits and costs will be distributed equally.

Recall the earlier analogy involving two athletic teams playing basketball. The groups' self-conceptions as groups distinct from each other depend on intersubjectively agreed-upon understandings – not merely within the groups, but between them as well. Similarly, the groups agree (again, both internally and externally) on a shared social purpose – in this example, athletic endeavour. If this were not the case, we might well expect extended discussion within and among the groups on the nature of the joint activity to be pursued (athletics, chess, music, war) or, indeed, over whether *any* such activity would occur. Finally, of course, the example presupposes familiarity on the part of all participants with the rules that constitute basketball. Thus, even a relatively simple case of positional activity between two small groups is shot through with intersubjectively shared knowledge.

In the second hypothetical scenario, one group (shorter but stronger) attempts to convince the second (taller but weaker) group to play football instead of basketball. Rather than 'playing by the rules', the first group instead attempts to change the rules. In this case, the reason seems clear: relatively stronger players are likely to enjoy (*ceteris paribus*) an advantage at football, while relatively taller players enjoy better odds at basketball. An interest-based explanation has

obvious *prima facie* plausibility in this case. This is not to say, however, that instances of institutional politics are explicable solely by reference to interest. In our simple example, one might wonder why the first group adopts football, in particular, as its game of choice from among all possible options. Or, indeed, why the two groups engage in an athletic contest as opposed either to a philosophical debate, a brawl, or some sort of collaborative activity. An interest-based explanation also provides no immediate explanation as to why the first group prefers to play a different game, rather than securing beneficial alterations to the rules of basketball. Further, one might easily imagine reasons aside from interest that might motivate the first group's behaviour. The benefit may be coincidental to another motive. Finally, imagine that the attributes of the groups are reversed. This hypothetical situation presents the hardest case for an interest-based explanation. Why would a group attempt to convince another group to play a different game, if that entailed forfeiting an advantage? Ethical reasons may well motivate such actions. The point for the moment is not to appraise the relative likelihood of these various scenarios; my point is simply to make clear that neither positional politics nor institutional politics has any fixed or necessary relationship to any particular logic of action, or to any particular social theory.

The observation that institutional politics may be motivated by considerations of interest raises one more important point. Cases of self-interested institutional politics do not amount to positional politics by another name. This is because the underlying logic of action is not the relevant dimension of difference between the two modes of political behaviour. The defining difference is between political actions that take the existing social context as given, and those that do not. In the domestic context, the difference is between running for political office and engaging in civil disobedience. In the current international context, the difference is between

attempting to become (or remain) a hegemon and, for example, pursuing a genuine global federation. Further examples of the two modes are contained in Table 1. The basic insight is that playing basketball is importantly different from attempting to convince the other team to play football. While not all such attempts at institutional politics succeed, the fact remains that such attempts constitute a distinct set of social behaviour of obvious interest in explaining social change.

**Table 1: Types of Politics**

	Positional-Distributional	Institutional
International Level	Balancing behaviour; collaboration problems; coordination problems	Transition from feudal society to sovereign states; the creation of the UN and Bretton Woods institutions
State Level	Electoral redistricting; rent-seeking behaviour by bureaucrats	Political or legal action seeking constitutional amendment or change
Sub-state Level	Economic competition among firms	The Protestant Reformation

The basic argument of this section is that ‘change’ is best understood as change in social institutions. Attempts to create such intersubjective change take the form of social processes that are themselves rule-governed. Such processes of institutional politics are commonplace; they constitute one of two modes of political behaviour. The natural question is why some attempts to change social institutions succeed while most fail. Before addressing that question, I briefly make the case for three theoretical gains from adopting my distinction between positional and distributional politics.

Treating change as the product of institutional politics offers three important theoretical advances in thinking about social change. First, it divides political behaviour with respect to its

acceptance or rejection of intersubjectively-held beliefs and institutions, rather than with respect to levels of analysis. Domestic and international politics, like political systems in different time periods, are defined according to their institutional structures. While the specific institutional structures vary, positional politics and institutional politics are generic across places, time periods, and levels of analysis. The argument is not that levels of analysis are without merit in studying international relations, but rather that the study of change can benefit from the study of isomorphic processes drawn from as many different institutional contexts as possible.

Highlighting the ubiquity and similarity of institutional politics at all levels of analysis allows both broader comparative study of social change and increased sensitivity to possible linkages among such processes at different levels.

The second theoretical gain similarly deals with expanding the universe of relevant cases. At least until the recent, and ongoing, acceptance of constructivism within the IR ‘mainstream’, the tendency in the literature was to define concepts such that the universe of cases that counted as change was either small or nonexistent.<sup>170</sup> Moreover, the legacy of this conceptual conservatism remained evident in some early attempts to improve the discipline’s basic theories.<sup>171</sup> The problematic move is to introduce a distinction between types of change that

---

<sup>170</sup> For Kenneth Waltz, “anarchic systems are transformed only by changes in organizing principle and by consequential changes in the number of their principal entities. Waltz, *Theory of International Politics*, 161. For Robert Gilpin, even changes in the system’s constitutive units do not change the rules of the game. World politics in both the age of empires and the age of hegemonies is portrayed as a succession of cycles of “growth, expansion, and eventual decline.” Gilpin, *War and Change in World Politics*, 210.

<sup>171</sup> Hendrik Spruyt makes the important point that the end of the feudal order requires an explanation separate from that for the selection of the state over its synchronic competitors; however, the difficulty is that he explicitly adopts “Gilpin’s definition of systems change” as “a transformation in the nature of the constitutive units.” Spruyt, *The Sovereign State and Its Competitors*, 196. The relation of change to actor type or actor identity is also found in John Ruggie’s critique of Waltz’s neorealism; Ruggie argued that Waltz overlooked a potential source of change by virtue of his claim that units in the international system are functionally undifferentiated. The point here is not that Ruggie is incorrect. Rather, if social change becomes synonymous with change either in actor type or in actor identity, at least in terms of scholars’ practical research choices, our pool of cases is drastically diminished. Ruggie, “Political Structure and Dynamic Density.” Finally, as I argued in Chapter 1, Wendt’s move from equating structure with culture to focusing on particular intersubjective understandings governing organized violence (the

renders one type more important or more fundamental than the rest.<sup>172</sup> Applying such significance tests to distinguish important from ‘unimportant’ change presents an unacceptable risk of rendering ‘important’ change all but impossible as a matter of definition. The question of a change’s significance is independent of causal questions about how and why the change occurs. In light of disagreements about how and when (or even whether) change occurs in world politics, I argue that the most sensible solution is to cast the empirical net as widely as possible; to postpone judgments as to the significance of individual cases of change, and to focus instead on identifying causal patterns.

Finally, orienting the study of social change around contestation of social institutions explicitly requires treating change as a process to be investigated rather than as a phenomenon to be identified. Such an approach requires taking seriously the shared beliefs that define social contexts, determining how actors are convinced to change those beliefs, and under what conditions (and via what mechanisms) individual belief change is translated to macro-level change in social institutions. This focus on process offers the advantage of fidelity to the actual social world; it treats change as what it actually is – the result of attempts by actors to alter the intersubjective institutions that govern social life.

### 2.3 Institutional Politics as Social Practice

Perhaps the most basic insight about processes of institutional contestation, or institutional politics, is that they are not random. Across a wide range of social contexts and

---

logics of anarchy) amounts to an *ad hoc* amendment of his theory. This amendment amounts to a decision about the relative significance of changes in different kinds of intersubjective ideas that has no obvious basis in Wendt’s theory. As such, it unnecessarily limits possible sites of change. Wendt, *Social Theory of International Politics*, 313.

<sup>172</sup> This conceptual move is also noted as a barrier to understanding change in James N. Rosenau, "Signals, Signposts and Symptoms: Interpreting Change and Anomalies in World Politics," *European Journal of International Relations* 1, no. 1 (1995): 119.

levels of analysis, actors know how to pursue desired changes in the social world. Furthermore, they also know how to recognize and how to evaluate such attempts by other actors. It is for this reason that I treat institutional politics as a social practice, defined as a socially meaningful pattern of action.<sup>173</sup> These patterns of action are constituted by intersubjectively-shared rules.

Though Adler and Pouliot's treatment of social practices is undoubtedly an important contribution to international relations theory, it also misunderstands the connection between social practices and social change. In making the case for the 'added value' entailed by the concept of practice, they argue that the concept offers the potential to overcome the dichotomy between stability and change, since "practices partake in both continuity and change in social and political life." They continue by noting that "practice-qua-performance is a process" and conclude that, accordingly, "change, not stability, is the ordinary condition of social life." The problem is their contention that "new ways of thinking or doing necessarily emerge from the contingent 'play of practice', in which meanings are never inherently fixed or stable."<sup>174</sup> This suggests that the sources of change in a given practice, X, are endogenous to practice X. While Adler and Pouliot do not aim to present a complete theory of social change, their initial comments on how the concept of practice may inform attempts to explain social change are at best incomplete. Their suggestions leave us without any real clue as to how mutations in social practices occur, or to why some mutations succeed while others fail. As a result, it leaves the reader confronting a proverbial black box.

The key to opening this box is to realize that actors often simultaneously engage in more than one practice. If a practice entails "a process of doing something",<sup>175</sup> then we need to be

---

<sup>173</sup> Adler and Pouliot, "International Practices," *International Theory* 3, no. 1 (2011): 4.

<sup>174</sup> *Ibid.*, 18.

<sup>175</sup> *Ibid.*, 6.

aware that actors are often *multitasking*. Specifically, part of what they are doing is presenting proposals for social change and evaluating (and potentially responding to) the actions and utterances of others. These propositional and evaluative acts, whether spoken or unspoken, are governed by rules for making and interpreting rules, or by what H.L.A. Hart called secondary rules. Recalling my earlier analogy, my claim is that in any interesting situation – and certainly in the modern international system – there are rules for convincing others to play football rather than basketball. There are rules for changing the rules; furthermore, to the extent that they are socially competent, actors know how to engage in this shared process of making and interpreting social rules both as proponents and as evaluators of social change. Secondary rules thus constitute an elementary class of social practice, institutional politics, which is applicable to virtually all organized human activity. They are also, as I will argue below, critical to explaining the success and failure of particular attempts at social change. That is, the sources of change not only in practice X but also in practices Y, Z, etc. (as well as in collective identities, and in social institutions) can be found in an additional practice, A, which exists precisely for the purpose of creating and altering intersubjective knowledge.

### **3 Secondary Rules: Rules about Changing the Rules**

The prior section of this chapter outlined my conceptualization of social change: the creation or alteration of intersubjective agreements that constitute social institutions, as the result of a social practice I refer to as institutional politics. This section develops a theory that attempts to provide leverage in understanding why some such attempts succeed while the large majority fail. The critical observation that underlies my theory is that societies and groups routinely develop rules governing the evaluation of proposals for social change. These are the rules that

constitute institutional politics as a social practice. The expectation is therefore that such rules are generally (though not always) adhered to – and that they thus have a substantial impact on which attempts are successful. These secondary rules, borrowing and extending the work of H.L.A. Hart, are not equally amenable to all means of pursuing change.

### 3.1 Creating Intersubjectivity

Framing social change in terms of change in intersubjective knowledge immediately suggests the importance of the burgeoning constructivist literature that has begun, over the last twenty years, to transform international relations as a scholarly enterprise. My argument attempts to both consolidate and to build on the gains made by constructivists. Constructivism remains heavily influenced by Keohane's challenge to 'reflectivist' approaches – to demonstrate empirical results, particularly about the role of social and ideational phenomena in international relations.<sup>176</sup> As a result, we now know a great deal about the creation and alteration of intersubjective knowledge in an astonishing variety of cases. The problem is that constructivists' empirically-oriented focus has led to a proliferation of terms, concepts and theoretical models describing and explaining essentially the same thing – the creation of intersubjective knowledge.

<sup>177</sup> Whether invoking the terminology of norm creation,<sup>178</sup> social learning,<sup>179</sup> strategic social

---

<sup>176</sup> Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly* 34, no. 2 (1988).

<sup>177</sup> The two most influential review articles on constructivism predate the development of much of this literature. As such, they provide little assistance in consolidating it. See Emanuel Adler, "Seizing the Middle Ground: Constructivism in International Relations," *European Journal of International Relations* 3, no. 3 (1997); Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4, no. 3 (2001).

<sup>178</sup> Audie Klotz, "Transnational Activism and Global Transformations: The Anti-Apartheid and Abolitionist Experiences," *European Journal of International Relations* 8, no. 1 (2002).

<sup>179</sup> Checkel, "Why Comply?," *International Organization* 55, no. 3 (2001).



construction,<sup>180</sup> socialization,<sup>181</sup> persuasion and argumentation,<sup>182</sup> cognitive evolution<sup>183</sup> or legitimacy contests,<sup>184</sup> constructivists share a central concern with the link between subjectivity and intersubjectivity.<sup>185</sup>

This state of affairs complicates efforts to speak of an organized constructivist literature. First, we currently know relatively little about the relationships between the various causal and constitutive mechanisms constructivists have identified. Second, we currently also lack an account of how actors know how to engage in these various activities. Nevertheless, the constructivist literature offers, collectively, a solid if incomplete foundation for understanding the politics of social change. The common denominator in this literature is recognition that the creation of intersubjectivity is a function of ideas' content and of the tactics adopted by the agents advocating them. While both factors are clearly important, I argue that the literature has thus far overlooked a third vital factor: secondary rules governing the creation of

---

<sup>180</sup> See Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca, N.Y.: Cornell University Press, 1998). Also, see Finnemore and Sikkink, "International Norm Dynamics," *International Organization* 52, no. 4 (1998).

<sup>181</sup> Alastair Iain Johnston, "Treating International Institutions as Social Environments," *international Studies Quarterly* 45, no. 4 (2001).

<sup>182</sup> The most prominent examples of this Habermasian literature are: Thomas Risse, "'Let's Argue!': Communicative Action in World Politics," *International Organization* 54, no. 1 (2000); Roger A. Payne, "Persuasion, Frames and Norm Construction," *European Journal of International Relations* 7, no. 1 (2001). On argumentation, see also Neta C. Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, U.K.: Cambridge University Press, 2002).

<sup>183</sup> Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*.

<sup>184</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*.

<sup>185</sup> Other works also concerned with the creation of intersubjectivity include Rodney Bruce Hall, "Moral Authority as a Power Resource," *International Organization* 51, no. 4 (1997); Chaim D. Kaufmann and Robert A. Pape, "Explaining Costly International Moral Action: Britain's Sixty-Year Campaign against the Atlantic Slave Trade," *International Organization* 53, no. 4 (1999); Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58, no. 2 (2004); Antje Wiener, "Contested Compliance: Interventions on the Normative Structure of World Politics," *European Journal of International Relations* 10, no. 2 (2004); Janice Bially Mattern, *Ordering International Politics: Identity, Crisis, and Representational Force* (New York, N.Y.: Routledge, 2004).

intersubjectivity and, thus, social change. These rules are critical because they provide an explanation of how actors are able to competently perform the social practice of institutional politics; that is, they collectively constitute the practice. In the remainder of this section I demonstrate the need to expand the existing constructivist literature to include secondary rules as an important factor in accounting for social change.

The primary constructivist hypothesis relating the content of ideas to their chance of acceptance is that ‘fit’ matters. Ideas compatible with pre-existing ideas will be accepted; incompatible ones will be rejected. Existing literature correctly regards this as an insufficient explanation.<sup>186</sup> First, it cannot account for selection between two ideas with a similar degree of ‘fit’ with prior ideas. This is a particular problem in complex cultures which may often contain internally incompatible ideas.<sup>187</sup> Against which standard will ‘fit’ be established? Second, the ‘fit’ hypothesis renders anomalous cases in which actors *do* accept ‘new’ ideas that have a low degree of compatibility with dominant ideas. Recourse might be made in such cases to the notion of an ‘exogenous shock’ that leaves decision makers cognitively motivated to search for new ideas. But *which* new ideas? What criteria are employed in selecting new ones? Third, through the related notions of ‘framing’, ‘strategic social construction’ and ‘localization’, constructivists have repeatedly highlighted the socially constructed nature of ‘fit’.<sup>188</sup>

---

<sup>186</sup> This point is made in various ways by: Acharya, "How Ideas Spread," *International Organization* 58, no. 2 (2004); Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*; Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*; Finnemore and Sikkink, "International Norm Dynamics," *International Organization* 52, no. 4 (1998); Kaufmann and Pape, "Explaining Costly International Moral Action," *International Organization* 53, no. 4 (1999); Keck and Sikkink, *Activists Beyond Borders*; Klotz, "Transnational Activism and Global Transformations," *European Journal of International Relations* 8, no. 1 (2002).

<sup>187</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, 43-44.

<sup>188</sup> Framing and strategic social construction are crucial to: Finnemore and Sikkink, "International Norm Dynamics," *International Organization* 52, no. 4 (1998); Keck and Sikkink, *Activists Beyond Borders*. On localization, see Acharya, "How Ideas Spread," *International Organization* 58, no. 2 (2004).

Examining the means employed by actors in promoting ideas has improved on the ‘fit’ hypothesis. If two ideas evince a similar degree of ‘fit’, advantage may go to the idea presented more effectively by its advocates. Similarly, exogenous shocks may create windows of opportunity for actors to successfully inject previously marginalized ideas into the mainstream (for example, the rise of neo-conservative ideas about foreign policy within the Bush administration after September 11<sup>th</sup>, 2001). However, the case-oriented nature of the extant literature has resulted in significant time spent ‘reinventing the theoretical wheel’. Thus, we are left with virtually as many theoretical accounts as case studies, and little obvious basis for comparison or theoretical progress. Constructivists have established important differences between the various processes and mechanisms they have described; however, we currently lack agreement on (and systematic discussion of) how they are related. My argument is that these various tactics and processes are all instances of producing intersubjectivity. The crucial distinction here is between the production of knowledge and the process of establishing the intersubjective (shared) nature of an already existing piece of knowledge; logically, the former must precede the latter.<sup>189</sup> I focus here on perhaps the two most prominent accounts of how actors establish intersubjectivity – persuasion and strategic social construction.

It is clear that persuasion and strategic social construction are distinct social activities. The Habermasian literature identifies stringent preconditions: genuine argumentation (and thus persuasion) requires actors that share a common lifeworld to engage in “truth-seeking” behaviour. Both sides must remain open to persuasion, and proceed in a non-hierarchical fashion. In contrast, work on strategic social construction explicitly allows for the use of

---

<sup>189</sup> This distinction animates parallel critiques by Emanuel Adler and Jeffrey Checkel of literatures on learning. See Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*. See also Checkel, "Why Comply?," *International Organization* 55, no. 3 (2001).

leverage and power by purposive “norm entrepreneurs” or activists, who are marked by strong commitment rather than an openness to persuasion. On this view, then, the relationship between the two processes seems best characterized in terms of scope conditions – identifying circumstances under which actors will either persuade or proselytize.<sup>190</sup> Argumentation and strategic social construction present the simplest contrast between processes in the constructivist literature. Arranging relationships and specifying scope conditions becomes significantly more difficult when the list is expanded to include more theoretical accounts.

In addition to the question of specifying scope conditions for various mechanisms, it is not at all clear that all instances of each process will be identical, or even strongly similar. Habermasian accounts come closest to specifying a particular social practice – engaging in reasoned debate in which all parties are open to persuasion. Even here, though, it is not clear either that a compelling argument in one context will remain persuasive in another, or even that the *procedure* for making a convincing argument will remain the same. Rules for determining what counts as relevant ‘evidence’ are one important example. Checkel and Johnston both note that the Habermasian account contains no criteria for determining what counts as a good argument.<sup>191</sup> It seems likely that this is precisely because such criteria are socially determined and, thus, variable. How actors engage in persuasion is thus a function of additional social rules.

The same question arises with respect to strategic social construction. Margaret Keck and Kathryn Sikkink conclude that ideas framed in terms of preventing harm to the vulnerable and providing equality of opportunity are most likely to prove persuasive, but these are offered

---

<sup>190</sup> Examples of this approach are found both in: Risse, "Let's Argue!," *International Organization* 54, no. 1 (2000); Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45, no. 4 (2001).

<sup>191</sup> Checkel, "Why Comply?," *International Organization* 55, no. 3 (2001): 580. See also Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45, no. 4 (2001): 493.

as inductively generated conclusions rather than theoretically derived propositions.<sup>192</sup> Even if correct in a given social context they are not generally applicable. Further, they deal as much with ‘fit’ as with tactics; these ideas are powerful because they are consistent with deeply held normative beliefs. More generally, Keck and Sikkink identify four tactics employed by transnational advocacy networks (TANs): information politics, symbolic politics, leverage politics and accountability politics. This broad typology provides considerable scope for varying means and combinations, and thus serves to highlight my point. Asserting that actors engage in strategic social construction begs significant further questions about *how* they do so – questions that may well prove to have significant bearing on whether or not the effort proves successful in a particular case.<sup>193</sup> These variations, I argue, are not random. Rather, they reflect the competent performance of particular social activities defined by secondary rules.

Even if these processes had no variations, constructivists would still have need for secondary rules in understanding the creation of shared knowledge. This is because we would still need to show how actors know *how* to engage in them. Without a notion of secondary rules, the very existence of patterned, consistent means of producing shared knowledge constitutes a puzzle. While examining content of ideas and the means employed to promote them are necessary and important components of the constructivist research agenda relating to the creation of shared knowledge, attention must also be paid to the role of secondary rules. In essence, secondary rules provide actors with an instruction manual, informing them how to legitimately and effectively pursue social change.

---

<sup>192</sup> Keck and Sikkink, *Activists Beyond Borders*, 27.

<sup>193</sup> This gap also exists in a related model of the ‘norm lifecycle’ identified in Finnemore and Sikkink, "International Norm Dynamics," *International Organization* 52, no. 4 (1998). Here, norm entrepreneurs shepherd norms through three stages: norm diffusion, norm cascade and norm internalization. How norms reach the ‘tipping point’ that creates the ‘cascade’ remains unclear, as does the mechanism by which they are subsequently internalized.

This notion of an instruction manual suggests another important point. What is crucial for creating intersubjectivity is the act of the *audience* – not the act of the speaker.<sup>194</sup> The real ‘action’ is in the minds of the listeners. Like the act of presenting a proposal for change, the evaluation of such proposals is also a social activity. Secondary rules also provide the shared social resources that listeners use in evaluating and responding to proposals for social change. Thus, these rules provide a crucial way to systematically evaluate the causes of social change. Secondary rules are a ‘cause’ (though not the sole cause) of listeners’ reactions – whatever these may be – to proposals for social change.<sup>195</sup>

### 3.2 Secondary Rules

To this point I have argued that the structures of social systems are comprised of institutions; that macro-level social change in either agents or structures entails change in institutions; and that such changes are the product of a political process I have referred to as ‘institutional politics’. In the final step of my theoretical argument, I claim that secondary rules serve as instruction manuals, both for those pursuing social change and for the audiences they engage. What, then, are the rules for changing the rules? How can they be identified? What impact do they have on the fortunes of particular attempts to create social change? Early constructivists, particularly Nicholas Onuf and Friedrich Kratochwil, established the importance of social rules for the study of international relations. Onuf, however, was interested primarily in

---

<sup>194</sup> Audience reaction has attracted attention in the constructivist literature as a relevant factor in explaining social change; however, this segment of the literature has been less influential than that focused on norm entrepreneurs. On the importance of audiences, see: Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*; Christian Reus-Smit, "International Crises of Legitimacy," *International Politics* 44, no. 2 (2007) and the remainder of this special issue of *International Politics*.

<sup>195</sup> I refer here to causation in the broader sense in which constitutive rules ‘explain’ behavior that counts as the social activity they constitute. Excellent background on this understanding of causation can be found in Alexander Wendt, "On Constitution and Causation in International Relations," *Review of International Studies* 24, no. 5 (1998).

the importance of rules in constituting conditions of political rule – effectively, in distributing rewards, or ‘privilege’, differentially to social actors.<sup>196</sup> This research focus is important in making explicit that social rules are centrally concerned with power; it is also useful as a reminder that systems of rules have homeostatic tendencies that carefully limit opportunities for change.<sup>197</sup> This latter point, of which Onuf is clearly aware, provides an unrealized opportunity to identify secondary rules. In limiting circumstances in which rule change is possible, and in setting a high bar for evaluating particular proposals for rule change, cultural systems necessarily contain secondary rules. From this point, all that is required is the additional supposition that different cultures may be more or less conservative in this respect – and that their specific criteria of evaluation may differ. Thus, I do not take my approach to be inconsistent with Onuf’s treatment of rules, though I will not rely heavily on his highly specific terminology.

Similarly, Kratochwil’s conception of rules and norms as providing reasons, or justifications, for social action is broadly consistent with my understanding of how rules operate in institutional politics as instruction manuals – both for pursuit and evaluation of change. Despite this affinity, Kratochwil’s account makes no distinction between the types of reasoning implicated in ‘playing the game’, on the one hand, and ‘changing the game’ on the other.<sup>198</sup> Again, the lack of this distinction reflects the different focus of his project. Since rules are

---

<sup>196</sup> Nicholas Greenwood Onuf, *World of Our Making: Rules and Rule in International Relations* (Columbia, S.C.: University of South Carolina Press, 1989), 22.

<sup>197</sup> All three types of ‘rule’ Onuf identifies (hegemony, hierarchy and heteronomy) function in this manner. See *ibid.*, Ch. 6.

<sup>198</sup> Kratochwil highlights the problem-solving nature of all rules; he then distinguishes instruction-rules, coordination-norms, and practice-type rules. None of these categories has any fixed relationship to either primary or secondary rules. See Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge, U.K.: Cambridge University Press, 1989), Ch. 3. In a brief direct discussion of Hart’s notion of secondary rules, Kratochwil focuses his criticism primarily against the notion that secondary rules provide a “clear demarcation criterion of law”. While this point is important support for my argument, below, that secondary rules are in fact a generic social phenomenon, Kratochwil does not directly address the tenability or utility of Hart’s distinction. *Ibid.*, 190-93.

relevant to both positional politics and institutional politics, assessing the role of norms and rules in decision-making does not require this distinction. My attempt to examine the creation of intersubjectivity does, however, for the reasons discussed in the previous section. Thus, the starting point for my answers to these questions will be H.L.A. Hart's classic, *The Concept of Law*.

Hart defined secondary rules in contrast to primary rules. When a primary rule exists, "human beings are required to do or abstain from certain actions, whether they wish to or not." Secondary rules, "provide that human beings may by doing or saying certain things introduce new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or control their operations."<sup>199</sup> For Hart, the presence of secondary rules sets complex social structures apart from simple ones. The paradigmatic example of a simple social structure is "a small community closely knit by ties of kinship, common sentiment, and belief, and placed in a stable environment."<sup>200</sup>

Such a society's exclusive reliance on primary rules creates three significant problems. The first is uncertainty as to the exact content of its primary rules and their criteria of validity.<sup>201</sup> Second, primary rules cannot provide means for their own alteration; thus, Hart's argument already suggests a link between secondary rules and social change. Third, simple social systems encounter enforcement problems stemming from "disputes as to whether an admitted rule has or has not been violated."<sup>202</sup> Hart argues that each of these three problems can be ameliorated by a specific type of secondary rule. The remedy for uncertainty about the content of rules is found in

---

<sup>199</sup> Hart, *The Concept of Law*, 81.

<sup>200</sup> *Ibid.*, 92.

<sup>201</sup> *Ibid.*

<sup>202</sup> *Ibid.*, 93.



a “rule of recognition” that specifies criteria for identifying rules.<sup>203</sup> Stasis in primary rules is addressed by “rules of change”. This subset of secondary rules “empowers an individual or body of persons to introduce new primary rules for the conduct of the life of the group, or of some class within it, and to eliminate old rules.”<sup>204</sup> Finally, difficulty in efficiently determining rule violations is addressed via “rules of adjudication” that authorize certain agents to perform these tasks according to certain procedures.”<sup>205</sup> Cataloguing secondary rules for a certain group at a given time requires identifying relevant rules for each of these functions: recognition, change, and adjudication.

Though Hart’s categories provide an important starting point, they are not sufficient for understanding social change. Hart leverages his distinction between primary and secondary rules in order to differentiate legal rules from other social rules; the mechanics of their operation are tangential to his project, and thus are left underdeveloped. He relies on a distinction between *systems* of rules united by secondary rules, and *sets* of rules which lack this degree of coherence.<sup>206</sup> For Hart, both etiquette and international law are sets of rules because they lack a rule of recognition,<sup>207</sup> rules of change and rules of adjudication simply ‘drop out’ of his analysis.

I will take up the issue of whether or not etiquette and international law can be subject to secondary rules shortly. My point thus far is that this underdevelopment of two of Hart’s three categories of secondary rules matters. On the one hand, the categories are clearly related. Knowing about the rules for creating rules will, at least in most cases, shed a great deal of light

---

<sup>203</sup> Ibid., 94.

<sup>204</sup> Ibid., 95.

<sup>205</sup> Ibid., 96-97.

<sup>206</sup> Ibid., 234.

<sup>207</sup> Kratochwil makes a related point about Hart’s conflation of plural rules of recognition and singular rule of recognition.

on the rules for changing them. It would be strange, for instance, to imagine a legislative body empowered to create new laws, but powerless to amend existing ones. On the other hand, it is conceivable that proper procedures for creating new rules may differ from procedures for altering existing ones. This potential disjuncture demonstrates that, if we want to understand the role of secondary rules in the pursuit and evaluation of social change, we require an account of rules of adjudication and rules of change, in addition to an account of rules of recognition.

Further, as I suggested above, there are difficulties with Hart's position that both etiquette and international law are examples of sets of rules – rather than of rule systems with secondary rules. My argument is that such secondary rules are virtually ubiquitous features of social life. Since Hart argues secondary rules set legal systems apart from social rules, it is at this point that my argument diverges sharply from his. On Hart's view, secondary rules are not just specific to complex societies; even within such social contexts, secondary rules are confined to legal systems. He states explicitly that there is no possibility of a rule of recognition governing the rule that men remove their hats upon entering a church.<sup>208</sup> More generally, Hart asserts that the entire category of rules of etiquette lacks a rule of recognition.<sup>209</sup> The situation is similar with respect to international law. Its lack of the centralized lawmaking authority characteristic of a modern domestic legal system enables Hart's conclusion that international law also lacks secondary rules.<sup>210</sup>

The functions performed by secondary rules are generic. There is little reason to expect, *a priori*, that these functions are performed only in modern domestic legal systems. Hart sets the bar too high by defining secondary rules in terms of a limiting case. This limiting case, the

---

<sup>208</sup> Hart, *The Concept of Law*, 109-10.

<sup>209</sup> *Ibid.*, 234.

<sup>210</sup> *Ibid.*, 236.

domestic legal system, is distinct from other social institutions (both within and between groups) in its specificity, formality and centralization. Domestic legal systems also generally emerge and flourish only within groups that already enjoy a relatively high degree of cohesion; it seems highly likely that social systems with less cohesion evolve secondary rules that are less specific, less formal and less centralized. The effect of Hart's argument is to render secondary rules in these contexts invisible. Accordingly, in addition to further developing the notions of rules of change and interpretation, understanding the role of secondary rules in social change requires abandoning Hart's use of the distinction between primary and secondary rules as a demarcating line between legal and non-legal rules. Rather, legal systems are best understood as highly specific, formal and centralized instantiations of a much more general phenomenon.

Thus far I have argued that secondary rules – rules of recognition, rules of change and rules of adjudication – collectively constitute a social practice of rule-making and rule interpretation, and that actors employ this practice both in making and evaluating proposals for social change. Before closing this theoretical discussion by addressing two existing, similar works of IR theory, I want to briefly comment on the relationship between Hart's notion of secondary rules and the more familiar category of constitutive rules. Constitutive rules, in contrast to regulative rules, define what counts as a particular social kind. While secondary rules collectively constitute the social practice of institutional politics, not all secondary rules are constitutive and not all constitutive rules are secondary. Some secondary rules are narrow, regulative rules, such as the provision in the United Nations Charter (Article 102) directing states to deposit all of their international agreements with the UN Secretariat for registry and publication. Though this rule is a valid element of contemporary institutional-political practices, both institutional politics in general and treaties in particular pre-existed the rule that treaties be

deposited with the UN. Equally, not all constitutive rules have to do with practices for making and interpreting rules. There are constitutive rules of chess, of friendship, and so on. Specific sets of secondary rules constitute *particular* practices of institutional politics, which are members of the general class or the *generic* practice of institutional politics. Secondary rules are thus a distinct subset of rules that partially intersects both the subset of constitutive rules and the subset of regulative rules.

Hart's work has not received significant attention within the constructivist IR literature, with one important exception. David Diehl, Charlotte Ku and Daniel Zamora employ his distinction between primary and secondary rules as the basis for their own distinction between the normative and operating systems of international law.<sup>211</sup> While the normative system amounts to specific rules for behaviour, "the operating system provides the framework within which international law is created and implemented and defines the roles of different actors as well as providing mechanisms for the settlement of disputes."<sup>212</sup> Diehl, *et al.*, thus part ways with Hart, as I do, over his assertion that international law lacks secondary rules.<sup>213</sup> However, they are silent as to whether or not secondary rules can exist outside of a legal system. Their claim that international law "provides the framework for political discourse" in world politics suggests that, like Hart, they view secondary rules as a property of legal systems.<sup>214</sup> Even if this is currently true, however, such a state of affairs would be a product of contingent, context-

---

<sup>211</sup> David Diehl, Charlotte Ku, and Daniel Zamora, "The Dynamics of International Law: The Interaction of Normative and Operating Systems," *International Organization* 57, no. 1 (2003): 43-44. This argument has recently been expanded upon in David Diehl and Charlotte Ku, *The Dynamics of International Law* (Cambridge, U.K.: Cambridge University Press, 2010).

<sup>212</sup> Diehl, Ku, and Zamora, "The Dynamics of International Law," *International Organization* 57, no. 1 (2003): 50.

<sup>213</sup> Friedrich Kratochwil also noted this criticism. See Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, 191.

<sup>214</sup> Diehl, Ku, and Zamora, "The Dynamics of International Law," *International Organization* 57, no. 1 (2003): 43.

specific secondary rules that grant international law this function. Reus-Smit's work comparing anarchies, some of which pre-date modern international law, clearly shows that other forms of secondary rules have governed inter-group relations.<sup>215</sup>

Also, as with Hart, the argument presented by Diehl, *et al.*, does not fully develop all functions of secondary rules. In enumerating the components of the 'operating system', the authors include rules governing the sources of law and the nature of actors, as well as jurisdictional rules and the rules establishing courts. Absent is an explicit account of the procedures by which rules are instantiated and changed.<sup>216</sup> Within the realm of international law, two immediate candidates are rules regarding the formation of customary law (particularly the role of *opinio juris*) and the notion of *clausula rebus sic stantibus*, or special pleading due to changed circumstance.<sup>217</sup>

Finally, and most important, the empirical investigation in this article reverses the causal relationship between primary and secondary rules. The authors investigate "the conditions under which operating system changes occur in response to normative ones."<sup>218</sup> Such an analysis serves as an important reminder of the recursive relationship between primary and secondary rules, but it is not directly helpful in determining whether, or how, secondary rules matter in the pursuit and evaluation of social change. Though the authors note the possibility of examining

---

<sup>215</sup> See, especially, Reus-Smit's chapters on the Greek system of city-states and on the city-states of Renaissance Italy. Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.

<sup>216</sup> My point here is similar to what Jutta Brunnee and Stephen J. Toope have called the 'hard work' of international law. Jutta Brunnee and Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge, U.K.: Cambridge University Press, 2010).

<sup>217</sup> For a good general introduction to international law, including both topics raised above, see Hugh M. Kindred et al., *International Law: Chiefly as Interpreted and Applied in Canada*, 6th ed. (Toronto, ON: Emond Montgomery, 2000).

<sup>218</sup> Diehl, Ku, and Zamora, "The Dynamics of International Law," *International Organization* 57, no. 1 (2003): 44.

“how the operating system conditions the adoption of new norms”, and suggest that “some new norms may be more rapidly adopted if they ‘fit’ within current operational rules”, they defer consideration of these possibilities.

In their 2010 book, Diehl and Ku devote a chapter to the possibility that the operating system of international law may impact the content of the normative system; however, they “anticipate that most of the influence from the operating system on the normative system will be indirect” and relatively weak. They further report that their review of the existing literature reveals that “previous research has not addressed the question of how the operating system conditions the normative system.”<sup>219</sup> Diehl and Ku provide a list of six potential effects of the operating system on the normative system of international law, but do not develop a theory specifying causal mechanisms. Further, the entire enterprise remains restricted to the domain of international law rather than attempting to more broadly leverage the relevance of Hart’s secondary rules to explaining efforts to create (or resist) social change. While their work is instructive, and a valuable addition to understanding the operation of both primary and secondary rules in the modern international system, it is not a substitute for the project undertaken in this study.

Before moving on to discuss problems related to the identification of secondary rules and to assessing their impact, it is necessary to briefly discuss an alternative constructivist approach to the question of social change advanced by Emanuel Adler. Adler’s approach shares with mine a similar starting point; both define social change in terms of intersubjectively shared knowledge, or what Adler has termed “background knowledge”.<sup>220</sup> For Adler, however, “communities of

---

<sup>219</sup> Diehl and Ku, *The Dynamics of International Law*, 130.

<sup>220</sup> Adler, *Communitarian International Relations: The Epistemic Foundations of International Relations*,

practice” constitute essential sites for the collective learning, or “cognitive evolution”, that is crucial for social change. Communities of practice consist of a group of people demarcated by a domain of knowledge and a shared practice. It is within these groups that “collective meanings emerge, discourses become established, identities are fixed, learning takes place, new political agendas arise, and the institutions and practices of global governance grow.”<sup>221</sup> Adler’s perspective understands social change “as the innovation, diffusion, political selection, and institutionalization of collective intersubjective structures or ‘epistemes’, which congeal in human practices and constitute agents’ transformed expectations and dispositions to act.”<sup>222</sup> Ultimately, such cognitive evolution results in “the growth or expansion across time and space of communities of practice.”<sup>223</sup>

Adler’s work raises two important issues. The first is his focus on social practice. Practices, as collectively meaningful social activities, are rule-governed. Indeed, Adler notes that they are constituted by background knowledge – or, in my terms, by social rules. Without such rules, actors could not engage in an activity that would be mutually understood. It may be, however, that slippage occurs between the ‘rules’ and the actual practice. Such divergence may stem from a variety of factors, including adaptation to slightly changed circumstances, honest differences in actors’ subjective understandings of intersubjective rules and their proper application, and (of course) power differentials. The possibility of such variance between rules and practices raises particular difficulties in identifying secondary rules, which I address below. It also highlights an important potential risk of the approach developed here. If rules are identified and assumed to tightly determine actor behavior, and thereby reified, resulting

---

<sup>221</sup> Ibid., 15.

<sup>222</sup> Ibid., 21.

<sup>223</sup> Ibid., 22.

explanations of particular social changes will be inaccurate and may also serve to render invisible key power dynamics whereby socially powerful actors are able to sustain advantageous differences between nominal rules and actual practice. Despite this risk, however, it is still necessary to keep rules and practices distinct: if only actual practices were studied, there would be no baseline with which to compare them, in order to determine the degree of slippage – and thus the extent to which slippage is the product of power differentials among agents. Focusing on rules thus does not preclude also examining social practices; indeed, understanding the rules that constitute such practices is necessary to understanding and explaining social change. Examination of secondary rules, while not sufficient, is nevertheless necessary.

Beyond the issue of the relationship between rules and practices, I want to briefly address Adler's account of cognitive evolution. In his account, cognitive evolution entails three processes: innovation, selection and diffusion.<sup>224</sup> My approach explicitly brackets processes of innovation. While clearly important, explaining the source of specific ideas in the (subjective) minds of particular agents is a fundamentally different question than explaining how and why a subset of such subjective ideas become intersubjectively shared. Regardless of the source of the idea, the proposal must be presented and evaluated before it can be either accepted or rejected. Secondary rules are fascinating in that they provide instruction for both presenting and evaluating proposals for social change. Thus, they grant analytical purchase on the actions of both proponents of change and their audiences.

Finally, it also seems unclear to me the extent to which selection of ideas and their diffusion can be meaningfully separated. Selection is described as a political process, but Adler

---

<sup>224</sup> Ibid., 74-75.



offers little insight on the politics involved.<sup>225</sup> Regardless of how selection is understood, diffusion still involves a similar choice; the knowledge recipient accepts or rejects the idea. At best, then, the difference between selection and diffusion amounts to difference in the level of analysis – selection occurring within a group and diffusion occurring in cases where the recipient is not part of the group promoting change. While these two cases may well evince different dynamics, the difference relates to the criteria governing evaluation of proposals for social change – that is, the difference between selection and diffusion amounts to potential differences in relevant secondary rules.<sup>226</sup>

Further, separating processes by intra- and inter-group criteria unnecessarily raises difficult questions of establishing clear group boundaries. Consider two possible cases. In the first, an authoritative group of decision-makers ‘selects’ an idea and engages in a ‘diffusion’ process directed at non-members. This generic case actually describes multiple examples – some of which complicate the question of in-group/out-group boundaries: an epistemic community diffusing expert knowledge to policy-makers;<sup>227</sup> the same policy-makers diffusing selected political values and policies to state citizens (or, indeed, the reverse case where public opinion imposes new or altered constraints on policy-makers); or Vatican ecclesiastical authorities diffusing beliefs or directives to the global Catholic laity, both directly and via ‘local’ clergy. Even in cases of strong group ties (citizenship, religious affiliation, etc.), there are potential questions as to whether these examples represent in-group selection, or both selection and diffusion. The second case involves diffusion in the absence of authority relations. The obvious

---

<sup>225</sup> Ibid., 75.

<sup>226</sup> I say ‘potential’ here because different groups can conceivably share secondary rules; e.g., two neighbouring families in an ethnically and culturally homogenous suburb.

<sup>227</sup> On epistemic communities, see Peter M. Haas, ed., *Knowledge, Power, and International Policy Coordination* (Columbia, S.C.: University of South Carolina Press, 1997).

example from world politics is a pair of sovereign states, one of which advances a proposal for social change. Though this seems a clear case of diffusion, since states have been taken as the *sine qua non* of group identity, questions arise if one takes into account the significant transnational networks of government officials and the extensive array of international regimes.<sup>228</sup> In general terms, the question is what differentiates diffusion between groups of formally equal standing from selection within a group of peers? At base, all of the examples above – from both cases – are instances of the same phenomenon: the creation of intersubjectivity. The crucial piece of the puzzle in either case is whether or not the audience accepts the proposal. While the secondary rules employed in making such a determination (as well as the determination about how to present the proposal) certainly vary in content, the important thing is that the evaluation is a rule-guided one. Thus, understanding both selection and diffusion begins with understanding the relevant secondary rules.

The above discussion also suggests an intriguing limiting case for my theory: first contact between groups. This is the logical extreme of the second case discussed above. In such instances, no intersubjective common ground exists and thus there can be no common secondary rules – just as there are initially no primary rules. The lack of secondary rules thus seems to present a key scope condition for my theory. Exploring this case in depth is outside the ambit of this project; however, a few brief observations will hopefully convince the reader that this case is not a major obstacle for my theory. In cases of genuine first contact, there may well be an initial period in which the parties seek to establish basic intersubjective common ground (a task obviously complicated by language barriers). It seems plausible that much communication in

---

<sup>228</sup> The literature on complex interdependence is an early recognition of this point; see Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, 3rd ed. (New York, N.Y.: Longman, 2001). On regimes, the classic volume is Stephen D. Krasner, ed., *International Regimes* (Ithaca, N.Y.: Cornell University Press, 1983).

this initial stage of the relationship is likely to revolve around defining respective roles – including roles with respect to creation and modification of more complex social rules governing the relationship.<sup>229</sup> The groups may thus quickly create the social resources they are lacking in an attempt to stabilize social relations. Whether or not such attempts succeed, or even occur, both sides may fall back on their existing stock of secondary rules – especially if any of these have explicitly contemplated first-contact situations. Given the human history of exploration and discovery, this is certainly not unlikely. Where these sets of rules are deeply incompatible, or where one (or both) sides' secondary rules warrant disregard for peoples in first-contact situations (particularly in the face of seemingly obvious power asymmetries), resort to force is certainly possible. However, this raises a final point: systems of secondary rules need not forbid the use of force either in presenting or responding to proposals for social change. Indeed, they are likely to carefully circumscribe the conditions under which various kinds of force are permissible. This recognition casts both revolution and counter-revolution in a new light. Rather than seeing armed force as the realm of positional politics and institutional politics as a province of cool-headed debate, this perspective makes clear that social rules and institutions often spark the most intense conflicts – and that groups often deem the stakes in such struggles to be high enough to justify bloodshed. Such violence is not, however, the complete breakdown of social order – or even of secondary rules. Rather, it may represent the operation of secondary rules in institutional politics. While the above discussion may seem helplessly abstract, or even fanciful, considerations relating to the operation of institutional politics in the absence of

---

<sup>229</sup> One fascinating example of early-stage communication in first contact situations is provided by Gavan Daws, *Shoal of Time: A History of the Hawaiian Islands* (Honolulu, H.I.: University of Hawai'i Press, 1968). More generally, Alexander Wendt's account of symbolic interactionism, or alter-casting, is suggestive with regard to the construction of intersubjectivity despite language barriers. Though the process is not explicitly reliant on verbal language, there still remains the problem of interpreting gestures and body language. See Wendt, *Social Theory of International Politics*, 326-36.

agreement on secondary rules are of direct relevance to the case studies contained in both Chapter 4 and, especially, Chapter 5.

Thus far I have developed my argument via dialogue with existing approaches to the study of social change. While I believe such an approach shows both my considerable intellectual debts to other scholars and my own contribution to addressing this question, it may be helpful, for reasons of clarity, to restate my argument. Secondary rules, or rules about the creation and alteration of intersubjectivity, provide instruction manuals for agents, giving direction both about presenting and evaluating proposals for change. In order to explain macro-level change, we are necessarily required to explain why certain ideas are widely adopted; thus, the crucial action is that of evaluation. Though such evaluation is rule-guided, I do not argue that secondary rules are determinative. The account of institutional politics presented here is, therefore, incomplete; however, it does represent a significant advancement over existing constructivist work, which to date has been focused on the content of norms and on tactics adopted by agents pursuing social change. I have also argued that the use of organized violence is potentially consistent with the operation of secondary rules in institutional politics. Such rules define, for example, who counts as a ‘revolutionary’, the circumstances under which revolution is acceptable, and what means are legitimate in pursuit of revolution. In the remaining part of this section, I discuss problems associated with identifying secondary rules and develop my hypothesis about the impact of secondary rules on the creation of intersubjectivity.

### **3.3 Operationalizing the Theory**

In this section, I address issues of method and evidence relevant to establishing my theoretical argument, and specify the expected observable implications of my theory. Given that

my theory pertains to social processes of rule-making and rule interpretation, I adopt a qualitative, case-study method. This method enables detailed process-tracing of attempts at institutional contestation, or institutional politics.

The most rudimentary question that can be asked about the cases I examine is whether or not change in the international system took place. In the first two cases – the aftermath of the Napoleonic Wars, and the inter-war period – I believe that it did. The creation of the Concert of Europe established new practices of collaborative, active management of the international system by the Great Powers; such practices are institutional ancestors of modern summitry and of UN Security Council’s permanent membership. A series of efforts in the decade following the Treaty of Versailles culminated in the Kellogg-Briand Pact, which created a rule severely circumscribing the sovereign prerogative to make war. While this rule was often violated over the early part of its lifespan, these violations were routinely criticized and (more important) the rule was reaffirmed following the Second World War in the UN Charter. The inter-war case demonstrates the power of the social practice of institutional politics in two further ways. First, the treaty negotiations reveal competent social performances by two relative novices – Japan and the Soviet Union. The fact that states with non-Western cultural traditions and with revolutionary aims could participate in this instance of institutional politics suggests a well-established and influential social practice. Second, the creation of the Kellogg-Briand Pact is noteworthy because it occurred despite the fact that neither of its principals (nor their governments) deliberately sought to create a rule generally limiting the sovereign prerogative to declare war. The case thus highlights the productive power of institutional politics. Secondary rules do more than constrain actor behavior or enable pursuit of predetermined goals; in at least some conditions they can have emergent effects.

In contrast, I am much more circumspect about concluding that the international system has been changed in the period since the 9/11 attacks. This is, in part, because despite the death of Osama bin Laden, al Qaeda remains an active player in the international system. Overall, however, this instance of institutional politics has been marked by what I call a Tower of Babel effect. The primary parties operate with such different sets of secondary rules that they are unable to participate meaningfully in a single social practice of institutional politics. This negative finding, however, has at least two important implications for my theory. First, if social change is a product of a social practice of institutional politics, then failure to agree on the rules of that practice should mean that social change cannot be achieved. If actors with fundamentally different sets of secondary rules were able to arrive at stable and mutually legitimate intersubjective agreements about applicable social rules, this would cast doubt on my theory. Put more simply, this final case is one where my theory should expect failed attempts at social change. Second, and more interesting, despite deep disagreement about the specific *content* of secondary rules, the post-9/11 case clearly establishes that both sides nevertheless continued to *play* institutional politics according to their respective understandings about how to do that. This finding supports my claim that institutional politics is a robust and generic social practice across cultural backgrounds. Even when actors disagree on *how* to play, they do not disagree on *whether* to play; nor do they stop playing when another party breaks the rules.

These empirical observations serve to foreshadow the actual cases, but they also emphasize that simply asking whether change occurs in a particular case is insufficient to generate true understanding of when, and why, social change occurs. Instead, this study should be understood to suggest (and hopefully to answer at least provisionally) three distinct questions. First, is it possible to identify secondary rules and to speak of a structured social practice of

institutional politics? Second, does this social practice influence and shape actor decisions at the point of creating and altering rules? Third, are rule changes subsequently adhered to and do they therefore represent widespread and lasting changes in the international system? Collectively, I believe that the cases comprising the remainder of this study warrant clear affirmative answers to the first two questions. More caution is required with respect to the third question. On one level, this is simply a function of scope. Merely demonstrating the existence and importance of the social practice of institutional politics across these three cases entailed a major effort and an extended argument. Beyond the difficulty of the task, however, I believe there are sound reasons to accept that a relatively less compelling demonstration of subsequent compliance is not a fatal shortcoming in this study. First, as all norms and rules are constantly subject to potential revision and are dependent on continuing instantiation for their existence, any finding on the existence of a norm or rule must remain provisional. It is impossible to show that a norm has been definitively ‘created’ because this is simply not how social facts behave. Thus, to evaluate norm existence in terms of subsequent compliance is insufficient. Put another way, rule creation is logically independent of subsequent adherence, even if the continued existence of the rule is not. Finally, subsequent compliance and the continuing existence of a rule reflect subsequent iterations of institutional politics as actors respond to their rule-following and rule-breaking behavior and that of others, and attempt to apply general rules to particular cases. While I focus in this study on institutional politics in cases of rule creation, the practice of institutional politics is equally relevant to the ongoing reproduction of social rules and institutions.

The second reason it is important to delve deeper than simply asking whether change occurred in a particular case is that each case consists of multiple distinct proposals for social change. This is important from a methodological perspective because it serves to greatly expand

the number of observations provided by the three cases in this study, thus increasing confidence in the findings and generating wider variation on the dependent variable. Disaggregating the cases allows comparative evaluation of individual proposals – some of which succeeded and some of which failed. One concrete example of just such a comparison is the rejection of the Holy Alliance in favor of the Quadruple Alliance; these substantively similar proposals generated different audience evaluations primarily because of divergence in their forms.

Investigating the argument I have made requires a means of identifying secondary rules. Though they are of a distinct type from primary rules, they are amenable to identification in the same manner. Essentially, evidence of the existence of rules must be drawn from the statements and practices of actors. This is the basic insight behind what Hart called the “internal aspect of rules”<sup>230</sup> – what constructivists today know as intersubjective understandings. In the following I discuss four methodological problems that arise in identifying secondary rules inductively: (1) how to determine what actors truly believe about the rules that constitute social structures, as opposed to how they may portray these rules for strategic reasons; (2) how to aggregate individual subjective understandings to arrive at intersubjective rules; (3) how to resolve variance between nominal rules and actual social practice; and (4) after identifying a rule, how to classify it as primary or secondary in nature.

With respect to the first problem, Hart provides useful guidance. He writes that the best evidence action is rule-guided “is that if our behaviour is challenged we are disposed to justify it by reference to the rule”; further, “the genuineness of our acceptance of the rule may be manifested not only in our past and subsequent general acknowledgements and conformity to it,

---

<sup>230</sup> Hart, *The Concept of Law*, 56-57.



but in our criticism of our own and others' deviation from it."<sup>231</sup> The idea is to check actors' declarations about the rule against their behaviour with respect to it. While this is hardly a perfect research practice, especially given the often limited information available to scholars of international relations, it certainly presents a starting point and a current 'best practice'.

The easiest solution to the second problem, the problem of aggregation, is often provided by actors themselves. Multiple subjective understandings can be reconciled via negotiation, and the negotiated outcome expressed in a formal manner such as a treaty, agreement or other document. Indeed, the undesirability of uncertainty about rules is part of the rationale for secondary rules, and the negotiation of shared agreement is precisely the stuff of institutional politics. The difficulty here is that few social contexts display the degree of formalization found in a domestic legal system; further, the fact of codification is not free from considerations of power. If secondary rules are not codified, or if codification does not reflect genuine agreement among the relevant actors, the task is more difficult; the task of the analyst in such cases is inductive – to assemble the best possible account both of commonalities and nodes of disagreement among actors' individual subjective understandings of secondary rules.

A similar strategy is indicated in addressing the third problem. In the face of contradictory evidence about the content of rules, whether in the form of actors' declarations, of social practices that diverge from apparent rules, or conflicting social practices, the appropriate response is to be explicit about such tensions and to reach a most likely conclusion. Vincent Pouliot has made a similar argument, calling on researchers to employ methods of triangulation,

---

<sup>231</sup> Ibid., 140.

in order to put “experience-near concepts... under the light of experience-distant contextualization.”<sup>232</sup>

Unlike the three problems discussed above, which have to do with ascertaining the existence of a rule, the fourth problem in identifying secondary rules is one of classification. Put simply: how can we tell whether rule X is a primary or a secondary rule? On one level, this is a problem of definition. Secondary rules allow actors to “introduce new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or their operation.”<sup>233</sup> The problem with this definition is that some rules appear to qualify as both primary and secondary rules. Within international relations, sovereignty is perhaps the clearest and most important example.

Sovereignty does not have clear directive properties with respect to the internal behaviour of states; that is, it does not require the enactment of law X or Y, or that laws be enacted in particular ways – indeed, it does not even require the enactment of law at all. The Montevideo Convention of 1934 reflects the current position in international law; it requires that a state must possess a permanent population and defined territory over which it exercises the functions of government, as well as the capacity to enter into relations with other states.<sup>234</sup> The most that can be claimed of sovereignty as a primary rule for the internal conduct of states is that it directs states to govern a territory with a population. On the other hand, sovereignty appears to be a clear directive for states not to intervene in the domestic affairs of other states. This seems to be a clear directive to abstain from prohibited behaviour – a primary rule. Sovereignty also has

---

<sup>232</sup> Vincent Pouliot, "'Subjectivism': Toward a Constructivist Methodology," *International Studies Quarterly* 51, no. 2 (2007): 370. A similar argument stressing the importance of multiple sources of evidence for increasing confidence in conclusions about intersubjective meanings is found in Checkel, "Why Comply?," *International Organization* 55, no. 3 (2001): 565-66.

<sup>233</sup> Hart, *The Concept of Law*, 81.

<sup>234</sup> Kindred et al., *International Law: Chiefly as Interpreted and Applied in Canada*, 12-15.

clear relevance as a secondary rule. First, it constitutes states as actors competent to make rules – both domestically and internationally. Similarly, it endows them with the competence to change and to interpret these rules. On this view, then, it may even appear that sovereignty is the sole secondary rule for world politics.

In fact, the key difficulty here is the conflation of institutions with their component rules; sovereignty is better understood as a social institution, comprised of both primary and secondary rules. Other such compound institutions include diplomacy, great power management, international law, and even war. These other institutions also add a great deal of social texture to international politics beyond that offered by sovereignty. Beyond empowering states to create, interpret and change rules domestically and internationally, sovereignty says little about *how* these functions may be accomplished; further, the sovereign power of states has been increasingly circumscribed by the entry of non-state actors into the game of rule-making. As I argued in the previous section of this chapter, secondary rules are best understood as a subset of rules that share the property of dealing with how rules are created, interpreted and altered. Ultimately, then, classifying rules as primary or secondary is a matter of case-specific judgment on the part of the analyst.

The final issue in this section is the question of impact. If secondary rules are basic to social life, and if they can be identified, so what? My argument is that secondary rules constitute a social practice for governing attempts to produce social change. The essential point is that these rules provide instruction manuals, informing actors about how to present and evaluate proposals for change. Secondary rules are not deterministic; actors clearly may break them in pursuing social change. However, even in such cases, secondary rules are not irrelevant. In addition to guiding actors in their choices about how to pursue social change (even if they

ultimately choose to disregard this guidance), secondary rules also guide other actors in selecting *responses* to instances of institutional politics – however they are pursued. This latter choice is in fact the crucial one for the purpose of studying social change. The real question is not what makes actors decide to initiate attempts to change social institutions – it is what makes their audience either accept or reject the attempt. Just as those proposing social change can break relevant secondary rules, so too can the actors evaluating the proposal. My hypothesis is therefore that attempts pursued within the relevant framework are more likely to succeed than those that are not.

This argument is, ultimately, an empirical one. Thus, I conclude this section by explicating the expected observable implications of my theory. Broadly, if I am correct, it will be possible to identify a social practice for the creation and alteration of intersubjectivity. This entails, first, the possibility of identifying the secondary rules that constitute this practice in a given social context. Second, my theory expects that actors will generally present proposals for social change according to such rules. Where inconsistencies exist between rules and tactics, these should be explained, excused, minimized, denied or criticized. Similarly, these same secondary rules should guide the evaluation of proposals for social change. Further, my theory expects that deviations from accepted evaluative procedures will prompt the same range of discursive response generated by improper presentations. Finally, my theory expects that disagreement on relevant secondary rules will compromise attempts to pursue social change. In such cases, actors are expected to criticize other participants for failing to adhere to legitimate practices for making and interpreting social rules. These expected observable implications form the basis for the case studies in the chapters that follow.

# Chapter 3: The Social Practice of Change: Institutional Politics and the Social Construction of Great Power Management, 1815-22

## 1 Introduction

The transition from the eighteenth to the nineteenth century was accomplished at the Congress of Vienna. More than a conclusion to the Napoleonic War, the congress and its associated diplomacy fundamentally changed the ‘rules of the game’ for international relations in the European state system. The competitive balance of power characteristic of the eighteenth century was replaced with a new system of collaborative great power conflict management. This outcome represents an unsolved puzzle for international relations theory.

Neorealist theories clearly predict competitive balancing – not collaboration or condominium.<sup>235</sup> Neither was the congress a clear example of hegemonic influence. As Paul Schroeder has argued, the post-1815 system was marked by a duopoly rather than a hegemony – among the great powers, Britain and Russia stood clearly above the so-called Continental powers (France, Prussia and Austria).<sup>236</sup> Claims of British hegemony in this period also overlook the fact that the Austrian foreign minister, Metternich, was as influential as his British counterpart in shaping the settlement.<sup>237</sup> If institutions are truly epiphenomenal reflections of hegemonic power, then Metternich’s remarkable influence constitutes an important anomaly.

---

<sup>235</sup> The classic statement is provided in Waltz, *Theory of International Politics*.

<sup>236</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 591.

<sup>237</sup> For an argument defining the post-1815 system as a British hegemony, see Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, Ch. 4. Metternich’s influence is consistently acknowledged in important historical accounts of the period. See, for example, Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*; Rene Albrecht-Carrie, *The Concert of*

Robert Jervis has suggested an additional explanation for the development of concert systems. He argues that concerts are temporary deviations from the behavioural norm represented by the balance of power. Concerts are possible “after, and only after, a large war with a potential hegemon” because such an episode presents alliance handicaps and renders statesmen abnormally reluctant to resort to war in the pursuit of national interest.<sup>238</sup> The operation of the balance of power is thus temporarily impaired by incentives that unfortunately prove all too fleeting. But incentives may not be recognized and, even if they are, there is no guarantee actors will reach agreement on the particular institutional form for a solution to their common problem. Even if an agreement is reached, a theory predicting behaviour on the basis of incentives has no ability to explain particular institutional forms or to describe the social processes involved in their creation. Further, in 1815, the statesmen had no existing concept or model of ‘Concert’ behaviour that they could apply. For all of these reasons, Jervis’s theory cannot adequately explain the emergence of the concert system in 1815 and after.

In this chapter, I argue that this shift in the primary rules governing state behaviour was the result of a rule-governed social practice. What H.L.A. Hart referred to as secondary rules – or rules about rules – define legitimate and illegitimate means of contesting the institutions that govern social life.<sup>239</sup> They serve as guides not only for social entrepreneurs promoting change, but also for the audiences which evaluate such proposals. When actors attempt to change the rules of the game, they engage in a social practice I refer to as institutional politics. The purpose of this generic practice is to forge intersubjective agreement on primary rules governing

---

*Europe* (New York, N.Y.: Walker and Company, 1968); Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*.

<sup>238</sup> Robert Jervis, "From Balance to Concert: A Study of International Security Cooperation," *World Politics* 38, no. 1 (1985): 60-61.

<sup>239</sup> Hart, *The Concept of Law*.

behaviour. Success thus depends on getting other actors to accept proposed rules; this places the explanatory spotlight squarely on the social act of evaluating a proposed rule change. Why do participants in this social practice accept some proposed rule changes while rejecting others? More specifically, why did statesmen at the Congress of Vienna agree on a system of collaborative great power conflict management that broke significantly from their prior balance of power practices?

The argument proceeds in two parts. The first consists of analysis of the relevant primary and secondary rules, effectively defining the scope of the case. Second, I demonstrate the role of secondary rules in the institutional politics associated with the creation of the great power concert.

## **2 Social Structure: The Rules of the Game**

In this section, I develop a sketch of the rules relevant to the shift from the eighteenth century European balance of power to the nineteenth century concert system. This sketch has two parts. The first is a before-and-after comparison of the central primary rules of the European state system. The second is an elaboration of the secondary rules that governed the institutional politics that structured the social process leading to this historic social change in primary rules. In the next section, I will leverage this analysis to provide an explanation for the system of collaborative great power management created in the aftermath of the Napoleonic War.

### **2.1 Primary Rules: From Balance to Concert**

European international relations in 1815 had been fundamentally unsettled by the French Revolution and then by Napoleon's empire-building project. Both had important long-term

effects on the international system, particularly on the development of nationalism, but these effects would not be felt until the mid nineteenth century.<sup>240</sup> The relevant prior rule-system is the eighteenth century balance of power that preceded the outbreak of the French Revolution. In contrast to the spare, mechanical vision of the balance of power popularized by neorealist theories, this balance system was deeply social and highly complex.

While the Peace of Westphalia established the modern state system, the balance of power emerged over the following decades. Its establishment is first codified in the Utrecht peace settlements, which marked the end of Louis XIV's drive for hegemony in the War of the Spanish Succession. This timing was no coincidence; after 1713, "the balance of power became a means of maintaining state independence and preventing hegemony."<sup>241</sup> Despite this desire to utilize the notion of a balance of power to restrain bids for hegemony, the Utrecht settlement did not contemplate a lasting international organization or any other limitation on the use of warfare as an instrument of foreign policy.<sup>242</sup> In the century between Utrecht and the Congress of Vienna, warfare was common – especially among the emerging great powers. Major wars in this period include the War of the Polish Succession (1733-35) and the Seven Years' War (1756-63). Moreover, as the eighteenth century wore on, "competition among great powers became subject to fewer legal and dynastic constraints."<sup>243</sup> Thus, the balance of power must be seen as a practice enabling competition among states, as well as a restraining factor that mitigated the effects of anarchy.

---

<sup>240</sup> For an excellent analysis of the impact of the French Revolution, see Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*.

<sup>241</sup> Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order 1648-1989* (Cambridge, U.K.: Cambridge University Press, 1991), 63.

<sup>242</sup> *Ibid.*, 80-81.

<sup>243</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, 95.



The purpose of the balance of power was well understood, and there was general agreement on its major rules.<sup>244</sup> Schroeder eloquently enumerates the rules of the game: “compensations; indemnities; alliance as instruments for accruing power and capability; *raison d'état*; honour and prestige; Europe as a family of states; and finally, the principle or goal of balance of power itself.”<sup>245</sup> The military aspects of the balance are most familiar. Simply put, the notion was that gains made by another state – both allies and adversaries – must be matched. Both gains and potential compensations were broadly understood, going beyond territory acquired in armed conflict to encompass “gains acquired legally (e.g. by dynastic inheritance or marriage) or from natural growth and development” as well as “gains in honour, prestige, and standing in the international system.”<sup>246</sup> Similarly, “one would try to exact the costs of war from the enemy whenever possible, but states also expected their allies to indemnify them for aid they supplied.”<sup>247</sup> Despite the free resort to force as “a regular and accepted means of achieving and defending certain objectives”,<sup>248</sup> eighteenth century wars were marked by significant tactical restraint. Elaborate rules limiting the conduct of war were augmented by ritualized social forms for the initiation and termination of hostilities, for surrender and for prisoner exchange.<sup>249</sup> Such rules “were fairly effective” in limiting the impact of war on civilian populations, especially in

---

<sup>244</sup> This point is widely agreed upon, even by authors who differ in their precise descriptions of the balance system. See Rene Albrecht-Carrie, *A Diplomatic History of Europe*, Revised ed. (New York, N.Y.: Harper & Row, 1973), 5-6; Gordon A. Craig and Alexander L. George, *Force and Statecraft: Diplomatic Problems of Our Time*, 3rd ed. (Oxford, U.K.: Oxford University Press, 1995), 19; Schroeder, *The Transformation of European Politics, 1763-1848*, 5.

<sup>245</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 6.

<sup>246</sup> *Ibid.*, 6-7.

<sup>247</sup> *Ibid.*, 7.

<sup>248</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, 64.

<sup>249</sup> Holsti, *Peace and War: Armed Conflicts and International Order 1648-1989*, 104.

comparison to the religious conflicts of the seventeenth century, despite the lack of a centralized enforcement mechanism.<sup>250</sup>

Just as possible gains and losses were broadly defined, interstate competition extended beyond the battlefield. Concern with honour and prestige were central to international relations in eighteenth century Europe. One important manifestation of this concern was preoccupation with rules of precedence and diplomatic etiquette. As Christian Reus-Smit has argued, “even when hierarchy was not the core issue animating interstate negotiations, it structured the process by which those negotiations were conducted.”<sup>251</sup> This concern stemmed from identification of the state’s moral purpose with enhancing the personal glory of the monarch. Beyond the issue of relative standing in diplomatic ceremonies, the pursuit of dynastic glory was conducted through “dynastic marriages, competing legal claims, alliance politics, and spying.”<sup>252</sup> The pursuit of prestige was not merely a matter of rational utility maximization. Instead, particular rivalries were regarded as historic and natural; Anglo-French and Franco-Austrian enmities are important examples of such “culturally constituted” relationships.<sup>253</sup>

The eighteenth century balance of power was a subtle, rule-governed social system that opened multiple avenues to Europe’s royal houses in their pursuit of prestige. And yet, it did not completely define their international relations; “despite the wars that pitted European states against each other, there was a general assumption that they were members of a comity of states that were bound together by common ties of family relationship, religion, and historical

---

<sup>250</sup> Craig and George, *Force and Statecraft: Diplomatic Problems of Our Time*, 19.

<sup>251</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 109.

<sup>252</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, 72.

<sup>253</sup> *Ibid.*, 76.

tradition.”<sup>254</sup> However, this thin European identity did not lead to robust cooperation among states in pursuit of common aims. Instead, the belief was that “the play of forces arising from each power’s pursuing its own interest would ensure the preservation of an overall balance and thereby prevent empire.”<sup>255</sup> Thus, while the balance was rule-governed, it was also highly decentralized in its operation.

The Congress of Vienna did not represent a complete rupture from the eighteenth century system. States ruled primarily by monarchs remained the dominant actors in international relations; they conducted their relations at least largely in terms of pursuing interest, through both diplomacy and armed force; common pan-European identity provided an important foundation for notions of collaborative crisis management; and concern with prestige was compatible with the emerging notion of special rights and responsibilities for the great powers.

The institutional innovation was the concert system itself: the notion of regular high-level meetings at which the great powers would collectively manage crises and conflicts – not only among themselves, but also with respect to the secondary and minor states of the European system. Beyond the practical innovation of the conferences, this also marked a shift away from purely incidental diplomacy focused on solving the problem at hand, in favour of designing enduring systems for explicitly managing conflict.<sup>256</sup> Reus-Smit argues that the modern system of contractual international law and multilateral diplomacy emerged later in the 19<sup>th</sup> century. He sees the Vienna settlement as “archaic” because it reasserted monarchical rule and did not

---

<sup>254</sup> Craig and George, *Force and Statecraft: Diplomatic Problems of Our Time*, 19.

<sup>255</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 9.

<sup>256</sup> The incidental nature of 18<sup>th</sup> century diplomacy is noted in Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 107.

establish a deliberative assembly with wide membership.<sup>257</sup> Both of these things are true; however, such changes would have required significant alteration of secondary rules.<sup>258</sup> Thus, my argument is able to explain not only the *accomplishments* of the Vienna settlement in changing the rules of the game, but also its *failure* to go further than it did.

The years after 1815 were marked by a series of conferences. Aix-la-Chapelle (1818), Carlsbad (1819), Troppau (1820), Laibach (1821) and Verona (1822) put into practice the essential ideas – first articulated in the Treaty of Chaumont (1814) – that informed the treaties of 1815: the Quadruple Alliance, the Final Act of the Congress of Vienna, and the Holy Alliance. Despite the importance of the 1815 treaties, the settlement was neither fully articulated in 1815 nor static in the years following. Over this period, the focus of great power collaboration shifted – the initial concern with preventing a great power war (either in the form of a renewed French threat or a war between the Eastern Powers over the Polish-Saxon question) giving way to a concern with the maintenance of order against revolutionary movements in the German states, Naples, Piedmont, Spain and Greece. Thus, explaining the shift from the balance to the concert requires examination of more than simply the treaties for 1815.

The settlement of 1815 and its evolution in the period from 1815-1822 are the focus of the third major section of this chapter. Before addressing the crucial causal question about the institutionalization of these particular ideas, I sketch the secondary rules that governed the relevant process of institutional politics.

---

<sup>257</sup> Ibid., 139.

<sup>258</sup> I argue below that the movement from natural to contractual international law was more advanced in this time period than its domestic counterpart, the shift from monarchical or dynastic to constitutional legitimation of state authority.

## 2.2 Secondary Rules: Diplomacy and International Law

The secondary rules relevant to the construction of the concert system were located within three social institutions: sovereignty, international law and diplomacy.<sup>259</sup> Sovereignty identified state officials, including monarchs, as the sole actors competent to engage in institutional politics. On its own, however, this says little about the legitimate means for creating or altering intersubjective rules. International law and diplomacy thus serve to fill in the gaps in the system of secondary rules.

The eighteenth century saw a fundamental shift in the foundations of international law. The legitimacy of rules, and of particular rules of international law, shifted from a basis in natural law to the emerging doctrine of positive or contractual law. Mlada Bukovansky attributes this shift to “the religious divisions and strife of the previous century, and the precipitous decline of the pope’s influence in temporal matters.”<sup>260</sup> Though “traditional religious symbolism and sanction” were still invoked, domestic legitimacy was increasingly seen in constitutional terms,<sup>261</sup> the corollary in international law was to cast the legitimacy of agreements in the consent of states and their legitimate rulers. One important manifestation of this transition was a decline in “the rigid adherence to family inheritances and rights deriving from ancient conquests and marriages” in favor of the view that territory could be “an exchangeable commodity.”<sup>262</sup> The shift in this basic rule led to a discernible shift in state practice; “dynastic rights were systematically violated in the numerous territorial exchanges of

---

<sup>259</sup> This is not to say that these institutions are concerned only with institutional politics; they are not, as I argued above with respect to sovereignty, and as I will argue below with respect to the other two.

<sup>260</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, 71.

<sup>261</sup> *Ibid.*, 70.

<sup>262</sup> Holsti, *Peace and War: Armed Conflicts and International Order 1648-1989*, 56.

the period.<sup>263</sup> The increasing commoditization of territory was part and parcel of a general lessening of constraints on balance of power practices in the latter part of the eighteenth century.<sup>264</sup> While the French and American revolutions were indicative of the growing strain on the traditional basis of domestic legitimacy, the situation in international law was further advanced. By the time of Napoleon's first defeat, the legitimacy of a proposed rule for international relations was primarily dependent on the consent of states, as embodied either in duly authorized treaties or in less formal diplomatic arrangements.<sup>265</sup>

The rules for reaching such arrangements, which define the actual process of institutional politics, are a subset of the rules of diplomacy. Perhaps more than any other institution in the international state system, diplomacy has fulfilled a double role. On the one hand, it provides the means for states to pursue their interests within the existing framework of rules and institutions – for instance, by concluding trade agreements or defensive alliances. On the other, it has provided the social grammar and vocabulary that have enabled sweeping changes in state practice, and that have blocked other such attempts. It is this latter function of diplomacy with which I am concerned here.

---

<sup>263</sup> Ibid., 90.

<sup>264</sup> Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, 95.

<sup>265</sup> Matthew Hoffmann has pointed out that treaty-making, especially of the multilateral form, was not definitively established as a default international practice until later in the nineteenth century. While I accept this point, I would reply that even if treaty-making was not regarded as a solution to all international problems, by 1815 it *was* regarded as the appropriate solution under some circumstances. Further, as I will show later in the chapter, it is also true that decision-makers employed other diplomatic forms for making agreements (declarations, diplomatic circulars, etc.) where they regarded treaty-making as inappropriate. Thus, it is mistaken to equate the acceptance of a positive basis for rule-making with the particular device of treaty-making.

Reus-Smit has characterized early European diplomacy as incidental, bilateral, secretive and hierarchical.<sup>266</sup> As with the justificatory foundations for sovereignty and for international law, the Congress of Vienna sat astride a transition in secondary rules. Where previous peace settlements, for example at Westphalia and Utrecht, took the form of a collection of bilateral treaties, the concert system marks the first tentative steps toward modern multilateralism. But this is more an outcome of the concert system than a secondary rule operating at the time of its creation. A great deal of the diplomacy in the period from 1815-22 remained bilateral in nature. Though the great powers negotiated together and issued joint declarations, there were also shifting alliances among them more consistent with bilateral diplomacy. Above all, even though multilateral diplomatic processes were conceivable, there was as yet no consensus that they were particularly appropriate as a form of diplomatic practice – either in general terms or for the more limited purpose of conducting institutional politics.

A similar situation existed with respect to the incidental characteristic of diplomacy, or the notion that diplomacy was intended to address issues as they occurred rather than to erect rules that would foresee future eventualities. As noted above, the introduction of an enduring set of rules for conflict management is one of the lasting legacies of the Vienna settlement. This is a contrast to the more modest settlements created in 1648 and 1713. The important point for the purposes of my argument is that the shift away from incidental diplomacy was limited to the domain of primary rules. The great powers were largely satisfied with the settlement, and none of them sought to leverage concert diplomacy as part of an attempt to contest secondary rules. Indeed, if anything the settlement envisaged a conservative or even a reactionary system designed precisely to retard or halt the development of more democratic trends in secondary

---

<sup>266</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.

rules. As a result, it is hardly surprising that the conference failed to revolutionize the secondary rules governing institutional politics. The Congress of Vienna was seen as an extraordinary event; insofar as it addressed secondary rules, it tended to make incremental changes or to reinforce existing rules.

The conservative bias of the Congress serves to highlight the two characteristics of traditional European diplomacy most consistently adhered to in the institutional politics surrounding the concert system: secrecy and hierarchy. The diplomacy leading to the 1815 settlement is replete with examples of secret agreements, the most important of which was the 3 January 1815 agreement between Britain, France and Austria for the purpose of forcing Prussia to yield its expansive claims on Saxon territory. The three governments each pledged 150,000 troops in order to compel Prussia to accept a compromise brokered by the other alliance members.<sup>267</sup> Despite this considerable reversal of fortune, Prussia accepted the compromise and remained active within the concert system. Less consequential in terms of the settlement, but still an important indication of attitudes toward secrecy in diplomatic procedure, the Congress of Vienna was the scene for a substantial degree of political espionage – especially by the Austrian hosts.<sup>268</sup> Other governments took some countermeasures, and it is doubtful how much espionage influenced the outcome of the congress; the important point, however, is that such activity never threatened to derail diplomatic progress. Instead, it was accepted as relatively routine. At any rate, it was regarded neither as an outrage nor as a betrayal.

While the pursuit of prestige had been an integral part of the eighteenth century balance of power, and one often pursued via diplomacy, the statesmen at the Congress of Vienna adopted the rule that diplomatic precedence would be accorded on the basis of seniority. By the time of

---

<sup>267</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 535-36.

<sup>268</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 203-06.



the first great power conference at Aix-la-Chapelle (1818), agreement had also been reached to sign treaties alphabetically, in order of states' formal names in the French language. These rules lasted for the next century.<sup>269</sup> Even by themselves, these are developments of significant importance. At the negotiations to end the Thirty Years' War, separate negotiations were held at Munster and Osnabruck because Protestant princes refused as a matter of principle to participate in negotiations including the pope.<sup>270</sup> Settling major issues of diplomatic protocol did not result, however, in a general social leveling among European rulers. A committee report prepared during the Congress explicitly proposed a three-tiered categorization of states.<sup>271</sup> Further, the Final Act of the congress included the first use of the term 'great power' in a treaty – thus consolidating and codifying terminology which had developed over the previous half-century.<sup>272</sup> Hierarchy among states remained a central characteristic of European diplomacy, shaping both primary rules governing behavior and secondary rules governing institutional politics. The increased formalization of the great powers as a collective club thus represented an elaboration of an existing theme, rather than a revolutionary development.

The shift in primary rules entailed by the Concert system thus occurred against the backdrop of relatively stable and generally well-understood rules of sovereignty, international law and diplomacy that decisively shaped actors' understandings about how to advocate and evaluate proposed changes in social rules and institutions. Where such procedures of institutional politics were in doubt, or were slightly altered to facilitate the task of preventing

---

<sup>269</sup> Ibid., 219.

<sup>270</sup> Holsti, *Peace and War: Armed Conflicts and International Order 1648-1989*, 32.

<sup>271</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 219.

<sup>272</sup> Craig and George, *Force and Statecraft: Diplomatic Problems of Our Time*, 3.

systemic war, these changes were often explicitly codified in the terms of treaties and joint Great Power declarations.

### 3 The Congress of Vienna and the Concert System, 1815-22

#### 3.1 The Vienna Settlement: the Creation of Great Power Management

The roots of the Vienna settlement can be located in the coalition diplomacy of 1814, conducted as the four allied powers (Britain, Prussia, Austria, Russia) pressed their campaign to defeat Napoleon. Despite this significant common danger, maintaining the unity of the alliance challenged the parties. Aside from the problem of negotiating common war aims, Napoleon's intransigent refusal to accept moderate peace terms generated concern that France would remain a threat after the war. At this juncture, on 1 March 1814, the allies concluded the Treaty of Chaumont. In most respects, the treaty was typical of contemporary alliance treaties; it "bound the allies to continue the war" while going at least some distance toward articulating common war aims, "provided new subsidy arrangements for another year's campaign if necessary, and most important, united them for twenty years in jointly maintaining peace."<sup>273</sup> This was significant because of its "assumption that France would continue to be a threat even after Napoleon's defeat."<sup>274</sup> The treaty thus had clear and limited objectives, a specific (if atypically long) duration, and was not regarded as a model for future state practice. It did, however, articulate a feeling among allied statesmen that preserving unity constituted a vital goal.

By the spring of 1814, Napoleon had been forced to abdicate his throne; the restored Bourbon monarchy under Louis XVIII had been compelled to accept both a domestic

---

<sup>273</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 501.

<sup>274</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 131.

constitution and a treaty with the allied powers. As at Chaumont, much of the treaty was conventional in form: the heart of the treaty reduced France's frontiers to their pre-1790 extent, save some slight concessions.<sup>275</sup> The innovation in the Treaty of Paris did not concern the perpetuation of the alliance. Instead, Article 32 – a secret article – provided for a plenary meeting of “all the Powers engaged on either side of the present War.”<sup>276</sup> In addition to the familiar diplomatic form of a secret article in the treaty, the notion of a general diplomatic conference to end a major war was also consistent with past practice at Westphalia and at Utrecht.

The purpose of the congress as expressed in the treaty is similarly familiar, at least on the surface. The treaty declared that “the relations from whence a system of real and permanent balance of power is to be derived shall be regulated at the Congress upon principles determined by the Allied Powers amongst themselves.”<sup>277</sup> The invocation of balance of power language here is misleading, however, unless it is considered in terms of the prevailing social context. The notion of a *permanent* balance founded on rules represents a departure from the supposedly self-regulating and constantly shifting balance of power that would have served as the intersubjectively shared referent for these actors. Further, the notion of general rules created by a group of powerful states, acting collaboratively to secure lasting peace rather than competitively to increase their power and prestige, would have directly contradicted prevailing notions (to borrow Reus-Smit's terminology) about the moral purpose of the state and the norm

---

<sup>275</sup> Ibid., 142.

<sup>276</sup> The Treaty of Paris, as quoted in Albrecht-Carrie, *The Concert of Europe*, 30.

<sup>277</sup> The Treaty of Paris, as quoted in Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 100.

of procedural justice.<sup>278</sup> As I argued above, notions of the state as a means for enhancing dynastic glory and the propriety of diplomatic focus on incidental agreements were becoming increasingly unstable, at least as rules for the conduct of international relations (positional politics) if not for institutional politics.

These instabilities undoubtedly provided a window of opportunity for change in primary rules; however, the fortunes of this particular form were also likely enhanced by a relative island of intersubjective stability: the notion of a prestige hierarchy. In addition to the four allied powers, the Treaty of Paris was signed by France, Sweden, Portugal and Spain – all of which had, at one point, played leading roles in European politics. Further, the treaty accorded invitations to the Congress to all states involved in the war. Nevertheless, the treaty codified the determination of the allied powers to exercise sole discretion in designing the first general European settlement that would seek to consciously solve the problem of large-scale war. Thus, the notion of a designed and directed remedy for hegemonic war was wedded to the traditional notion of interstate hierarchy – which itself was given a twist with the emerging idea of a great power ‘club’.

While the Congress of Vienna would ultimately be dominated by the great powers, it would be attended by the entire range of European states. In addition to the signatories of the Treaty of Paris, it included delegations from thirty-two minor German states, two delegations from Naples, a papal delegation, a representative of the Ottoman Sultan, and at least three non-state groups (a Jewish delegation from Frankfurt, a group of German Catholics, and representatives of the publishing trade).<sup>279</sup> These groups all arrived “under the impression that

---

<sup>278</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.

<sup>279</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 128-32.

they would be granted the opportunity to establish their respective claims or at least to contribute their influence and opinions to the new European order.”<sup>280</sup> In an interesting lapse, “none of the Big Four seems to have realised in advance to what an extent the problem of organisation and procedure would create opportunities for dissension and intrigue.”<sup>281</sup> If the Congress of Vienna would rewrite the rules of the game for international relations, these procedural rules were the secondary rules that would govern the looming instance of institutional politics.

Initial negotiation among the four allied powers centred around the respective roles of the so-called ‘Big Four’ and the plenary congress. On 20 September 1814, the allies “agreed that decisions would be taken by the ‘Big Four’, but that they would be submitted to France and Spain for their approval and to the Congress for their ratification.”<sup>282</sup> In a testament to the degree of consensus on the necessity of great power unity, the possibility of disagreement among them “was not even considered”.<sup>283</sup> This procedural agreement was efficiently destroyed by Talleyrand’s masterful exploitation of the very secondary rules the allies relied upon to craft it. This outcome bears further emphasis: the chief negotiator for the defeated power, lacking the military means to press his claims, was able to score a major diplomatic victory. Without minimizing the degree of intellect and skill required for such a feat, Talleyrand’s accomplishment was not to conjure agreement from a vacuum; rather, he adroitly deployed his audience’s own rules against them. He began by insisting that the initial procedural agreement was objectionable in that it made reference to “the Allies”, when the Treaty of Paris had ended

---

<sup>280</sup> Ibid., 135.

<sup>281</sup> Ibid., 136.

<sup>282</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 148.

<sup>283</sup> Ibid., 150.

the alliance.<sup>284</sup> Further, the ‘Big Four’ lacked legitimacy as a decision-making body because their own treaty had called for a congress between all parties to the war. On this view, the proper directing body for the congress could only be the eight signatories to the Treaty of Paris or the entire plenary body. He began to organize secondary states in order to press the allies on this issue.<sup>285</sup> As Sir Harold Nicolson reports, “the Big Four could find no reply to this argument.” Entrapped by Talleyrand’s maneuver, they “agreed to tear up the protocol which they had signed” and to allow the French diplomat to participate in drafting a replacement.<sup>286</sup>

Talleyrand’s motives were clearly strategic. After securing his goal of French participation in procedural negotiations on an equal footing with the allied powers, “he rapidly abandoned all of his small allies.”<sup>287</sup> His “chief practical goal was to gain France an equal status and voice among the great powers at Vienna.”<sup>288</sup> Secondary rules constituted this interest, just as they had provided Talleyrand his opening with his counterparts. In the first place, rules of diplomatic prestige provided the incentive: achieving equal status would allow France a claim to participation in future deliberations. Recognition as a great power could guarantee restoration of France’s diplomatic relevance. This claim to great power standing was enabled, as Henry Kissinger has noted, by the fact that the Bourbon restoration removed the crucial justification for denying France the diplomatic status it traditionally enjoyed.<sup>289</sup>

In the immediate term, though, Talleyrand achieved only marginal gains. The four allied powers continued informal discussions of the crucial remaining territorial issues surrounding

---

<sup>284</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 142.

<sup>285</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 151-52.

<sup>286</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 142.

<sup>287</sup> *Ibid.*, 143.

<sup>288</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 530.

<sup>289</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 148.

Poland and Saxony; the German Committee started work under the joint leadership of Prussia and Austria; and the group of eight signatories to the Treaty of Paris appointed committees to deal with international rivers and diplomatic precedence, as well as an informal body to study abolition of the slave trade.<sup>290</sup> France would not gain full access to Congress deliberations until January 1815, and then largely in return for assistance in securing a settlement of the Polish-Saxon question.<sup>291</sup>

The root of this vexing dispute was the Convention of Kalisch, an agreement between Prussia and Russia signed on 28 February 1813, during the aftermath of Napoleon's disastrous Russian campaign. The heart of the agreement was a classic example of territorial compensation consistent with the rules of the eighteenth century balance of power. Prussia agreed to forfeit the majority of its Polish possessions to Russia to facilitate Tsar Alexander's plan for a Polish state reconstituted as a Russian satellite; in return, Alexander pledged to support Prussian claims to Saxony as compensation.<sup>292</sup> For various reasons, Britain, Austria and France opposed this arrangement; the essence of their opposition related to its impact on political equilibrium, in that it would clearly strengthen both Russia and Prussia. Schroeder makes a convincing case that, rather than a reversion to the balance of power, this crucial episode instead represented the first instance of great power condominium in operation. By December 1814, Russia had essentially consolidated its gains in Poland; "balance-of-power tactics were tried and failed."<sup>293</sup> As a result, the focus shifted to preventing similar Prussian consolidation in Saxony. Prussian threats of war were defused by a secret alliance between Britain, Austria and France, and because Russia

---

<sup>290</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 144-45.

<sup>291</sup> The first instance of France working with the other four great powers was provided by the Statistical Committee, which began work in December 1814. *Ibid.*, 146.

<sup>292</sup> *Ibid.*, 167.

<sup>293</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 537.

“controlled its junior partner and joined the others in imposing the chief costs of the settlement on it.”<sup>294</sup> A Cold War analogy serves to contextualize the significance of this event: Russia played essentially the role that the United States would play in the Suez Crisis with respect to its erstwhile allies.<sup>295</sup> Schroeder attributes Russian moderation to sincere belief in the notion of a European system for peace that the Tsar had first suggested to William Pitt in 1804.<sup>296</sup>

Several other minor institutional innovations achieved at Vienna would later prove their worth in buttressing the general principle of great power management. First, the Statistical Committee was created to facilitate territorial settlements by developing accurate estimates of populations in various contested regions.<sup>297</sup> The committee was appointed on 24 December 1814 and finished its mandate by 19 January 1815, simultaneously serving as the first test of France’s reintegration into the ranks of the great powers, a demonstration of the application of scientific study to managing international conflict, and an important example of diplomatic efficiency. Second, the committee for the management of international rivers served as proof of the potential for transnational regulation. Third, the informal ‘conference’ on the abolition of the slave trade created “a Conference of Ambassadors charged with the duty of watching the execution of the several agreements come to.”<sup>298</sup> While it was not particularly effective, it “was at the time a startling innovation and provided a useful precedent for the future.”<sup>299</sup> Finally, “in a move of major symbolic and practical importance, all the various treaties were tied together into one great

---

<sup>294</sup> Ibid.

<sup>295</sup> On the Suez Crisis, see Bially Mattern, *Ordering International Politics: Identity, Crisis, and Representational Force*.

<sup>296</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 559.

<sup>297</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 146.

<sup>298</sup> Ibid., 215.

<sup>299</sup> Ibid., 216.



package, so that while there was no formal guarantee of the whole settlement, the violation of any treaty implicitly threatened them all.”<sup>300</sup>

Napoleon’s escape from Elba and subsequent final defeat at Waterloo resulted in another restoration of the Bourbon dynasty in France, as well as the Second Treaty of Paris. The treaty imposed more punitive, though not ruinous, conditions on France: primarily a 700 million franc indemnity, and a requirement to financially support 150,000 occupation troops for a period of five years.<sup>301</sup> On the same day as the peace treaty was signed, 20 November 1815, the four allies renewed the Quadruple Alliance first codified in the Treaty of Chaumont. Article Six of the renewed alliance “provided for future European reunions to promote repose, prosperity, and peace, and thus became the basis for the post-war European Concert and its conferences.”<sup>302</sup> The article marks a broadening of the ambit for great power management beyond preventing hegemony. Over the next seven years, this shift would find expression in state practice.

### 3.2 The Concert System: the Evolution of Great Power Management

The shift from preventing hegemony to more robust great power management occurred more gradually than the initial creation of a great power alliance. While the idea of continued cooperation was relatively uncontroversial, at least for the limited purpose of avoiding another general war, both the particular purposes that would be served by joint action and the means by which it would be accomplished were worked out over a longer period. This period begins with the Holy Alliance of September 1815, and encompasses the initial set of great power conferences – starting at Aix-la-Chapelle in 1818 and ending at Verona in 1822. Throughout these crucial

---

<sup>300</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 573.

<sup>301</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 240-41.

<sup>302</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 557.

seven years, as at Vienna, statesmen were explicitly concerned with relevant secondary rules in advancing and evaluating proposals for social change.

### 3.2.1 *The Holy Alliance and the Quadruple Alliance*

The first crucial juncture in the transition from the more modest agreements at Vienna to a more robust practice of collectively managing international crises took place in the fall of 1815, with the creation of the Holy Alliance and the renewal of the wartime Quadruple Alliance. These agreements were largely redundant; both expressed a shared sentiment that the great powers would collectively direct international relations among the European states. Why would essentially the same parties conclude two substantively similar agreements on the same topic within a span of three months? I will argue that this outcome can best be explained as the result of knowledgeable actors engaging in the social practice of institutional politics. The renewal of the Quadruple Alliance, as well as significant alterations to the draft of the Holy Alliance, were intended and understood as attempts to found a new European political order in a manner consistent with existing secondary rules for creating social change.

The Holy Alliance was signed by the monarchs of the three eastern powers, largely at the behest of the Russian Tsar. Article One of the agreement (it did not take the form of a treaty) bound its signatories to “remain united by the bonds of a true and indissoluble fraternity.”<sup>303</sup> Article Two couched this union in terms of Christianity; it committed the parties “to consider themselves all as members of one and the same Christian nation.”<sup>304</sup> However, the final draft of the agreement had been significantly altered from the Tsar’s original proposal. Overall, the tenor of the changes was conservative: the revised document “called, not for a fraternal union between

---

<sup>303</sup> Quoted in Albrecht-Carrie, *The Concert of Europe*, 33.

<sup>304</sup> Quoted in *ibid.*, 34.

monarchs and their peoples, but for a paternal alliance of monarchs over their peoples.”<sup>305</sup> These alterations were made at the behest of Austrian Foreign Minister Klemens von Metternich. More concretely, Metternich secured the removal of language calling for constitutional reforms in domestic politics, as well as criticism of the eighteenth-century balance of power.<sup>306</sup> According to Nicolson, the result was achieved by Metternich’s strategy of “playing adroitly upon the Tsar’s increasing repudiation of his former liberal sentiments.”<sup>307</sup> Nicolson’s account is consistent with Metternich’s attempts to constrain the Tsar, as well as other actors, throughout the period under examination. His interventions in the discourse that forged great power cooperation employed two predominant analogies: criminality and disease. The success of both depended heavily on secondary rules, and will be dealt with in more detail below. The point, for now, is that the diplomacy surrounding the creation of the Holy Alliance supports my argument that social change occurs through the practice of institutional politics by rule-regarding actors.

In its altered form, the content of the Holy Alliance was consistent with the renewed Quadruple Alliance that would be signed in November 1815, and with the great power practices which would emerge in the following years. Further, the agreement was eventually acceded to by every sovereign in the system – save the British, the Ottoman Empire (for obvious religious reasons) and the Vatican. The British abstention was primarily driven by domestic political and constitutional constraints; in lieu of British accession, Castlereagh “urged the Prince Regent to subscribe to it personally, though without involving the British government.”<sup>308</sup> As late as 28 September 1815, Castlereagh had written to Lord Liverpool about a “Project of Declaration” he

---

<sup>305</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 559.

<sup>306</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 189.

<sup>307</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 253.

<sup>308</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 559.

proposed for the Congress of Vienna, “in which the sovereigns were solemnly to pledge themselves in the face of the world to preserve to their people the peace they had conquered, and to treat as a common enemy whatever Power should violate it.”<sup>309</sup> Like his counterparts, Castlereagh remained consistently supportive of continued great power cooperation.

Despite widespread agreement on the basic substance of the Holy Alliance, it was superseded less than three months later by the renewal of the Quadruple Alliance. Further, the Holy Alliance was denigrated both by Castlereagh, who called it “a piece of sublime mysticism and nonsense”,<sup>310</sup> and by Metternich, who wrote that it “had no more sense or value than that of a philosophical aspiration disguised beneath the cloak of religion”.<sup>311</sup> These criticisms were rooted in what Nicolson called the Tsar’s “fatal error of concluding the Holy Alliance in the name of the Sovereigns personally, and not in the name of their governments or peoples.”<sup>312</sup> Castlereagh had proposed a declaration appended to the Final Act of the Congress of Vienna, consistent with contemporary diplomatic procedure. In the same letter to Lord Liverpool referred to above, Castlereagh reported that the Tsar rejected this idea, indicating that the agreement “ought to assume a more formal shape, and one directly personal to the sovereigns.”<sup>313</sup> As a result, the Holy Alliance did not take the form of a treaty; it was not presented in a manner consistent with relevant secondary rules, and this seriously compromised its importance in the international system.

---

<sup>309</sup> Quoted in John W. Derry, *Castlereagh* (London, U.K.: Allen Lane, 1976), 187.

<sup>310</sup> Quoted in Wendy Hinde, *Castlereagh* (London, U.K.: Collins, 1981), 233.

<sup>311</sup> Quoted in G. de Bertier de Sauvigny, *Metternich and His Times*, trans. Peter Ryde (London, U.K.: Darton, Longman and Todd, 1962), 131.

<sup>312</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 251.

<sup>313</sup> Quoted in Derry, *Castlereagh*, 187.

Not only was it superseded by the renewed Quadruple Alliance, attempts to invoke the Holy Alliance as a legitimate basis for great power action were rare and consistently rejected. For example, in preparing instructions for Austrian representatives to an 8 October 1824 meeting with France, Prussia and Russia regarding domestic political difficulties in Spain, Metternich explicitly rejected a proposal to justify action in terms of the Holy Alliance. To do so, he wrote, “would be like giving sanction to a defection from, or a schism in, the grand alliance”.<sup>314</sup> Metternich’s reasoning stressed the non-legal nature of the Holy Alliance. He asserted that “it was agreed between the monarchs and it belongs to their Cabinets neither in its origin nor in its drafting; thus not once has it been quoted by the Cabinets in any of their diplomatic exchanges.”<sup>315</sup> The Quadruple Alliance, in its expanded form to include France after the 1818 conference at Aix-la-Chapelle, was the operative legal instrument for managing great power cooperation. This difference in the status and importance accorded to the two agreements was explicitly attributed by participants to their differing forms. While the Quadruple Alliance took a form accepted under prevailing secondary rules, the Holy Alliance did not.

In contrast to the Holy Alliance, the Quadruple Alliance was quintessentially a document of international law. It provided for the renewal of what had been a familiar alliance treaty, while at the same time introducing a significant innovation in its sixth article. The article declared that “the High Contracting Parties have agreed to renew their meetings at fixed periods... for the purpose of consulting upon their common interests, and for the consideration of the measures which at each of these periods shall be considered most salutary for the repose and prosperity of Nations, and for the maintenance of the peace of Europe.”<sup>316</sup> Thus, the lasting

---

<sup>314</sup> de Bertier de Sauvigny, *Metternich and His Times*, 132.

<sup>315</sup> *Ibid.*, 133.

<sup>316</sup> Albrecht-Carrie, *The Concert of Europe*, 32.

institutionalization of great power cooperation took the form of a binding treaty rather than a hortatory declaration of the type exemplified by the Holy Alliance. This development was the result of rule-governed interaction that guided agents in evaluating available proposals for change. Two substantively similar proposals were evaluated; one was accepted, and the other was not. The crucial factor in this outcome was that the form of the Holy Alliance was incompatible with the rules of institutional politics as the primary players understood them.

### 3.2.2 *The Conference of Aix-la-Chapelle*

The various agreements of 1814-1815 served merely to set the stage for the latter phases of the institutional politics surrounding the creation of the great power concert. Despite agreement that the great powers would assume responsibility for the operation of the European state system, “the issues which would be considered proper topics for international discussion were still undefined.”<sup>317</sup> This issue was resolved over the course of five great power conferences held between 1818 and 1822. The first, held at Aix-la-Chapelle in the fall of 1818, was largely concerned with reintegrating France into the great power club. The “Protocol of Conference”, issued 15 November 1818, made this objective – and the rationale underlying it – clear: “assuring to France the place that belongs to her in the European system, will bind her more closely to the pacific and benevolent views in which all the Sovereigns participate, and will thus consolidate the general tranquility.”<sup>318</sup> By the conclusion of the conference these objectives had been met. In fact, the other great powers had agreed prior to the conference to end their occupation of France, in response to the restored Bourbon government’s authorization of

---

<sup>317</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 215.

<sup>318</sup> Quoted in Albrecht-Carrie, *The Concert of Europe*, 44.

reparation payments stipulated by the Second Peace of Paris. However, the outcomes of the Aix-la-Chapelle conference were not achieved without substantial institutional politics.

The institutional politics began in advance of the meeting itself. In June 1817, Metternich wrote to his subordinate Baron Vincent expressing a desire to significantly expand upon the institutional innovation of regular great power conferences achieved in Article 6 of the Quadruple Alliance. His proposal was to dramatically heighten the profile of the permanent conference of ambassadors that had been established in Paris to provide coordination of monitoring for the implementation of peace terms. His aspiration was for it to “become the centre of a system of surveillance over those revolutionary intrigues both at home and in other countries, a surveillance which would be instructed to consider and put forward repressive measures to be adopted against them.”<sup>319</sup>

Castlereagh responded to this plan by arguing that “such a mode should not be a habitual occurrence and especially ought not to proceed from the ministers in conference at Paris.”<sup>320</sup>

The predominant interpretation of British relations with its conference partners is one of gradual estrangement forced on Castlereagh by a Cabinet and Parliament that saw the system of great power cooperation as anti-democratic and as antithetical to British policy of isolation from the political affairs of the Continent.<sup>321</sup> The strength of this argument is its recognition that institutional politics is a multi-level social activity; it is certainly true that as the threat posed by Napoleon receded, Castlereagh found himself increasingly limited by domestic constraints.

Available evidence suggests a more complex picture, however.

---

<sup>319</sup> Quoted in de Bertier de Sauvigny, *Metternich and His Times*, 137.

<sup>320</sup> Quoted in Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 219.

<sup>321</sup> This account can be found in Kissinger’s study, as well as in Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*.

Castlereagh wrote glowingly of the conference system on numerous occasions. Writing during the meeting at Aix-la-Chapelle, he expressed the belief that “past habits, common glory, and these occasional meetings, displays, and repledges, are among the best securities Europe now has for a durable peace.”<sup>322</sup> He thus clearly recognized that the system required periodic practice and affirmation in order to maintain and reproduce it, consistent with the expectation of modern constructivist theories. He was also clear about the causal mechanism linking conferences with peace. The value of the conferences was that they were capable of “giving the counsels of the Great Powers the efficiency and almost the simplicity of a single State.”<sup>323</sup> The conferences were important vehicles for facilitating collective management of crises. Why, then, had Castlereagh objected to Metternich’s proposal to strengthen precisely the features of the conference system that Castlereagh held responsible for maintaining peace, especially since strong and effective domestic opposition to Castlereagh’s policy had not yet developed?<sup>324</sup>

The answer, I argue, can be found in a memorandum interpreting the treaties of 1814-1815 submitted to the conference at Aix by the British delegation. In this memo, the British argued that the First Peace of Paris, the Final Act of the Congress of Vienna and the Second Peace of Paris “contain in no case engagements which have been pushed beyond the immediate objects which are made matter of regulation in the treaties themselves.”<sup>325</sup> Further, though the great powers may choose to oppose breaches of the peace, it was the British position that “the

---

<sup>322</sup> Quoted in C.J. Bartlett, *Castlereagh* (London, U.K.: Macmillan, 1966), 201-02.

<sup>323</sup> *Ibid.*, 202.

<sup>324</sup> Existing accounts are consistent in portraying domestic constraints as slow to develop, and as increasing in strength during the period under consideration. Early in the period, Castlereagh enjoyed considerable latitude in directing British policy.

<sup>325</sup> Albrecht-Carrie, *The Concert of Europe*, 37.



treaties do not impose, by express stipulation, the doing so as a matter of positive obligation.”<sup>326</sup> Rather, the Quadruple Alliance represented a great power agreement “to interpose their good offices for the settlement of differences subsisting between the States, to take the initiative in watching over the peace of Europe, and finally in securing the execution of its treaties in the mode most consonant to the convenience of all the parties.”<sup>327</sup>

The British position favoured a more politically flexible system that frankly acknowledged the necessity of applying general principles only in context of particular cases. In contrast, Metternich had sought to effectively ‘lock in’ cooperation by delegating its application in particular cases to lower-level diplomats. For my purposes, however, this substantive disagreement is of lesser importance than the manner in which the British replied to Metternich’s proposal. They did so in terms of international law, by parsing treaty obligations and showing the plan to be beyond the scope of existing treaties. The British argument was essentially an assertion of the notion that a sovereign state can be bound only by the treaties it has consented to.

Despite his genuine scepticism with regard to binding *ex ante* commitments to intervention, Castlereagh nevertheless believed in the conference system embodied in Article 6 of the Quadruple Alliance, and supported convening the conference on this basis. However, in the face of resistance from the British Cabinet and, surprisingly, from Metternich, the meeting was eventually held on the much more limited basis of Article 5 of the Treaty of Paris, which “provided for a review of the Allied relations with France at the end of three years”.<sup>328</sup> As noted above, British resistance to Castlereagh’s policy stemming both from liberal values and

---

<sup>326</sup> Ibid.

<sup>327</sup> Ibid., 41-42.

<sup>328</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 221.

considerations of national interest have been well-documented elsewhere. The more interesting feature of this episode is Metternich's argument for a limited mandate at Aix-la-Chapelle.

In addition to the difference between British and Austrian positions on the nature of the new international order, there was an equally significant gulf between Metternich's position and that of the more liberally-inclined advisors to the Tsar, chief among whom was the Count Capo d'Istria. In preparation for the meeting at Aix, Capo d'Istria had pressed for the inclusion of lesser European states, on the grounds that restricting invitations would "only excite the jealousy of the Powers not admitted... and injure both monarchs and Cabinets by the want of results."<sup>329</sup> As at the time of the Holy Alliance, Metternich believed the Tsar's tendency – encouraged by Capo d'Istria – to play both to liberals and to smaller states "revives by its expressions the hopes of innovators and sectaries of every kind."<sup>330</sup> Indeed, the attempt to recreate the broad attendance of the Congress of Vienna was consistent with a range of Russian proposals that could reasonably have been construed in this light. For example, Kissinger notes that, in the spring of 1816, Alexander had sought British support for a multilateral plan for general disarmament.<sup>331</sup>

Again, the crucial issue is Metternich's method for opposing such proposals. Despite his preference for a generalized system of great power intervention, Metternich was willing to adopt a more limited basis for the meeting at Aix-la-Chapelle in order to defeat a proposal (i.e., inviting secondary states) he saw as likely to undermine legitimate monarchical authority and to disproportionately advance Russian power. In response to Capo d'Istria, he argued that any

---

<sup>329</sup> *Memoirs of Prince Metternich*, ed. Richard Metternich, trans. A. Napier, vol. 3 (New York, N.Y.: Howard Fertig, 1970), 163.

<sup>330</sup> *Ibid.*, 164.

<sup>331</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 219.

potential objection by secondary states to a great power conference was without proper legal basis. To support this contention he noted that “the Five Courts which are assembled at Aix are not only invited there, but by the treaty of November 20, 1815 [the Second Peace of Paris], they are bound to come. All the European Courts have by their consent acknowledges and confirmed this treaty and all its stipulations.”<sup>332</sup> Metternich went on to argue that the text of the treaty not only restricted participation to the members of the Quadruple Alliance plus France, but that it also demanded that the parties limit their agenda to a review of matters pertaining to the execution of the terms of peace with France.<sup>333</sup> Thus, convening the Aix conference on the basis of the Treaty of Paris rather than the renewed Quadruple Alliance was an attempt on Metternich’s part to invoke secondary rules in order to defeat Russian efforts to convene the conference on grounds amenable both to broader participation and a more ambitious agenda. Both sides sought to leverage secondary rules to advance their goals, and also to evaluate and respond to alternative proposals.

Metternich’s actions in this instance serve to highlight an important feature of my argument. Institutional politics does not require, and indeed perhaps rarely involves, purely altruistic or even principled actors. Participants are free to advance self-interested proposals, as well as to make arguments that could potentially be seen as inconsistent with their own past positions. The crucial characteristic of institutional politics as a social practice is that agents evaluate proposals on the basis of a relatively stable set of mutually accepted rules – even if they sometimes do so on the basis of mixed, or even completely cynical, motives. Metternich’s resort

---

<sup>332</sup> *Memoirs of Prince Metternich*, 164

<sup>333</sup> *Ibid.* Metternich was not completely successful in this regard. The conference also saw at least informal discussion of German issues, the slave trade, the Barbary pirates, and the status of Spain’s rebellious colonies; nevertheless, he did achieve his goal of removing the most objectionable Russian proposals from the table. See Hinde, *Castlereagh*, 248.

to international law in order to block Russian proposals is therefore consistent with my theory. Further, this political manoeuvre highlights the importance actors placed on a seemingly esoteric procedural point – in this case whether the Aix conference would be convened on the basis of the Treaty of Paris or of the Quadruple Alliance. In contrast to neorealist and neoliberal theories, a constructivist account of the kind I advance offers theoretically grounded reasons for the attention paid by actors to such matters.

The third important instance of institutional politics surrounding the great power conference at Aix-la-Chapelle pertains to the final compromise whereby France was reinstated as a great power in good standing. Once again, issues of form and procedure play an important role in shaping the outcome. The parties concluded a secret renewal of the Quadruple Alliance, as well as a public protocol that extended to France an invitation to future meetings called for by Article 6.<sup>334</sup> In Castlereagh's words, the idea was "to give France her concert, but to keep our security."<sup>335</sup> The first noteworthy feature of the agreement was that it returned to Article 6 of the Quadruple Alliance as the basis for future great power conferences – highlighting the anomalous nature of the meeting at Aix, which had been convened on the basis of the Treaty of Paris. However, unlike the regular meetings that had been envisioned in 1815, emerging doubts in the British cabinet required Castlereagh to secure an agreement that meetings "shall be special, namely that they shall arise out of the occasion and be agreed upon by the Courts at the time."<sup>336</sup> While the foreign policy debate in Britain represents a potential site of analysis for institutional politics at the domestic level, the relevant structure of secondary rules would clearly have been more complex and somewhat divergent from its international analogue. For this reason, I will

---

<sup>334</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 223.

<sup>335</sup> Quoted in Hinde, *Castlereagh*, 248.

<sup>336</sup> Quoted in Bartlett, *Castlereagh*, 211.

merely note here the potential for further study of institutional politics in varying social contexts. Questions of potential interaction effects between processes of institutional politics at various levels of analysis also offer fertile ground for further inquiry.

In this case, however, the interaction appears reasonably straightforward. Rather than reflecting weakness in the consensus regarding great power management by conference, the accommodation of Castlereagh's domestic political constraints more accurately reflects a robust intersubjective common denominator among relevant actors at the international level. This conclusion is suggested by the fact that the continental powers, especially Metternich's Austria, consistently sought British participation in the conference system, despite the broadening of domestic opposition. Castlereagh and his counterparts were sufficiently confident in their mutual commitment to settling disputes via conference that they felt able to forego the reassurance of a specific legal commitment to regular meetings. The successful reintegration of France and the general lack of serious disagreements at Aix-la-Chapelle likely heightened this confidence. While this conclusion is circumstantial, the interpretation it is based on has the advantage of consistency with the parties' subsequent practice.

Beyond the abandonment of periodic meetings, the other significant difference between the Quadruple Alliance and the agreement at Aix-la-Chapelle was that the latter did not take the form of a treaty. The parties explicitly rejected the notion of expanding the Quadruple Alliance to include France. Metternich, in a diplomatic report describing the proceedings at Aix-la-Chapelle, notes that expanding the alliance was impossible because "there is no possibility of establishing a *casus foederis* between the five Courts."<sup>337</sup> That is, there was no external party against which the five great powers could form a defensive alliance that would be triggered

---

<sup>337</sup> *Memoirs of Prince Metternich*, 186.

under specified conditions. An alliance treaty, as understood by these actors, was therefore inappropriate to the circumstances they faced in 1818. Rather than altering the shared understanding with regard to the possible purposes of an alliance treaty (an act which would have required alteration of secondary rules of diplomacy and international law), the response was to pursue an agreement that was consistent with legal and diplomatic rules. Metternich described this as “a diplomatic agreement (other than a treaty) between the five Courts, having for its one definite end the maintenance of the general peace.”<sup>338</sup> Thus, rules of international law acted to restrict the potential forms of cooperation available to the great powers.

Though the great powers claimed for themselves broad authority to direct the political affairs of the European state system, these powers were not without limit, and were not established without attempts to acknowledge the legitimate rights and prerogatives of Europe’s secondary and minor powers – or without efforts to secure their acquiescence, if not their consent. Metternich himself noted that the diplomatic agreement reached at Aix-la-Chapelle was potentially troubling to minor states concerned for their sovereignty. In response he detailed several measures designed to “deprive it of any tendency to disturb the other Courts of Europe.”<sup>339</sup> These proposals are reflected in the diplomatic protocol issued at the conclusion of the conference. Its second article establishes that the union of great powers “can have no other object than the maintenance of peace founded on sacred respect for the engagements set out in the treaties.”<sup>340</sup> Beyond this expression of support for the fundamental principle of *pacta sunt servanda*, the protocol established more concrete commitments intended to reassure other states. In particular, the protocol’s fourth article pledged “that in the event of these meetings having as

---

<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Quoted in de Bertier de Sauvigny, *Metternich and His Times*, 140.

their object matters specially bound up with the interests of the other European States, they shall only be held in response to a formal invitation on the part of such states as are concerned in the aforesaid matters and on the express condition that such states be allowed to participate in them either directly or through their plenipotentiaries.”<sup>341</sup> As will become evident in the analysis of later conferences at Troppau and Laibach, this concession did not amount to a dramatic restriction of great power autonomy; instead, it was manipulated to further great power agendas – but this is immaterial to my argument here that the great powers were constrained not only by procedural rules of diplomacy and international law, but also by the rules of sovereignty that accorded standing to the secondary powers, thereby legitimizing at least to some extent their participation in establishing the rules of the international system.

Attempts to assuage minor states extended beyond the text of the protocol. Austrian diplomat Friedrich Gentz, Metternich’s confidant, wrote an extended memo to a minor nobleman, Prince Souza, in which he sought to present the actions of the great powers in a positive light. He argued that, if not for the system of great power cooperation, its members “would enter into new political combinations” that “would bring us to a general war.”<sup>342</sup> In addition to the spectre of systemic war, Gentz also invoked what was to become one of Metternich’s favored rhetorical devices – the likening of revolution to illness or disease. Gentz asserted that “all European countries, without exception, are tormented by a burning fever” and that without determined efforts to oppose revolutionaries, “we should all be carried away in a very few years.”<sup>343</sup> In military terms, it is unlikely that any combination of secondary powers could have forced the great powers to abandon their plans. The fact that they devoted diplomatic

---

<sup>341</sup> Quoted in *ibid.*

<sup>342</sup> *Memoirs of Prince Metternich*, 191.

<sup>343</sup> *Ibid.*, 194.

resources to securing the consent of secondary states is therefore indicative of rule-oriented social activity.

Finally, in addition to their impact on the diplomatic agreements reached at Aix-la-Chapelle and on the efforts of great powers to secure the acquiescence of small states, secondary rules also exercised an influence on the agreements that were not reached. Two such proposals will be considered here. The first is an ambitious Russian proposal, which Tsar Alexander described as “a common league guaranteeing to each other the existing order of things in thrones as well as in territories, all being bound to march, if requisite, against the first power that offended either by her ambitions or by her revolutionary transgressions.”<sup>344</sup> The proposal was officially made to the conference in an 8 October 1818 memo.<sup>345</sup> The essence of the proposal was not only a collective security system, but also a compact committing the great powers to oppose revolution in any European state.

Kissinger notes that Castlereagh “rejected the principle on which the Russian memorandum was based as impractical and as a violation of the doctrine of non-interference.”<sup>346</sup> Castlereagh’s objection, as with Metternich’s earlier plan to capitalize on the Paris Conference of Ministers, was not to intervention but rather to a legally binding *ex ante* commitment. His preference was for a system of diplomatic consultation in which intervention would be considered on a case-by-case basis.<sup>347</sup> This distinction is evident in Castlereagh’s contrast of the aspirational Holy Alliance, which he likened to the Tsar’s proposed Treaty of Guarantee, with binding treaties. While he could accept a declaration of the kind the Tsar supported as a

---

<sup>344</sup> Quoted in Bartlett, *Castlereagh*, 209.

<sup>345</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 223.

<sup>346</sup> Quoted in *ibid.*, 226.

<sup>347</sup> Kissinger reaches this same conclusion. See *ibid.*, 227.



description of state policy, at least under some circumstances, casting the same policy as a legal commitment seemed both imprudent and counter to the doctrine of non-intervention derived from the institution of sovereignty. Despite his general support of the Tsar's principle, Metternich replied to the proposal in a manner remarkably similar to Castlereagh. His response had two components. First, he argued that a new document would run the risk of undermining the Holy Alliance, Alexander's prized creation. While the appeal here was at least partially directed to the Tsar's vanity, the fact that he was sufficiently committed to the Holy Alliance that such an appeal seemed to Metternich likely to be effective suggests that such arguments were regarded as meaningful. Second, Kissinger notes that Metternich argued that "the Treaty of Chaumont still existed in full force because the lapsing of clauses contingent on the war with France could not affect the permanent provisions" that committed the great powers to defend each other.<sup>348</sup> As a result, the proposal for a treaty of guarantee was redundant and unnecessary.

The most significant aspect of this episode is that despite different interests – Castlereagh in avoiding a legal commitment to reactionary intervention, and Metternich in restraining Russian freedom of action – the Tsar's chief counterparts reacted in virtually the same manner. Further, this response was expressed not in terms of the balance of power or of deterrence, but rather in the language of international law. Actors engaged in evaluating a proposal in terms of pre-existing rules that provided guidance in making just this sort of evaluation. The end result in this case was that the Tsar withdrew his proposal.

The second failed proposal to be considered here is a more limited treaty of guarantee advanced by Prussia in the closing days of the conference. While it contained territorial guarantees not only for the great powers but also for the Netherlands and the German

---

<sup>348</sup> Ibid., 226.

Confederation, it omitted the troublesome notion of a commitment to reactionary intervention.<sup>349</sup> This alteration addressed both British domestic concerns about the anti-democratic nature of great power cooperation and Austrian fears of Russian aggrandizement. Nevertheless, the proposal failed. While Metternich lent it his support, he was unable to find a compromise that allowed Britain to “express its moral approval without undertaking the obligatory commitments of the treaty.”<sup>350</sup> The case of the Prussian guarantee thus provides another instance in which attempts to guarantee peace were limited by the secondary rules that governed the process of institutional politics the great powers engaged in. Britain had sought to strengthen both the Netherlands and the German states as essential components in its plan to constrain any potential French drive for hegemony, and had displayed no disposition toward making or supporting territorial claims at the expense of its fellow great powers. Despite the congruence between basic British security interests and the substance of the Prussian proposal, considerations of form rendered it unpalatable.

Failure to reach agreement for reasons of form and procedure, despite broad agreement on the proper policy, is emblematic of the meeting at Aix-la-Chapelle. While rehabilitating France proved unproblematic, attempts at institutional innovation – beyond support for further conferences – were less successful. This result is consistent with my theory. The most important disagreements were not over whether or not joint great power management of the international system was appropriate; they were not even over whether or not such management included the right to intervene jointly in other states’ domestic affairs. Rather, agreement foundered over considerations of form, as well as over the circumstances under which intervention was justifiable. These issues – what constitutes the form of a legitimate rule for behaviour, who is

---

<sup>349</sup> Ibid., 230.

<sup>350</sup> Ibid.

entitled to make such rules, and the proper procedure for determining whether or not case X falls under the scope of rule Y – are precisely the kinds of problems that secondary rules are designed to solve. The fact that they were regarded as important issues by relevant actors engaging in evaluating proposals for institutional change lends crucial empirical support to my theoretical argument.

### 3.2.3 *The Conferences of Troppau and Laibach*

The first joint intervention was conducted by the great powers almost two years after their gathering at Aix-la-Chapelle, in response to the outbreak of revolution in Naples. Because the prior conference had been inconclusive with respect to a policy on intervention, the response to the Neapolitan revolt was vigorously contested; the two conferences held on this matter, at Troppau in late 1820 and at Laibach in early 1821, were clear cases of actors engaging in institutional politics.

The Neapolitan revolt broke out on 2 July 1820.<sup>351</sup> After achieving initial success, the rebels obliged King Ferdinand to accept a constitution closely modelled on the extremely liberal document imposed on the Spanish king in March 1820.<sup>352</sup> This apparent revolutionary contagion, coupled with the existence of a treaty barring Naples from instituting such domestic changes without consulting Austria,<sup>353</sup> helps to account for the fact of intervention in Naples and not in Spain.

There was no serious disagreement among the great powers over the notion of suppressing the rebellion. As in 1815 and 1818, the crucial issues surrounded the justificatory

---

<sup>351</sup> Ibid., 251.

<sup>352</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 608.

<sup>353</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 251.

basis for intervention. Castlereagh, conversing with a Russian diplomat, argued that “the revolution should be treated as a special rather than a general question, as an Italian question rather than as an European, and consequently in the sphere of Austria rather than of the Alliance.”<sup>354</sup> The existence of the Neapolitan treaty obligation to consult Austria before instituting domestic constitutional reforms allowed Castlereagh to cast the situation in more limited terms, in an attempt to forestall a renewed attempt on the part of the Continental powers to establish a binding general commitment to intervention. On 16 September 1820, Castlereagh disclosed his reasoning in a letter to his half-brother, Sir Charles Stuart. He acknowledged that “if the existing danger arose from any obvious infractions of our treaties, an extraordinary reunion of sovereigns and their cabinets would be a measure of obvious policy.”<sup>355</sup> Absent such a condition, there was no basis for a general conference.

As a result, the Troppau conference began on 20 October 1820 with Britain and France present only as observers.<sup>356</sup> Further, the Prussian King would not arrive until 7 November, a decision indicative of his general disengagement from the conference.<sup>357</sup> Of the five great powers, only Austria and Russia participated enthusiastically in the meeting. Moreover, existing historical accounts agree that Metternich was a dominant figure throughout the Troppau and Laibach conferences, effectively controlling both the agenda and the results.<sup>358</sup> The clear nature of this outcome begs the question of how Metternich achieved this victory. I will argue that his

---

<sup>354</sup> Quoted in *ibid.*

<sup>355</sup> Quoted in Derry, *Castlereagh*, 203.

<sup>356</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 259.

<sup>357</sup> *Ibid.*, 268.

<sup>358</sup> Kissinger is supported in this conclusion by: de Bertier de Sauvigny, *Metternich and His Times*; Schroeder, *The Transformation of European Politics, 1763-1848*.

success turned, in important part, on his ability to skilfully deploy arguments that drew upon relevant secondary rules.

The chief obstacle in Metternich's path, once again, was Capo d'Istria. By 2 November, an agreement had begun to take shape. Kissinger reports that a Russian memo submitted on this date "laid down three principles which justified the intervention of the Alliance: that a revolution automatically excluded the affected power from the Alliance; that the Alliance had a right to take the requisite measures to prevent the epidemic from spreading and to restore the affected nations to the bosom of the Alliance; but that these measures could not affect the territorial arrangements of the treaties of 1814-15."<sup>359</sup> Note the broad nature of this draft – it explicitly contemplated intervention in another great power, and it repudiated the 18<sup>th</sup> century practice of territorial adjustments as a means of preserving the balance of power. The problem for Metternich was Capo d'Istria's interpretation of how this policy required the great powers to act with respect to the Neapolitan revolt. He argued that intervention was justifiable only after the failure of moral suasion and after the great powers had designed institutions for Naples that had an essentially liberal-nationalist character.<sup>360</sup> Metternich dismissed this interpretation by appeal to the fundamental rule of sovereignty and the 1818 Aix-la-Chapelle Protocol, which required both the invitation and participation of affected secondary states. By 6 November 1820, Metternich was able to provide his emperor with a text declaring support for his position, entitled "Principles of the Policy of Intervention." Rather than a settlement negotiated with the revolutionaries, this document made clear that "what the King in his wisdom considers satisfactory for the interests of the kingdom, and consequently satisfactory to the sound part of the nation, will be taken as the

---

<sup>359</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 261.

<sup>360</sup> *Ibid.*, 262.

legal basis of the order to be established in the Kingdom of Naples.”<sup>361</sup> The rationale here rests on an assessment of the competence of the king as an actor entitled to create rules for Naples, a capacity not shared by the revolutionaries. The issue of fitness to decide is explicitly invoked via the reference to “the sound part of the nation” and in the reference to a proper legal basis for a new domestic order.

The Troppau conference produced a common diplomatic circular agreed on by the governments of Austria, Russia and Prussia. The text of this document, dated 8 December 1820, closely echoes the Russian draft of 2 November, in that it asserts a joint right of intervention. This right is justified in terms of dangers posed by revolutionaries that “endeavour to spread to neighbouring countries the misfortunes which they had brought upon themselves.”<sup>362</sup> The circular continues by asserting that revolutions “are an evident violation of contract” in that their spread denies legitimate governments the rightful enjoyment of their authority.<sup>363</sup> As at Aix-la-Chapelle, the language employed in the document clearly reflects an attempt to persuade a broader audience of relevant opinion, at least among the rulers of Europe’s secondary states. In this light, the circular notes the invitation of King Ferdinand to a follow-up conference at Laibach, casting it as “a step which would free the will of his Majesty from every outward constraint, and put the King in the position of a mediator between his deluded and erring subjects and the States whose peace was threatened by them.”<sup>364</sup> Once again, we see the discourse of incapacity stemming from illness (in this case, delusion). Finally, it casts the Troppau agreement

---

<sup>361</sup> *Memoirs of Prince Metternich*, 444.

<sup>362</sup> *Ibid.*, 445.

<sup>363</sup> *Ibid.*

<sup>364</sup> *Ibid.*, 446.

as “in perfect harmony with the agreements formerly concluded”, namely at Vienna and at Aix.<sup>365</sup>

These public arguments are consistent with those Metternich made privately in a memo to Tsar Alexander on 15 December 1820. In attempting to impress upon the Tsar the nature of the revolutionary threat, he referred to “one of the most active and at the same time most dangerous instruments used by the revolutionists of all countries... the secret societies, a real power, all the more dangerous as it works in the dark, undermining all parts of the social body, and depositing everywhere the seeds of a moral gangrene.”<sup>366</sup> Not only were the aims of the revolutionaries wrong and dangerous, Metternich again returned to the theme of proper authority. He insisted that “even real good should be done only by those who unite to the right of authority the means of enforcing it.”<sup>367</sup> Accordingly, it was imperative not to acknowledge any actor other than a legitimate government as a rightful participant in political affairs. Intervention could thus be justified as necessary to ensure the proper, legitimate operation of a political system with operative rules of institutional politics. To allow the destruction of legitimate governments would be to undermine existing mechanisms for political change.

The interpretation embodied in the Troppau agreement remained sharply at odds with that of the British government. Castlereagh was particularly concerned with the assertion the Troppau agreement was consistent with the agreements reached at Vienna and Aix. This concern was sufficient to prompt him to take the public step of issuing his own diplomatic circular, dated 19 January 1821. In this document, Castlereagh broke openly with his erstwhile alliance partners. He denounced the agreement as “in direct repugnance to the fundamental

---

<sup>365</sup> Ibid.

<sup>366</sup> Ibid., 464.

<sup>367</sup> Ibid., 471.

Laws of this Country”, as well as in violation of international law.<sup>368</sup> Particularly, he maintained his position that intervention was justifiable only where a state’s “immediate security, or essential interests, are seriously endangered by the internal transactions of another state.”<sup>369</sup> Further, he noted a potential problem of moral hazard. A consistent doctrine of intervention may induce leaders not to “accommodate themselves with good faith and before it is too late by some prudent change of system to the exigencies of their particular position.”<sup>370</sup> Castlereagh’s reply focused on the criteria for deciding whether or not a given revolution posed a genuine threat to other states and on whether a doctrine of intervention was an effective means of addressing such a threat. These arguments failed to persuade the continental powers. According to my theory, this is unsurprising, for the simple reason that they hinged on determinations of fact. Under international law, then as now, the ultimate authority to make determinations of threat rests with individual states.<sup>371</sup> Further, what threatens one state may not threaten another. Unfortunately for Castlereagh, the great power settlement had not established either common criteria or procedures for determining when a revolution posed a general European danger. Left without rules he could appeal to, Castlereagh had no option other than to refuse British participation in a joint intervention in this particular case.

Encouraged by promises of great power support, King Ferdinand repudiated the liberal constitution of 1820 immediately after departing for the conference at Laibach.<sup>372</sup> This act provided the necessary pretext to make a great power intervention consistent with the restraints

---

<sup>368</sup> Quoted in Albrecht-Carrie, *The Concert of Europe*, 49.

<sup>369</sup> Quoted in Derry, *Castlereagh*, 208.

<sup>370</sup> Quoted in Bartlett, *Castlereagh*, 220.

<sup>371</sup> In the modern system this right is somewhat modified by the United Nations Charter, which empowers the Security Council to determine the existence of threats to international peace and security; nevertheless, this capacity limits but does not extinguish state capacity.

<sup>372</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 611-12.



adopted at Aix-la-Chapelle as a fig leaf acknowledging the sovereign rights of secondary states. King Ferdinand, however, would not prove completely pliable. Freed from immediate danger, he reverted to a rigidly reactionary stance. Interestingly, Metternich preferred to establish “the principle of a qualified monarchy, thus excluding both despotism and the representative system.”<sup>373</sup> Though King Ferdinand’s preferences differed, he was ultimately dependent on Austrian military support for the restoration of his throne and had no choice but to acquiesce to Metternich’s wishes. The significance of this episode is that it suggests an important degree of nuance in Metternich’s thinking. While he was not completely opposed to domestic reform, he regarded it as vital that such reforms be established with the consent of legitimate governments, who were the only actors entitled to approve such changes. This suggests a rule-regarding actor, rather than a blindly reactionary ideologue, and thus lends further support to my theoretical argument.

As at Troppau, Metternich employed a diplomatic dispatch in order to press his case in the various European capitals. In this document, dated 12 May 1821, he casts the great powers as supporting actors that “content themselves with seconding by their most ardent wishes the measures adopted by this sovereign for the reconstruction of his Government, and the securing, by good laws and wise institutions, the real interests of his subjects and the constant prosperity of his kingdom.”<sup>374</sup> His argument returns again to the notion of proper legal standing and the issue of determining capacity to participate in institutional politics, both at the domestic and international levels. The circular asserts that “useful or necessary changes in the legislation and administration of States should emanate from the free will, the thoughtful and enlightened

---

<sup>373</sup> *Memoirs of Prince Metternich*, 516.

<sup>374</sup> *Ibid.*, 544.

conviction of those to whom God has given the responsibility of power.”<sup>375</sup> This secondary rule is the basis on which the great powers “regard as legally void and unauthorized according to the principles which constitute the public law of Europe all pretended reforms effected by revolt and open force.”<sup>376</sup>

The Laibach circular thus makes explicit a second crucial dimension to the institutional politics of great power cooperation. In addition to an attempt to persuade his fellow statesmen, Metternich understood his actions as a defence of existing secondary rules, especially at the domestic level, against an attempt by revolutionaries to gain standing in (and thus influence over) processes of institutional politics. Understanding the role of secondary rules is therefore critical not only to understanding how Metternich attempted to persuade his counterparts to engage in the suppression of revolutions, but also to understanding the *source* of his anti-revolutionary stance. Failure to oppose revolution elsewhere ran the risk of giving the appearance of weakness in the face of domestic revolt – the constant spectre which hung over an ethnically polyglot Austrian Empire.

#### 3.2.4 *The Conference of Verona*

Initially the conference at Verona in the autumn of 1822 was intended to review the results of the allied operations, initiated at Laibach, to suppress the Neapolitan and Piedmontese rebellions. However, these plans were altered by the success of the Italian interventions, as well as by crises in Greece and Spain. Whereas the conferences at Troppau and Laibach resulted in interventions by the allied powers, the diplomacy associated with the Verona conference did not.

---

<sup>375</sup> Ibid., 545.

<sup>376</sup> Ibid., 546.

Despite the different result, the conference of Verona furnishes proof that new practices of great power management had become stabilized.

Perhaps the most striking aspect of the resolution to the Greek crisis was that Metternich, Castlereagh and Alexander all essentially ‘played by the rules’, despite factors that suggest any of them may well have acted differently. The precedent set at Troppau and Laibach made great power intervention in other states a real option – and one that Metternich, in this case, wanted very much to avoid. Rather than denying the importance of the new great power practices, or seeking to abolish them, Metternich instead relied centrally on them by engaging in an argument that asserted essentially that Russia was playing the new game improperly. Castlereagh found, in the Greek revolt, an opportunity to return to the conference system that he had repudiated publicly for its interventions in Italy. The mere fact that he sought to oppose Russian intervention in the new language of great power management, rather than in the prior language of balance of power, is indicative of a relatively stabilized social practice. Deepening domestic opposition to the conference system, and his own objections to a more legally binding form of great power management, were insufficient to prevent Castlereagh from responding to the Greek crisis in terms of what the agreed-upon principles of great power management did (and did not) legitimate. Further, Alexander had strong reasons to back an intervention. Leaving aside any potential gains from a successful war, Russia possessed valid treaty claims against the Ottoman Empire stemming from its response to the revolt. Nevertheless, Alexander consistently acknowledged the need for an allied endorsement of his position and ultimately accepted a diplomatic solution that fell short of his initial demands. Finally, the Greek revolt presented an interesting case in that one of the main players – the Ottoman Empire – was not a part of, or at

least an equal member in, the European state system.<sup>377</sup> Accordingly, it was at least possible for the great powers to decide either that: (1) the practice of great power management was inoperative in this case, allowing Russia to proceed as it wished; or (2) the principles of the Holy Alliance required the Christian powers to collectively defend the Christian Greeks. Instead, they opted to extend the European system and to apply their existing social practice to a new situation.

The Greek revolt was not a trivial case; the great powers had strong differences, and the stakes were high – a war between Russia and the Ottoman Empire was regarded by the players as a major threat. Yet, the crisis did not cause the breakdown of the new practice of great power management. This suggests that it was broadly regarded as legitimate – even by Russia, whose claims were partially rejected by its peers, and by Britain, which had previously rejected an outcome of essentially the same practice. In the following, I will detail the major episodes of institutional politics in the resolution of the Greek crisis, paying particular attention to the role of secondary rules in guiding actors' decisions. For the most part, the actors were engaged in a dispute over whether this particular case was one that warranted joint intervention. In Hart's terms, the problem was not one of recognizing a valid rule or of changing an existing rule – rather, the Greek revolt presented, and was treated as, a problem of adjudication.

March 1821 saw the initial outbreak of political violence in the Ottoman province of Moldavia. The great powers, still gathered at Laibach, acted swiftly and with unanimity; “Alexander promptly and publicly condemned the rebels and gave his consent to a Turkish

---

<sup>377</sup> Edward Keene argues, persuasively, that the treatment of Muslim states (including the Ottoman Empire) declined in the early nineteenth century; such states were increasingly relegated to unequal status in the international system, in large part due to an emerging discourse that differentiated between states and populations on the basis of their conformity or non-conformity with “civilized” – or, rather, European – norms and standards. See Keene, “The Construction of International Hierarchy,” *International Organization* 61, no. 2 (2007).

occupation of the Principalities as required by the Treaty of Bucharest”.<sup>378</sup> This was reassuring, since the revolt was led by Ypsilanti (a former aide to the Tsar),<sup>379</sup> and because a faction within the Russian government led by Capo d’Istria favoured the establishment of a Greek state. Ottoman troops ended the Moldavian insurrection relatively easily; however, “Turkish troops remained in occupation of the Principalities, while the Sultan refused to nominate new hospodars to replace the old ones compromised in the revolt – violating Russian treaty rights in both instances.”<sup>380</sup> The outbreak of a second revolt in Greece escalated tensions further. The Greek revolt was more successful than the Moldavian one, and thus generated more intense reprisals; these included attacks on Orthodox churches and culminated with a massacre of Greeks in Constantinople on Easter Sunday, 1821.<sup>381</sup> The Easter attack included the public execution of the Patriarch of Constantinople, which further inflamed Russian opinion.<sup>382</sup> The result was a diplomatic stalemate, with Russia demanding a withdrawal of Ottoman troops from Moldavia, as well as further concessions on the protection of Christians under Turkish rule, and the Ottoman government asserting its sovereignty.

Metternich’s initial reaction, just as with the Troppau conference, was to write a memo to the Tsar. The aim of the Laibach memo was to buy time, and to delay any possible unilateral Russian intervention by invoking Russian commitment to the conference system itself. His primary argument was that “the transactions at Laybach should be regarded by the two Courts as

---

<sup>378</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 616.

<sup>379</sup> Hinde, *Castlereagh*, 248.

<sup>380</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 617.

<sup>381</sup> Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*, 290

<sup>382</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 617.

an unchangeable basis until the meeting of the Cabinets in 1822.”<sup>383</sup> The principle *pacta sunt servanda* thus provided Metternich a way of establishing a presumption against unilateral action. He also sought to commit the Tsar to a common process of consultation; to “judge any fortuitous case according to the principles which were applied at Laybach in similar cases” and “to put off any explanations with other Courts until after an exchange of communications... rather than run the risk of differing in their explanations or their conduct.”<sup>384</sup> The obvious contrast here is the failure of Castlereagh’s argument that intervention in Naples was factually unwarranted; rather than leave such a determination with respect to the Ottoman case in the hands of the Tsar, Metternich sought to establish common rules and processes of adjudication for determining whether any future events warranted great power intervention. Having achieved a more general statement of the principle at Troppau and Laibach, Metternich sought now to create a framework to codify its application in future cases. Such a strategy had been unavailable to Castlereagh precisely because he opposed a general principle of intervention. Despite their significance as an attempt to increase the formalization of great power management by more explicitly codifying relevant secondary rules, Metternich’s efforts were not a sufficient resolution to the crisis.

The true challenge for the allies, pursued in coordination by Metternich and Castlereagh, was twofold. First, the plan was to firmly commit the Tsar to a policy that would forswear the pursuit of an independent Greek state. Second, the two statesmen sought to resolve the crisis within the institutional framework of the alliance and without a war that could both risk the internal cohesion of the Ottoman Empire and significantly strengthen Russia’s position in the Balkans and the eastern Mediterranean. Both goals entailed deflecting Russian requests for

---

<sup>383</sup> *Memoirs of Prince Metternich*, 539.

<sup>384</sup> *Ibid.*

allied endorsement of intervention, in the event that the Ottoman Empire continued to refuse strong Russian demands.

Three primary arguments were used to achieve these aims. The first denied the existence of a fundamental similarity between the Italian and Greek cases, by pointing out that the Italian case involved intervention in defence of a legitimate government. In contrast, Russia was proposing to back a revolution against a legitimate government. According to Derry, “Castlereagh advised that the Powers would be well advised to support the Turks as the rightful government, while extending their protection to the Greeks once order had been restored.”<sup>385</sup>

While Castlereagh framed his appeals to the Tsar largely in terms of the legitimate claims of the Ottoman government, Metternich relied principally on a related argument about the dangers of appearing to endorse a revolution. These complementary lines of argumentation were not accidental; they were coordinated at a meeting between Metternich and Castlereagh in Hanover, in October 1821.<sup>386</sup> In a 22 January 1822 letter to Lebzeltern, his representative in St. Petersburg, Metternich provided a clear indication of his views to be communicated as the Austrian position. He first argued that “the revolt of the Greeks, however different might be its long-standing and permanent causes from the revolutions which the Grand Alliance was called upon to combat, nevertheless directly originated in the plots of the disorganized faction which menaces all thrones and all institutions.”<sup>387</sup> Metternich then cast doubt on the continued existence of the alliance in the event of a unilateral Russian war, and made the further claim that

---

<sup>385</sup> Derry, *Castlereagh*, 213.

<sup>386</sup> Bartlett, *Castlereagh*, 226.

<sup>387</sup> *Memoirs of Prince Metternich*, 601.

even if the alliance went to war with Russia it “would cease to be formidable in the eyes of the revolutionists when the forces of several of the Powers were employed in the East.”<sup>388</sup>

Notably, both types of argument resisted the Russian position by making use of secondary rules, particularly with respect to the relative standing or legitimacy of the Greek rebels as compared with the Ottoman government. This broader social rule about the nature of actors entitled to govern, and to participate in the international system, was crucial in guiding the responses of actors called upon to determine whether or not this particular case fit the criteria for joint intervention.

The same letter to Lebzeltern also contains the crucial distinction that provided both Metternich and Alexander, as well as the Ottomans, with an acceptable escape from the crisis. Metternich acknowledged that, while “the Greeks, as rebels, had no title to the favour of the Emperor of Russia”, it was true that “these same Greeks, as persecuted Christians, placed in certain relations with Russia by virtue of existing treaties, were in some sort justified in invoking the support of that monarch.”<sup>389</sup> The *basis* of the appeal to Russia was of vital importance in this formulation, and it determined the extent of the claims that were warranted. While Metternich would not support an independent Greek state or the imposition of new Russian rights in protecting Christian subjects of the Ottoman Empire, he was prepared to back more modest Russian demands pertaining to the enforcement of existing treaties.

By March 1822, Alexander had dispatched a diplomat, Tatitscheff, to Vienna for the purpose of achieving an agreement with Metternich. On 8 March, Tatitscheff wrote to Metternich to confirm the details of a settlement based closely on the compromise laid out in the letter to Lebzeltern. The agreement called on the Ottomans to begin by “evacuating entirely and

---

<sup>388</sup> Ibid., 603.

<sup>389</sup> Ibid., 605-06.



without delay the principalities of Wallachia and Moldavia”, the occupation of which violated demilitarization provisions of the Treaty of Bucharest, and by nominating new hospodars, or local vassals.<sup>390</sup> Tatistscheff, writing again on 14 March, agreed that the goal for the negotiation was to end the violence in the provinces and “to secure their tranquil possession to the Ottoman Porte.”<sup>391</sup> This acknowledgement amounted to abandonment of a Greek state as a Russian policy objective, as well as a retreat from the threat of war. On 19 April 1822, Metternich again wrote to the Tsar, providing a review of the negotiations as well as arguments about how to proceed. The memo upholds the requirement that treaties be observed, conceding that “Russia has the undoubted right of requiring the strict fulfilment of all the stipulations contained in her different treaties and conventions with the Porte.”<sup>392</sup> The document also provides information about the Ottoman response. Metternich reminds the Tsar that the Ottoman government “invariably recognised the duty of executing existing treaties and conventions, and has openly declared its wish to conform to them; but it has added to these declarations restrictions founded on pretended difficulties either temporary or local – restrictions which have up to this time made all reconciliation impossible.”<sup>393</sup> He then expressed the allied position in more general terms: “the respect due to treaties is the basis of public right in Europe, and the Porte, unless it wishes to renounce the position it has hitherto occupied among the European Powers, cannot hesitate for a moment to recognise this principle.”<sup>394</sup>

---

<sup>390</sup> Ibid., 609.

<sup>391</sup> Ibid., 610.

<sup>392</sup> Ibid., 612.

<sup>393</sup> Ibid.

<sup>394</sup> Ibid., 614.

The Ottoman Empire's claims for special consideration were not sufficient to absolve it of its treaty obligations, but neither was this an absolute endorsement of Russia's prior strong demands. Metternich distinguished between 'strict rights' and questions of 'general interest'. Demands for new rights to supervise treatment of Christians fell into the latter category; on this score, Metternich made clear that a strong position was impermissible. He insisted that "any ideas which the Cabinets may bring forward concerning the future condition of the Greeks, must be restricted to subjects of legislation and administration, and not touch on the fundamental relations between the Turkish Government and its Christian subjects."<sup>395</sup> He recommended, particularly, that the powers make such recommendations only on the explicit basis of the parties' mutual interest in "a solid and permanent peace."<sup>396</sup> For this to be achieved, Metternich argued, "it is above all indispensable that the Ottoman Government should proceed to an act of real amnesty, and that it should cause it to be observed and executed in its full extent. It is equally indispensable that the insurgents should submit to this act."<sup>397</sup> By 30 May, Metternich was able to report to Emperor Francis that "the evacuation of the Principalities has made such an impression... that his Majesty [Tsar Alexander] is ready to re-establish diplomatic relations with the Divan immediately."<sup>398</sup>

After this point, the dispute between the great powers was essentially resolved, leaving only negotiation with the Ottoman Empire over implementation of the agreement. Schroeder argues that credit for the peaceful resolution of the Greek crisis belongs to Alexander, because

---

<sup>395</sup> Ibid.

<sup>396</sup> Ibid., 615.

<sup>397</sup> Ibid.

<sup>398</sup> Ibid., 626.

“he insisted on getting a European mandate for action like Austria’s in Naples.”<sup>399</sup> To an extent this is true; however, Alexander’s decision was not made in a vacuum. As I have shown, the Greek crisis was resolved in the context of an increasingly stabilized social practice of great power management. A potential crisis between the great powers was resolved by resort to arguments based on relevant secondary rules. The outcome was regarded as sufficiently legitimate that Alexander was convinced to forego both a potential opportunity to advance key Russian interests in the Balkans and the Mediterranean, and a chance to act as a champion for Greek Christians. This decision is best explained by a practice-based theory that understands it in its social context, and that also explains the behaviour of the other social actors involved.

Just as a peaceful resolution to the Greek crisis was being worked out, in April 1822, a simmering situation in Spain acquired new urgency when King Ferdinand VII requested great power assistance. After being restored to the Spanish throne by the allies as part of the campaign against Napoleon, Ferdinand had insisted on waging military campaigns to maintain control of Spain’s colonies in the Americas. These unpopular adventures eventually led to a military coup in January 1820. By March 1820, the rebels had gained control of the government and forced Ferdinand to accept the radical constitution of 1812, which “gave real power to a unicameral, broadly elected Cortes.”<sup>400</sup>

In response, royalists established an alternate government in the north, near the French border. This faction then “appealed to France and the other powers for money, arms, and intervention.”<sup>401</sup> Alexander responded eagerly, agreeing to intervene with the proviso that the intervention would be conducted by a European army composed of contingents from all five

---

<sup>399</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 620.

<sup>400</sup> *Ibid.*, 607-08.

<sup>401</sup> *Ibid.*, 624.

great powers.<sup>402</sup> Though the French delegation to Verona was itself divided, the French government was generally prepared to consider an intervention, both to enhance French prestige and to restore a Bourbon government in Spain. Though Metternich harboured reservations, especially about a multilateral intervention that would entail the deployment of Russian troops in Western Europe, he was not opposed in principle to the notion of suppressing liberal interventions. Only Britain was fundamentally opposed to intervention – both because of its sympathy for liberal causes and because it worried about a resurgent France re-establishing its influence over Spain. This opposition hardened with George Canning’s appointment as Foreign Minister just before the conference of Verona, following Castlereagh’s suicide. Canning’s policy placed far greater emphasis on supporting democracies, and rejected the conference system as reactionary in nature.<sup>403</sup>

The compromise produced by the conference of Verona was a fragile one that serves as an important reminder that the new social practice of great power management was not the sole such practice in international politics, even among the great powers. On 19 November 1822, a joint protocol was released by Austria, France, Prussia and Russia. Article 1 of the protocol defined three circumstances under which the four parties agreed that intervention would be necessary. These were: (1) “an armed attack on the part of Spain against the French territory, or of an official act of the Spanish Government provoking directly to rebellion the subjects of one or other of the Powers”; (2) a declaration that the king had forfeited his throne or an attempt to harm him; and (3) “a formal act of the Spanish Government infringing the rights of the legitimate succession of the Royal family.”<sup>404</sup> All of these conditions relate to the locus and source of state

---

<sup>402</sup> See the editor’s note in *Memoirs of Prince Metternich*, 578.

<sup>403</sup> Nicolson, *The Congress of Vienna: A Study in Allied Unity, 1812-1822*, 274-75.

<sup>404</sup> *Memoirs of Prince Metternich*, 651.

authority. The great powers made clear that attempts by the rebels to seize state authority in Spain or to incite similar rebellions in other states would constitute cause for war to overthrow the liberal Spanish government.

The protocol's second article went further, providing that in the event of a similar case not explicitly covered by Article 1, "the ministers of the allied Courts accredited to his Most Christian Majesty should unite with the Cabinet of France to examine and determine if the case in question should be considered as belonging to the class of the *casus foederis* foreseen and defined".<sup>405</sup> This language represents a further development of the strategy Metternich employed in his memo to Tsar Alexander after the Laibach conference. It commits the great powers to engaging in a process of adjudication – determining whether case X is covered by rule Y – one of the three categories of secondary rules crucial to the smooth operation of the social practice of institutional politics. The fact of this agreement is, in itself, significant evidence that actors are indeed aware of (and participating in) an actual social practice of the kind my theory posits.

However, my theory does not claim that secondary rules are determinative of behaviour. Rules are often susceptible to multiple interpretations; as Metternich's second article indicates, rules cannot explicitly cover every conceivable situation; and, finally, actors sometimes break the rules. The handling of the situation in Spain presents such a situation. After the publication of the protocol, Britain broke with the allies, largely on the basis of Wellington's sense of betrayal.<sup>406</sup> Metternich had assured him "that there shall be no general Protocol on the negotiations and conference relative to the Spanish affair" and "that the despatches exchanged between the ministers or presented to the Conferences shall be regarded as simple

---

<sup>405</sup> Ibid., 652.

<sup>406</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 625.

communications from Cabinet to Cabinet.”<sup>407</sup> Given the low probability that Britain, under Canning’s leadership, would participate in joint action, this promise makes little sense. More serious was the collapse of a plan for the four remaining powers to issue joint instructions recalling their ambassadors from Spain in order to exert diplomatic pressure on the rebels. Ultimately, the French government balked at having its freedom of manoeuvre restricted by its fellow great powers. The initial French proposal, to delay the recall of the ambassadors past the conclusion of the Verona conference, was rejected by Metternich and Alexander. As a result, a diplomatic circular was issued by the three eastern powers in December 1822 without French participation. The circular touched briefly on the Italian and Greek situations before addressing Spain. It did so by posing a rhetorical question on behalf of the monarchs, asserting that they “must ask themselves whether it can be longer permitted to remain quiet spectators of calamities which daily threaten to become more dangerous and more horrible, or even by the presence of their representatives give the false appearance of a final consent to the measures of a faction ready to do anything to maintain and support their pernicious power.”<sup>408</sup> The circular went on to answer this question in the negative, and to declare publicly that the three powers had recalled their ambassadors.

Separated from the other great powers, French policy was driven by a vigorous internal debate between liberals, moderate royalists and ultra-royalists. This contest was decided in favour of the ultras by late January 1823. Over the next two months, France independently broke relations with Spain and declared war.<sup>409</sup> This intervention, according to Schroeder, “was a political and military success, overcoming just enough Spanish resistance to give the army and

---

<sup>407</sup> *Memoirs of Prince Metternich*, 653.

<sup>408</sup> *Ibid.*, 660.

<sup>409</sup> Schroeder, *The Transformation of European Politics, 1763-1848*, 626.

regime some glory and to raise French morale.”<sup>410</sup> The Spanish case clearly saw the French break the rules of great power management to act unilaterally. That said, the significance of this outcome should not be overstated. Even though cooperative management of the international system was not established as an iron-clad practice, neither did France behave in a manner consistent with the relatively unconstrained balance of power practices typical of the late eighteenth century. As Schroeder notes, “France, having occupied all of Spain, withdrew with nothing permanent to show for it.”<sup>411</sup> If, at the end of the Verona conference, the new institution of great power management was not all that Metternich had hoped, neither was the international system the same as it was before Napoleon – or, for that matter, immediately after his defeat.

#### 4 Conclusion

The argument in this chapter has been that changes to the structure of the international system after 1815 were socially constructed by actors engaging in a mutually intelligible social practice. This social practice was constituted by secondary rules drawn from the contemporary institutions of sovereignty, diplomacy and international law. Actors consistently framed their responses to proposals for institutional change in terms of these secondary rules; such rules also proved persuasive to actors, even in the face of contrary interests. By the time of the conference of Verona, when the new social practice of great power management was relatively stabilized, evidence shows actors attempting to apply the new rules, and to codify the applicable rules of adjudication for doing so.

Overall, available evidence provides a relatively good fit for the expectations of my theory. The two potentially problematic outcomes are the eventual split between Britain and the

---

<sup>410</sup> Ibid., 627.

<sup>411</sup> Ibid.

continental powers, and the failure of great power coordination to constrain France in the case of its intervention in Spain. As I have argued, the split between Britain and the continental powers was, at least until the time of Castlereagh's suicide, primarily a difference of interpretation as to how the new rules of great power cooperation should be institutionalized. This difference was rooted in Castlereagh's insistence that great power cooperation take a diplomatic, rather than a legal, form. Britain was committed to the game of institutional politics as well as the overarching goal of preventing systemic war by active great power collaboration on crisis management, but ultimately could not accept the manner in which these goals were to be achieved. Despite these differences, therefore, Castlereagh remained committed to the notion of great power cooperation in resolving international crises – as shown by his willingness to cooperate with Metternich in the Greek case. With respect to France, the key point is that despite its unilateral intervention, it did not take advantage of the opportunity to aggrandize itself as would have been expected under prevailing norms of international politics in the late eighteenth century. The rules of the game had changed; even where they were not obeyed completely, they exercised a moderating and restraining influence on actors' behaviour. These changes were the outcome of a mutually intelligible social practice of rule-making and rule interpretation engaged in by leading statesmen of the Great Powers.



# Chapter 4: Banning War: Institutional Politics in the Inter-war Period

## 1 Introduction

The First World War and its aftermath have played a central narrative role in both the theory and practice of international relations. The most familiar interpretation of the inter-war period is that of a momentous failure of statecraft resulting from liberal – or, according to some realists, utopian – policies aimed at recasting the international system. Efforts to eliminate war as a means of conflict resolution and replace it with an expanded system of international law were, on this view, inevitably consigned to failure. Such assertions have been central to the development of realist International Relations (IR) theory as a purported antidote to the flawed assumptions and policy prescriptions entailed by liberal theories.

My purpose here is to ask why and how such allegedly naïve and disastrous agreements were signed, and how they attracted widespread official adherence. In contrast to the realist view, evidence shows the existence of social change in the international system, in the form of a norm banning the resort to war (except in cases of self-defence). Crucially, this norm was the emergent outcome of a practice of institutional politics; creating a rule banning war was not the initial intent of either of its chief architects, American Secretary of State Frank Kellogg and French politician (then Foreign Minister) Aristide Briand. Secondary rules did not simply constrain actor choice among pre-existing preferences; they fundamentally shaped the outcome by leading to the generation and ultimate adoption of a new alternative.

The case also contains two other key findings. On one hand, actors were often frustrated in reaching procedural agreements, even when they agreed in substance. Slight differences in interpretations of legitimate practices for making and interpreting rules mattered to the

participants, sometimes independently of whether those differences had substantive implications. On the other hand, the case also contains socially competent performances in the practice of institutional politics by a range of interesting actors – most notably the British Dominions, Japan and the Soviet Union. These actors were either new participants in international rule-making, non-Western in their political and philosophical traditions, avowedly hostile to the institutions and practices of the international system, or some combination of the three. The fact that they nevertheless participated as knowledgeable social actors is remarkable. Collectively, these two findings indicate the broad level of awareness and acceptance of international practices for making and interpreting rules, and thus provide further empirical support for my theory.

The chapter leaves aside the Treaty of Versailles in order to focus on the Locarno agreements of 1925 and the Kellogg-Briand Treaty of 1928. With respect to the prevention of future wars, and thus to the particular attempt to change the structure of the international system of interest here, the Treaty of Versailles was very much an unfinished document. Aside from the fact that the United States did not ultimately ratify the treaty, even ratifying states regarded the peace as incomplete. The flurry of diplomatic activity related to international security and the prevention of war during the 1920s is a clear reflection of the prevailing sentiment that more work remained to be done. The Locarno agreements and the Kellogg-Briand Treaty represent the zenith of inter-war efforts to replace war as a means of conflict resolution. In addition, both were conceived, negotiated and created after the end of the Wilson presidency. Unlike the Treaty of Versailles, these agreements cannot be attributed to Wilson's public popularity or intellectual force of will. Indeed, the impetus for both came from European leaders, with the United States playing a limited, unofficial role in the Locarno agreements and an initially reluctant role in the case of the Kellogg-Briand pact. The question is why, and how, these

particular agreements were signed at those particular moments – and whether they amount to a change in the structure of the international system.

Explanations for the alleged diplomatic excesses of the 1920s can be grouped in two broad categories. The first attributes anti-war agreements to psychological aversion to the destruction caused by the world's first large-scale industrial war. Such explanations sometimes supplement psychological explanations at the elite level with arguments about the importance of mass communication and democracy in subjecting foreign policy to increased popular pressure. The second explanation for 1920s diplomacy dismisses the agreements as 'cheap talk', noting the intensification of great power rivalries in the 1930s and the eventual outbreak of the Second World War.

Both of these explanations deal with the motives of relevant actors. However, in any interesting social situation involving a number of parties, it is likely that motives are mixed. This expectation seems reasonable both among states as well as within them. In such cases, the relevant question is how mixed motives, interests, values and ideas are translated into intersubjectively agreed-upon outcomes. Neither the aversion hypothesis nor the 'cheap talk' hypothesis accounts for the particular form or timing of the Locarno agreements or the Kellogg-Briand Treaty. In this chapter I show that inter-war agreements restricting the use of war as a means of conflict resolution were the product of a defined social practice accepted as the legitimate means for altering the 'rules of the game' in international politics. This social practice was constituted and governed by secondary rules.

The outbreak of the Second World War tempts the observer to conclude that Locarno and Kellogg-Briand were failures, and that the international system underwent no change as a result. While it is certainly true that these agreements ended neither war nor even international rivalry,

this view lacks nuance. In the first place, norms are counterfactually valid. The outbreak of a war, especially one regarded as a clear instance of unilateral aggression, does not completely vitiate agreements restricting warfare. Indeed, the substance of Locarno and Kellogg-Briand was incorporated in the international order created in 1945. This continuity suggests that while these agreements were less than a complete success, they were also more than ‘cheap talk’ – and that they played a largely underappreciated role in the development of the international system.

The chapter is divided in three parts. The first discusses primary rules related to the use of warfare as a means of conflict resolution, both before and after the conclusion of the Locarno and Kellogg-Briand treaties. The second identifies relevant secondary rules governing the contemporary practice of institutional politics. Finally, the third part demonstrates the role of secondary rules in the institutional politics instrumental to Locarno and Kellogg-Briand.

## 2 Primary Rules: War as a Means of Conflict Resolution

Prior to the First World War, the relevant set of ‘rules of the game’ governing warfare was primarily the product of the Concert of Europe.<sup>412</sup> War was seen as a normal, functional and legitimate part of international politics, instrumental to maintaining the balance of power and preventing hegemony. In cases where hegemony was not at stake, war was regarded as a permissible form of self-help when state rights were infringed. While the Concert system continued to remain influential, the remainder of the nineteenth century evinced two apparently contradictory trends with respect to the rules of war. On the one hand, mass nationalism and rising militarism made warfare *more* acceptable, rather than less. Late nineteenth-century militarism posited “war as a desirable and constructive social activity.” The accompanying

---

<sup>412</sup> For more detail on the creation of the Concert system, see the previous chapter.

expectation that war entailed “short, decisive battles between armies” enabled “increased jingoism of the press in many countries of Europe during the late nineteenth and early twentieth centuries.”<sup>413</sup> On the other hand, the closing decades of the 1800s also saw increasingly influential humanitarian and pacifist movements that sought to restrain, if not eliminate, war. The most significant of these antiwar achievements came at the Hague peace conferences of 1899 and 1907.

At the First Hague Peace Conference, twenty-seven states “formulated a new body of codified laws governing the conduct of war and the nature and use of armaments, and they established the Permanent Court of Arbitration to interpret and adjudicate these and other international laws.”<sup>414</sup> In fact, the practice of arbitration as a means of interstate dispute resolution had become reasonably robust by the eve of the First World War. Francis Anthony Boyle reports that the Permanent Court of Arbitration (PCA) completed fourteen arbitrations by 1914, and that approximately 50 more international arbitrations took place outside of its ambit. Further, he concludes that “states resorted to arbitration and dutifully complied with awards for reasons of enlightened and rational self-interest.”<sup>415</sup>

The enthusiasm for arbitration, moreover, was widespread even among the great powers. The 1899 peace conference had been proposed by the Russian Foreign Minister in a circular note dated 30 December 1898. The United States accepted on condition that the agenda exclude the ongoing Spanish-American War; however, the Republican administration of President McKinley was prepared to play a constructive role in advancing the cause of arbitration. Secretary of State

---

<sup>413</sup> Holsti, *Peace and War: Armed Conflicts and International Order 1648-1989*, 159-61.

<sup>414</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 142.

<sup>415</sup> Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1898-1922* (Durham, N.C.: Duke University Press, 1999), 35, 24.

John Hay instructed the American delegation to propose a court Boyle describes as “a permanent international tribunal organized along the lines of the U.S. Supreme Court.” While the British were supportive of the principle of arbitration, they preferred an *ad hoc* panel created for each dispute. The only major opposition to the principle of arbitration came from the German government, which opposed arbitration out of concern that the delay entailed by the process would nullify the substantial advantage in mobilization speed Germany enjoyed over her neighbours.<sup>416</sup>

While the PCA constituted an important advance in efforts to peacefully resolve international conflicts, it did not attempt to ban war – only to reduce the incidence of wars caused by disputes over the interpretation and application of treaties. Even the most ardent supporters of arbitration embraced it only for a narrowly circumscribed set of issues; questions relating to political independence and territorial integrity were explicitly excluded. In addition, “the US government insisted on omitting from a Russian list of proposed subjects deemed suitable for obligatory arbitration international conventions relating to rivers, interoceanic canals, and monetary matters.”<sup>417</sup>

Article 19 of the 1899 Convention on the Pacific Settlement of International Disputes, however, explicitly reserved the right of parties to conclude other bilateral or multilateral arbitration treaties – including agreements that established obligatory arbitration as well as arbitration over a broader range of issues. The practice of concluding bilateral arbitration treaties proved popular; “between the First Hague Peace Conference in 1899 and 1908 some seventy-

---

<sup>416</sup> Ibid., 27-28.

<sup>417</sup> Ibid., 28. Restriction of arbitration and international courts to so-called ‘justiciable questions’ relating to the interpretation and application of existing international treaties continued in the Covenant of the League of Nations; see Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 147.

seven arbitration treaties were concluded by the various countries of the world, and all but twelve provided for some sort of reference to the Permanent Court of Arbitration.” The first such treaty, between France and the United Kingdom, was concluded on 14 October 1903. The United States signed eleven bilateral treaties modeled on the Anglo-French treaty between November 1904 and February 1905.<sup>418</sup>

Delegates to the Second Hague Peace Conference sought to build on and strengthen the machinery for arbitration of international disputes. The United States remained ready to make PCA arbitration obligatory in cases that fell into the court’s jurisdiction. Even Germany “had dropped its objection to the principle of obligatory arbitration, but now insisted that the proper approach should be the negotiation of a series of bilateral arbitration treaties between interested states instead of the conclusion of a general multilateral pact.”<sup>419</sup> This shift in justification highlights the growth in the legitimacy of arbitration as a practice of resolution of international disputes. Ultimately, the creation of a more robust successor to the PCA foundered not on differences of principle, but over the selection of judges. Secondary states, especially Brazil, objected to being represented only on a rotational basis, in contrast to the permanent representation accorded to the great powers.<sup>420</sup> These objections, framed in the language of sovereign equality, limited the 1907 conference to recommending adoption of the Draft Convention Relative to the Institution of a Court of Arbitral Justice “as soon as an agreement

---

<sup>418</sup> Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1898-1922*, 30. These so-called Hay arbitration treaties were undermined by the insistence of the US Senate that submission of any dispute to arbitration required its assent, in the form of a two-thirds affirmative vote. President Theodore Roosevelt rejected the treaties, so amended, as ineffective and withdrew his support. The obstructionist tendency of the Senate with respect to arbitration, although rooted in protection of the Senate’s constitutional prerogatives, foreshadowed the fate of the Treaty of Versailles.

<sup>419</sup> *Ibid.*, 31.

<sup>420</sup> *Ibid.*, 44.

shall have been reached upon the selection of judges and the constitution of the court.”<sup>421</sup>

Further consideration of arbitration was postponed until the Third Hague Peace Conference, planned tentatively for 1915.

In 1919, peacemakers confronted a world in which the rules of the game for international relations did not ban war. This remained true, albeit with additional restrictions, after the conclusion of the Paris peace conference and the creation of the League of Nations. Article 10 of the Covenant declared that “the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.” This famous collective security provision was supplemented by an Article 12 undertaking between League members to submit their disputes with other League members “either to arbitration or judicial settlement or to enquiry by the Council” before resorting to war, as well as by Article 16, which declared that failure to do so constituted an act of war against all other League members and empowered the Council to specify military contributions from member states intended to coerce the recalcitrant state. In the event of a dispute between a League member and a state not party to the League of Nations, Article 17 provided for the non-member to resolve the dispute according to League rules; its refusal to do so would authorize activation of the collective enforcement provisions of Article 16.<sup>422</sup>

The overall effect of the League Covenant on the status of war in international relations amounted to the provision of increasingly detailed alternate dispute resolution procedures – and

---

<sup>421</sup> Quoted in *ibid.* Selection of judges to proposed permanent international courts remained a contentious issue until the adoption by the League of Nations of a proposal by Mr. Elihu Root of the United States; Root argued that judges should be selected by concurrent vote of the League’s two major bodies, the Assembly and the Council. See William E. Rappard, *The Quest for Peace since the World War* (Cambridge, M.A.: Harvard University Press, 1940), 142-43.

<sup>422</sup> All references to the text of the League Covenant rely on: “The Covenant of the League of Nations,” [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp).



corresponding obligations on the part of states to avail themselves of these mechanisms – on the one hand, alongside the creation of legal machinery that provided for the authorization of collective use of military force. That the League did not outlaw war was understood at the time. A widely published state paper authored by South African foreign minister Gen. Jan Smuts declared that “as long as members of the league submit their disputes for inquiry and report or recommendation or decision by some outside authority, their obligation to the league will be satisfied, and thereafter they will be free to take any action they like, and even to go to war.”<sup>423</sup> Smuts’s analysis and his suggestions regarding the League of Nations were taken seriously both among the British Cabinet and by President Wilson.<sup>424</sup> The collective enforcement provisions of the covenant were similarly incomplete. The early League of Nations Assembly meetings were occupied, in part, by a Canadian effort to establish a heavily circumscribed interpretation of Article 10; this effort culminated at the Fourth Assembly in the fall of 1923, where an interpretive resolution was adopted stating that it was the sovereign prerogative of each individual state to decide whether or not to contribute troops to particular League enforcement actions, and that members were bound by the Covenant only to consider League of Nations decisions in good faith.<sup>425</sup> The failure of the United States to join the League of Nations, as well as the initial exclusion of Weimar Germany and the Soviet Union, further illustrate the incomplete and uncertain status of the rules regarding the legitimacy of warfare in the immediate aftermath of Versailles.

---

<sup>423</sup> Quoted in Boyle, *The Quest for Peace since the World War*, 115.

<sup>424</sup> Margaret MacMillan, *Paris 1919: Six Months That Changed the World* (New York, N.Y.: Random House, 2003), 89-90.

<sup>425</sup> Rappard, *The Quest for Peace since the World War*, 209-18.

The Locarno agreements, signed 16 October 1925, were the first significant achievement in efforts to end war as a means of international conflict resolution. Bilateral arbitration treaties between Germany and its neighbours were subsumed under the multilateral Treaty of Mutual Guarantee. This umbrella document constituted the heart of the Locarno agreements, despite consisting of only ten brief articles. In addition to guaranteeing Germany's western frontier, the parties agreed "that they will in no case attack or invade each other or resort to war against each other." This broad, clear language contained in the treaty's second article was qualified by only two exceptions: self-defence, either in the event of violation of the treaty's border guarantee or of the demilitarization provisions of the Treaty of Versailles (Article 42-43), and League of Nations enforcement action under Articles 15 and 16 of the Covenant. In addition to the negative commitment contained in Article 2, the treaty's third article contained a positive obligation "to settle by peaceful means and in the manner laid down herein all questions of any kind which may arise between them and which it may not be possible to settle by the normal methods of diplomacy." After specifying measures for dispute resolution, the treaty established a second positive obligation for the parties severally to "come immediately to the assistance of the Power against whom the act complained of is directed" in the event that the treaty was breached.<sup>426</sup>

These obligations represented a significant departure from a system in which war was seen as a legitimate, and sometimes even positive aspect of international politics. They did not, however, represent a system-wide change. Locarno took the form of an international treaty and, as such, bound only the signatories in their mutual relations. While Germany, France, Great Britain, Italy and Belgium were core members of the international system, that system was

---

<sup>426</sup> All references to the full treaty text are drawn from "Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy," [http://avalon.law.yale.edu/20th\\_century/locarno\\_001.asp](http://avalon.law.yale.edu/20th_century/locarno_001.asp).

significantly more pluralistic than it had been in 1815; further, the ranks of the great powers now clearly included the United States, and arguably also Japan and the Soviet Union.

The significance of the Locarno agreements was twofold. First, they were a major step in the diplomatic rehabilitation of Weimar Germany; in voluntarily recognizing the legitimacy of its western frontier as established at Versailles and pledging to pursue alteration of its eastern border solely by peaceful means, the German government achieved a victory in its policy of reclaiming Germany's status as a great power. In the months following Locarno, for instance, allied occupation and military control over the Rhineland began to ease. By September 1926, Germany had joined the League of Nations, fulfilling a condition of the Locarno negotiations.<sup>427</sup> More broadly, the Locarno agreements revitalized, even if temporarily, many of the diplomatic practices associated with the Concert period after the Napoleonic Wars. Regular meetings of the Locarno principals took place, and diplomatic rhetoric publicly noted the existence of a "spirit of Locarno" entailing a commitment to cooperation and peaceful dispute resolution.<sup>428</sup> Second, Locarno would act as a crucial precedent for the 1928 Kellogg-Briand Treaty, which successfully generalized rules against resort to warfare by securing the adherence of virtually every member of the international system.

The Kellogg-Briand Treaty originated as a French proposal for a bilateral agreement between France and the United States.<sup>429</sup> By the time it was signed in Paris on 27 August 1928, it had become a multilateral pact for the renunciation of war. Upon its entry into force on 24

---

<sup>427</sup> Patrick O. Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932* (Cambridge, U.K.: Cambridge University Press, 2006), 266-68; Jon Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929* (Princeton, N.J.: Princeton University Press, 1972), 60-68.

<sup>428</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 257-58; Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 68-70.

<sup>429</sup> David Hunter Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty* (New York, N.Y.: Knickerbocker Press, 1928), 7.

July 1929 it had already acquired the adherence of thirty-two states in addition to the original signatories; eight more states would eventually adhere, bringing the total number of parties to fifty-five, encompassing virtually the entire international community.<sup>430</sup> The institutional politics underlying this transformation will be examined in detail later in this chapter. The result, however, must be seen as a substantial change in the rules of international politics. The treaty contained three brief operative articles following a short preamble. The first article declared that the parties “condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.” The second article contained an equally broad undertaking “that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.” The only exception to these obligations was found in the preamble, which noted that “any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty”. The third article specified provisions for ratification and entry into force.<sup>431</sup>

The pact is notable both for its strong renunciation of war, and for its near universality. Contemporary enthusiasm is reflected in J.W. Wheeler-Bennett’s conclusion that “the Great Powers are taking a step towards the prevention of war and the maintenance of permanent peace essentially different from any they have previously attempted.” Though the agreement lacked specific sanctions and did not specify mechanisms for pacific dispute resolution, these were not necessarily the fatal flaws they have come to seem with hindsight. Wheeler-Bennett, for

---

<sup>430</sup> Full information on signatories, adherents and ratifications can be found at "Kellogg-Briand Pact," [http://avalon.law.yale.edu/20th\\_century/kbpact.asp](http://avalon.law.yale.edu/20th_century/kbpact.asp).

<sup>431</sup> All quotations from the treaty text are drawn from *ibid*.

instance, saw the agreement as a starting point, to be expanded upon in future diplomatic talks.<sup>432</sup> American international lawyer (and later State Department official) David Hunter Miller went further, arguing that it was a mistake to evaluate the Kellogg-Briand agreement out of context of the League of Nations; he concluded that “in the matter of sanctions the Treaty is to a large extent implemented in advance by the Covenant.” The same held true with regard to mechanisms for dispute resolution.<sup>433</sup> On this view, the Kellogg-Briand treaty supplemented the League of Nations and closed a vital loophole in the Covenant. In either case, the agreement was recognized as an important change in the practices of international politics.

In a span of ten years after the Treaty of Versailles, the leading states in the international system championed efforts to relegate war from its historical place as means of national glory and aggrandizement, as well as the ultimate arbiter of disputes, to a new status as either a duly authorized collective effort to preserve peace or – barring such authorization – an act of aggression contrary to international law. They further created detailed and plausible alternate means of dispute resolution marked by a consistent reliance on arbitration and positive international law as supplements to diplomacy and negotiation. In the remaining sections of this chapter, I show that this outcome (in terms of form, process and timing) was the result of a rule-governed social practice of political contestation.

---

<sup>432</sup> J.W. Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928* (London, U.K.: George Allen & Unwin Ltd., 1928), 9, 10.

<sup>433</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 137. The importance of contextualizing the Kellogg-Briand pact has been asserted more recently in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 419-20, 76.

### 3 Secondary Rules

In the previous chapter, I argued that the construction of the Concert of Europe was accomplished according to socially accepted rules of international law and diplomacy. Particularly, actors relied on procedural rules for reaching, institutionalizing, interpreting and enforcing agreements among sovereign states. These secondary rules are constitutive of the social practice of institutional politics in specific social contexts. They instruct actors both on how to present and evaluate proposals for change in the primary rules governing behaviour.

In this section I review the secondary rules relevant to state officials in the 1920s. The most important point in this regard is the fundamental continuity in secondary rules from the post-Napoleonic period to the inter-war period. Although the formal locus of sovereignty had shifted from the person of the sovereign to various conceptions of popular or constitutional sovereignty, the state remained uniquely empowered to create, interpret and alter the rules of international politics. Nationalism and democratization subjected state officials to greater scrutiny, and increasingly compelled justificatory defences of major policies for domestic audiences; these shifts represent an important thickening of the social practice of institutional politics with respect to international relations, but they had not – at least by the 1920s – undermined the central role of the state as the dominant actor in this process.<sup>434</sup>

The most striking characteristics of institutional politics in the inter-war period were a thorough-going commitment to legal positivism and an emerging norm of multilateralism. Christian Reus-Smit argues that multilateralism stemmed from “the precept that social rules

---

<sup>434</sup> On the impact of early nationalism in international relations see Bukovansky, *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*. For more on the role of ‘public opinion’ as a constraint on state action, see Carr, *The Twenty Years’ Crisis*. Finally, for information on the role of transnational advocacy networks in advancing anti-war efforts, consult Robert H. Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact* (New Haven, C.T.: Yale University Press, 1952).

should be authored by those subject to them” while the expansion of international law reflected “the precept that rules should be equally applicable to all subjects, in all like cases”.<sup>435</sup> Both multilateralism and especially international law represent elaboration and development of trends evident in the aftermath of the Napoleonic Wars.<sup>436</sup> Diplomacy surrounding both the Locarno Pact and the Kellogg-Briand Treaty was suffused with the language of international law. States couched their proposals in legal forms and language, evaluated proposals in terms of their compatibility with existing rules of international law, and accorded prominent roles at decisive moments to their in-house legal experts.<sup>437</sup> Taken together, these facts support the argument that states engaged in a patterned and mutually intelligible social practice in order to arrive at a legitimate decision regarding proposals for social change to the primary rules governing the use of warfare in the international system. This argument will be developed in the final section of this chapter.

Despite the essential continuity and thickening of secondary rules in the ‘long 19<sup>th</sup> century’,<sup>438</sup> two primary ‘fault lines’ are relevant to understanding the institutional politics surrounding Locarno and Kellogg-Briand. The first dealt with the tension between great power responsibility – the cornerstone of the Concert system – and the legal principle of sovereign equality. Both eastern European and, to a greater degree, Latin and South American states, resisted attempts by the United States and the European great powers to assert special authority

---

<sup>435</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, 133.

<sup>436</sup> This point is developed more substantially in Chapter 3.

<sup>437</sup> See Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1898-1922*; Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*; Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*.

<sup>438</sup> This phrase was coined by historian Eric Hobsbawm.

in institutional politics. The second, and ultimately more important, fault line divided American and European notions regarding the proper roles of government and private society – including, but not limited to, the role of the market. While the American government remained an ardent supporter of international law throughout the 1920s, it refused to join the League of Nations and generally ruled out even official diplomatic participation in major efforts aimed at strengthening the rule of law at the expense of war. Rather than disengagement, disinterest or disagreement with the goals of these efforts, the American stance reflected principled disagreements regarding the role of government and the proper rules for diplomacy – about how to legitimately pursue shared goals – that handicapped efforts to build and sustain new rules limiting the use of warfare in international relations.

#### 4 Institutional Politics

Locarno and Kellogg-Briand each amounted to major steps in restricting the legitimate role of warfare in international politics. In the remainder of this chapter, I show that these agreements were the product of a social practice of institutional politics. In concrete terms, this means that actors presented and evaluated proposals for social change according to secondary rules, and that deviations – both in presentation and evaluation – generally prompted justification and criticism.

As noted earlier, the crucial agreements of the latter 1920s were not *sui generis*. Efforts to employ arbitration and other quasi-judicial means of dispute resolution gathered strength in the early twentieth century. The creation of the Permanent Court of Arbitration at the First Hague Peace Conference both reflected and encouraged the further development of this trend. The provision of alternate means of dispute resolution is clearly relevant to the later success of



attempts to delegitimize warfare, the traditional last resort in this regard. However, as I have argued above, nothing in the Hague Conferences nor in the Treaty of Versailles made the pursuit – much less the conclusion – of a ban on warfare inevitable. Any attempt to understand the form, process and timing of this outcome must be centrally concerned with the diplomacy more immediately prior to the agreements in question.

#### 4.1 Precursors to Locarno

The Locarno agreements can be usefully contrasted with two similar but unsuccessful efforts pursued over the course of 1924 – the Cecil-Requin Draft Treaty of Mutual Assistance and the proposed Geneva Protocol of 1924. What would become the Cecil-Requin draft had its origin at the Third League of Nations Assembly in the fall of 1923. The call for an agreement explicitly linking disarmament and collective security led to the referral of the matter to the Temporary Mixed Commission; the draft treaty was submitted a year later to the Fourth Assembly, for member comment and review.<sup>439</sup> The draft had four key features. Its first article read, in part, that “the High Contracting Parties solemnly declare that aggressive war is an international crime and severally undertake that no one of them will be guilty of its commission.”<sup>440</sup> The treaty called for members to assist victims of aggression generally, while allowing for the existence of regional defensive treaties as additional insurance. Third, “the draft treaty endowed the [League of Nations] Council with executive powers extending far beyond those of the Covenant.” Collective security decision-making would thus be centralized above the level of the state. Finally, it made such collective security assistance “contingent on fulfilment of specified disarmament duties.” States that maintained excessive levels of military

---

<sup>439</sup> Rappard, *The Quest for Peace since the World War*, 243-44, 48-49.

<sup>440</sup> Quoted in *ibid.*, 250.

preparedness would be left to fend for themselves. Rappard reports that twenty-eight League of Nations members replied to the draft, and that “about half accepted the draft in principle, while suggesting various amendments.” Rappard attributes this response to a strong desire for disarmament, while noting that states ultimately “did nothing more than discuss these proposals, which were in reality stillborn.”<sup>441</sup>

The crucial decisions regarding the Cecil-Requin treaty were taken by the United Kingdom’s first Labour government, led by Ramsay MacDonald. The MacDonald government sought both to overcome the Ruhr crisis, precipitated by French occupation of the Ruhr valley in late 1923, and to generally strengthen the League of Nations and its fledgling system of collective security. Initially, MacDonald was faced with a choice between the Cecil-Requin treaty and a proposal championed by Foreign Office stalwart Eyre Crowe and the Viscount D’Abernon (British Ambassador to Berlin) for a regional non-aggression pact that would include Germany as an equal signatory. The latter proposal was an expansion of an idea proposed by German Foreign Minister Gustav Stresemann on 11 February 1924. Ultimately, MacDonald chose a third option – to develop his own proposal. On 26 February 1924, MacDonald wrote Stresemann that he had rejected the notion of a regional pact as too closely resembling the system of alliances that had contributed to European devastation in the First World War.<sup>442</sup> Instead, he pursued a solution rooted in the League of Nations.

The resulting document was the proposed Geneva Protocol of 1924. This document reflected the influence of Ramsay MacDonald as well as of Edouard Beneš, the Prime Minister of Czechoslovakia. It sought, like the Cecil-Requin treaty, to modify the League of Nations

---

<sup>441</sup> Ibid., 250-52.

<sup>442</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 97-98.

Covenant. First, “the prohibition to resort to aggressive war was made unconditional and absolute.” Second, “the jurisdiction of the Permanent Court of International Justice was rendered compulsory in all legal disputes”. In disputes not relating to the interpretation of treaties, “the procedure before the Council, under Article 15 of the Covenant, was so defined as necessarily to lead to a peaceful settlement”.<sup>443</sup> Finally, parties would pledge to “carry out in full good faith any judicial sentence or arbitral award that may be rendered” or to “comply... with the solution recommended by the Council.”<sup>444</sup> Thus, the primary difference between the Cecil-Requin treaty and the draft Geneva Protocol was the latter’s increased specificity with regard to alternate dispute resolution mechanisms short of war. Both documents aimed to eliminate war as the policy prerogative of sovereign states, except in cases of self-defence or of collective security action against an aggressor. These exceptions were, further, to be codified in international law and thus made subject to scrutiny by the international community.

For the purpose of my argument, the crucial point is that MacDonald clearly sought to advance proposals for substantial change in practices of international politics by employing channels of international law and diplomacy, and in the clearly recognizable form of a draft treaty. The abandonment of the Cecil-Requin draft in favour of a draft Geneva Protocol distinguished by expanded, and highly legalistic, alternate dispute resolution mechanisms indicates the presence of a norm favouring legal responses to problems of international governance. The high response rate to the abandoned Cecil-Requin draft further indicates that other governments accepted the legitimacy of MacDonald’s approach, even if they were unwilling, as yet, to accept his proposals.

---

<sup>443</sup> Rappard, *The Quest for Peace since the World War*, 157-58.

<sup>444</sup> Quoted in *ibid.*, 158.

The Geneva Protocol met, at best, a mixed response. Debate revolved centrally around the nature and extent of the commitments to collective action. Beneš's statement to the League's Fifth Assembly (fall 1924) acknowledged that compliance must be judged according to whether a state met expectations "to an extent consistent with its geographical position and its particular situation as regards armaments." While he maintained that states could not deny the existence of their obligations, he allowed that "each state is judge of the manner in which it shall carry out its obligations".<sup>445</sup> These statements demonstrate the importance placed on secondary rules – particularly, in Hart's terms, on rules of adjudication. Beneš sought to deflect criticism that the draft protocol was overly expansive; that it would circumscribe sovereign authority with respect to commitment of military resources, and that it failed to recognize crucial prudential exceptions to the requirement for participation in collective action. In each respect, Beneš publicly accepted the conventional position consistent with established international practice, thereby limiting the protocol's legal force. Although the Assembly voted in favour of the draft protocol 48-0, the resolution stopped short of adopting the protocol; instead, the Assembly merely recommended its adoption to individual member states.<sup>446</sup>

Ultimately, the draft Geneva Protocol was derailed by the collapse of MacDonald's government in October 1924, after the publication of the so-called 'Zinoviev letter', which alleged Soviet efforts to foment revolution in Britain. The MacDonald government had supported re-establishing relations with the Soviet Union and, eventually, bringing it into the League of Nations.<sup>447</sup> Though the Conservative Baldwin government withdrew its support for

---

<sup>445</sup> Quoted in *ibid.*, 256, 57.

<sup>446</sup> *Ibid.*, 259.

<sup>447</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 202.

the Geneva Protocol, it felt compelled to offer justification. On 8 September 1925, almost a year after the protocol had been rejected, Austen Chamberlain (Baldwin's Foreign Secretary) justified his government's stance to the League Council by arguing that the text had suggested "that the vital business of the League is not so much to promote friendly co-operation and reasoned harmony in the management of international affairs as to preserve peace by organising war, and it may be war upon the largest scale."<sup>448</sup>

In substance this justification made little sense; if taken seriously, it would preclude any measures to guarantee peace, on the basis that these might involve (non-pacifist) enforcement measures. Further, it was inconsistent with the Conservative party's traditional support of the military, the empire and the balance of power. This cynical attempt to justify a decision taken on grounds of prudence (avoiding over-commitment in matters of war, given Britain's precarious post-war position) in terms of anti-war principle demonstrates the importance of institutional politics as a social practice. The Conservative government opted to express a false basis for its decision in an attempt to avoid the charge that it was less than fully committed to the goal of European peace and the avoidance of war, or that it had abdicated its systemic responsibility as a great power for self-interested reasons.

The United States remained outside of the League of Nations, and assiduously refrained from involvement in diplomacy relating to the Cecil-Requin draft treaty and to MacDonald's proposed Geneva Protocol. This was undoubtedly due to a desire on the part of the Coolidge administration to avoid entanglement with Wilson's creation, as well as a desire to avoid antagonizing isolationists in the Senate. It would be a mistake to conclude, however, that the administration was hostile to the goal of promoting peace or to the means provided by

---

<sup>448</sup> Quoted in Rappard, *The Quest for Peace since the World War*, 259-60.

international law. Rather, Republican foreign policy in the 1920s reflects a distinct view emphasizing the virtues of limited government activity and the dangers of traditional European diplomacy. Efforts on both sides of the Atlantic succeeded only in achieving partial reconciliation of the European and American perspectives on secondary rules. The partially divergent American conception provides explanatory leverage on key inadequacies in attempts to restrict the resort to warfare. Within these parameters, the Coolidge administration sought to play a positive, if tragically limited, role in fostering peace and stabilization.

In a speech to the Canadian Bar Association on 4 September 1923, US Secretary of State Charles Hughes stressed informal efforts to pursue peace rather than diplomatic agreements. He argued that the crucial factor in success would be “the constant effort to diminish among people the disposition to resort to force”.<sup>449</sup> The ‘cure’ for war was to be found, in more familiar international relations terms, at the individual level of analysis – hardly a realist article of faith. Just as crucially, Cohrs notes that “Hughes consistently emphasised that not only the war-debt issue but also strategic questions, especially possible security commitments in Europe, fell outside the ‘province of the executive’ in Washington.” This view of the American constitution is diametrically opposed to more modern interpretations, and affords Congress a far more decisive voice in issues of foreign policy. Both under Coolidge and his successor, Herbert Hoover, American foreign policy “was driven by a pronounced faith in the blessings of minimal governmental interference and a staunch belief in the self-invigorating dynamism of peaceful

---

<sup>449</sup> Quoted in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 86.

change via the economic sphere.”<sup>450</sup> These views were supplemented by a strong commitment to international law.<sup>451</sup>

How, then, did this distinct viewpoint inform American diplomacy during 1924? While the US government did not take part in European efforts, through the League, to ban warfare, it was a vital participant in simultaneous efforts to settle the Ruhr crisis and the underlying dispute over German reparations and the continuing Allied occupation. The basis for American policy on reparations can be traced to a speech by Charles Hughes given in New Haven, Connecticut, on 29 December 1922. The heart of his plan called for the creation of two expert committees to deal, respectively, with Germany’s capacity to pay reparations and with the timing and mechanisms for payment. The underlying concept was to ‘depoliticize’ the loaded question of sanctions, and to set clear rules and guidelines for an ultimate solution. States would delegate the key functions of secondary rules – especially rule determination and rule adjudication. On the one hand, this idea evinces a sophisticated understanding of the difficulty of adjudication in international relations – of determining the facts of a particular case and identifying applicable rules for its resolution. The Republican approach, then, was to treat the sanctions question as one about the proper application of legal rules; this method presupposes basic agreement among actors on how to appropriately undertake such adjudication. On the other hand, the United States repeatedly refused to become an ‘official’ participant in the negotiations aimed at resolving the sanctions issue and the Ruhr crisis. Much of the actual negotiation was carried out through the auspices of Thomas W. Lamont, a partner of American financier J.P. Morgan. Indeed, the American loan to Germany – the so-called ‘Dawes loan’ crucial to ensuring Germany’s financial stability and thus capacity to pay reparations – was provided by Morgan and his partners rather

---

<sup>450</sup> Ibid., 88, 191.

<sup>451</sup> Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1898-1922*.

than by the US government; further, the loan was not guaranteed by any of the governments involved.<sup>452</sup>

While the negotiation leading to the eventual Dawes plan did not directly address efforts to ban warfare, two further aspects of these talks deserve mention. First, one of the key stumbling blocks among the Allied powers was directly related to secondary rules. The French, and to a lesser degree the British, government was vitally concerned with specifying procedures to be employed in the event of German default on its reparation obligations. The central issue was determining which body would be endowed with the authority to declare a default and subsequently apply sanctions. Whereas France preferred a strong role for the League's Reparations Commission, the United States preferred that this authority be incorporated within the ambit of the new expert committees. Over the last days of July and the beginning of August, this issue was the subject of intense bargaining. The first potential compromise "proposed a new sanction mechanism whereby in the case of 'flagrant default' the decision would still be made by the Reparations Commission, yet only with the participation of a US representative and after hearing the newly-appointed agent-general for reparations." The American desire to avoid even unofficial involvement with the League led President Coolidge to propose on 29 July that the chief justice of the United States Supreme Court be given the authority to determine if Germany was in default. This proposal would have amounted to an unprecedented extension of the authority of a national court to the international level, and led Ramsay MacDonald to counter by supporting a plan enabling the Permanent Court of International Justice (PCIJ) to fulfil the crucial adjudicative task. The clear difference was that the PCIJ proposal would preserve the

---

<sup>452</sup> A detailed account of the negotiations leading to the Dawes agreement of 16 August 1924 is provided in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, see especially Ch. 9-11.



nominal sovereign equality of the parties, with the additional (ultimately unacceptable) effect of bringing the US into a relationship with a body closely connected to the League. By 2 August, the allied powers had agreed to a proposal vesting the authority to declare default with the Transfer Committee, the second of the two expert bodies at the heart of the Dawes process.<sup>453</sup>

That the United States prevailed despite its partially divergent conception of secondary rules suggests that an institutional politics approach cannot fail to take power into account; however, the divergence in this case was only *partial*. While the Republican administration held idiosyncratic, unhelpful views on the virtues of minimal government action, it was deeply committed to the basic rules and norms of contemporary international law. As a result, it was able to contribute to a solution of the reparations problem that was consistent with these rules in most key respects. Further, regardless of the outcome, it is significant that issues related directly to the smooth operation of secondary rules – and thus of institutional politics – were crucial to the resolution of a major dispute that touched directly on the national security of the world’s great powers.

The Dawes negotiations are also noteworthy as the first instance of direct negotiation between France and Germany in the aftermath of the First World War. This outcome was not a certainty until late in the initial phase of inter-allied negotiation, which lasted from 15 July to 2 August. MacDonald had written to Edouard Herriot, the Radical Socialist French premier, on 8 July expressing the rationale for direct negotiation with Germany rather than the French preference for communication via the exchange of diplomatic notes: a directly negotiated agreement would have “greater moral value than the acceptance of the Treaty of Versailles.”<sup>454</sup> This ‘moral value’ stemmed directly from the resolution of the untenable ‘second class’

---

<sup>453</sup> Ibid., 165-68.

<sup>454</sup> Quoted in *ibid.*, 170.

diplomatic status to which Germany had been relegated at Versailles. The German delegation was invited on 2 August and arrived three days later, after an unofficial visit to Berlin by Charles Hughes, reinforcing that Germany would be expected to accept inter-allied compromises and to trust Britain and the United States to jointly ensure its interests against French pressure. In fact, Stresemann exceeded these limitations to engage directly in negotiations with Herriot. His essential strategy was to use financial concessions as a lever to gain an end to French occupation of the Ruhr and, eventually, an end to allied control of the Rhineland; however, he also placed great importance on restoring Germany to an equal sovereign footing with the other parties. A deal was reached on this basis, calling for evacuation of the Ruhr by 16 August 1925, one year after the signing of the Dawes plan. The resumption of direct diplomatic contact between Germany and the allied powers was a necessary prerequisite to the proper operation of institutional politics and therefore crucial to future efforts to ban warfare. This result was achieved by the deployment of interest-based arguments, but these interests were themselves constituted by the secondary rule according sovereign states a nominally equal status under international law, and by the secondary rule assigning special systemic governance responsibilities to great powers. Further, France's attempts to change her relations with Germany met opposition from an otherwise sympathetic ally in Austen Chamberlain, in large part because of their non-conformity with secondary rules.

#### 4.2 The Locarno Agreements

The Locarno agreements comprise five treaties signed on 16 October 1925. The first four are bilateral arbitration treaties between Germany and France, Belgium, Poland and

Czechoslovakia.<sup>455</sup> The fifth, and crucial, treaty is known as the “Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy.” As noted earlier, this treaty contained numerous advances in the attempt to displace war as a means of conflict resolution, including a pledge between the parties not to resort to war, a positive pledge to resolve all conflicts by peaceful means, and a pledge to assist any party subject to a breach committed by any other. In this section I demonstrate that this outcome was achieved via the operation of the social practice of institutional politics as instantiated in this time period.

The initial proposal was made by the German government in a note delivered to London on 20 January 1925 and to Paris on 9 February.<sup>456</sup> The conditions surrounding the proposal serve as the first illustration of the institutional politics of Locarno. The proposal was a clearly self-interested one, made in hopes of furthering Stresemann’s policy of regaining Germany’s sovereignty and great-power status via negotiation with the Allied powers. In particular, Stresemann’s note was intended to further several policy objectives: preventing an Anglo-French security alliance, avoiding a potential delay in evacuation of allied troops from the Cologne occupation zone,<sup>457</sup> the withdrawal of the Inter-Allied Military Control Commission (IMCC), and the prevention of a French plan to create permanent international commissions to verify German disarmament.<sup>458</sup> The crucial question in analysis of institutional politics, however, is *how* actors seek to translate goals into social change.

---

<sup>455</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 3.

<sup>456</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 209; Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 4.

<sup>457</sup> The Treaty of Versailles called for the evacuation of one of three occupation zones (Cologne, Coblenz and Mainz) every five years beginning in 1925, provided Germany fulfilled its treaty obligations; spurred by the French, the Inter-Allied Military Control Commission (IMCC) issued findings in December 1924 to the effect that Germany’s compliance was lacking. Germany was informed on 5 January 1925 that, on this basis, the evacuation of Cologne would be indefinitely delayed. Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 7-8.

<sup>458</sup> *Ibid.*, 6.

E.H. Carr reports that Germany had proposed an international guarantee for the Franco-German border as early as 1922, and Cohrs documents the renewal of this proposal to the British government in 1924.<sup>459</sup> The diplomatic push in early 1925 was driven by two factors. The first was the December 1924 note from the IMCC and the looming delay in the evacuation of Cologne. German ambassadors in allied capitals had been instructed, even before Germany had been officially notified of the delay, “to argue that an Allied refusal to negotiate a Cologne settlement would have an extremely adverse impact on the German public.”<sup>460</sup> In fact, Stresemann declared that “it would mean the complete bankruptcy” of his cooperative foreign policy.<sup>461</sup> The failure of this argument emphasizing domestic constraints prompted a new strategy: “to break the link between occupation and treaty enforcement, Stresemann proposed an alternative form of military security – a pact of nonaggression and a treaty of guarantee.”<sup>462</sup> Stresemann thus pursued German interests – most immediately the end of occupation – by making a proposal for social change in a mutually intelligible form according to what he understood as a legitimate process.

Unfortunately for Stresemann, issues of process directly involving secondary rules would significantly complicate British reception of his proposal. The second factor driving the timing and form of the German proposal was a visit from the British ambassador to Berlin. On 29 December 1924, D’Abernon warned Carl von Schubert, Stresemann’s State Secretary, that France sought a military alliance with a receptive Chamberlain. Though D’Abernon had proposed schemes similar to Locarno, both to the German government and to his own, since

---

<sup>459</sup> Carr, *The Twenty Years' Crisis*, 99; Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 259.

<sup>460</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 11.

<sup>461</sup> Quoted in *ibid.*, 12.

<sup>462</sup> *Ibid.*, 9.

1923, Germany mistakenly believed his approach to have been officially authorized. In fact, it was not. Proceeding under this misconception, “by January 14 Stresemann and Schubert had decided to subordinate D’Abernon’s suggestion for a multilateral nonaggression pact to a scheme prepared by Friedrich Gaus, the legal expert at the Wilhelmstrasse – an international guarantee of Rhineland demilitarization and the *status quo* in Western Europe.” The key role for a legal expert in crafting the proposal illustrates awareness of social rules regarding proper form for the pursuit of social change and the existence of patterned practice in this regard. This view is further buttressed by the method chosen to communicate the proposal. Because the suggestion had come unofficially from the British ambassador, the reply was made in the same fashion. However, the proposal was made only to London at first, because German policymakers “feared that leaks to the Paris press would result in quick rejection of the proposal.”<sup>463</sup>

Because D’Abernon’s approach had not been made under instructions from the Foreign Office, Austen Chamberlain instead saw the German proposal as an unsolicited “attempt to initiate secret Anglo-German negotiations” designed to create a rift between Paris and London. This interpretation led to awkward attempts to deflect the proposal. “Eyre Crow, the Permanent Under-secretary, first tried to postpone the official delivery of the proposal to London, and when Chamberlain did see the German ambassador, Friedrich Sthamer, on January 30, he all but rejected it.” In fact, he “even declined to let Sthamer report to Berlin that he favored the German proposal in principle.”<sup>464</sup> Given this hostile initial reception, it is remarkable that the German proposal eventually resulted in the Locarno agreements. However, both Britain’s eventual reversal and the French reaction can be explained by the influence of secondary rules.

---

<sup>463</sup> Ibid., 9-13.

<sup>464</sup> Ibid., 13-14.

The explanation for Britain's change of position is found jointly in the increasing scrutiny of foreign policy in the domestic press, and in the politics of the Conservative Baldwin cabinet – particularly the Committee of Imperial Defence (CID). British public opinion had, since the end of the war, become more sympathetic to German claims of unequal treatment and of French excesses in occupation, particularly with respect to the Ruhr. By 19 March 1925, Chamberlain informed the French ambassador, Aimé de Fleuriau, that he was convinced public opinion would not support a security pact between France and Britain that excluded Germany.<sup>465</sup> The combination of press scrutiny with the postwar adoption of universal male suffrage presented a novel constraint; domestic democratic processes of rule-making were suddenly at least potentially more relevant to international rule-making than they ever had been. This amounted to a thickening of institutional politics among states, in that it involved new actors (political parties, interest groups, voters, etc.) and presented new opportunities for comparison of rule-making processes in different social contexts.

While democratization represents a novel and important influence on institutional politics in the 1920s, the British reconsideration of Germany's pact proposal ultimately took place in the CID. At the time the German proposal reached London, the CID remained actively engaged in crafting a further justification of its rejection of the MacDonald government's Geneva Protocol, to be delivered at the League Council meeting in March. The basic problem was that, while "all agreed that a simple statement of rejection would expose the government to the charge that Britain was an obstacle to the resolution of the security problem and to the pacification of Europe... they disagreed among themselves as to what alternative constructive suggestion should

---

<sup>465</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 210.

be proposed.”<sup>466</sup> The matter had been assigned on 16 December 1924 to a subcommittee chaired by Maurice Hankey, which recommended on 13 February that the government propose a new protocol that would amend the League Covenant to bolster collective security. At this same meeting Chamberlain mentioned Stresemann’s proposal as potential evidence of German moderation, and Lord Curzon “asked him to prepare drafts of an agreement for a four-power security pact which would include Germany along with Britain, France, and Belgium.” Thus, British acceptance of the German proposal was driven at least in part by a desire to avoid social criticism that Britain was blocking attempts to bolster European security. The Baldwin government’s withdrawal of the MacDonald government’s draft Geneva Protocol created this vulnerability because it allowed critics to point out the reversal in policy and to demand an explanation.

At the 19 February CID meeting Chamberlain refused to produce the draft Curzon had requested and instead proposed a draft Anglo-French alliance treaty. At decisive meetings on 2 and 4 March the CID rejected both the new protocol and Chamberlain’s proposed alliance. Instead, Chamberlain was instructed “to tell Herriot that a quadrilateral pact including Germany ‘might be of great assurance to the peace of Europe’.” Notably, his initial instructions “rigidly precluded him from committing the British government to any specific formula for participation in the Rhineland Pact.”<sup>467</sup> They allowed him merely to promise the Baldwin government would “do its best to make possible such a mutual agreement”.<sup>468</sup> Dissatisfied with such weak assurances for France, Chamberlain ultimately threatened to resign, prompting Baldwin to personally support Chamberlain’s request for a more definitive British stance. The cabinet thus

---

<sup>466</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 15.

<sup>467</sup> *Ibid.*, 17-19.

<sup>468</sup> Quoted in *ibid.*, 20.

formally committed Britain to negotiation of a multilateral security pact on 20 March, and Chamberlain announced the policy in Parliament four days later.<sup>469</sup>

Chamberlain ultimately accepted the outcome of cabinet deliberations according to established British political practice, though only after exhausting his alternatives. Interestingly, Chamberlain came to embrace the notion of the Locarno agreements, seeing them not as anathema to British interests but rather as consistent with the traditions of British foreign policy. According to Cohrs, by March 1925 Chamberlain “now espoused a policy of reviving the ‘concert of Europe’”.<sup>470</sup> Indicative of his change of heart, on 14 March Chamberlain wrote: “Britain’s part is now the same as in 1815 and *mutatis mutandis* Castlereagh’s policy is the right one today.”<sup>471</sup> This was a striking change from a man who initially advocated a pure balance of power security alliance with France to contain the potential for a rising Germany.

Counterintuitively, French policymakers accepted the German proposal more readily than did Chamberlain, despite the fact that public pressure in France was strongly against concessions to Germany – the opposite situation to that confronted by the British government. To some extent, the French response was driven by financial necessity: subject to an American loan embargo pending resolution of war-debts, Paris was under acute financial pressure for much of the 1920s. However, this financial pressure is itself connected to contemporary institutional politics. Within the French government, the victorious point of view belonged to Jacques Seydoux, a reparations expert and the sub-division director for economic affairs in the French Foreign Ministry. In his estimation, Cohrs reports, rejecting the offer would lead to France being

---

<sup>469</sup> Ibid., 21.

<sup>470</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 209.

<sup>471</sup> Quoted in *ibid.*, 217.



“accused of ‘bad faith’ by Anglo-American politicians who could eventually ‘oblige’ Paris to abandon its hold on Germany ‘without any compensations’.” Thus, the French *expected* to be criticized and to incur substantial consequences for breaching relevant secondary rules requiring negotiation in good faith, not only by the Germans but also by their own alliance partners.

Faced with this possibility, the better strategy was to, at minimum, ‘play along’. Indeed, “French policymakers came to see the pact as an opening for more substantial British guarantees.” Accordingly, France began from a maximalist bargaining position; “Herriot demanded that Germany first recognise all French occupation rights in the Rhineland and sign treaties with Poland and Czechoslovakia guaranteeing their territorial *status quo*”, but “the *Quai d’Orsay* knew that these were unacceptable demands.”<sup>472</sup> Regardless, to reach its aims, the French government consciously accepted the German proposal as a basis for further negotiation and thus committed itself to engaging in institutional politics with the German government as a legitimate participant.

The influence of secondary rules did not end with the initial acceptance of the German proposal as the basis for negotiation of a multilateral security pact. The next phase in the creation of the Locarno agreements was an extended period of pre-conference negotiation over several key issues – most notably the conditions under which Germany would join the League of Nations, the question of security guarantees for France’s eastern alliance partners, Poland and Czechoslovakia, and the precise circumstances under which the guarantee of military assistance would be triggered. This negotiation displays the characteristics associated with institutional politics: actors generally made proposals in forms consistent with secondary rules, and denied or

---

<sup>472</sup> Ibid., 212.

justified inconsistencies; also, other actors generally responded to such proposals according to the guidance provided by secondary rules, and denied or justified inconsistencies.

Although Britain and France had accepted the notion of a multilateral security pact by the end of March 1925, the official allied response would not come for another two months. Even before this official response, contained in a French diplomatic note dated 16 June, the parties had to grapple with the problem of French maximalism, expressed in terms of disarmament demands via the IMCC. Another IMCC report released on 4 June contained mixed findings. While it found considerable compliance, it raised concerns that the *Reichswehr* was subverting police forces in an attempt to create *de facto* militias. The note was controversial mainly because its “tone was that of an allied decree commanding the execution of the Treaty of Versailles and threatening sanctions in the case of non-compliance.” It was an attempt by Aristide Briand, who had become Foreign Minister in April 1925, to “establish the principle that ending disarmament inspections and, crucially, an early termination of the Rhineland occupation were contingent on enhanced assurances of security”. Despite his sympathy for the French position, “Chamberlain insisted that the exchanges over German disarmament should quickly be eliminated as an irritant in the pact negotiations.” He recognized the French attempt to wring concessions from Germany and undermined it with a narrow, process-based argument to separate the thorny problem of disarmament from the German proposal, which was designed in large part to render the disarmament-occupation problem more tractable by providing alternate security reassurances. The German government ably supported Chamberlain’s position by declaring that it was willing to discuss any “justified” concerns over its disarmament at some unspecified future time. Though the twin issues of disarmament and occupation would figure prominently in the eventual

Locarno conference, Stresemann and Chamberlain succeeded in using process-based arguments to effectively table these issues in order to allow progress on other fronts.<sup>473</sup>

Though French efforts to obtain concessions had been thwarted, the wider strategy of making onerous demands for French participation in security pact negotiations remained intact in Briand's diplomatic note of 16 June. In lieu of more complete German disarmament or extension of deadlines for withdrawal from the Rhineland, France now sought satisfaction on two other fronts: the conditions for German entry into the League of Nations, and security guarantees for Poland and Czechoslovakia – states France had sought to enlist in order to balance or contain Germany. Under the initial proposal, Germany would join the League and receive a permanent Council seat, in accordance with its great power status; this was uncontroversial. The Germans insisted that, due to Germany's disarmament and its central position in Europe, that it be given an explicit exemption from participation in Article 16 collective security actions. The French note, in contrast, sought Germany's entry into the League without any such exemption. Briand also sought to strengthen the eastern arbitration agreements in two ways. First, he proposed that they be made an essential part of the security pact rather than an officially unrelated gesture of German good faith. Second, he demanded that Britain (and, after Chamberlain refused, France) be given the right to guarantee – if necessary by force – that the parties abided by any arbitral award.<sup>474</sup>

The German reply, a diplomatic note of 20 July, refused each of these requests; with respect to Article 16, it reiterated the familiar arguments relating to Germany's position and disarmed status. Despite the official defence of its initial position, the note did contain attempts

---

<sup>473</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 244-45.

<sup>474</sup> *Ibid.*, 245-46.

to advance the negotiation; “these hinged on an extension of the ‘system of arbitration treaties’ developed by Schubert with the assistance of the Foreign Office’s legal expert Friedrich Gaus. In essence, Germany offered to enshrine in the pact the renunciation of war as a means of territorial revision – and to give Warsaw an informal assurance that a modification of Germany’s eastern border was not ‘acute’. Further, to placate Paris, an explicit linkage of the pact and the Rhineland occupation was avoided.” The German note also proposed that further negotiation take place in person, rather than through diplomatic note.<sup>475</sup>

Though this initial exchange of diplomatic notes did not lead to any concrete agreement, it is evident that the French and German governments both engaged in a political process of contesting social institutions, and that each regarded this process as legitimate. Proposals were framed in legal language, and drafted with the assistance of legal experts; additionally, the notes contained justifications for positions that were developed at least with reference to, if not in conformity with, shared standards of appropriate state behaviour. Equally striking is that, while France sought to delay the evacuation of the first Rhineland occupation zone (Cologne), it did not seek to delay completion of the Ruhr withdrawal, which was completed in July 1925 – ahead of the schedule laid out in the Dawes agreement of 1924.<sup>476</sup> Such a move would almost certainly have generated opposition not only from Germany, but also from Britain, on the basis that France was disregarding her earlier commitments. Finally, the German note contained one important substantive amendment to the initial proposal: the treaties with Poland and Czechoslovakia would not merely require arbitration *before* resort to war; they would instead contain a pledge not to settle territorial disputes by force in any circumstance. Thus, this process of institutional politics led to compromise in the pursuit of agreed-upon social change.

---

<sup>475</sup> Ibid., 251-52.

<sup>476</sup> Ibid., 245.

The core of the Locarno bargain was between France and Germany; however, Britain's essential guarantor role sparked crucial inter-allied discussion in advance of the Locarno conference. This debate concerned the precise nature of the guarantee afforded by the proposed pact. In London, "Locarno was taken to mean that Britain was to come to the immediate assistance of the French only in the event of an actual German attack on France, or if German troops entered the Rhineland with the obvious purpose of immediately marching across the border and invading French territory."<sup>477</sup> The case of actual or imminent invasion was a clear one, however; the key question was whether the guarantee would be triggered by provocations that fell short of this standard. Britain, largely motivated by considerations of self-interest, sought to minimize its commitment. Chamberlain valued an outcome that preserved maximum freedom of action. The important point is the method by which Britain sought to gain French and Belgian acquiescence. The key figure in this effort was Foreign Office legal advisor Cecil Hurst, who expressed the British view that smaller provocations should be referred to the League of Nations Council and that the Council should only act "if it were convinced that Germany intended war."<sup>478</sup> Thus, Britain attempted to employ existing international law and established institutional mechanisms in order to minimize its Locarno commitment.

The French and Belgian governments, led by Briand and by French Foreign Ministry legal expert Henri Fromageot, responded in kind, arguing that such a procedure would defeat the object of the agreement: by providing Germany with ample mobilization time, the British proposal would diminish the practical value of the Locarno guarantee. Chamberlain, assisted by new Permanent Under-secretary William Tyrell, replied that any mobilization would be preceded by a period of political tension similar to the 'July crisis' of 1914 and that the League could

---

<sup>477</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 30.

<sup>478</sup> Quoted in *ibid.*

capitalize on this obvious tension in order to act with sufficient alacrity. The inter-allied debate was ultimately settled at a pivotal meeting between Briand and Chamberlain in London on 11-12 August. “As a compromise, the distinction between flagrant and non-flagrant violations of the demilitarized zone was adopted. The two men agreed that British military assistance was to be immediate, and take place without League deliberation, only if Germany resorted to force and committed an unprovoked act of aggression, or if immediate action were necessary because armed forces had been assembled in the demilitarized zone.” Chamberlain explained the Anglo-French understanding explicitly in terms of international law. He informed Stresemann that Britain interpreted Locarno as modifying the Treaty of Versailles. Articles 42-44 of Versailles authorized Britain to regard German violations of the demilitarized zone (DMZ) as hostile acts; Locarno applied only to a *class* of such violations, but made military assistance mandatory within that class.<sup>479</sup>

The London meeting also produced an Anglo-French draft treaty that served as the basis for the final phase of negotiations prior to the actual Locarno conference: a meeting of British, French and German legal experts that took place during early September in London. The very fact of this meeting was a reversal for Briand, who “had long sought to insist on completing the negotiations by way of diplomatic notes, intent on maintaining the appearance of two *entente* powers pursuing a concerted policy *vis-à-vis* Germany.”<sup>480</sup> Ultimately, the precedent of the 1924 Dawes agreement and the secondary rules according states the right to act as their own legislators could not be overcome, especially given Chamberlain’s interest in reviving concert diplomacy. The experts’ preparatory meeting largely continued the overall trajectory of

---

<sup>479</sup> Ibid., 31-33.

<sup>480</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 255.

negotiations. The most significant development was a clarification of the German position with regard to the eastern treaties. Chamberlain would report to D'Abernon that "Gaus had in fact explained that his government could not sign a document explicitly renouncing war with respect to the eastern frontiers because Berlin regarded this as tantamount to recognising them. But he had also stressed that the Germans were 'willing to tie themselves up with such conditions that recourse to war would in fact be impossible'."<sup>481</sup> Germany's paramount concern with form reflects awareness of the applicable rules of international law. Stresemann was careful to avoid even the appearance of accepting the legitimacy of Germany's territorial *status quo* with Poland and Czechoslovakia because he realized this would negatively impact Berlin's hope of eventual peaceful territorial gains that could be pursued by means of diplomatic argument. This stance makes sense only if he was aware of the standards by which arguments would be evaluated, and if he believed other actors were likely to place importance on them.

The Locarno conference opened on 5 October 1925, and was attended by delegations from Britain, France, Germany, Belgium and Italy. Poland and Czechoslovakia were present only to deal with the eastern arbitration treaties. The proceedings, which lasted until 16 October, were marked by a "remarkably constructive atmosphere" that reflected the substantial legitimacy of the process as well as the actors' relatively consistent commitment to operating according to relevant secondary rules.<sup>482</sup> The result was a series of compromises on Germany's League of Nations membership, security guarantees for Poland and Czechoslovakia, and on the thorny initial problems of disarmament and Rhineland evacuation.

The first major issue resolved at the Locarno conference was the form of the eastern treaties. On the second day of the conference Briand reiterated his problematic demand for the

---

<sup>481</sup> Quoted in *ibid.*, 256.

<sup>482</sup> *Ibid.*, 259-61.

inclusion of a French right to guarantee the accords; this was followed promptly by a renewed German refusal justified in terms of domestic opposition. In addition, Germany objected to the inclusion of the agreements in the security pact, for the reasons articulated by Gaus at the meeting of legal experts the previous month. The impasse was broken by a British proposal under which France concluded separate guarantee treaties with Poland and Czechoslovakia on the same day as Locarno was signed. In addition, “article 2 of the Locarno accords stated that France had the right to intervene against Germany under article 16 of the League Covenant – if its Council had declared Germany the aggressor in a conflict with its eastern neighbours.”<sup>483</sup>

This compromise is an example of creative use of international law in order to resolve a deadlock. The French desire to guarantee the security of its eastern alliance partners was preserved, at least in instances where Germany acted as the aggressor according to a mutually agreeable standard of determination, and this was accomplished without the formal appearance of creating a super-sovereign status for France.

The key exchanges on Germany’s Article 16 obligations in the League of Nations took place in sessions on 7-8 October. In these meetings Chamberlain, despite his empathy for the French position, accepted German arguments; “he deemed it natural that Stresemann had to take into consideration Germany’s geo-political position”. Ironically, Chamberlain’s support for a compromise that would enable the Locarno agreement was also driven, in part, by his conclusions that the League was weak. On this view, “what mattered more than obligations under article 16, which would always be subject to different interpretations, was the clear commitment of all pact signatories in one specific area: on the Rhine.” Far from mere ephemera, social rules were vital to ensuring European security. Rules susceptible to clear interpretation

---

<sup>483</sup> Ibid., 262-63.



were to be valued at a premium. Rather than a condemnation of the practice of institutional politics, Chamberlain's view was at once an acknowledgement of the important *limitations* of this practice in the 1920s and a pragmatic attempt to overcome these limits in order to improve security. Supplement F explicitly recognized the special circumstances created by Germany's geographic location and disarmament, and acknowledged that this reality limited German ability to take part in collective security measures.<sup>484</sup>

In the spring of 1925 Stresemann and Chamberlain had resisted French attempts to extort Germany into making concessions on disarmament and Rhineland occupation as a 'price' for French participation in what would become the Locarno negotiations. By the fall, the tables had been turned. In a series of meetings from 12-15 October, it was Stresemann who sought to employ this leverage strategy, seeking to obtain a firm date for the evacuation of the Cologne occupation zone, as well as further concessions on French disarmament and inspection demands.<sup>485</sup> The initial reaction to Stresemann's demands was outrage – Chamberlain went so far as to call them an "attempt at blackmail."<sup>486</sup> Despite this strong emotional reaction and the analogy to criminal behaviour, both Chamberlain and Briand remained willing to proceed according to secondary rules. They initially sought to dispense with German demands by arguing that "Stresemann had raised issues too numerous and too difficult to be resolved during the conference." Unswayed, Stresemann stood his ground. In response, the allies relied again on a process-based argument. They argued that it was impossible to bypass the Conference of Ambassadors, which oversaw occupation and disarmament, but that the successful conclusion of

---

<sup>484</sup> Ibid., 263-64.

<sup>485</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 60.

<sup>486</sup> Quoted in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 266.

the Locarno treaties would enable progress on these issues.<sup>487</sup> Similar to the compromise on the arbitration treaties, the strategy was to formally disaggregate elements of the overall political agreement in order to allow the denial of unpalatable *quid pro quo* arrangements. Thus, “it was agreed at Locarno that after their return to Berlin, the Germans would address a note to the Conference of Ambassadors indicating that they had made a serious beginning on disarmament and promising to carry out the most important remaining points. The Allies would then respond, promising to evacuate Cologne by a specified date without waiting for the completion of German disarmament.”<sup>488</sup>

The German note was sent on 23 October; it reported completion of some tasks, progress on others, and also refused to provide any assurance of compliance on five specific issues. This mixed response prompted France’s Marshal Foch to insist on a lengthy verification process that would delay evacuation; however, he was jointly opposed in this argument at the late October Conference of Ambassadors meeting by *Quai d’Orsay* official Jules LaRoche and the Marquess of Crewe (Britain’s ambassador to France), who “insisted on a speedy reply in the spirit of Locarno.” By 16 November Briand, in his capacity as chairman of the Conference of Ambassadors, notified the German ambassador in Paris that the evacuation of Cologne would begin on 1 December 1925 and be completed by 26 Jan 1926. In addition, a diplomatic note dated 14 November promised that troop reduction in the second and third occupation zones (Coblenz and Mainz) would be forthcoming, along with a reduction in the size of the IMCC.<sup>489</sup> Stresemann had achieved the most crucial of his objectives, helping him to sell the Locarno

---

<sup>487</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 62; Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 267.

<sup>488</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 62.

<sup>489</sup> *Ibid.*, 62-64.

treaties to a sceptical domestic public; however, he was obliged to achieve these results by employing the procedures and mechanisms of the Conference of Ambassadors, thereby implicitly legitimizing this institutional creation of the Treaty of Versailles.

Beyond the evidence that secondary rules account for key facets of the process leading to Locarno, the text of the agreement itself supports the conclusion that actors themselves took the practice of institutional politics seriously. The treaty of guarantee contained extensive provisions intended to facilitate its interpretation. These provisions amount to the codification of applicable rules of international law analogous to Hart's 'rules of adjudication' – one of three categories of secondary rules. The first instance of such rules is contained in Article 2, which enumerates and defines exceptions to the parties' undertaking not to resort to war: self-defence, and collective security actions pursuant either to Article 15 or Article 16 of the League Covenant. Article 3 of the Locarno treaty commits the parties specifically to submitting disputes relating to the interpretation of treaties to "judicial decision", and all other disputes to a "conciliation commission" or – as a last resort – to the League Council. The fourth article specifies that any allegation of breach must be brought to the Council, which was endowed with the authority to determine if a breach had occurred, and that parties would immediately assist any other party against whom a breach was directed. The sole exception to this procedure was the case of a so-called "flagrant violation" of the treaty, in which case the other parties were required to immediately assist the victim without waiting for the League Council to act. Article 5 provides that failure to submit disputes for settlement as required by Article 3 triggers the provisions of Article 4. The sixth and seventh articles state the collective interpretation of the parties that the Locarno treaty did not prejudice either their respective rights under the Treaty of Versailles or the authority of the League of Nations to "safeguard the peace of the world." Finally, Article 8

provided for the official deposit of the treaty with the League of Nations and specified that the treaty would remain in force until one year after a two-thirds majority of the League Council “decides that the League of Nations ensures sufficient protection to the High Contracting Parties”. Instructions for interpreting and applying the treaty, and for resolving disputes between the parties make up the bulk of the treaty’s text. The care taken in providing such clarification demonstrates that actors were aware of the importance of secondary rules and that they were able to achieve substantial agreement on their precise modalities. The clear legal form of these provisions, combined with the fact that such rules were not a topic of contestation among the Locarno principals, indicates that the treaty’s final provisions were not regarded as extremely controversial or as inconsistent with accepted practice.<sup>490</sup>

The Locarno agreements were adopted easily in the French Chamber of Deputies; the October vote yielded a 413 to 71 margin in favour, albeit with 60 abstentions. Briand’s initial fears of nationalist opposition were largely unrealized. Though the army remained reluctant, even nationalist stalwart Raymond Poincaré came to back Briand’s general policy, though largely because of the lack of a viable alternative. Stresemann’s domestic situation was more challenging. As in France, the army remained opposed to the accord; in addition, the primary German nationalist party (the DNVP) refused to accept the agreement and resigned from the coalition government on 23 October, focusing its criticism on the continued occupation of Coblenz and Mainz. The agreements would not be approved by the *Reichstag* until 27 November, when they passed by a slim margin.<sup>491</sup>

---

<sup>490</sup> "Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy," [http://avalon.law.yale.edu/20th\\_century/locarno\\_001.asp](http://avalon.law.yale.edu/20th_century/locarno_001.asp).

<sup>491</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 236, 76-78; Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 66.

Internationally, Locarno was received with considerably more enthusiasm. The Seventh Assembly of the League of Nations (fall 1926) declared that “the general ideas embodied in the Treaties of Locarno... may well be accepted among the fundamental rules which should govern the foreign policy of every civilised nation” and requested that the Council “recommend the States Members of the League of Nations to put into practice the above-mentioned principles and to offer, if necessary, its good offices for the conclusion of suitable agreements likely to establish confidence and security”.<sup>492</sup> The Eighth Assembly attempted to further the acceptance of the Locarno principles of territorial guarantee, war renunciation and peaceful dispute resolution by creating a special committee on arbitration and security. It would ultimately report to the Ninth Assembly in the fall of 1928 with three model treaties, one of which was a mutual assistance accord similar to the Rhine guarantee.<sup>493</sup> These steps were ultimately surpassed by other events, including the 1928 Kellogg-Briand treaty; however, they are indicative of considerable support for legal measures to replace war as a means of conflict resolution.

Germany’s entry to the League of Nations, however, became a fiasco. After Germany’s official application for membership, including a permanent Council seat as agreed to at Locarno, Poland, Spain and Brazil also demanded permanent representation on the Council. Each claim had a slightly different rationale – Spain on the basis of historical, if faded, great power status; Poland and Brazil on grounds of incipient power. Regardless, all of the claims were enabled by the nominal equality of sovereign states under international law and by stringent League decision rules. The eventual solution was to offer each of the three “semi-permanent” places on the Council; “Poland accepted this, while Spain threatened to withdraw from the League and Brazil

---

<sup>492</sup> Quoted in Rappard, *The Quest for Peace since the World War*, 266.

<sup>493</sup> *Ibid.*, 266-68.

actually did so.”<sup>494</sup> The fact of concessions cannot be explained by the material power of the claimants. Instead, their arguments demanded (and received) attention because of the secondary rules of international politics – especially the tension between sovereign equality and great power responsibility.

The process by which the League Council debacle was resolved highlights the underlying strength of the practice of institutional politics: “on four occasions during the League Council meeting (March 7-17), the Locarnites [Briand, Stresemann and Chamberlain, plus Emile Vandervelde of Belgium and Benito Mussolini] met in Chamberlain’s hotel room to discuss, without complete success, the competing claims of the four powers to council seats.” Locarno thus led to the revival of concert diplomacy Chamberlain had sought since March 1925; “for the next three and one-half years there persisted a pattern of negotiation by means of meetings of the representatives of the Locarno powers, usually meetings of the Locarno Big Three – Stresemann, Briand and Chamberlain.” The meetings dealt with disarmament, the Rhineland and reparations, and the leaders “also arbitrated the affairs of the rest of Europe and coordinated their policies on matters considered by the League Council.” This informal system of management “came to surpass negotiations through normal diplomatic channels, which were utilized largely to handle low-level or routine matters or, at best, to prepare for future foreign ministers’ meetings and to follow up on those previously held.”<sup>495</sup> The fate of these diplomatic efforts is outside the scope of my argument here; the important point is that leaders continued to engage in the kinds of social communication entailed by institutional politics: discussing, justifying and criticizing proposals and policies on the basis of shared rules and standards. Further, this social practice was not a tool of the weak, intended to level the playing field of international politics; rather, it

---

<sup>494</sup> Jacobson, *Locarno Diplomacy: Germany and the West, 1925-1929*, 68.

<sup>495</sup> *Ibid.*, 69-70.

was the domain of the great powers and a central mechanism for the management of the international system.

The primary limitation of the Locarno agreements was their regional character. As treaties between a limited set of powers, they had not effected change at the systemic level and had no legal force to bind non-parties. Similarly, the declarations of the League Assembly were hortatory in nature, even if they carried significant moral authority. This regional character was not accidental. When approached in the spring of 1925, the new American Secretary of State (Frank Kellogg) had expressed strong support for the substance of the pact yet flatly refused to involve the United States as a party to the negotiations.<sup>496</sup> Likewise, Britain had staunchly opposed the French desire to expand the pact's guarantee to encompass Germany's eastern border.

#### 4.3 The Kellogg-Briand Treaty

The eventual conclusion of the Kellogg-Briand Treaty was hailed as a major progressive step in international politics. Briand's flowery speech at the signing ceremony, held at the *Quai d'Orsay* on 27 August 1928, allegedly moved the American Secretary of State to tears. The initial list of 15 signatories comprised the great powers – with the exception of the Soviet Union – plus the remaining Locarno signatories, the British Dominions and India.<sup>497</sup> By the time of its entry into force, triggered by the Japanese ratification on 24 July 1929, thirty-one more states had ratified the treaty, and another seventeen would eventually ratify after it had become

---

<sup>496</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 222.

<sup>497</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 219, 3.

operative, bringing the total number of ratifications to sixty-three by 10 May 1934.<sup>498</sup> The treaty, which contained a strong legal ban on the use of warfare to settle disputes, had become essentially universal.

The fascinating truth is that this remarkable outcome was completely unintended. The Kellogg-Briand Treaty, in its multilateral form, was a product of the social practice of institutional politics that neither of the two men whose name it bore had sought to create. Briand made the initial proposal on 6 April 1927, the tenth anniversary of American entry into the First World War. It took the unorthodox form of a direct statement to the American people via the Associated Press, a fact that would cause significant confusion and delay. In his statement, Briand offered that France would “subscribe publicly with the United States to any mutual engagement to outlaw war, to use an American expression, as between these two countries.”<sup>499</sup> He famously called for “the renunciation of war as an instrument of national policy”, in language that would survive (ironically because of American insistence) the negotiations and appear in the final treaty.<sup>500</sup> Crucially, the French proposal was for a *bilateral* treaty.

The French proposal was driven by an interest in improving relations with the United States, and in achieving assurances of American neutrality – if not assistance – in the event of a European war. Franco-American relations suffered under two primary sources of strain at the time of Briand’s proposal: differences in disarmament talks, and the question of French war debts owed to the United States. The disarmament issue was dealt with in Kellogg’s testimony to the House of Representatives Foreign Affairs Committee on 11 January 1927. He informed

---

<sup>498</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 258.

<sup>499</sup> Rappard, *The Quest for Peace since the World War*, 168.

<sup>500</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 448.



the committee that France insisted on the conclusion of security guarantees before disarmament, on international inspection to verify the fulfilment of disarmament obligations, that agreements should be universal in scope, and that accords must take into account each state's military-industrial potential in addition to its current level of armament. All of these concerns were undoubtedly directed at maintaining the French position of strategic superiority *vis-à-vis* Germany. In contrast, the United States sought to conclude disarmament agreements without incurring obligations to provide military assistance, in keeping with its policy of minimizing its diplomatic activity. Further, Kellogg opposed verification on the grounds that such mechanisms would merely "create new elements of suspicion" between states, and sought to restrict talks to dealing with actual armament levels, on the grounds that assessing a state's military capacity was too difficult.<sup>501</sup> In addition to their differences over disarmament, France and the United States had not yet resolved the repayment of French war debts. France sought to reduce its obligations, while the American government insisted on complete repayment.<sup>502</sup> Finally, the proposed treaty was consistent with ongoing French efforts to secure guarantees of military assistance against possible German irredentism. The language of the pact, calling for a ban on war between the parties, was intended to preclude the United States from entering a war on the opposite side from France. Moreover, this language was consistent with French diplomatic practice in its alliance treaties with states in Eastern Europe – particularly its 1926 alliances with Romania and Yugoslavia, which contained language banning war between the parties.<sup>503</sup>

---

<sup>501</sup> Ibid., 427-30.

<sup>502</sup> The question of war debt was eventually resolved by the Mellon-Bérenger agreement, which was signed in 1926 but not ratified by the French *Chambre* until 1928. See Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 69. For additional background negotiation, an excellent general history is provided in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*.

<sup>503</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 64, 67.

Clear French interests in proposing the pact do not, however, fully explain its form. Beyond the consistency with the 1926 alliances, there is compelling evidence that Briand sought to frame his proposal such that it would resonate with the American public. On 22 March 1927, Briand met in Paris with Professor James T. Shotwell of the Carnegie Endowment for International Peace, one of the leading American anti-war organizations. Briand's diplomatic skill was sufficient to convince Shotwell that it was he who persuaded Briand to make the proposal, despite the apparent incongruity of a bilateral agreement approximating what were clearly French treaties of alliance having been written by an American advocate of world peace. Beyond the initial proposal, Briand would continue to encourage and even orchestrate the efforts of the American peace movement, in an attempt to exert pressure on the Coolidge administration to reach an agreement.<sup>504</sup> This strategy displays a sophisticated awareness of the evolving role of citizens and non-governmental organizations (NGOs) in processes of rule-making at the international level; its logic resembles a 'Trojan Horse' strategy.

Despite Briand's innovative best efforts, the initial results were not promising. His message to the American public attracted little popular attention; it appeared on page 5 of the *New York Times*, page 4 of the *Washington Post* and page 12 of the *Chicago Herald-Tribune* – it was not carried at all by the *Chicago Daily Tribune* or by the *Los Angeles Times*.<sup>505</sup> The proposal failed to generate a response from the State Department as well; "since there was no communication to the Department... those in authority in Washington appeared to consider the Briand message simply as an expression of friendship."<sup>506</sup> Briand's message was, perhaps, too

---

<sup>504</sup> Ibid., 68-72.

<sup>505</sup> Ibid., 74.

<sup>506</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 6.

innovative in form. By departing from accepted procedures for the social practice of institutional politics, he had undermined the efficacy of his proposal.

At this juncture, however, Briand's courtship of the American peace movement proved its value. A letter to the editor appeared in the *New York Times* on 25 April 1927 by Dr. Nicholas Murray Butler, the head of the Carnegie Endowment, as well as the president of Columbia University, an unsuccessful candidate for the Republican presidential nomination in 1920 and 1928, and a prominent public intellectual who would eventually share the 1931 Nobel Peace Prize. In the weeks following the publication of Butler's letter praising Briand's proposal, at least three draft treaties were released to the press by American peace groups, and the general atmosphere was one of a "rush for the band wagon, hitherto so empty."<sup>507</sup> Amidst the public pressure, Kellogg nevertheless insisted that the State Department refrain from comment on the grounds that the proposal had not been properly transmitted through diplomatic channels. Privately, he met with George Barton French, a mutual friend to Kellogg and to Butler, in order to express strong displeasure with Butler's actions, which Kellogg saw as diplomatically embarrassing to the administration.<sup>508</sup>

Seeking to capitalize on the shift in American public opinion, Briand made an informal inquiry through US Ambassador Myron T. Herrick as to whether the administration would enter negotiations on a bilateral treaty for the renunciation of war.<sup>509</sup> Kellogg's basis for ignoring the French overture had vanished. Accordingly, he directed Herrick to reply that "the United States will be pleased to engage in diplomatic conversations on the subject of a possible agreement

---

<sup>507</sup> Ibid., 7-8; Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 74.

<sup>508</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 78, 82.

<sup>509</sup> Ibid., 89.

along the lines indicated by M. Briand's statement to the press on April sixth last".<sup>510</sup> Diplomatic niceties aside, Secretary of State Kellogg was certainly not pleased. As a delay tactic, Kellogg instructed Herrick to suggest the opening of negotiations through the French Ambassador to the United States, Paul Claudel, who was currently in France. This attempt to delay by manipulating diplomatic process backfired badly: "Philippe Berthelot, Secretary-General of the French Ministry of Foreign Affairs, sent for Sheldon Whitehouse, the American *chargé d'affaires* in Paris, on the evening of June 21. He informed Whitehouse that Secretary Kellogg's suggestions as to conversations on the proposed pact were very pleasing to his chief, Aristide Briand. But as the French Ambassador to the United States would not reach Washington until the end of August Briand thought that was too long a time to delay doing anything about the proposed pact. Briand had, therefore, drafted a suggested text."<sup>511</sup> The French draft consisted of a preamble, standard procedural clauses dealing with ratification and entry into force, and two operative articles consisting of one sentence each. In a departure from standard practice, it was not accompanied by a diplomatic note.<sup>512</sup> Article 1 declared that "the high contracting Powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war, and renounce it respectively as an instrument of their national policy towards each other." Article 2 provided that "the settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origins they may be, which may arise between France and the United States of American, shall never be sought by either side except by pacific means."<sup>513</sup> Briand had turned Kellogg's attempt to delay

---

<sup>510</sup> Quoted in Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 9.

<sup>511</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 94, 95-96.

<sup>512</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 10.

<sup>513</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 72-73.

against him, and effectively presented the Coolidge administration with a *fait accompli* rather than a three month delay in the start of negotiations over a potential text.

The United States would not reply to the French draft of 20 June 1927 for a full six months. The intervening period, covering the summer and fall of 1927, was marked by extensive internal discussion of how to respond to the French draft. State Department officials were conscious both of the French attempt to use the language of war renunciation to bolster their strategic freedom of action and of strong American public support for outlawing war. J.T. Marriner, Chief of the State Department's Division of Western European Affairs wrote in a 24 June memo that the French proposal amounted to "a kind of perpetual alliance between the United States and France, which would seriously disturb the other great European Powers – England, Germany and Italy."<sup>514</sup> Despite this unwanted outcome, Marriner treated future negotiations as inevitable; he wrote that:

*when the time comes actually to negotiate, it would seem that the only answer to the French proposition would be that, as far as our relations with France were concerned, adequate guarantees were contained in the Bryan Treaty, and that if any step further than this were required, it should be in the form of a universal undertaking not to resort to war, to which the United States would at any time be most happy to become a party. Before such a time, treaties of the nature which France suggests become practically negative military alliances.*<sup>515</sup>

Marriner's belief that the United States would ultimately need to engage in negotiations over the French proposal was shared by senior State Department official William R. Castle, Jr., who wrote in his diary on 6 May 1927 that there was "too much pacifist feeling in this country to

---

<sup>514</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 450.

<sup>515</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 107. Emphasis added. The Bryan Treaty referred to was one of a series of identical arbitration treaties concluded by the United States under Secretary of State William Jennings Bryan; the treaty with France was up for renewal at the time of initial negotiations on Briand's new proposal.

permit a refusal.”<sup>516</sup> In addition to its assumption that the French proposal would require a response, even if its substance clearly ran counter to American interests, Marriner’s memo is noteworthy in that it represents the first appearance of the eventual American move to counter the French proposal. Both the Secretary of State and his political mentor, the isolationist Idaho Republican Senator William Borah, would later claim the idea as their own, but Marriner’s memo appears to predate either man’s articulation of such a concept. In fact, Kellogg and Coolidge would exchange letters in late June indicating their mutual acceptance of Marriner’s analysis.<sup>517</sup>

The French proposal had been the subject of informal diplomatic discussions among the great powers throughout the spring of 1927. By 30 June, the United States made more formal assurances to the Japanese Ambassador, Tsuneo Matsudaira, that it would not conclude a bilateral accord with France. On 6 July, Kellogg went further, assuring British Ambassador Sir Esme Howard that the US would conclude no agreement with France that it would not be willing to sign with any other state.<sup>518</sup> These assurances reflect the conclusion in Marriner’s memo and foreshadow the eventual American reply.

State Department officials spent much of the remainder of the summer of 1927 focused on disarmament talks in Geneva that adjourned in failure on 4 August. Geneva, however, would remain the site of important diplomatic discussions related to Briand’s proposed pact. At the Eighth League of Nations Assembly in September, smaller states sought to insert themselves in the dialogue regarding war renunciation. The Dutch Foreign Minister noted international

---

<sup>516</sup> Quoted in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 451.

<sup>517</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 107.

<sup>518</sup> *Ibid.*, 107-08.

sentiment favouring the outlawry of war and, on this basis, proposed a resolution on 6 September calling on the League Assembly to reconsider the “general principles” embodied in the stillborn Geneva Protocol of 1924. Three days later, the Polish delegate proposed a different resolution designating war of aggression “an international crime.” The Polish resolution contained three substantive clauses: “(1) That all wars of aggression are, and shall always be, prohibited; (2) That every pacific means must be employed to settle disputes, of every description, which may arise between States; (3) The Assembly declares that the States Members of the League are under an obligation to conform to these principles.”<sup>519</sup>

In substance, the resolutions – especially the Polish one – were similar to the text under consideration between France and the United States. The crucial difference was the involvement of the League and the resulting provision for sanctions. Austen Chamberlain objected on the grounds that he could not commit Britain to guaranteeing every border in the same fashion as it had agreed to do at Locarno; however, he would not raise similar objections in the multilateral negotiations that followed between the great powers. Ultimately, both the Dutch and Polish resolutions were referred to the Assembly’s Third Committee, which dealt with the body’s agenda. Ferrell reports that an attempt to combine the two was stymied by Chamberlain because it relied on the former Labour government’s Geneva Protocol.<sup>520</sup> This exchange highlights the importance placed by actors on the institutional context in which social changes were located. While Chamberlain was willing to negotiate a ban on war on an *ad hoc* basis, he ruled out a similar proposal advanced by smaller powers via the machinery of the League. This difference displays the tension between conflicting secondary rules providing for sovereign equality and for

---

<sup>519</sup> Quoted in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 121.

<sup>520</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 122-23.

great power responsibility in managing the international system, and the critical role for power in institutional politics. However, it is noteworthy that Britain opposed the Dutch and Polish resolutions in the first instance by referring them to committee for further discussion – effectively removing them from the spotlight before decisively opposing them.

The United States was not involved in the League Assembly deliberations; instead, American officials concentrated on the domestic politics related to the war renunciation treaty – primarily the problem of reconciling strong public support for the plan with the perceived likelihood of strong opposition in the Senate. The Senate had consistently blocked efforts by various administrations to conclude international arbitration treaties, on the grounds that referring an individual dispute to arbitration required the ‘advice and consent’ of the Senate under the American constitution.<sup>521</sup> It was expected that the Senate would object to the war renunciation treaty on the similar argument that it infringed the Congressional prerogative to declare war. On 25 November, President Coolidge referred to the problem at a press conference, where he said: “I have given some thought to the outlawry of war. Any treaties made on that subject are somewhat difficult under our Constitution.” It is unclear whether this declaration was intended as a justification to legitimize rejection of the French proposal in the eyes of public opinion or a genuine attempt to ascertain the Senate’s likely reaction to the treaty. In any event, Senator Borah, the Chairman of the Senate Foreign Relations Committee, declared the following day that, in his view, such a treaty would not trespass Congressional authority but rather make the exercise of that authority (in the form of a declaration of war) unnecessary. Given the close relationship between Borah and Kellogg, it is difficult to rule out a coordinated political strategy either to facilitate or impede a treaty. The president remained sufficiently concerned about the

---

<sup>521</sup> The history of American arbitration treaties is covered comprehensively in Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1898-1922*.



constitutionality of a potential treaty that he addressed the matter in his ‘State of the Union’ address on 6 December. He sought to minimize the importance of treaties for preventing war, arguing that “the heart of the Nation is more important”, while allowing that the United States should “promote peace... by such international covenants against war as we are permitted under our Constitution to make.”<sup>522</sup>

The constitutionality of the treaty was not a major obstacle either to the negotiations or the eventual ratification of the treaty by the Senate, rendering this set of exchanges something of a mystery. There seem to be at least two broad possibilities, both of which are consistent with my argument that social change is the result of practices of institutional politics. The first is that Coolidge sought a legitimate ‘out’, both for domestic and international audiences, in the event that negotiations created an outcome he deemed unacceptable. On this view, the reiteration of his concern in the State of the Union address indicated a repudiation of Borah’s opinion that the treaty was constitutional, and the lack of further constitutional complication merely indicates that the administration was satisfied with the resulting treaty. Coolidge utilized secondary rules with an eye to preserving his freedom to reject an eventual treaty.

The second possibility is that Coolidge sought to ascertain the Senate’s reaction, and that both his initial acknowledgment of potential constitutional issues and Borah’s optimistic interpretation were ‘trial balloons’. On this account, the State of the Union reference simply indicates the possibility that Borah’s interpretation would not be accepted, particularly if the treaty contained strong sanctions provisions that could definitively commit the United States to collective security actions in support of the treaty – thus effectively warning European governments against inclusion of the kinds of measures contemplated by the resolutions

---

<sup>522</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 117-18, 31.

introduced at the League Assembly. That Kellogg did not raise the constitutional issue in negotiations would then suggest either that the message was received or that the European great powers did not press for strong sanctions for other reasons, or both. The greater puzzle in this scenario is why the Senate accepted Borah's interpretation. Given that treaties are incorporated into American domestic law, the approval of a complete anti-war treaty would have created a situation whereby the Congress would violate international and American law in exercising one of its explicit Constitutional prerogatives. It thus seems likely either that the Senate was generally convinced the text contained loopholes sufficient to avoid this untenable situation, that they regarded the Borah interpretation as effective political 'cover' allowing them to support a popular but constitutionally dubious treaty, or both. The crucial point is that, under any of the scenarios discussed above, actors regarded rules about legitimate rule-making procedures as both real and effective. Secondary rules about the role of Congress in foreign policy shaped the administration's actions in the fall of 1927, creating and foreclosing options and demanding that the president engage in particular discursive acts in pursuit of his policy goals.

Four days after Coolidge delivered his State of the Union address, Castle met with Claudel. Claudel's task in this meeting was to derail the negotiations toward an antiwar pact. His initial proposal was that the two countries turn their attention either to renewing or replacing their bilateral arbitration treaty. This prompted Castle to ask "whether he was referring to the draft of a treaty outlawing war submitted through Mr. Herrick by M. Briand... The Ambassador went on to say, however, that he thought the world was obviously not yet sufficiently advanced to make a treaty of this nature acceptable." Castle replied by expressing the view that the proposed treaty "might be of some use in its appeal to sentiment" but that "it could easily be of very real harm if it were a treaty concluded between the two countries only". Further, he told

Claudé that he “could not see any particular harm in a treaty of this nature if it could be concluded between a great number of countries” even if “in the present stage of world sentiment, these treaties would hardly be more than words.” Castle’s diary entries and memoranda indeed point him as somewhat of a sceptic, who saw the primary virtue of the negotiations as an opportunity to paint the French into a diplomatic corner. After Castle had directly raised the notion of a multilateral treaty with a French representative for the first time, Claudé sought to counter by raising the possibility that constitutional complications would prevent the United States from ratifying a strong treaty. Castle recalled Claudé arguing as follows: “after all, if we could have a really strong preamble we should have done what we can with words and satisfied public sentiment and that it would then do no harm to have what some people would call a ‘weak treaty’.”<sup>523</sup> Castle then solicited Claudé’s suggestion for an arbitration treaty preamble renouncing war; Claudé complied, and “pointed out that the actual treaty might well be substantially the present arbitration treaty.” Thus, by 10 December, France was certainly aware of the possibility that the Coolidge administration would call for a multilateral version of Briand’s treaty, and responded by seeking a diplomatic retreat. Claudé pursued this retreat by attempting to merge the war renunciation treaty with the renewal of the Franco-American arbitration treaty. Including the reference to war renunciation in the preamble of a bilateral treaty would both avoid a multilateral document and rob the language of its legal force. Further, he sought to entice the American government by offering the French retreat as a solution both to potential constitutional issues and to the very public pressure that Briand had created in the first place.

---

<sup>523</sup> Quoted in *ibid.*, 132-33.

In fact, the bilateral arbitration treaty was renewed on 6 February 1928; however, Kellogg and his associates would not let Briand off the hook so easily.<sup>524</sup> At a closed hearing of the Senate Foreign Relations Committee on 22 December 1927, Borah joined the emerging consensus that the best response was to expand the original French proposal: “I think, Mr. Secretary, you may consider it the sense of the committee that you go ahead with the negotiation of a pact to include all countries.”<sup>525</sup> Kellogg handed the French Ambassador the first official reply to the French proposal on 28 December 1927, and it proposed just such a multilateral pact. Claudel’s reply was “that he doubted if Briand would consider a multilateral treaty unless Kellogg could explain clearly why the United States could not conclude a bilateral treaty.” In response, Kellogg observed that such a treaty between the US and Germany would be sure to cause tension with France, and that American public opinion would conclude that any bilateral treaty “looked too much like an alliance and too short a step toward universal peace.”<sup>526</sup> The crucial point is that Claudel’s response, to demand a justification for the American position, is entirely consistent with my claim that actors pursue change by engaging in a rule-governed social practice. The same can be said of the justification Kellogg provided, which privileged the reaction not only of another great power but also that of American public opinion. Castle, in particular, was acutely aware of the awkward position that the United States had manoeuvred France into; he wrote exultantly that Briand “has now got a bad case of cold feet. They will be positively frozen when we drive him into the open and make him do something, or refuse to do something.”<sup>527</sup>

---

<sup>524</sup> Ibid., 135.

<sup>525</sup> Quoted in *ibid.*, 139.

<sup>526</sup> Ibid., 145.

<sup>527</sup> Quoted in *ibid.*, 147.

The note delivered to Claudel deliberately conformed as closely as possible to the language employed in the original French draft. It cast the notion of a multilateral treaty as “a more signal contribution to world peace” than a bilateral version and suggested “a treaty among the principal Powers of the world, open to signature by all nations, condemning war and renouncing it as an instrument of national policy in favour of the pacific settlement of international disputes.”<sup>528</sup> Over the winter of 1928, several diplomatic notes were exchanged between France and the United States that comprise the heart of the negotiation over what would become the Kellogg-Briand Treaty. It would quickly become evident that debate would revolve around five inter-related issues: the specific signing procedure to be adopted for a multilateral pact, the precise language adopted in order to ban war, the compatibility of the proposed treaty with existing diplomatic arrangements (especially Locarno and the League of Nations), the status of the right to self-defence, and the consequences of a breach of the treaty.

Three days after Claudel received the American diplomatic note, Briand met Whitehouse in Paris. With the failure of his attempt to replace the war renunciation treaty with the preamble of the arbitration treaty, Briand now pursued a different tactic. He informed Whitehouse that France opposed a multilateral treaty and suggested instead that the countries create a diplomatic protocol to the same effect.<sup>529</sup> This attempt to downgrade the legal status of any multilateral product is consistent with the attempt to restrict war renunciation language to a treaty preamble, and makes sense only if Briand believed that the specific legal form of a treaty mattered – and that other states would act accordingly. The suggestion was not accepted by the United States, and Briand set about crafting his official reply, dated 5 January 1928. In his note, Briand

---

<sup>528</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 75.

<sup>529</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 147.

acknowledged the potential for the American proposal to inspire other states to adhere to the treaty, and attempted to create the impression of complete concurrence. He wrote that:

I am authorized to inform you that the Government of the Republic is disposed to join with the Government of the United States in proposing for agreement by all nations a treaty to be signed at the present time by France and the United States and under the terms of which the high contracting parties shall renounce all war of aggression, and shall declare that for the settlement of differences of whatever nature which may arise between them they will employ all pacific means.<sup>530</sup>

There were two material differences between Briand's note and Kellogg's, neither of which was accidental. The first, that France and the United States should negotiate and sign the treaty before inviting other states to adhere, was designed to achieve the substance of a bilateral accord. The second dealt with the language creating the ban on war. Kellogg's proposal had self-consciously adopted Briand's language regarding the renunciation of war 'as an instrument of national policy'; in contrast, Briand had seemingly narrowed the scope of the treaty to preclude only 'war of aggression'. The latter change, to French language from Briand's original proposal, was made "without comment or explanation"; David Hunter Miller, an American treaty expert, concluded that the French note "was not well framed and seems to have been written without much thought of American official or American popular sentiment."<sup>531</sup>

Regardless, Briand's changes were immediately noticed by the State Department. Castle wrote in his diary on 7 January: "We shall not sign anything with France unless we know very well that the other nations will sign it also and we shall not be willing to include the phrase 'aggressive war' because that immediately links the thing up with the League of Nations and makes a definition of aggression necessary." In the meeting at which he delivered the note, Claudel proposed yet another alternative that would prevent the creation of a multilateral treaty:

---

<sup>530</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 77.

<sup>531</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 20.

a ‘declaration of principles’ governing the Franco-American relationship.<sup>532</sup> France clearly continued to cast about for alternatives sanctioned by relevant secondary rules, going to great lengths not to directly refuse the American proposal.

The American reply of 11 January directly raised the two changes Briand had sought to insert. With regard to the plan to sign a bilateral treaty that would be open for adherence, Kellogg argued that “this procedure would be open to the objection that a treaty, even though acceptable to France and the United States, might for some reason be unacceptable to one of the other great Powers.” In contrast, if the negotiations were made multilateral, “the views of the Governments concerned could be accommodated through informal preliminary discussions and a text devised which would be acceptable to them all.”<sup>533</sup> The rejection of Briand’s proposal was articulated in terms of prudential considerations, but this concern was rooted in the secondary rules that provided states with the right to be bound only by the rules they had agreed to. Kellogg’s reply also envisioned special consideration for the great powers in negotiating the treaty text.

On the matter of the language to be employed in banning war, Kellogg capitalized on the lack of explanation in order to deflect what Castle’s diary indicated was seen as an attempt to ensnare the US in the legal machinery of the League, which could potentially lead to unwanted positive security obligations in Europe. Kellogg wrote that he hoped the change in language did not indicate that France would decline to join him in proposing:

that the original formula submitted by M. Briand, which envisaged the unqualified renunciation of all war as an instrument of national policy, be made the subject of preliminary discussions with the other great Powers for the purpose of reaching a tentative agreement as to the language to be used in the proposed treaty.<sup>534</sup>

<sup>532</sup> Quoted in Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 150-51.

<sup>533</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 78-79.

<sup>534</sup> Quoted in *ibid.*, 80.

Kellogg closed his note by suggesting the official diplomatic correspondence to date be copied to the United Kingdom, Germany, Italy and Japan.

The French reply, dated 21 January 1928, responded directly to Kellogg's criticisms. It asserted that the French suggestions were not substantive differences, but rather procedural conveniences. The plan for a bilateral treaty open to accession reflected "a desire more speedily and more surely to achieve the result which [France] seeks in common with the United States." Briand then conceded that France was "ready to concur in any method which may appear to be most practicable." The French note similarly offered a *post hoc* justification along with an effective concession on the matter of the draft language for the treaty. It claimed that the phrase 'war of aggression' was "inspired by the formula which has already gained the unanimous adherence of all the States Members of the League of Nations, and for that reason might be adopted by them with regard to the United States, just as it has already been accepted among themselves." Thus, the language was merely intended to allow the treaty to include League members. Nevertheless, the note made clear that France would "very gladly welcome any suggestions offered by the American Government which would make it possible to reconcile an absolute condemnation of war with the engagements and obligations assumed by the several nations and the legitimate concern for their respective security." While conceding a return to what Kellogg had called Briand's "original formula", France thus continued to insist on alterations designed to ensure the continued legitimacy of self-defence and the protection of the vital security guarantees embodied in Locarno and the League of Nations.<sup>535</sup>

In his next note of 27 February, Kellogg attacked the French claim that qualification of the ban on war was necessary in order to allow France to sign a multilateral treaty without

---

<sup>535</sup> The above passages are reproduced on *ibid.*, 82-84.



endangering its commitments under Locarno and to the League. He sought to make his point first on an abstract level, objecting that “it is hardly to be presumed that members of the League of Nations are in a position to do separately something they cannot do together.” In a more practical vein, Kellogg pointed out “the recent adoption of a resolution by the Sixth International Conference of American States expressing... unqualified condemnation of war as an instrument of national policy in their mutual relations.” He emphasized that “of the twenty-one States represented at the Conference, seventeen are members of the League of Nations.” His strategy was to point out that other League members interpreted their obligations such that they were consistent with exactly the type of war renunciation language Briand had initially proposed, in order to force France to abandon its objection or at least to provide further justification. He also sought, at a more general level, to create a compatibility of purpose between the League and the type of treaty he envisioned. He argued that a universal treaty “would be a most effective instrument for promoting the great ideal of peace which the League itself has so closely at heart.”<sup>536</sup>

Kellogg expanded his position with respect to the impact of his treaty proposals on the obligations of League members at a 15 March speech to the Council on Foreign Relations. The crucial issues at stake were the collective security provisions contained in Article 10 and Article 16 of the Covenant. Neither, he noted, contained a positive obligation for League members to go to war. To the contrary, the League’s membership had consistently interpreted Article 10 to vest the decision whether or not a state would participate in collective action with its constitutional

---

<sup>536</sup> Quoted in *ibid.*, 86-87.

authorities. This interpretation had been established, at least informally, by a Canadian resolution to the Fourth Assembly that had been blocked by only a single dissenting vote.<sup>537</sup>

By early March, there is evidence that Kellogg's pursuit of a strong treaty – initially a tactical position taken to embarrass Briand into abandoning his unwelcome attempt to create a *de facto* alliance – had become more sincere. On 6 March, Castle's diary records his surprise at a change in Kellogg's attitude: "The funny thing is that [Assistant Secretary of State] Olds and the Secretary seem to take it all with profound seriousness".<sup>538</sup> Kellogg would himself write, in a 21 July letter to journalist Walter Lippmann, that he saw the pact as a "valuable, practical and psychological enforcement of existing efforts to maintain world peace."<sup>539</sup> The sources of this personal change of heart are not vital to my argument; however, it does not seem unreasonable to conclude that it was at least related to the experience of negotiating the agreement over the course of a full year. In any event, Kellogg's sincere pursuit of a treaty took the same form as when it was a tactical ruse. This consistency is indicative of a settled social practice – regardless of his motives, Kellogg knew how to effectively pursue a multilateral treaty by legal and diplomatic argument, believed this was a legitimate response to the French proposal and that other relevant actors would agree.

The next French diplomatic note, dated 26 March, was delivered by Claudel on 30 March. It again pressed the claim that a multilateral treaty could not employ the same language as a bilateral treaty between France and the US:

In order to pay due regard to the international obligations of the signatories, it was not possible, as soon as it became a question of a multi-lateral treaty, to impart thereto the unconditional character desired by Your Excellency without facing the necessity of obtaining the unanimous adherence of

---

<sup>537</sup> Quoted in *ibid.*, 92-93.

<sup>538</sup> Quoted in Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 165.

<sup>539</sup> Quoted in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 418.

all the existing States, or at least of all the interested States, that is to say, those which by reason of their situation are exposed to the possibility of a conflict with any one of the contracting States.<sup>540</sup>

In addition to protecting the sanctity of the League Covenant and Locarno, the French reply was concerned with the case of a state being attacked by a non-party. Accordingly, it contained two proposals: first, the treaty should “only come into force after having received universal acceptance, unless the Powers having signed this treaty or acceded thereto should agree upon its coming into force, despite certain abstentions.” Second, that “if one of the signatory States should fail to keep its word, the other signatories should be released from their engagement with respect of the offending State.” On this point, as well as the compatibility of the treaty with Locarno and the Covenant, Briand now felt comfortable declaring that “the French Government now believes itself fully in accord with the Government of the United States.” In addition, the note stated that France “likewise gathers from the declarations which Your Excellency was good enough to make to me on March 1<sup>st</sup> last, the assurance that the renunciation of war, thus proclaimed, would not deprive the signatories of the right of legitimate defence.”<sup>541</sup>

Despite these signs of convergence in the French and American interpretations of the text’s meaning, the French note made a point of disputing Kellogg’s reference to the resolutions passed at the Havana conference of American states. It noted that the unconditional condemnation of war Kellogg had touted was contained in the preamble of a resolution that “in itself constituted only a kind of preliminary tending toward a treaty of arbitration to which numerous reservations were formulated.” Further, it pointed out that the same conference had adopted a *second* resolution “limited to the very terms ‘war of aggression’ which the French Government felt compelled to use in characterizing the renunciation to which it was requested to

---

<sup>540</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 96.

<sup>541</sup> The above passages are reproduced on *ibid.*, 98.

bind itself by means of a multi-lateral treaty.”<sup>542</sup> France and the United States had begun the process of reconciling their interpretations, but important points of contention still remained.

Kellogg had preferred a joint text be communicated to the other great powers; however, in light of the difficulty encountered in reaching final agreement, the United States circulated a draft to France, the United Kingdom, Germany, Italy and Japan on 13 April – with the understanding that France would provide an alternate text shortly thereafter. Rather than settling disputes about the treaty text bilaterally and transmitting a joint proposal for social change, the negotiations would expand with the task of adjudicating between the French and American drafts unfinished. The American draft treaty of 13 April, like the proposal made to France on 28 December 1927, adopted the language of Briand’s original proposal; the only changes were those required to create a multilateral rather than a bilateral instrument. The covering note explained that France would communicate its position separately, but that the United States “has not conceded that such considerations necessitate any modifications of its proposal for a multi-lateral treaty” and pointed out the fidelity of its draft to the original French proposal.<sup>543</sup> In contrast to the spare three article American draft, the French text contained six articles. The first specified the preservation of legitimate self-defence, as well as collective security actions pursuant to the League Covenant and the Locarno agreements. The second article required signatories to employ peaceful means to settle disputes. The third article provided that parties would be released from their obligations under the treaty toward any state violating the ban on war. The fourth article stipulated that the treaty did not circumscribe the obligations created by prior international treaties. The fifth provided that the treaty would enter into force only with

---

<sup>542</sup> Quoted in *ibid.*, 96.

<sup>543</sup> The covering note is reproduced on *ibid.*, 101-02.

universal accession, unless the parties agreed otherwise. The final article dealt with the details for ratification.<sup>544</sup>

The first reply to the American draft came in the form of an eager acceptance from the German government, delivered on 27 April 1928.<sup>545</sup> This reaction was consistent with Schubert's avowed goal, which was to "devalue as far as possible the superior position of military power of states like France through legal commitments."<sup>546</sup> Before any other replies were made, however, Kellogg was to deliver a crucial speech before the American Society of International Law on 28 April. The address essentially made public an internal analysis of the French draft Kellogg had prepared for American ambassadors on 23 April in order to ensure a consistent American voice.<sup>547</sup> Kellogg began by summarizing the six articles of the French draft before expressing his position that the French concerns had been met in the language of the American draft.

He asserted that the right of self-defence "is inherent in every sovereign State and is implicit in every treaty." He continued by taking the position that "no treaty provision can add to the natural right of self-defence" and that, therefore, "it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defence, since it is far too easy for the unscrupulous to mould events to accord with an agreed definition."<sup>548</sup> Here, Kellogg departed from the expectations of his European counterparts, who were consistently more eager to specify the rules of adjudication that would allow the parties to clearly interpret the proposed treaty and

---

<sup>544</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 171-72.

<sup>545</sup> The German reply is reproduced on Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 110-13.

<sup>546</sup> Quoted in Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 463.

<sup>547</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 175-76.

<sup>548</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 107.

successfully apply its provisions to particular cases. While there was no substantive disagreement about the status of self-defence under the treaty, France and the United Kingdom would subsequently push Kellogg to agree to the inclusion of language designed to prevent future difficulties in arriving at shared conclusions about how the treaty would operate in practice. This type of dispute is emblematic of institutional politics in that it deals directly with specifying the precise nature of the social changes being created.

The second subject Kellogg dealt with was the compatibility of the American draft with the obligations entailed by the League Covenant and by Locarno. He reiterated the position he had staked out in his 15 March address to the Council on Foreign Relations; that the League's own members had consistently upheld the right of states to decide for themselves whether or not to go to war in particular cases of collective action and that, similarly, any positive obligation to go to war under the provisions of Locarno "certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder." These facts enabled Kellogg to advance a creative argument. If the members of the League and the parties to Locarno all adhered to the anti-war treaty, any situation requiring collective action would also entail a breach of the obligation not to employ war as an instrument of national policy. Accordingly, "the other parties to the anti-war treaty would thus, as a matter of law, be automatically released from their obligations thereunder and free to fulfil" their collective security commitments. It was Kellogg's attitude that "any express recognition of this principle of law is wholly unnecessary." Again, Kellogg made clear that the difference between the American and French drafts was not a difference in substance, but rather a procedural difference about the extent to which the text should explicitly specify the appropriate interpretation of the pact's meaning.<sup>549</sup>

---

<sup>549</sup> The above passages are reproduced on *ibid.*, 108-09.

There was, however, one important substantive difference between the American and French drafts. The French text provided for the treaty to enter into force only when it had been universally ratified; in contrast, the American proposal was for entry into force upon the treaty's ratification by the six great powers – the US, France, the UK, Germany, Italy and Japan. Kellogg relied on a practical argument to defeat the French position; namely, that the French formula would allow a 'spoiler' to entirely defeat the treaty either by acceding to it and then refusing to officially ratify the accord or by simply refusing to sign. Further, he argued that "the coming into force among the above-named six Powers of an effective anti-war treaty and their observance thereof would be a practical guarantee against a second world war."<sup>550</sup> Even if universal adherence could not be secured, a partial treaty among the great powers would still have considerable value.

From April 1928, negotiations broadened to include the other great powers, and eventually the British Dominions and India, as well as the remaining Locarno powers. Among this group of original signatories to the pact, Britain stands out in terms of its active role in negotiations. The British Foreign Office had been apprised of the substance of the American proposal as early as 27 February, but was not publicly involved in the negotiations until after the circulation of Kellogg's April draft.<sup>551</sup> In the meantime, legal expert Cecil Hurst had been tasked with examining the proposal. His initial analysis was optimistic about the compatibility of the anti-war treaty with British interests; however, by the end of March he had revised his position. Hurst had come to believe that the American draft could "bar Britain from defending key imperial interests, notably in Egypt." In addition, he was less sanguine about its impact on

---

<sup>550</sup> Quoted in *ibid.*, 110.

<sup>551</sup> Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 456.

British obligations both under Locarno and pursuant to the League Covenant. Accordingly, he “advised Chamberlain to insist, first, on including all Locarno powers into it and, second, on incorporating a provision that released the other signatories from their obligations should one of them break the pact.”<sup>552</sup>

The legal character of the British response to the pact was consistent. Hurst’s recommendations would form the core of the official British reply of 19 May, and Chamberlain also backed Briand’s desire for an international conference of jurists that would further the negotiations by attempting to reconcile the two drafts. Kellogg opposed this latter proposal, insisting that he sought to address the issue from “a broad point of view, not a narrow legalistic one.”<sup>553</sup> This reply is curious, given the clearly legalistic basis of Kellogg’s diplomatic and public arguments blocking French proposals – and his consistent preference for a formal legal treaty. It seems likely that Kellogg reacted as he did out of a desire to avoid direct negotiation that gave equal consideration to the French and American drafts, and evaluated them on the basis of strictly legal criteria. In any event, while the European powers abandoned their attempt to hold a formal legal conference including the United States, the legal experts of the French, British and German governments would meet informally in July 1928, before any of the three governments had officially accepted the treaty’s final text. While Kellogg was able to prevent a formal conference, the practice of international legal consultation had become an important component of institutional politics among the European powers.

As noted above, Hurst’s legal analysis drove the official British reply. Pressed by David Lloyd George and by Ramsay MacDonald in the House of Commons to accept the American draft, Chamberlain noted the twin difficulties of consulting the Dominions and of ensuring the

---

<sup>552</sup> Ibid., 459, 67.

<sup>553</sup> Quoted in *ibid.*, 468.



protection of Britain's existing commitments under Locarno and the League Covenant.<sup>554</sup> The eventual reply relied explicitly on Kellogg's speech to the American Society of International Law (ASIL) in interpreting his official note. On the basis of the two documents together, Chamberlain adopted the position that there was "no serious divergence between the effect" of the French and American drafts. He then proceeded to stake out a middle ground, siding with the American text on some issues and the French on others. He concurred with Kellogg that the war-renunciation language in the US draft would "exclude action which a State may be forced to take in self-defence." This expansive reading of an unenumerated provision for self-defence most likely stemmed from Hurst's concerns about the impact of the draft on imperial defence, an issue Chamberlain would return to later in his note.

Article 2 of the American and French drafts, Chamberlain concluded, contained "no appreciable difference" in their requirement that parties employ peaceful means of dispute resolution. Indeed, the universal acceptance of such language is a striking indication of the robust support for rule-based legal and quasi-legal mechanisms for dispute resolution. This bears emphasis. While the ban on resort to war was treated by the parties as deeply controversial, the accompanying obligation to employ only peaceful means of dispute resolution was far less so. Given the strong logical relationship between the negative obligation not to go to war and the positive obligation to employ alternate legalistic dispute resolution mechanisms, this is surprising. The negative obligation was more specific, and thus may have been perceived as more constraining, but in fact the positive obligation to use nothing other than peaceful means of dispute resolution amounted to the same thing. The lack of controversy surrounding the positive

---

<sup>554</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 178-79.

obligation thus likely owes more to the deep legitimacy of such peaceful practices and their consistency with relevant secondary rules.

Chamberlain gave clear support to the language proposed by the third and fourth articles of the French draft, which respectively provided certainty that parties would be released from their obligations toward treaty violators and that the treaty would have no impact on pre-existing treaties such as Locarno or the Covenant. Regarding the third French article, he stated that “His Majesty’s Government are not satisfied that, if the treaty stood alone, the addition of some such provision would not be necessary. He then expressed his optimism that “means can no doubt be found without difficulty of placing this understanding on the record in some appropriate manner so that it may have equal value with the terms of the treaty itself.” Chamberlain tied, as Kellogg had, the matter of a breach of the treaty to the obligations contained in Locarno and the Covenant. He noted that both agreements “go somewhat further” than the draft treaty banning war, “in that they provide certain sanctions” to prevent violations. He expressed concern that “a clash might thus conceivably arise between the existing treaties and the proposed pact unless it is understood that the obligations of the new engagement will cease to operate in respect of a party that breaks its pledge and adopts hostile measures against one of its co-contractants.” The inclusion of the French draft’s third article was, however, insufficient protection for the other European security arrangements. The note made clear that the Baldwin government “would for their part prefer to see some such provision as Article 4 of the French draft embodied in the text of the treaty.” Chamberlain pressed this point by insisting, perhaps disingenuously, that “to this we understand there will be no problem”, on the basis that Kellogg’s speech to the ASIL had – on Britain’s view – made clear the US “had no intention by the terms of the new treaty of preventing the parties to the Covenant of the League or to the Locarno Treaty from fulfilling

their obligations.” This assertion placed Kellogg in the difficult position of dropping his objection to the French article or having his position that the proposed treaty was compatible with Locarno and the Covenant called into question.

The British note proceeded by briefly concurring that “it is not necessary to wait until all the nations of the world have signified their willingness to become parties” in order to allow the treaty to enter into force, thus accepting the American formula over the French. The final and most novel aspect of Chamberlain’s note pertained to the matter of imperial defence. In order to preserve Britain’s strategic freedom of action, Chamberlain insisted that “there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety.” He alluded to similar US interests, a transparent reference to the Monroe Doctrine, and also sought to buttress his argument by subsuming the matter under Kellogg’s expansive treatment of self-defence. Indeed, Chamberlain went so far as to condition Britain’s acceptance of the treaty “upon the distinct understanding that it does not prejudice their freedom of action in this respect.” Chamberlain’s final demand with respect to imperial defence was that India and the Dominions – Canada, the Irish Free State, Australia, New Zealand and the Union of South Africa – be accepted as original signatories to the pact, thus extending its umbrella of protection.<sup>555</sup>

The other great power signatories sent much less extensive replies. Italy’s reply, dated 5 May, expressed support for the pact proposal and articulated the view that the proposed conference of jurists “can only be effective if the participation of a legal expert of the Government of the United States is assured.”<sup>556</sup> The Japanese reply, dated 26 May, displays

---

<sup>555</sup> The British note is reproduced on Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 115-19.

<sup>556</sup> Quoted in *ibid.*, 114.

significantly more attention to legal detail. The note declared that the American draft “is understood to contain nothing that would refuse to independent States the right of self-defence, and nothing which is incompatible with the obligations of agreements guaranteeing the public peace, such as are embodied in the Covenant of the League of Nations and the Treaties of Locarno.”<sup>557</sup> Japan was a relative newcomer to the international system, and remained one of a small number of sovereign states that did not share in the Western liberal tradition of philosophy and law. As such, its adherence to secondary rules based on this system is striking, and indicative of the extent to which these practices were considered ‘settled’; deeply contested practices are presumably less likely to be adopted by new group members.

By mid-May, Kellogg had officially agreed to incorporate the Locarno parties as signatories to the anti-war treaties, as had been contemplated in his speech on 28 April; shortly thereafter, he accepted the British request to include India and the Dominions.<sup>558</sup> At Kellogg’s request, A.B. Houghton, the American Ambassador in London, addressed a letter to Chamberlain providing invitations to join the negotiations to Australia, New Zealand, South Africa and India. Invitations to Canada and the Irish Free State were presented directly through American representatives in Ottawa and Dublin. The six replies arrived in relatively short order, and were generally consistent both with each other and with the British note of 19 May.<sup>559</sup> This consistency is perhaps the most interesting thing about them. None of the Dominions objected to the idea, and none raised new hurdles which had not already been discussed.

---

<sup>557</sup> Quoted in *ibid.*, 120.

<sup>558</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 182.

<sup>559</sup> The American invitation and the individual replies are reproduced on Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 122-34.

Most important, all were essentially ‘fluent’ in the language of institutional politics. The Irish note referred directly to Kellogg’s landmark April address, and concurred in its analysis; the responses of Australia, New Zealand and India were all brief and positive. The two most substantial replies were written by the South African and Canadian governments. The South African note addressed the issues of self-defence, as well as the idea that signatories would be released from their obligations toward violators. It concluded by insisting that “it is not intended that the Union of South Africa, by becoming a party to the proposed treaty, would be precluded from fulfilling, as a member of the League of Nations, its obligations towards the other members thereof under the provisions of the Covenant of the League.” Finally, the Canadian reply indicated that W.L. MacKenzie King’s government was “convinced that there is no conflict either in the letter or in the spirit between the Covenant and the multilateral pact, or between the obligations assumed under each” and that “the proposed multi-lateral treaty does not impose any obligation upon a signatory in relation to a State which has not signed the treaty or has broken it.” The common thread is the familiarity evident in the notes with the standards for argument over the contents of treaties. The replies exceeded simple utilitarian acceptances of the American invitation; they placed understandings and beliefs on the diplomatic record because such a procedure was understood to be important in safeguarding sovereign rights and prerogatives.

Perhaps seeking to capitalize on British support for the third and fourth articles of the French draft, Briand used the occasion of a visit by Chamberlain to Paris on 2 June to remark to the press that “the powers consulted since and Mr. Kellogg himself... have come to our point of view.”<sup>560</sup> Four days later, in a meeting with American Ambassador Myron Herrick, Briand

---

<sup>560</sup> Quoted in Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 186.

remarked that the shared understanding evident after Kellogg's 28 April speech could be placed either in an altered preamble or an accompanying protocol interpreting the treaty. The French Ambassador in London, Aimé de Fleuriau, asked Chamberlain for the assistance of the British Ambassador to Washington in pursuing this plan. The French strategy remained one of employing procedural rules and diplomatic forms in order to insert their more specific understandings of the text into Kellogg's sparse draft. In fact, the British Embassy in Washington informed Kellogg of the French request on 18 June. Kellogg reacted by seeking to head off the French proposal; he immediately prepared and sent a revised draft of his treaty to the initial set of great powers, the Dominions and India, as well as the remaining parties to the Locarno agreements.

The American draft of June 1928 would become the final text of the Kellogg-Briand Treaty. Its accompanying diplomatic note insisted the United States "remains convinced that no modification of the text of its proposal for a multi-lateral treaty for the renunciation of war is necessary to safeguard the legitimate interests of any nation." While maintaining that self-defence and release in the event of violation were self-evidently correct interpretations of the treaty, and that the adherence of all Locarno parties obviated any possible fear of incompatibility, it announced that the United States was circulating a new draft. The rationale for this decision was laid out as follows: "it appears that, by modifying the draft in form though not in substance, the points raised by other Governments can be satisfactorily met and general agreement upon the text of the treaty to be signed promptly reached." This new draft was identical to that of 13 April, save for amendment of the list of signatories and a revised preamble. This new preamble

gave “express recognition to the principle that, if a State resorts to war in violation of the treaty, the other contracting parties are released from their obligations under the treaty to that State.”<sup>561</sup>

Kellogg had finally consented to an alteration in his text, in order to meet European concerns related precisely to issues of adjudication and interpretation. Though the great powers were in substantive agreement on these matters – reflecting underlying secondary rules that provided, *inter alia*, guidance on interpreting treaties – they had differed on the necessity and desirability of placing them on the official record, and again on the best among multiple legitimate means for doing so. This outcome, in which a compromise was attained, simultaneously highlights the limits of persuasion in institutional politics (especially where actors have partially divergent understandings of secondary rules, as the Republican Coolidge administration did) as well as the possibility of reaching agreement in its absence. Indeed, in a culturally heterogeneous international system, such a principle of tolerance may well be the *sine qua non* of successfully altering intersubjective understandings. The rules of positive international law and diplomacy operative in this case allowed states to place conflicting viewpoints and interpretations on the record, and accorded to those claims and statements the presumption of equal authority even as supplementary rules of great power management facilitated an outcome that could avoid irreconcilable alienation of crucial players. It is important to note that nothing about the existence of such effective secondary rules was inevitable. They are, themselves, social constructions – albeit overlooked and often invisible ones, at least to the modern study of international relations.

Kellogg’s new draft generated a swift wave of positive replies, but only after an informal meeting of French, British and German legal experts at the Berlin home of Friedrich Gaus. This

---

<sup>561</sup> The above passages are reproduced on Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 144-46.

unofficial location and the absence of American representation symbolized the divide between American and European approaches to institutional politics. Ferrell reports that the three European leaders had agreed not to reply to Kellogg's note until after the meeting.

Contemporary press accounts "asserted the three jurists had agreed that Kellogg's note of 23 June covered almost every possible eventuality"; this is confirmed by Miller, who reported that, on this basis, "the final decision was not to seek any further conventional paper" specifying the pact's meaning.<sup>562</sup>

Even more than the replies to the April draft, the responses to the June 1928 draft display a remarkable consistency. All fourteen arrived over a nine day period, from 11-20 July.<sup>563</sup> The one potential complication, British repetition of the imperial defence doctrine advanced in Chamberlain's 19 May note, was studiously ignored both by the United States and the other signatories.<sup>564</sup> Almost universally, the replies noted and concurred with current American interpretations of the crucial issues, in most cases adopting strikingly similar language.

The pact was signed in Paris on 27 August, at a formal signing ceremony in the *Quai d'Orsay*. Briand summarized the effective change in the rules of international politics as follows: "Considered of yore as of divine right and having remained in international ethics as an attribute of sovereignty, that form of war becomes at last juridically devoid of what constituted its most serious danger: legitimacy."<sup>565</sup> Perhaps the most interesting aspect of his speech was the

---

<sup>562</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 188-89; Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 99.

<sup>563</sup> The individual replies are reproduced on Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 150-70.

<sup>564</sup> Cohrs argues, plausibly, that this lack of attention – at least on the part of the United States – became part of a "tacit agreement" between the US and the UK that "each side's prerogatives were unaffected by the pact." Cohrs, *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*, 460.

<sup>565</sup> Quoted in Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 174.



inclusion of language explicitly intended to mollify the states not invited to become initial signatories to the treaty. Briand exhorted them to “realize, in this hour of complete union, our unanimous regret that for purely technical reasons it was found imperative to adopt the procedure best calculated to ensure and expedite, for the benefit of all, the success of the great undertaking.” He then noted that the *Quai d’Orsay* had directed the flags of each of the world’s states to be flown at the signing ceremony, rather than those only of the invited signatories.<sup>566</sup> This language was expanded upon in the American diplomatic note inviting the remaining states to adhere to the treaty; it noted that the inclusion of India and the Dominions was necessary to satisfy Britain, and that the Locarno powers were included as a necessity to gain French adherence. The inclusion of some secondary states but not others was evidently a breach of protocol that required justification. The American note went further, insisting that the signatory list “was based entirely upon practical considerations” intended to reach agreement on a treaty as quickly as possible and also that the United States believed “that if these Powers could agree upon a simple renunciation of war as an instrument of national policy there could be no doubt that most, if not all, of the other Powers of the world would find the formula equally acceptable.”<sup>567</sup>

Among the uninvited states, the only one to cause concern was the Soviet Union. Its very exclusion from the negotiations was an indication of the importance of secondary rules; Soviet hostility to the rules and practices of international politics – including diplomacy and international law – had resulted in its virtual exclusion from international society. In the weeks before the signing ceremony, statesmen feared that a Soviet delegation would attend uninvited, and that even a simple invitation to adhere to the treaty would be greeted in Moscow as an

---

<sup>566</sup> Ibid., 176.

<sup>567</sup> Quoted in *ibid.*, 179.

opportunity to engage in hostile rhetoric.<sup>568</sup> Ultimately, an invitation to adhere was transmitted not by the United States but by France, which had maintained diplomatic relations. Interestingly, it received an affirmative – albeit critical – response. The Soviet note of 31 August began by summarizing the contents of the second-hand American note inviting its adherence.<sup>569</sup> It then sought to establish Soviet *bona fides* on the subject of international security, noting the rejection of Soviet disarmament proposals as well as the omission of disarmament provisions from the Kellogg-Briand Treaty. It went on to point out an earlier Soviet proposal for bilateral war renunciation pacts, and its actual conclusion of such agreements with Germany, Turkey, Afghanistan, Persia and Lithuania. The note declared that “other States silently ignored the proposal, making the strange explanation that unconditional renunciation of aggression was incompatible with their obligations towards the League of Nations.” This, of course, was a thinly veiled accusation of hypocrisy; the arguments used to reject the Soviet proposal had been discarded in considering an allegedly substantively similar proposal from France and the United States.

The note then changed direction, noting that its invitation to adhere “does not mention any conditions which would permit the Soviet Government to secure any modifications in the text.” In response, it declared that: “The Soviet Government postulates as an axiom that under no conditions can it consent to being deprived of that right which the other signatory Governments had or could have had, and on the basis of that axiom it must first make several reservations as to its attitude towards the Pact itself.” This is plainly the assertion of a right grounded in sovereignty and the secondary rules relevant in international law and diplomacy;

---

<sup>568</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 202-03.

<sup>569</sup> The Soviet note is reproduced on Wheeler-Bennett, *Information on the Renunciation of War, 1927-1928*, 182-87.

such an act is only possible if the speaker is aware of those rules and is only rational if he believes the audience will consider them – or at least be expected to consider them by important third parties. The note then specified and justified several key reservations to the treaty. The first dealt with a lack of “precision or clarity in the first clause as regards the very formula for the prohibition of wars, which permits various and arbitrary interpretations.” The Soviet view was that “there must be a ban not only on war in its formal juridical sense (such as normally follows a declaration of war” but also such military actions as a blockade or the occupation of foreign territory, etc.”

Second, the note objected to “the British reservation in paragraph 10 of its Note of May 19<sup>th</sup> of this year, whereby the British Government reserves its freedom of action as regards a series of regions not specifically mentioned.” The Soviet analysis of this claim was that

if this reservation is meant to refer to regions already belonging to the British Empire or its Dominions, it is apparently superfluous, since they are already included in the Pact, and the possibility of their being attacked is provided for in it. If, however, some other regions are meant, the participants of the pact are entitled to know exactly where the freedom of action of the British Government begins and ends.

It further criticized this right on the basis that it “might be an example for other nations to follow who by virtue of equality of status would take advantage of the same right.” Finally, the Soviet note opposed the British doctrine with a procedural argument, asserting that it was not binding on the USSR because “the British Government’s Note referred to has not been communicated to the Soviet Government as being an integral part of the Pact or its annexes”.

This procedural argument was used again to warrant the Soviet Union’s insistence that it “cannot consent to any other reservations which might be calculated to serve as justification for war, particularly reservations made in the correspondence designed to exempt from the application of the Pact obligations ensuing from the Covenant of the League of Nations and the Locarno Agreement.” Despite this refusal to accept a core aspect of the treaty, the Soviet

government agreed to subscribe to it as the best available option for the maintenance of peace since it “objectively imposes certain obligations on the Powers before world opinion”. While one incident is insufficient to support any general conclusion about the ‘socialization’ of the Soviet Communist regime to the rules and practices of international politics, its reaction to the Kellogg-Briand Treaty clearly displays an awareness of the basic rules and procedures of institutional politics and an ability to engage in them at least on a surface level. Given the revolutionary stance of the early Soviet Union, its participation is indicative of the underlying strength of secondary rules.

Reaction to the treaty at the League of Nations was more positive. Lithuanian representatives proposed the amendment of the Covenant in light of the Kellogg-Briand Treaty at the 9<sup>th</sup> Assembly in September 1928; however, “it was thought that any such action pending the coming into force of the Treaty would be premature.”<sup>570</sup> Despite the initial failure of this attempt, it was renewed the next year at the 10<sup>th</sup> Assembly, which adopted a resolution that asserted “it is desirable that the terms of the Covenant of the League of Nations should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris.” The Secretary-General was asked to disseminate British draft amendments to League members, and the Council was asked to create a committee to report on reconciling the Covenant with the Kellogg-Briand Treaty. After prolonged debate, the matter was transferred to the Disarmament Conference where it ultimately failed to come to fruition.<sup>571</sup>

Despite the wider failure of League diplomacy and of disarmament discussions, the Kellogg-Briand agreement was taken seriously by actors, and treated as an important advance;

---

<sup>570</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 5-6.

<sup>571</sup> Rappard, *The Quest for Peace since the World War*, 173.

this is reflected as well by its near universal ratification. The US Senate approved the treaty on 15 January 1929, and President Coolidge signed the instrument on ratification on 17 January. After the American ratification, Poland, Belgium and France quickly followed suit. The treaty would enter into force on 24 July 1929, when Japan provided the final great power ratification. The Japanese government had been delayed in its ratification by confusion over language in the treaty declaring that the signatories adhered to it “in the names of their respective peoples”; the problem was that this language contravened the Japanese Constitution, under which the Emperor signed treaties on his own behalf. The controversy was resolved only after Kellogg personally assured the Japanese government that the troublesome language was synonymous with signing “on behalf of” the Japanese people and as such posed no constitutional danger to imperial authority.<sup>572</sup> This incident indicates the gravity with which secondary rules – in this case relating to the authority to sign treaties – were treated, and also highlights the increasing relevance of domestic secondary rules to processes of rule-making at the international level. The relative novices in the Japanese government sought outside counsel, and accepted Kellogg’s assurance as authoritative. As Kellogg possessed no authority in interpreting the Japanese constitution, it is clear that the question was regarded within the Japanese government as possessing an international dimension. The treaty would be ratified by its initial fifteen signatories as well as another 48 states, culminating with Brazil’s 10 May 1934 ratification. These states encompassed the vast majority of the contemporary international community and excluded no important state.<sup>573</sup>

---

<sup>572</sup> Ferrell, *Peace in Their Time: The Origins of the Kellogg-Briand Pact*, 254-56.

<sup>573</sup> For a complete list of ratifications, see *ibid.*, 258.

## 5 Conclusion

The Kellogg-Briand Treaty represents the apex of efforts to ban war in the inter-war period, and yet it was also an unintended outcome decisively shaped by the secondary rules that constitute the social practice of institutional politics. Although my primary goal is to identify and illustrate this practice, the question of efficacy looms large in this case. Two broad criticisms can be made of the Kellogg-Briand Treaty. The first is that the agreement was meaningless because it lacked sanctions. While it is certainly true that the agreement did not contain either the guarantee of territorial integrity provided by Locarno or the provisions for collective action contained in the League Covenant, these omissions are far less important if the analyst avoids the mistake of considering the treaty in isolation. This conclusion is shared by Miller, who argues persuasively that “in the matter of sanctions the Treaty is to a large extent implemented in advance by the Covenant.”<sup>574</sup> In the event of a violation, the anti-war provisions ceased to apply to the violator; meanwhile, all of the other provisions of international law – including those for collective security – would remain in effect, allowing for remedial action.

The second criticism of Kellogg-Briand is that it was a hopelessly utopian endeavour that committed the deadly sin of ignoring the allegedly immutable ‘reality’ of anarchy. If this were true, the process of institutional politics would be at best irrelevant and, at worst, dangerous. I have argued in prior chapters that, as a matter of theory, this view of the social world – and of anarchy in particular – is mistaken. Here I argue that this case, the very basis for the founding myth of modern realism, when viewed as a process of institutional politics, provides support for the constructivist position. The key is to treat the Second World War as a case of norm violation rather than as an instance of ‘business as usual’. On this view, Allied condemnation of Nazi

---

<sup>574</sup> Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, 137.

aggression is crucial; Hitler's Germany was clearly seen and treated as a norm violator in initiating the war. Just as important, the general norm has clearly *survived* the instance of norm violation. The preamble to the Charter of the United Nations enshrines as the organization's first purpose the task of saving "succeeding generations from the scourge of war", and Article 2.4 of the Charter specifically embodies the essence of the Kellogg-Briand Treaty. It declares that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."<sup>575</sup> Finally, the norm against interstate warfare can be observed in operation. One useful example can be found by contrasting the Persian Gulf War of 1990-91 with the American invasion of Iraq in 2003. In both instances the United States sought to justify its action according to international rules and standards, and other states evaluated these claims. While international disapproval did not prevent the 2003 invasion, the fact that the coalition supporting American action was far less broad than in 1991 indicates that the George W. Bush administration's claims were widely rejected. Similarly, the difference between the international reaction to American claims with regard to Afghanistan and Iraq indicates a process of evaluating claims according to shared rules and standards.

This process exists because of the rule outlawing warfare contained in the Kellogg-Briand Treaty. That treaty, in turn, was the culmination of a series of proposals and negotiations during the 1920s that proceeded according to relevant secondary rules. Beyond its importance in illustrating my theory about social change, this finding is of value to international relations scholars because it undermines realist claims that the inter-war period was one of failed idealism. Given the foundational importance of the inter-war period to modern IR realism, a re-evaluation

---

<sup>575</sup> "Charter of the United Nations," <http://www.un.org/en/documents/charter/>

of this case further calls into question the value of realist theory for the development of knowledge about international relations.

Finally, the case suggests two important points connected to the study of institutional politics. First, the creation of new rules does not guarantee actors will comply with them in particular cases. The outbreak of the Second World War – to say nothing of the various wars of the 1930s – clearly demonstrates that the rule against warfare was broken. As I have argued, however, if we take the counterfactual validity of norms and rules seriously, this is not a problem for my theory of institutional politics – especially if other actors respond by calling attention to, and criticizing, such violations. Second, divergence with regard to secondary rules significantly hampers efforts to conduct institutional politics. The absence of agreed-upon standards and procedures to evaluate proposals for social change, in turn, presents a significant challenge to the stability of a social system. While the differences with respect to secondary rules in this case were relatively minor, the problem is all the more pressing in today's international system, which has become massively more culturally diverse than that which confronted Kellogg, Chamberlain and Briand. This last point, in particular, will prove central to my third and final case.



# Chapter 5: Contemporary Institutional Politics: Al Qaeda and the West, Post 9/11

## 1 Introduction

The previous case chapters have shown the existence of a practice of institutional politics, as well as its importance in understanding and explaining two crucial cases of social change in the international system – the construction of a system of great power conflict management after the Napoleonic Wars, and the creation of a rule against aggressive warfare in the inter-war period that ultimately survived the Second World War to be enshrined in the United Nations Charter. In this final case study, I will demonstrate that the practice of institutional politics is relevant to understanding important political dynamics in the contemporary international system. Particularly, I argue that the 11 September 2001 terrorist attacks and the ‘War on Terror’ are part of a broader instance of institutional politics – that they are attempts to alter the ‘rules of the game’ that constitute the international system, that they are engaged in as such by socially competent actors, and that the success or failure of particular proposals for rule change are determined in important part by whether those proposals are presented in a manner consistent with relevant secondary rules.

Unlike the previous historical cases, this final case remains incomplete. While al Qaeda<sup>576</sup> is unlikely to topple the current international order through force of arms, it remains a player in international politics – and one committed to its goal of changing the international

---

<sup>576</sup> No single system exists for rendering Arabic words in the Roman alphabet. I endeavour to be consistent, with the exception that I have remained true to the spelling employed by the author or translator in quoted material.

system.<sup>577</sup> More broadly, the appeal of radical Islamist groups in the Muslim world reflects significant dissatisfaction with the international system and its institutions on the part of a religious group accounting for roughly one-sixth of the planet's population.<sup>578</sup> Even if al Qaeda were decisively defeated militarily, the potential for similar challenges to the international system would remain. Accordingly, it remains premature to reach strong conclusions about whether or not the international system has changed.

The incomplete nature of this case *enhances* its importance, in policy terms, since it is not too late to draw policy lessons and more effectively counter the radical Islamist position articulated by al Qaeda. I will return to the policy implications of this case, and of my theory in general, in the conclusion. For now, the important issue is a methodological one posed by the fact that the case remains open: if actors are still engaged in this instance of institutional politics, how can we draw conclusions about whether or not the case supports the theory of institutional politics I am advancing? At one level, the project here is an existence proof; part of the point is to demonstrate the existence of the practice of institutional politics, in order to direct the attention of scholars and policy-makers to an important – and overlooked – phenomenon in international relations. This can be done even if the process has not reached a conclusion.<sup>579</sup> However, this existence proof is only a first step, since I also maintain that this social practice is actually employed by actors both in promoting and responding to proposals for change in the international system. Sustaining this stronger claim requires showing that the practice of

---

<sup>577</sup> On the resurgence of al Qaeda, see Bruce Hoffman, "The Global Terrorist Threat: Is Al-Qaeda on the Run or on the March?," *Middle East Policy* 14, no. 2 (2007): 44-58. I will take up the question of al Qaeda's goals in greater detail below.

<sup>578</sup> On Muslim public opinion toward the United States, and more generally regarding the international system, see John L. Esposito and Dalia Mogahed, "Battle for Muslims' Hearts and Minds: The Road Not (yet) Taken," *Middle East Policy* 14, no. 1 (2007): 27-41.

<sup>579</sup> By their very nature, processes of institutional politics are necessarily provisional in their conclusion; this is because the intersubjectivity they create is provisional and requires reproduction through social practice.

institutional politics has causal importance, which in turn requires the possibility of reaching conclusions. As in the previous cases, I disaggregate the case into individual proposals and counter-proposals, in order to demonstrate the consistent influence of secondary rules on actors' "moves" in the game of institutional politics. The methodological importance of this strategy is threefold: (1) it multiplies the number of total observations, thereby improving the quality of the data; (2) by allowing the comparison of successful and unsuccessful proposals, it ensures variation on the dependent variable (change in primary rules),<sup>580</sup> and, most important for my purposes in this chapter, it (3) enables micro-conclusions about particular proposals for change, notwithstanding the ongoing nature of this case of institutional politics. This final benefit allows for the division of the case by time period, and for analysis of its earlier stages pending a final outcome.

In this chapter I will examine the period starting with Osama Bin Laden's "Declaration of Jihad Against the Americans", issued 2 September 1996, and ending roughly in January 2003.<sup>581</sup> This time period covers the beginning of al Qaeda's open efforts to contest the primary rules governing behavior in the international system,<sup>582</sup> as well as the 9/11 attacks, the initiation of Operation Enduring Freedom (OEF), and the creation of the International Security Assistance Force (ISAF). The period from September 1996 through January 2003 includes the beginning of

---

<sup>580</sup> On the importance, respectively, of maximizing the number of observations within a case-study and of ensuring variation on the dependent variable, see Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton, NJ: Princeton University Press, 1994), 208, 129.

<sup>581</sup> "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," (Reston, VA: Foreign Broadcast Information Service, 2004), 13-28.

<sup>582</sup> While major figures associated with the 1993 World Trade Center (WTC) attack had ties to Al Qaeda, the 1996 "Declaration of Jihad" marks a turning point in al Qaeda's attempts to articulate a political message in addition to its use of political violence. For attribution of the 1993 WTC attack to Al Qaeda, see Jerrold M. Post, "Killing in the Name of God: Osama Bin Laden and Al Qaeda," (Montgomery, AL: United States Air Force Counterproliferation Center, 2002).

the period of institutional politics, as well as the most significant and intense bursts of associated discourse to date. Beginning in the fall of 2002, debate in the United States began to turn from concern with the Taliban and al Qaeda to a broader construction of the ‘War on Terror’ centred on what would become Operation Iraqi Freedom (OIF). I do not intend to add to the voluminous literature debating the appropriateness, wisdom or success of the Iraq War; rather, the point I seek to make is that the Iraq War can be seen as part of the US Administration’s attempt to respond to the institutional-political challenge presented by al Qaeda. In turn, this American attempt to alter the rules of international politics was met with consistent and determined opposition both from America’s rivals as well as some of its closest allies. This opposition was framed explicitly in terms of secondary rules. This development amounted to an off-ramp and a subsequent cul-de-sac in terms of the direct dialogue between al Qaeda’s challenge and a Western response. The fragmentation of the international community’s position effectively pre-empted attempts to deal with the radical Islamist challenge to the international system. The deteriorating strategic situation in Iraq throughout George W. Bush’s second presidential term exacerbated these divisions and provided an insurmountable distraction, which was further compounded by world economic crisis in fall 2008. The radical Islamist challenge to the international system, then, has remained largely in neutral since shortly after the start of the 2003 Iraq War; statements have been relatively less frequent and have tended to recapitulate the basic positions adopted by the various parties prior to 2003. Thus, disaggregating the case and limiting the time period under examination to the crucial early period between 1996 and 2003 allow the conduct of a viable case study despite the fact that the case remains ‘open’.

In addition to ‘distractions’ created by other issues on the international agenda, which essentially amount to exogenous shocks from the perspective of my theory, one other factor

deserves special mention in explaining the difficulty in resolving this instance of institutional politics: the relative lack of consensus, especially in comparison to my two previous cases, between the parties with respect to the applicable secondary rules. Both sides possess established secondary rules and associated practices of institutional politics. The problem is that these rules and practices are, at least thus far, incompatible. As I will demonstrate below, al Qaeda leaders present criticisms and arguments that are clearly reliant on particular interpretations of Islamic ideas about legitimate rule-making. Their central complaint with the international system is the substitution of illegitimate man-made law for proper, divinely-formulated, Sharia law. On this view, the relevant secondary rule of recognition to determine the legitimacy of a rule is whether it is part of Sharia; further, since law is not a human creation, rules of change simply drop out. Instead, the challenge of adapting rules to new circumstances is borne entirely by rules of adjudication – in this case, rules of Islamic jurisprudence. This generates a practice of institutional politics markedly different from the standard international legal and diplomatic practice that has figured prominently in the first two case chapters of the dissertation, and which continues to provide the basis for international expectations about methods and procedures for legitimate international rule-making.

The effect of these incompatible practices for rule-making has been to impart a Tower of Babel quality to this instance of institutional politics. Participants have routinely, and perhaps sometimes strategically, talked past each other – proceeding as if their preferred standards for rule-making were obviously unproblematic and could be taken for granted. In fact, as I will demonstrate, direct institutional-political dialogue between the parties has been virtually non-existent; instead, institutional politics have been characterized by direct appeals to a partially overlapping audience consisting of publics in both advanced industrial democracies and in

lesser-developed states, especially in the Muslim world. This situation is highly dangerous. The lack of a mutually acceptable practice for making and altering the rules of the international system, combined with the widespread dissatisfaction with the state of the international system evident in the Muslim world, suggests the strong possibility of continued political violence.

The chapter proceeds in three parts. In the first, I review the primary rules of the international system, focusing on those that al Qaeda and the Bush administration, respectively, have sought to alter in this episode of institutional politics. In the second, I review the two sides' respective understandings of appropriate secondary rules. In the third, I show how these understandings of secondary rules have structured the resulting practice of institutional politics, and have been important determinants of the success or failure of particular proposals for rule change.

## 2 Primary Rules

The claim that there is a case of institutional politics to be found in the interaction between radical Wahhabi terrorists and the government of the United States requires, at minimum, that one side engages in attempts to change the rules of the international system. In this section I will identify the rules that each side has sought to alter. I turn first to the question of whether al Qaeda can be meaningfully said to pursue changes in the rules of the international system; at least two alternate views deserve consideration.

First, it is possible that al Qaeda and other Wahhabist groups have purely nihilistic goals and intend to destroy the international system without constructing a replacement. Parallels with anarchist terrorism in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries have, in fact, drawn recent scholarly

attention.<sup>583</sup> Even among authors inclined to accept such a comparison, however, its validity rests on a reading of anarchists as actors pursuing a positive alternative rather than an assessment that Wahhabists seek only to destabilize the international system. For instance, James L. Gelvin concludes that “the very structure of the world as constituted by anarchists requires them to delineate the contours of some ideal ‘counter-community’, either explicitly or implicitly.”<sup>584</sup> Short of cases involving pure doomsday groups, engaging in social criticism seems to imply the existence of morally preferable alternatives. Even if this is not the case as a matter of strict logical necessity, it does not appear to hold true in this case. In a reply to Gelvin, John Kelsay concluded that “the evidence suggests that jihadis are political actors, with identifiable goals.”<sup>585</sup> Andrew Phillips has likewise concluded that radical Islamist groups possess an affirmative programme.<sup>586</sup> As I will demonstrate below, this view is correct.

Second, Max Abrahms has argued that terrorism is best explained as an attempt to build and maintain affective ties between group members – rather than as a means to accomplish a political goal.<sup>587</sup> While Abrahms may be correct that terrorists’ motives for undertaking violent acts are more complex than they have been made out to be, terrorist groups typically do more than execute violent attacks. In the particular case at hand, evidence shows that al Qaeda engages in other political communication, and that it does so in a planned, considered, purposive

---

<sup>583</sup> See, for instance, James L. Gelvin, "Al-Qaeda and Anarchism: A Historian's Reply to Terrorology," *Terrorism and Political Violence* 20, no. 4 (2008): 563-81; Richard Bach Jensen, "The International Campaign against Anarchist Terrorism, 1880-1930s," *Terrorism and Political Violence* 21, no. 1 (2009): 89-109.

<sup>584</sup> Gelvin, "Al-Qaeda and Anarchism," *Terrorism and Political Violence* 20, no. 4 (2008): 566.

<sup>585</sup> John Kelsay, "Al-Qaida as a Muslim (Religio-Political) Movement: Remarks on James L. Gelvin's 'Al Qaeda and Anarchism: A Historian's Reply to Terrorology'," *Terrorism and Political Violence* 20, no. 4 (2008): 602.

<sup>586</sup> Andrew Phillips, "The Protestant Ethic and the Spirit of Jihadism - Transnational Religious Insurgencies and the Transformation of International Orders," *Review of International Studies* 36, no. 2 (2010): 270-71.

<sup>587</sup> Max Abrahms, "What Terrorists Really Want," *International Security* 32, no. 4 (2008): 78-105.

manner.<sup>588</sup> Thus, even if Abrahms is correct, it is still appropriate to treat al Qaeda as a political actor pursuing political goals, rather than simply a social club or violent fraternity; terrorists may simply have different motives for engaging in different kinds of behavior. The deeper point is that Abrahms seeks to explain a slightly different phenomenon than I do: namely, the choice to use violent means, rather than attempts to alter intersubjective agreements. The two are at least potentially related – in fact, one implication of my theory is that violent means are more likely to achieve political ends in cases where applicable secondary rules specify that violent means are acceptable for the pursuit of social change under at least some circumstances (e.g., the acceptance of a legitimate right to revolt against a tyrannical state); however, a group may seek to alter the ‘rules of the game’ without using violent means, and a group may use violent means without seeking to alter the ‘rules of the game’.

Ultimately, whether al Qaeda is attempting to change the rules of the international system is an empirical question. It is worth noting, as a *prima facie* answer, that Osama bin Laden has answered this question affirmatively on multiple occasions. In a January 2000 message issued to correspond to the Eid al-Fitr holiday that marks the end of Ramadan, bin Laden was reported to have said “we do not accept the world order of the United States”; instead, he asserted, he and his associates “believe only in the world order of Allah”.<sup>589</sup> The salient point here is that bin Laden clearly articulates both a rejection of the current international system and an endorsement of a positive programme rooted in Islamic ideas. In an interview given on 28 September 2001,

---

<sup>588</sup> For an overview of jihadi communication, see Manuel R. Torres, Javier Jordan, and Nicola Horsburgh, "Analysis and Evolution of the Global Jihadist Movement Propaganda," *Terrorism and Political Violence* 18, no. 3 (2006): 399-421. With respect to online jihadi communication, see Hanna Rogan, "Jihadism Online: A Study of How Al-Qaida and Radical Islamist Groups Use the Internet for Terrorist Purposes," (Kjeller, Norway: Norwegian Defence Research Establishment, 2006)

<sup>589</sup> Bakht Ullah Jan Hasrat, "Usama Bin Ladin Denounces US-Sponsored 'World Order'," 9 January 2000, translated and reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," 136.



bin Laden explicitly distinguished between opposition to the United States and opposition to the international system, claiming that “we are not hostile to the United States. We are against the system, which makes other nations slaves of the United States, or forces them to mortgage their political and economic freedom.”<sup>590</sup> Asked on 21 October 2001 about al Qaeda’s strategy in the Arabic world, bin Laden replied that “our aim is to support our nation and remove the injustice, humiliation and submissiveness. Our aim is also to *remove the rules* [emphasis added] that the United States has imposed on its agents in the region [i.e., secular Arabic states]. We want this nation to be ruled according to the book of God, who created it.”<sup>591</sup> Finally, in his “Letter to the American People” of 26 October 2002, bin Laden provided his most extensive statement to a Western audience on al Qaeda’s goals and demands. After detailing specific policy grievances, he made a more general statement of positive proposals. The first of these was that Americans should convert to Islam, “the love of Allah, complete submission to His orders, and the discarding of all the opinions, orders, theories and religions which contradict with Allah’s orders.” Bin Laden continued, clarifying the importance of altering Western rules to his position: “you are the nation who, rather than ruling by the law of Allah, choose to implement your own inferior rules and regulations, thus following your own vain whims and desires.” He then specified several areas in which he believes Western rules to be illegitimate. These range from the personal (alcohol, gambling, pornography) to the clearly international-political (use of nuclear weapons, American failure to sign the Kyoto Protocol, human rights, etc.).<sup>592</sup> Al Qaeda’s political rhetoric evinces clear concern with the international system, and more

---

<sup>590</sup> “Exclusive Interview with Usama Bin Ladin on 11 September Attacks in US,” *Karachi Ummat*, 28 September 2001, translated and reproduced in *ibid.*, 181.

<sup>591</sup> “Full Text of Interview Held with Al-Qa’ida Leader Usama Bin Ladin on 21 October 2001,” *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 242.

<sup>592</sup> “Letter from Usama Bin Ladin to the American People,” [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 217-19.

specifically with general rules governing that system. Moreover, insofar as al Qaeda rhetoric has evolved over time, it has displayed an increasingly anti-systemic orientation.<sup>593</sup>

Determining *which* rules al Qaeda seeks to alter requires an examination of their specific grievances and criticisms of the international order. These can be broadly grouped under three headings: (1) rejection of the special rights and responsibilities accorded (often implicitly) to great powers; (2) objections to central elements of the modern state system; and (3) dismissal of important human rights norms. In each of these areas, al Qaeda seeks patterned changes in international relations. As I have argued in the theoretical chapters of the dissertation, such patterned changes are produced by changes in rules. However, assembling an account of specific rule changes sought by al Qaeda is complicated by two major factors. First, more than any actor in either previous case, al Qaeda is an outsider to the international system, and particularly to accepted international practices of rule-making. This outsider status, combined with the existence of a robust alternative set of secondary rules rooted in Islamic jurisprudence, has given rise to the Tower of Babel situation mentioned above. The result has been an instance of institutional politics in which both parties speak less to each other than they do to a shifting, partially overlapping audience that includes states but is composed primarily of global public opinion. As a consequence, many of al Qaeda's proposals are couched in terms alien to Western listeners and that often bear little direct resemblance to the current international system. In the relatively rare, but significant, instances where al Qaeda leaders attempt to speak to Western listeners (and, equally, when the Bush administration and other Western speakers have targeted Muslim audiences), statements and claims seem all the more tactical in their presentation –

---

<sup>593</sup> On this point, see Devin D. Jessee, "Tactical Means, Strategic Ends: Al Qaeda's Use of Denial and Deception," *Terrorism and Political Violence* 18, no. 3 (2006): 368. See also Benjamin Orbach, "Usama Bin Ladin and Al-Qa'ida: Origins and Doctrines," *Middle East Review of International Affairs* 5, no. 4 (2001): 57.

complicating attempts to assess their sincerity. One possible reading of al Qaeda's proposals is a fundamentally conservative one: to maintain state sovereignty, while simply creating a large Muslim state analogous to an enhanced European Union. This interpretation is unconvincing, I will argue, because al Qaeda's positions rest on bases fundamentally dissimilar to those underlying the current international system, and because al Qaeda has made explicit its own hostility to that system. Al Qaeda does not understand itself as trying to preserve the international system; we should take their stated intentions seriously.

Second, presenting a specific account of al Qaeda's positive programme – that is, of the rules it seeks to construct – runs the risk of overstating the internal consistency and completeness of the group's beliefs. Al Qaeda represents only a part of a broader network of individuals and groups committed to ideals rooted in radical Salafi – more particularly, Wahhabi – beliefs. This network, like Islam more broadly, is decentralized in its operation both as a practical matter in light of determined international opposition and as a matter of sincere belief about proper and legitimate social relations. Further, some analysts have speculated that al Qaeda and its jihadist allies have become even more decentralized in the years since 9/11.<sup>594</sup> Just as al Qaeda's operational practices appear to have evolved, so too have its criticisms of the extant international order and associated demands. Most notably, analysts have observed a widened ambit of concern beyond bin Laden's initial demands for the removal of Western troops from Saudi Arabia and for the adoption by Muslim states of domestic policies consistent with Islamist demands.<sup>595</sup> At their maximum, more recent al Qaeda statements have advocated the

---

<sup>594</sup> Hoffman, "The Global Terrorist Threat," *Middle East Policy* 14, no. 2 (2007): 45-50; Brynjar Lia, "Doctrines for Jihadi Terrorist Training," *Terrorism and Political Violence* 20, no. 4 (2008): 532. Both Hoffman and Lia agree that this decentralization is more reflective of Al Qaeda strategy than the success of counterterrorism efforts; Lia, in particular, notes the importance of updated training doctrines articulated by Abu Musab Al-Suri, a key Al Qaeda thinker.

<sup>595</sup> See *supra*, footnote 593.

establishment of a Caliphate encompassing the territory of all Muslim states.<sup>596</sup> The problem is that, as multiple observers have concluded, these calls for the establishment of a Caliphate are vague and inchoate. Gelvin, for instance, points out that multiple uses of the term correspond respectively to a post-Westphalian notion of governance, a Westphalian state with a conservative Islamist government, and a vague post-millennialism. Ultimately, he concludes that this vagueness “has more to do with the difficulty of coming up with an entirely original program for governance-cum-disciplinary mechanism from a vantage point located within the existing nation-state system than with maintaining a purposeful tactical ambiguity.”<sup>597</sup> Just as Karl Marx and his followers found it easier to articulate critiques of capitalism than to articulate an alternative vision for human social relations, Osama bin Laden and his associates have thus far been unable to supplement their criticisms with a fully developed set of proposals for rule change.

Despite these complications, some meaningful conclusions can be reached regarding Al Qaeda’s proposals for rule change in the international system. First, they aim to eliminate the privileges and responsibilities accorded to great powers and to international organizations. In a December 1998 interview, bin Laden asserted that “what we want is the right of any living being. We want our land to be freed of the enemies; we want our land to be freed of the Americans.”<sup>598</sup> The phrasing adopted indicates that bin Laden saw freedom from external influence as a general

<sup>596</sup> For example: “Usama Bin Ladin’s ‘Letter’ Calling for ‘Global Islamic State’,” *Rawalpindi Nawa-i-Waqt*, 7 January 2001, translated and reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 146-47. Also see “Full Text of Interview Held With Al-Qa’ida Leader Usama Bin Ladin on 21 October 2001,” *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 242. These statements stand in contrast to the 1996 “Declaration of Jihad” (see *supra*, footnote 581) as well as “Text of World Islamic Front’s Statement Urging Jihad Against Jews and Crusaders,” *Al-Quds al-‘Arabi*, 23 February 1998, translated and reproduced in *ibid.*, 56-58. The latter statements do not mention the establishment of a Caliphate.

<sup>597</sup> Gelvin, “Al-Qaeda and Anarchism,” *Terrorism and Political Violence* 20, no. 4 (2008): 573-74. For a concurring opinion on the conflicting usage of the term ‘caliphate’ see Phillips, “The Protestant Ethic and the Spirit of Jihadism,” *Review of International Studies* 36, no. 2 (2010): 277.

<sup>598</sup> “Al-Jazirah TV Broadcasts Usama Bin Ladin’s 1998 Interview,” 20 September 2001, translated and reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 158.

right – which would entail a corresponding duty (rule) to respect it. The specific reference to the United States indicates he regarded that right as enforceable regardless of power imbalances between specific actors. Later in the same interview, bin Laden also articulated the belief that United Nations resolutions are illegitimate.<sup>599</sup> His reasoning will be examined below; for now, the important point is that his opposition to external influence extends beyond direct military occupation to encompass even such diffuse ‘interference’ as that created by international organizations.

The general theme of non-interference is ubiquitous in al Qaeda rhetoric. In an interview on 28 September 2001, shortly after 9/11, bin Laden linked ideas of non-interference, reciprocity and friendship:

The United States has no friends, nor it wants to keep one [*sic*] because the prerequisite of friendship is to come to the level of the friend or consider him at par with you. America does not want to see anyone equal to it. It expects slavery from others...<sup>600</sup>

The cultural terms of reference here (friendship and slavery) demonstrate the intersubjective chasm dividing the jihadis from modern state practices of international relations, but the substance of his claim can nevertheless be at least broadly understood to require equitable relations and relations of friendship to be founded on the basis of mutual non-interference. This interpretation is buttressed by bin Laden’s statements in his “Letter to the American People,” dated 26 October 2002. In it, he criticized the United States for its “duality in both manners and law”, and alleged that “your manners and policies have two categories: one for you and one for the others.” He further insisted that the United States “deal with us [the Islamic world] and

---

<sup>599</sup> Ibid., 160.

<sup>600</sup> “Exclusive Interview with Usama Bin Ladin on 11 September Attacks in US,” *Karachi Ummat*, 28 September 2001, translated and reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 179.

interact with us on the basis of mutual interests and benefits.”<sup>601</sup> On its face, the al Qaeda position closely resembles notions of sovereign equality familiar to students of international relations; however, these doctrines have historically been qualified by recognition of legitimate – or at least acceptable – great power rights and responsibilities, typically defended on grounds of maintaining system stability.<sup>602</sup> These supplementary rules have also formed a good deal of the justificatory basis for the authority delegated to international organizations, as well as for the international legal doctrine that customary international law is binding on all states independent of their consent. Al Qaeda’s position opposes each of these rules, and thus presents a significant challenge to the contemporary international system.

The second conclusion that can be drawn about al Qaeda’s proposals for rule change is that they seek to alter many core features of the state system itself. Chief among these is the current system of generating state boundaries along ostensibly ‘national’ lines. Phillips notes that “where the nation-state rests on mutually exclusive national jurisdictions, jihadists emphasise the artificiality of the nation-state, decrying it as a Western imposition designed to fragment the global community of believers (the *ummah*).”<sup>603</sup> Like their objections to the role of great powers, and of international law and organizations, jihadi opposition to the state system (or, at minimum, the inclusion of the Islamic world in that system) is essentially instrumental to the deeper goal of re-establishing the Caliphate and basing social relations within it on legitimate

---

<sup>601</sup> “Letter from Usama Bin Ladin to the American People,” [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 219-20.

<sup>602</sup> For more on a crucial episode in the development of such rules, see Chapter 3.

<sup>603</sup> Phillips, “The Protestant Ethic and the Spirit of Jihadism,” *Review of International Studies* 36, no. 2 (2010): 259 The conclusion that Al Qaeda fundamentally challenges the state system is also reached in: Barak Mendelsohn, “Sovereignty under Attack: The International Society Meets the Al Qaeda Network,” *Review of International Studies* 31, no. 1 (2005): 45-68.

Islamic rules and institutions rather than imposed Western ones.<sup>604</sup> On this basis, they “call for the establishment of *sharia* law and the dissolution of nation-states in favour of an Islamic Caliphate as remedies to the spiritual and moral malaise they see gripping the Islamic world.”<sup>605</sup> These commitments are evident in the text of an al Qaeda letter mailed to the Pakistani daily *Rawalpindi Nawa-i-Waqt* in January 2001. The letter asserted that “every member of the Muslim world agrees that all the Muslim countries of the world having boundaries on the basis of nationality, geography, religious discord, color and race, should be merged into one Muslim state, where men do not rule men.” It went on to specify further proposals for the governance arrangements in this state: “There should be only one caliph for the whole state whose capital should be Mecca. There should be one currency and defense for this state and the Holy Koran should be its constitution.”<sup>606</sup> Enclosed with the letter, according to the newspaper report, was a world map – with the territory of the proposed caliphate shaded green.

It is unclear from al Qaeda’s statements whether they envision this caliphate co-existing either within or alongside the remnants of the state system. The more conservative view, that the Caliphate could co-exist, is consistent with the previously quoted statements insisting that al Qaeda has no particular animosity toward the United States and that they simply want to be free from outside interference. On the other hand, it is important to acknowledge that there is significant support in al Qaeda’s public statements for a more radical view – that establishment of the caliphate is seen as an interim step toward its eventual global expansion. This

---

<sup>604</sup> Altering the domestic policies of Islamic states, and especially of the Kingdom of Saudi Arabia, has been an important aspect of Al Qaeda’s motivation since its founding. See, for example, Al Qaeda’s initial “Declaration of Jihad” (*supra*, footnote 581). See also Orbach, “Usama Bin Ladin and Al-Qa’ida,” *Middle East Review of International Affairs* 5, no. 4 (2001).

<sup>605</sup> Phillips, “The Protestant Ethic and the Spirit of Jihadism,” *Review of International Studies* 36, no. 2 (2010): 271.

<sup>606</sup> “Usama Bin Ladin ‘Letter’ Calling for ‘Global Islamic State’,” *Rawalpindi Nawa-i-Waqt*, 7 January 2001, translated and reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 147.

development, of course, would entail the destruction and replacement of the current state system. The more radical view is suggested by bin Laden's calls for Americans to convert to Islam,<sup>607</sup> and by his assertion that a 'clash of civilizations' is inevitable.<sup>608</sup> Further, bin Laden has, on multiple occasions, invoked a particular Koranic phrase that casts the conflict in Manichean terms: "'and fight the pagans all together as they fight you all together' and 'fight them until there is no more tumult or oppression, and there prevail justice and faith in God'."<sup>609</sup> Finally, bin Laden maintained in a video broadcast on 4 January 2004 that "the struggle between us and them, the confrontation, and clashing began centuries ago, and will continue because the ground rules regarding the fight between right and falsehood will remain valid until Judgment Day." The 'ground rule' to which he refers is that "there can be no dialogue with occupiers except through arms."<sup>610</sup>

Ultimately, it is impossible to say whether this radical position is unanimously held by the al Qaeda leadership – let alone by the entirety of the Salafi jihadist movement. Such views may also evolve over time. Finally, whether al Qaeda pursues the more modest vision of a Caliphate encompassing Islamic states or a truly global Caliphate likely will not matter in the short to medium-term since it is unlikely to attain even a limited Caliphate in the foreseeable

---

<sup>607</sup> "Bin Ladin Threatens Attacks on 'Key Sectors' of US Economy," *Al-Jazirah TV*, 6 October 2002, translated and reproduced in *ibid.*, 205. FBIS #20, p. 217. See also "Letter from Usama Bin Ladin to the American People," [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 217.

<sup>608</sup> "Full Text of Interview Held With Al-Qa'ida Leader Usama Bin Ladin on 21 October 2001," *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 242.

<sup>609</sup> "Text of World Islamic Front's Statement Urging Jihad Against Jews and Crusaders," *Al-Quds al-'Arabi*, 23 February 1998, translated and reproduced in *ibid.*, 58. The verse is also quoted in "Al-Qa'ida Issues Statement Under Bin Ladin's Name on Afghan War Anniversary," *Al-Qalah*, 14 October 2002, translated and reproduced in *ibid.*, 207.

<sup>610</sup> "Bin Ladin Warns of 'Grand Plots' Against Arabs, Criticizes Gulf Rulers," *Al-Jazirah TV*, 4 January 2001, translated and reproduced in *ibid.*, 273.



future. The more important point for my purposes is that either of the two positions entails major changes in the rules governing the international system.

The third area in which al Qaeda seeks changes in rules governing the international system is the area of human rights. Radical Islamist positions on international human rights norms are well known. Bin Laden has articulated broad criticisms of various freedoms and practices accepted in the international community.<sup>611</sup> While such rules are clearly of great importance to individuals' life chances, they are of less obvious relevance to the operation of the international system. Indeed, the international system existed and operated long before any such rights or freedoms had been widely established. Therefore, I will not dwell on them, other than to note that they represent rules al Qaeda is attempting to alter – at least within the Islamic world.

Like al Qaeda, the Bush administration sought to leverage the 9/11 terrorist attacks in order to alter the primary rules governing the international system. In contrast to the jihadis, however, the Bush administration's attempts are more easily recognizable and intelligible – precisely because they employed arguments and procedures that are more consistent with established secondary rules. American challenges to the rules of the international system can be grouped under three headings. The first US proposal for rule change sought to establish a positive obligation for states to disrupt and dismantle terrorist organizations operating within their borders. The second, directly related, proposal was the attempt to make preventive war legal in at least some circumstances – specifically where states failed to meet the obligation entailed in the first US proposal. The third American challenge to existing international rules related to the rules of warfare, especially those concerned with the treatment of individuals detained in the course of a conflict.

---

<sup>611</sup> “Letter from Usama Bin Ladin to the American People,” [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 214-20.

The idea of a positive obligation on the part of states to prevent the operation of terrorist groups within their borders was articulated by President George W. Bush in his national address on 20 September 2001, in which he declared that “from this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.”<sup>612</sup> This position was reflected in American demands that the Taliban hand over senior al Qaeda leaders for trial; refusal of this demand, on the basis of Pashtun codes specifying obligations of hosts to their guests,<sup>613</sup> was the proximate justification for the initiation of military operations in Afghanistan on 7 October 2001.<sup>614</sup> Michael Byers has noted that this American claim represents a deviation from the accepted practice in international law. He writes that “even when countries were directly implicated in acts of terrorism, acts of self-defence directed against them did not attract much international support – prior to 2001.” In support, Byers cites an April 1986 nightclub bombing in West Berlin, the 1985 Israeli attack on PLO headquarters in Tunisia, and the 1986 ruling in the Nicaragua case. The latter held that assisting rebels did not constitute an ‘armed attack’ – and thus that UN Charter requirements for triggering self-defence rights had not been met.<sup>615</sup>

Any possible doubt that the American position represented a proposal for a general rule governing the international system was removed in 2002. In his State of the Union address, President Bush made clear that he intended this requirement to apply to all states – and not simply to Afghanistan. He expressed his “hope... that all nations will heed our call and

---

<sup>612</sup> George W. Bush, "Address to the Nation," speech given at Washington, D.C., 20 September 2001, accessed at [www.presidentialrhetoric.com](http://www.presidentialrhetoric.com).

<sup>613</sup> On Taliban diplomacy, see Paul Sharp, "Mullah Zaeef and Taliban Diplomacy: An English School Approach," *Review of International Studies* 29, no. 4 (2003).

<sup>614</sup> Michael Byers, "Not yet Havoc: Geopolitical Change and the International Rules on Military Force," *Review of International Studies* 31, no. 1 (2005): 57-58.

<sup>615</sup> *Ibid.*, 55-57.

eliminate the terrorist parasites who threaten their countries and our own” before recognizing that “some governments will be timid in the face of terror.” In those cases, he claimed, “make no mistake about it: if they do not act, America will.” He then went on to specify three countries at risk of American action – the infamous ‘Axis of Evil’, comprising North Korea, Iran and Iraq.<sup>616</sup> The American proposal was further developed in the September 2002 National Security Strategy (NSS). Its introductory letter declared that “the United States is guided by the conviction that all nations have important responsibilities.” The document then immediately specified several connected duties: “Nations that enjoy freedom must actively fight terror. Nations that depend on international stability must help prevent the spread of weapons of mass destruction. Nations that seek international aid must govern themselves wisely, so that aid is well spent. For freedom to thrive, accountability must be expected and required.”<sup>617</sup> The universalistic language and the invocation of concepts such as responsibility and accountability indicate that the intention was to generate a mandatory standard of behavior – in other words, a rule.

Alongside the attempt to establish a positive obligation for states to prevent the use of their territory for the conduct of terrorism, the United States also sought to alter international rules on the use of force such that they would permit preventive military action in order to deal with international terrorist networks. The language of a ‘war on terror’ intended to go beyond the capture or elimination of al Qaeda leaders was already in place by Bush’s 20 September 2001

---

<sup>616</sup> George W. Bush, "Address before a Joint Session of the Congress on the State of the Union," speech given at Washington, D.C., 29 January 2002, accessed at [www.gpoaccess.gov/sou/index.html](http://www.gpoaccess.gov/sou/index.html).

<sup>617</sup> The White House, "The National Security Strategy of the United States of America," (Washington, D.C.: Government Printing Office, 2002), Introductory Letter.

address.<sup>618</sup> In another major speech, at the West Point graduation on 1 June 2002, Bush sought to make a case that deterrence was insufficient to meet the threat posed by terrorist networks; instead, he claimed that “if we wait for threats to fully materialize, we will have waited too long.”<sup>619</sup> The commencement address stopped short of articulating the idea of justified intervention in cases where states failed to meet their obligation to combat terrorism. That task was again left to the 2002 NSS, which reiterated the putative inadequacies of deterrence, noted that “the United States has long maintained the option of preventive actions to counter a sufficient threat to our national security” and announced that the United States was prepared to act with force in advance of an armed attack against it. The language in the report clearly reflects awareness on the part of its authors of its broader significance for the rules of the international system. It makes direct reference to established rules of international law authorizing pre-emptive self-defence, on the grounds that states “need not suffer an attack before they can lawfully take action against forces that present an imminent danger of attack.” It continues by couching the US proposal as an attempt to “*adapt* [emphasis added] the concept of imminent threat”, and therefore explicitly acknowledging that the American argument was an attempt to change the rules – or, at the very least, an attempt to reason about how to apply an existing rule to a novel case. This confirms the applicability of two of Hart’s three varieties of secondary rules – rules of change and rules of adjudication – and alerts relevant audiences that an instance of institutional politics has been initiated. Finally, the NSS took pains to prevent the use of the American proposal to authorize claims by other states in cases where the United States

---

<sup>618</sup> Bush stated that: “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.” Bush, “Address to the Nation,” speech given at, accessed at .

<sup>619</sup> Bush, “Commencement Address at the United States Military Academy at West Point,” speech given at West Point, N.Y., 1 June 2002, accessed at [www.presidentialrhetoric.com](http://www.presidentialrhetoric.com)

disagreed – or, at least, to provide the American government with a basis of objection in such cases. It did so by qualifying resort to pre-emption in several ways.<sup>620</sup>

The mechanics of these American proposals for rule change and their consistency with secondary rules will be examined in more detail in the third major section of the chapter; the point for now is that the administration's language in both cases indicates an attempt to create general rules of behavior for the international system. This point is worth dwelling on. In what appear on their face to be two of the strongest manifestations of American unilateralism, the Bush administration in fact engaged in a structured social practice aimed at establishing intersubjective agreements authorizing their unilateralist positions. From the standpoint of realist theory, this action presents a curiosity – if not an anomaly. In contrast, this behavior is completely consistent with the core expectations of my theory.

Finally, the United States attempted to change the rules of the international system relating to the status and treatment of detainees. However, parallel to my decision not to focus analytically on al Qaeda's efforts to alter international human rights rules, I will not make the voluminous debate over detainees a central concern in this case.<sup>621</sup> While these rules are of crucial importance, and while they demonstrate the operation of the social practice of institutional politics, they are not as central to the operation of the international system as the other rule changes pursued by the Bush administration.

Both al Qaeda and the United States sought to change the rules of the international system. Whether their attempts to do so are consistent with the expectations of my theory depends on whether or not they employed methods consistent with accepted secondary rules;

---

<sup>620</sup> The White House, "The National Security Strategy of the United States of America," 15-16.

<sup>621</sup> The question of rules regarding detainees is well-addressed in: Byers, "Not yet Havoc," *Review of International Studies* 31, no. 1 (2005); Jason Ralph, "The Laws of War and the State of the American Exception," *Review of International Studies* 35, no. 3 (2009).

accordingly, the next section of the chapter examines these secondary rules in order to generate a baseline against which to evaluate the empirical evidence. Whereas prior cases have proceeded on the basis of secondary rules broadly accepted by all parties, institutional politics post-9/11 have been characterized by a split between actors reliant on the established secondary rules of the international system and actors reliant on secondary rules derived from particular traditions of Islamic jurisprudence.

### 3 Secondary Rules

As with the primary rule changes sought after 9/11, the secondary rules employed by the United States – and the international community in general – are more readily intelligible to a Western observer. Indeed, the set of secondary rules employed by the international community has evolved to the point that it has become taken-for-granted both by many scholars and practitioners of international relations. This deeply established character of Western secondary rules is, I believe, part of the explanation for the failure to identify and respond to radical Islamic challenges to international rules prior to the 9/11 terrorist attacks. The internalized nature of these secondary rules make them a natural starting point in this discussion of contemporary secondary rules relevant to institutional politics after 9/11.

The secondary rules that structure contemporary international practices of institutional politics are an extension of the secondary rules identified in each of the prior two cases. These rules have displayed a fundamental continuity since the consolidation of positive international law as a key structural component of the international system. My primary emphasis here will therefore be on trends and developments in secondary rules since the inter-war period examined in the last chapter; two are of particular note. First, as Christian Reus-Smit has argued, processes

of modern rule-making are thoroughly multilateral in nature. While precursors to multilateralism were readily identifiable in the Congress of Vienna and the negotiation of the Kellogg-Briand pact, the norm of multilateralism has become more solidly entrenched over the last several decades. This multilateralism is ‘thick’ in nature, extending well beyond what John Ruggie helpfully referred to as a ‘nominal’ multilateralism entailed by the mere participation of three or more parties. Rather, as Ruggie pointed out, modern multilateralism entails a “qualitative dimension” consisting of additional rules and norms designating how it is to be legitimately practiced.<sup>622</sup> Just as this institutional form is used to reach trade agreements, it is also employed in processes of international rule-making that seek to change or contest the basic institutional architecture of the international system. Second, the period since 1928 has seen several important attempts to codify secondary rules in international law. Whereas, in 1815, secondary rules rested on intersubjective agreements among European elites, the progressive democratization of politics at the state level and the global expansion of the European state system have spurred attempts to ‘shore up’ the foundations of the international practice of institutional politics. The most significant such achievements are: the Statute of the International Court of Justice (1945), the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on the Law of Treaties (1969).

As a result of these twin processes of multilateralization and codification, the international practice of institutional politics has become more transparently specifiable. International agreements provide concrete directives to states on how to recognize a valid rule in the international system. Article 38 of the Statute of the International Court of Justice, for instance, specifies four sources of international law. Further, it differentiates among them by

---

<sup>622</sup> John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution," *International Organization* 46, no. 3 (1992): 565-66.

establishing the mutual priority of customary international law and international conventions, or treaties; in contrast, “judicial decisions and the teachings of the most highly qualified publicists of the various nations” are defined as “subsidiary means for the determination of rules of law.”<sup>623</sup> Valid rules, then, are rules created by states – primarily in the form either of international treaties or rules of customary law. The Vienna Convention on the Law of Treaties (VCLT) and, to a lesser extent, the Vienna Convention on Diplomatic Relations (VCDR), provide a great deal of supplementary detail as to the mechanics for the creation and recognition of valid international rules. The VCLT includes specific provisions for how to deal with such questions as: how to determine who possesses legitimate authority to contract under international law on behalf of a state (Articles 6-8); how to authenticate a treaty text (Articles 9-10); how states should indicate their consent to be bound by a treaty (Articles 11-17); how to establish a valid rule in the case of successive treaties dealing with the same subject (Article 30); and how states may register and respond to reservations that have the potential to exempt them from the application of particular treaty provisions (Articles 19-23).<sup>624</sup> The VCDR deals with, among other things, the means for establishing official and legitimate diplomatic relations between states and the rights and immunities possessed by those diplomats.<sup>625</sup> While rules of recognition with respect to international treaties are clear and relatively highly developed, the position with respect to customary international law is admittedly less so. However, legal scholars have established wide agreement that two components are necessary for the establishment of a rule of customary international law. There must exist “a consistent and general international practice among

---

<sup>623</sup> "Statute of the International Court of Justice," <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>.

<sup>624</sup> "Vienna Convention on the Law of Treaties," [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

<sup>625</sup> "Vienna Convention on Diplomatic Relations," [http://untreaty.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf).



states” and “the practice must be accepted as law by the international community.” That is, states must perform the practice because they believe it to be legally required of them. This second component of determining customary law is referred to as *opinio juris*.<sup>626</sup> While these requirements leave room for parties to reach differing conclusions on the status of a putative rule, there are basic standards for rule determination. These standards furthermore commit states to participation in a discursive practice of argumentation, and one which does not require consensus for rule creation. Rules of change in the contemporary international system are derived from rules of recognition. First, the actors competent to change rules are the same actors who were entitled to create them in the first place – states. Second, in order to be valid, a rule must be changed via legitimate practices of rule creation.

Finally, the contemporary international system possesses detailed standards for interpreting rules, and for determining the applicability of general rules to particular cases. These rules correspond to Hart’s third category of secondary rules – rules of adjudication. The Statute of the International Court of Justice deals with issues of interpretation in some depth, since this is the primary function of the court. However, the court’s authority is explicitly recognized as deriving from that of states; indeed, the court exercises jurisdiction only where states refer cases to it or where states have previously indicated that they accept the court’s jurisdiction as compulsory.<sup>627</sup> The court’s statute is remarkably thorough. It deals in detail with provisions for the selection of judges and the organization of the court (Articles 1-33). Perhaps most interesting is that the statute empowers the court to set its own procedural rules; Article 30 states that “the Court shall frame rules for carrying out its functions. In particular it shall lay

---

<sup>626</sup> Kindred et al., *International Law: Chiefly as Interpreted and Applied in Canada*, 129-30.

<sup>627</sup> "Statute of the International Court of Justice," <http://icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>.

down rules of procedure.” Given the degree of specificity in the statute, this suggests that its drafters viewed procedural rules as relatively unproblematic. Rather than requiring precise elaboration by states, they could be left to the elected justices. The third major issue addressed in the statute is the proper form and practice for a judicial decision. Article 56 establishes that, in all cases, “the judgment shall state the reasons on which it is based” and Article 57 authorizes the familiar domestic legal practice of allowing dissents and minority opinions in cases where the justices do not unanimously agree on the entirety of the official decision. Finally, Article 60 states that “the judgment is final and without appeal”, and that the court has sole authority to interpret its own decisions.<sup>628</sup>

Despite the existence of the ICJ, international rules of adjudication also explicitly contemplate an adjudicative role for individual states. This identity of legislators, judges and subjects of law is a defining characteristic of international law, and one that has caused a great deal of doubt about the ‘legal’ status of international law. What is vital is that, though states are empowered – at least in many circumstances – to be judges in their own cases, they are not legitimately entitled to judge however they please. Article 31 of the VCLT establishes the “general rule of interpretation” for treaties. It states that: “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” The article further specifies that the “context” a treaty refers to its text, preamble, annexes, as well as other relevant agreements reached by the parties. Further, it allows states to refer to “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions” as well as to “any subsequent practice in the application of the treaty which establishes the agreement of the parties

---

<sup>628</sup> Ibid.

regarding its interpretation” and “any relevant rules of international law applicable in the relations between the parties.” If these data points are insufficient, Article 32 establishes that “recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion”. Thus, secondary rules for interpreting and applying primary rules of behavior in given cases are highly specific. They require states to reason in particular ways, and to do so in a public manner subject to response and rebuttal by other parties.

Though these examples are drawn from international treaties that establish fundamental practices of international law (most notably treaty-making and international adjudication), it would be inappropriate and mistaken to draw the conclusion that practices of institutional politics are coextensive with procedural rules of international law. After all, treaty-making is fundamentally as much a diplomatic practice as it is a legal one; and, as I have demonstrated in the previous two chapters, diplomats and public officials employ similar processes of reasoning in negotiations, even when they are not directly legal in character. Indeed, it is more accurate to say that *both* diplomacy and international law are – at least in part – instantiations of prior secondary rules. That is, they are socially constructed institutions that perform the crucial function of stabilizing actor expectations about legitimate practices of rule creation, interpretation and contestation in the international system – just as constitutional democracy and Western domestic legal systems are institutions that perform these tasks at the state level.

It might be objected at this point that, even if the international community possesses a relatively stable, legitimate set of secondary rules, al Qaeda and its radical Islamist confreres do not. Such an objection could, in fact, take any of multiple forms. The first is the notion that such groups are simply fuelled by hatred and a desire to avenge perceived grievances. Another is that

secondary rules are a particular feature of Western culture and thought, not shared by non-Western communities. A third stems from jihadis' rejection of man-made law in favour of exclusive adoption of Sharia law; on this view, the objection would be that Islam – or at least the radical interpretations of it adhered to by jihadis – completely rejects the concept of institutional politics or rule change and that legitimate rules are timeless and unchanging. Ultimately, each of these is an empirical objection; they are also incorrect. In the remainder of this section I will demonstrate the existence of well-established Islamic secondary rules and practices of institutional politics. Al Qaeda does not reject the *concept* of institutional politics; they merely reject important elements of the secondary rule system on which institutional politics in the contemporary international system is based. Al Qaeda's public statements reflect the deep influence of Islamic secondary rules and practices, and thus establish that the case generally conforms to the expectations of my theory.

Islamic practices of institutional politics are easy for a Western observer to overlook because they proceed from a fundamentally different basis than the contemporary international practices outlined above. Unlike the positive law foundation of international practices, Islamic practices for rule creation and alteration begin from the presumed validity of particular religious texts; that is, from a natural law basis. John Kelsay has usefully laid out the central elements of Islamic thought pertaining to institutional politics, which centre around three overarching agreements. First, "all Muslims agree on the importance of *al-sharia* – that is, they agree that there is a 'path' or way to live that accords with human nature, and is consistent with divine guidance." Second, "they further agree that the best way to discern the contours of that path involves reading and interpreting approved sources – the Qur'an and 'sound' reports of the Prophet's practice, understood as 'signs' that point to the approved way." Third, "Muslims agree

that the proper way of interpreting these sources, in conversation with the consensual judgment of previous generations, is to find analogies between textual, historical precedents and the circumstances of contemporary believers.”<sup>629</sup> These observations establish the clear relevance of Hart’s three categories of secondary rules: rules of recognition, rules of change and rules of adjudication. The first agreement corresponds to a fundamental rule of recognition that legitimate rules are those provided for humanity by Allah. The second agreement establishes that these rules are recorded in the Koran and in the *sunna* and *hadith* (the customs and sayings of Mohammed and his companions).<sup>630</sup> The third agreement specifies proper procedures for interpreting and applying these source rules to particular cases. This final category, rules of adjudication, plays an especially prominent role in Islamic practices of institutional politics. Unlike a positive law framework, where all rules are susceptible to alteration by the parties with standing to participate in rule-making, natural law systems contain rules of superior status that are sheltered from human alteration. As a result, the ‘action’ or dynamism in such systems rests disproportionately on the ability of agents to make socially compelling reinterpretations of existing rules and novel interpretations of what divinely mandated rules require in particular cases.

A brief historical sketch of the evolution of Islamic jurisprudence (*fiqh*) illustrates the relevance and accuracy of this analysis, and provides crucial context required in order to understand and explain the rhetorical choices made by al Qaeda leaders. In his book *The Social Structure of Islam*, Reuben Levy argued that early Islamic officials and rulers were faced with high degrees of uncertainty about the dictates of their faith – both with respect to political and

---

<sup>629</sup> Kelsay, "Al-Qaida as a Muslim (Religio-Political) Movement," *Terrorism and Political Violence* 20, no. 4 (2008): 601-02.

<sup>630</sup> The concepts of *sunna* and *hadith* play a major role in Islamic jurisprudence, and will be discussed in greater detail below.

social affairs in the public realm and also to basic matters of faith. For instance, Levy notes that “for a century or more after the death of the Prophet it was not definitely known, or decided, actually how many periods of worship were laid down nor at what hours worship was to be performed.” In addition, military conquests placed Muslims in positions of rule over non-Muslim populations, including former citizens and subjects of the Roman and Persian empires. These rulers struggled to reach decisions on public matters consistent with their faith: “Having in the Koran, even if they knew or studied it, no comprehensive guide either in political emergencies or when social or legal problems arose, the Muslim governors were driven to adopting local usage or else to applying their own reason or common sense as a way out of their difficulties.”<sup>631</sup> In such an environment, secondary rules became a crucial matter of debate and contestation.

The relevance and legitimacy of the Koran, and the rules contained in it, has not been a serious point of contention. However, like any major human religious text, attempts to interpret the Koran as a guide for human society have been more controversial. At base, this is in part true because the Koran is both vague and internally inconsistent. In fact, the Koran explicitly addresses problems of internal contradiction. Sura 2:100 states that “if we abrogate any verse, or cause it to pass into oblivion, we bring a better one than it, or as good.” Sura 13:39 instructs that “what he pleases God will blot out or confirm; and with him is the ‘Mother of the Book’.”<sup>632</sup> The term ‘abrogation’ (*naskh*, in Arabic) is a technical one in Islamic jurisprudence. Levy quotes the 13<sup>th</sup> century Persian commentator Baydawi as justifying *naskh* on the grounds that

---

<sup>631</sup> Reuben Levy, *The Social Structure of Islam* (Cambridge, U.K.: Cambridge University Press, 1962), 155, 65.

<sup>632</sup> *Ibid.*, 163.

“laws are formulated and verses revealed as they are required, to suit mankind.”<sup>633</sup> Though the Koran thus provided for its own alteration, the appropriate process for abrogation was not specified. Even absent internal contradictions in the Koran, early Muslims were faced with the problems of ambiguity and incompleteness in its prescriptions and directives. The initial strategy in resolving such problems was to refer to the *sunna* and *hadith*. While the two words are often used interchangeably, “the *hadith*, properly speaking, is the report of the Prophet’s *sunna* or course of conduct, or of his doings and sayings, to any one of which a particular *hadith* may refer.” Levy notes that “the *sunna* acquired an authority only a little less than that of the Koran itself” and that “in the later times of Islamic theology the *sunna* came to be held as of equal origin and equal validity with the Koran.” Despite the importance of *hadith* to Islamic secondary rules, no universally accepted collection of them exists. The most that can be said is that *hadith* typically have two components: “the *isnad* or the chain of authorities who have transmitted the report” and “the *matn*, the text or substance of the report.”<sup>634</sup> Further, despite the extensive proliferation of *hadith*, it would be extremely difficult to maintain either that the Koran and *hadith* adequately address every possible situation that may require the interpretation or application of Islamic rules, or that the relevance and meaning of particular verses is always self-evident. Indeed, early Muslims differed substantially on how to translate their faith into social and political rules. Between approximately 767 and 855 AD, a series of debates culminated in the emergence of four distinct schools of Sunni jurisprudence. All four continue to exist today.<sup>635</sup>

---

<sup>633</sup> Ibid.

<sup>634</sup> Ibid., 170.

<sup>635</sup> Because the radical jihadist networks carrying out terrorist attacks directed against the international system – as opposed to attacks directed against the state of Israel – are, to date, exclusively Sunni, I leave aside Shi’a approaches.

The oldest school of Islamic jurisprudence, the Hanafi school, dates approximately from the death of its founder (Abu Hanifa) in 767 AD. Hanifa and his followers accepted the legitimacy of using human reason and judgment in interpreting the primary sources of Islamic law – the Koran, *sunna* and *hadith*. This use of reason, referred to in Arabic as *ra'y*, offered flexibility in adapting rules to changing circumstance, but only at the potential cost of religious orthodoxy. Accordingly, Hanifa held that proper interpretation and application of rules must attempt “to penetrate behind the wording of the text to the *'illa*, or motive of the provisions made. In the new application of the text, or in the law derived from it, there must be the same *'illa* as in the Koranic revelation or traditional usage.” This procedure came to be known as *qiyas*, or reasoning by deductive analogy. Hanafi scholars explicitly recognized the potential problem created by conflicting conclusions generated via *ra'y* and *qiyas*. Accordingly, they concluded that “in the last resort it was the consensus of the learned in any one period – what came to be known as *ijma* – which decided whether any law obtained by *qiyas* had valid force.”<sup>636</sup>

The Hanafi school originated in what is now modern-day Iraq. Its reason-based approach was explicitly rejected by scholars in the city of Medina, who preferred to augment the loose and indeterminate set of social rules laid out in the Koran “by deliberately inventing *hadiths* of the prophet to justify their new regulations or fresh ways of applying Koranic laws.” This group of scholars was led by Malik ibn Anas, the founder of the Maliki school of law. Levy argues that early Muslims were aware of the suspect provenance of many *hadith*, but that they accepted them as legitimate on consequentialist grounds. For Malik, “it was tradition, either that of the Prophet or local custom, which had first claim to consideration after the Koran. If *hadiths*

---

<sup>636</sup> Levy, *The Social Structure of Islam*, 166-67.



differed he gave preference over them to local practice (*'amal*).” The infallible status attributed to Mohammed created an inevitable tension between entrenched local practice and Koranic orthodoxy. In order to resolve this, Maliki jurists developed the notion “that somewhere there existed another prophetic *hadith* abrogating the inconvenient one, and that upon it the *ijma* is based.”<sup>637</sup>

The Shafi'i school of law expanded the concept of *ijma* “to include all the immense body of ideas and decisions which those competent to do so in Islam – apart, of course, from the Prophet Muhammad himself – had formulated and agreed upon.” This expansive notion of *ijma* is in direct contrast to that of the Maliki school, which restricted standing to determine *ijma* to the scholars of Medina. Despite the inclusion of scholars from outside the Arabian peninsula, the Shafi'i school differentiated between laypersons and accredited jurists (*faqihs*). Only the latter were empowered to determine *ijma*. Like the Hanafi jurists, Shafi'i scholars accepted the use of *qiyas* as a subsidiary means of determining the law.<sup>638</sup>

The last of the four Sunni schools of jurisprudence is the Hanbali school, named for Ahmad ibn Hanbal, which emerged slowly after its founder's death in 855 AD. The Hanbali school is noted as “the most reactionary”, primarily because it rejects “the unlawful ‘innovation’ (*bid'a*) of the *ijma*.” Adherents of this school resolutely oppose the use of reason in order to interpret and extend the rules specified in the Koran, on the basis that the use of reason allows for subjective interpretations of law. While the Hanbali school claims the fewest adherents of the four major schools of *fiqh*, its importance is magnified by the fact that it is accepted by the

---

<sup>637</sup> Ibid., 170-74.

<sup>638</sup> Ibid., 177-79.

Wahhabi sect of Islam, a variant of Salafist Islam which dominates both in Saudi Arabia and among contemporary radical Islamist groups.<sup>639</sup>

The purpose and importance of this review is to establish key sites of agreement and contestation among Sunnis with respect to secondary rules. The four Sunni schools of jurisprudence agree on the core sources of Islamic law (the Koran, and the sunna as recorded in hadith), and on the necessity for supplementary means of determining how to apply rules to particular cases – that is, on the necessity of rules of adjudication in addition to rules of recognition. However, they disagree on the precise methods to be used in interpreting and applying rules. Al Qaeda’s leaders adhere to a reactionary, minority position on secondary rules that remains deeply controversial among Muslims. Their Hanbali beliefs are the most literalist of the four in applying the Koran and *hadith* to real-world situations; their version of secondary rules allows the smallest degree of freedom and adaptability. Further, Salafi radicals engage in the controversial practice of *takfir* – declaring other Muslims apostates and thus outside of the Dar al-Islam. Bin Laden’s 1996 Declaration of Jihad against the Americans claims that using “man-made law instead of the Sharia... would strip a person of his Islamic status”.<sup>640</sup> The claim that employing improper practices relating to secondary rules constitutes apostasy and is therefore grounds for expulsion from the Islamic community demonstrates the seriousness with

---

<sup>639</sup> Ibid., 179-80.

<sup>640</sup> Osama bin Laden, quoted in Orbach, "Usama Bin Ladin and Al-Qa'ida," *Middle East Review of International Affairs* 5, no. 4 (2001): 59. The Foreign Broadcast Information Service compilation of al Qaeda statements translates this passage as: "Upholding temporal laws and supporting heretics against Muslims are prohibited in Islam, as the ulema have ruled. God said 'whoever does not rule by God's law is a heretic,' and He said: 'But no, by the Lord, they can have no (real) faith until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction'." See "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," 18. The Salafi acceptance of *takfir* is also noted in Assaf Moghadam, "Motives for Martyrdom: Al-Qaida, Salafi Jihad, and the Spread of Suicide Attacks," *International Security* 33, no. 3 (2008-2009): 62.

which intra-Islamic disputes over secondary rules are taken by Wahhabi or Salafist Muslims employing Hanbali notions of *fiqh*.

The lack of robust agreement among Muslims on the appropriate procedures for creating, altering, interpreting and applying social rules is evident in the political rhetoric of al Qaeda's leaders. Kelsay is correct that al Qaeda is "deeply, though controversially, related to Islamic tradition." He notes that its leaders "speak in ways that suggest a serious engagement with Muslim sources" and concludes that "in the end, jihadists are engaged in an argument with other Muslims regarding the nature of Islamic practice."<sup>641</sup> These intra-Islamic disputes are not my primary analytic focus, since they relate most directly to issues of domestic governance; however, they may have indirect relevance to institutional contestation at the system level insofar as they present opportunities for the consolidation of a *modus vivendi* on institutional politics that includes significant portions of the Muslim world.

The uncertainty and disagreement over legitimate Islamic practices of institutional politics must also be viewed in light of the continuing legacy of colonialism in the Muslim world. Disruption of early Islamic practices for rule-making has destroyed significant social capacity, capacity that Muslim societies continue to struggle to rebuild. As Anver Emon points out, "in the premodern period, the existence of legal professionals, licensing procedures, curricula, and training centers made possible an Islamic rule of law system that ensured transparency, accountability, and expertise." Emon contrasts this situation with the modern, post-colonial situation: "while a premodern *madrasa* student would have delved deeply into the study of the Qur'an, prophetic traditions, and related fields, the modern law student in the Muslim world works with codes of various sorts, many of which are drawn largely from European

---

<sup>641</sup> Kelsay, "Al-Qaida as a Muslim (Religio-Political) Movement," *Terrorism and Political Violence* 20, no. 4 (2008): 601.

inspiration.” Where *sharia* is applied in Muslim legal systems, Emon essentially argues that it is used primarily as a set of primary rules governing behavior, and that it has been displaced as a procedural system of jurisprudence by practices adopted from European legal systems.<sup>642</sup> This shift has been largely consolidated at the state level, but has struggled to deeply penetrate many Islamic societies; traditional notions of Islamic law remain influential at the societal level, at the same time as social expertise in operating traditional systems of rule has eroded. Bin Laden and al Qaeda are directly reflective of these shifts. On traditional understandings of Islamic practice, bin Laden’s standing to participate in legal processes of rule-making is questionable. As Orbach notes, “it is a basic tenet of Islam that only trained clerics can issue *fatwas* (decrees), but bin Laden has not hesitated to do so” despite his lack of such training.<sup>643</sup> The erosion of the distinction between rule-makers and the laity deserves special attention because it highlights an important corollary to my theory, which is about the operation of settled social practices for the creation and alteration of social rules. To the extent that important actors are unwilling or unable to operate applicable practices of institutional politics, disputes about the content, interpretation and application of primary rules are more likely to be resolved violently.<sup>644</sup>

The ‘amateur’ status of key al Qaeda figures – both with respect to Islamic and contemporary international practices of institutional politics – significantly complicates the operation of institutional politics in this case, as my theory expects. To a lesser extent, the neoconservative figures in the Bush administration shared this ‘outsider’ status. The

---

<sup>642</sup> Anver Emon, "Techniques and Limits of Legal Reasoning in *Shari'a* Today," *Berkeley Journal of Middle Eastern and Islamic Law* 2, no. 1 (2009): 102-03.

<sup>643</sup> Orbach, "Usama Bin Ladin and Al-Qa'ida," *Middle East Review of International Affairs* 5, no. 4 (2001): 56.

<sup>644</sup> Note that such cases are distinct from those in which secondary rules explicitly stipulate force as a means of dealing with conflicts over rules. Examples of the latter could include forms of ritual combat such as dueling, or potentially also Wendt’s notion of Hobbesian cultures of anarchy. Wendt, *Social Theory of International Politics*, Ch. 6.

combination of two outsider groups in key positions played an important role in shaping the dynamics of institutional politics immediately after the 9/11 attacks. Both groups were generally aware of the secondary rules relevant in their own immediate cultural contexts, to the extent that they could function as socially competent but not especially skillful participants; their social competence with each other's practices, however, was even more attenuated – leading to the 'Tower of Babel' quality I have identified previously. To the extent al Qaeda and the Bush administration attempted to engage the other side, these attempts generally took the form of appeals designed to play to narrow outlying segments of the opponent's audience – elements of Western public opinion in the case of al Qaeda, and moderate or liberal Muslims in the case of the Bush administration. Such attempts are more appropriately characterized as bad-faith tactical efforts than as attempts to conduct genuine dialogue. In the final major section of this chapter, I will demonstrate the central dynamics of this process of institutional politics in greater detail.

#### 4 Institutional Politics

My analysis of the institutional politics between al Qaeda and the West begins with bin Laden's 1996 declaration of jihad against the United States, and the February 1998 fatwa issued by the World Islamic Front calling on Muslims to kill Americans. These early documents establish a pre-9/11 context and provide insight on al Qaeda's initial goals, proposals and justifications. The central point about these documents is that they are primarily concerned with crafting a convincing case for jihad rooted in Islamic practices of rule-making and rule interpretation, and are therefore directed primarily at an Islamic audience.

The ultimate target, especially in the 1996 declaration, is the Saudi government.

Operations against the United States are derivative of, and portrayed as instrumental to, the goal

of establishing a genuinely Islamic government in Saudi Arabia. Further, the document makes clear that the primary defects of the current Saudi government relate in large part to its alleged violation of Islamic practices of institutional politics. While the document criticizes the Saudi government for its decision to admit American troops during the Persian Gulf War, bin Laden goes to great lengths to make clear that violence against the Saudi regime is justified by the government's failure to respond appropriately to attempts at peaceful dialogue, and more broadly by "its suspension of the Islamic Shari'ah laws" in favour of "temporal laws". This issue of the proper basis for law is significant; as noted in the previous section, this is essentially a charge of apostasy, or an instance of the author engaging in the controversial practice of *takfir*. Bin Laden argues that "upholding temporal laws and supporting heretics against Muslims are prohibited in Islam, as the ulema have ruled." Thus, al Qaeda's conflict is, from the beginning, a conflict precisely over the terms of legitimate practices for rule-making. This statement is also noteworthy in that it asserts a legitimate role for violent resistance in political life if parties are unwilling to employ proper practices of institutional politics. Bin Laden then goes on to ground his position in the Islamic tradition by direct invocation not only of the authority of the *ulema* but also of particular Koranic verses: "God said, 'whoever does not rule by God's law is a heretic', and He said: 'But no, by the Lord, they can have no (real) faith until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest convictions'." On this view, accepting man-made law is inconsistent with making God "the judge of all disputes".<sup>645</sup>

The document claims that bin Laden and other like-minded individuals acted first according to "the gentle and lenient method of wisdom and good advice calling for reform and

---

<sup>645</sup> "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," 16-18.

penance for the major wrongdoings and corruption that transgressed the categorical religious limits and the public's legitimate rights." In support of this contention he describes a pair of petitions presented to the Saudi king calling for domestic reforms and the expulsion of American forces. Because "the only response... was rejection, disregard, and ridicule", he argues "silence was no longer appropriate and overlooking the facts was no longer acceptable."<sup>646</sup> He thus expresses the conviction that violence is legitimate only after the failure of peaceful attempts at dialogue. Whether this conviction is genuine is, of course, open to serious question. The point, though, is that bin Laden apparently believed making this rhetorical move was at least potentially politically useful. Such a conclusion only makes sense if he was aware of intersubjectively shared expectations among at least part of his target audience that peaceful political means rooted in Islamic practice were the appropriate response to problematic government policies.

The notion that bin Laden was consciously engaged in such a practice of political contestation of Saudi policy is bolstered by the fact that his letter directly engages with Saudi justifications of the American presence. He dismisses "the claim that the crusaders' presence in the land of the two holy mosques is a necessity and a temporary matter aimed at defending this land" and asserts that "it is an old and obsolete story especially after the brutal destruction of Iraq and its military and civilian infrastructures." He notes that "here we are approaching the seventh year since their arrival" and concludes that "the regime is unable to move them out. The regime does not want to admit to its people its inability to do so."<sup>647</sup> If the justification for the American presence was to defend the Saudi kingdom from the threat of an aggressive Iraqi neighbor, then the removal of the threat (i.e. the destruction of Iraq) should have led to the withdrawal of

---

<sup>646</sup> "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in *ibid.*, 16.

<sup>647</sup> "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in *ibid.*, 21-22.

American forces. Further, the implication is that the American destruction of Iraqi civilian infrastructure renders American motives even more suspect.

Although Saudi apostasy and apostasy by other pro-Western Islamic governments are bin Laden's primary concerns, he concludes in this letter that rectifying the problem requires attacks against American troops and personnel. The connection between what are known to jihadis as the "near enemy" (pro-Western Islamic states) and the "far enemy" (primarily the US, but in some constructions more broadly the Western industrial democracies)<sup>648</sup> is evident in bin Laden's contention that "while we know that the regime is fully responsible for what has afflicted the country and the people, the main disease and the cause of the affliction is the occupying US enemy." This is because, according to bin Laden, "whenever a reform movement appears in the Islamic states, that Jewish-crusade alliance pushes its agents in the region, the rulers, to exhaust and abort such a reform movement by various suitable means".<sup>649</sup> Securing an American withdrawal, not only from Saudi Arabia but generally from the Muslim world, and altering the international system so as to prevent further external interference are thus vital steps toward achieving domestic political change and 'making the world safe for Islam'.

This sense of external threat is crucial to the final noteworthy aspect of bin Laden's 1996 declaration: his call for Muslim unity in opposing the United States. This argument was carefully couched in terms of Islamic tradition. He drew on the writing of the 13<sup>th</sup> and 14<sup>th</sup> century Hanbali scholar Ibn Taymiyah, who he reports as having argued "that all Muslims should join hands in warding off the great heresy controlling the Islamic world." He then directly quoted Taymiyah's argument that "one of the principles of the Sunnah and the

---

<sup>648</sup> Fawaz Gerges, *The Far Enemy: Why Jihad Went Global* (Cambridge, U.K.: Cambridge University Press, 2005).

<sup>649</sup> "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," 23, 19.



[Prophet's] group is to do conquest using every good as well as sinful person, for God supports this in the interest of the cause of religion" because it will ensure that "most of the rules of Islam are established, if not all." Bin Laden himself casts the matter as one of how to appropriately reconcile conflicting duties. He argues that "when duties are numerous the most important takes priority." On his view, this means that "warding off that American enemy is the top duty after faith, and nothing should take priority over it, as decreed by the ulema." Thus, "it is incumbent on every tribe in the Arabian Peninsula to fight for God's cause and purge their territory of these occupiers."<sup>650</sup>

The initial call for Muslims in the Arabian peninsula to use violence to prompt a US withdrawal was followed by a February 1998 statement purporting to be a *fatwa*, or religious ruling, signed by bin Laden, Ayman al-Zawahiri and representatives of a handful of jihadi groups identifying themselves collectively as the World Islamic Front. The document explicitly presents itself as conforming with Islamic practices of rule-making and rule-interpretation; its authors declare that "in compliance with God's order" they "issue the following fatwa to all Muslims." Despite the fact that the authors' standing to issue a *fatwa* was unclear, they maintained that "the ruling to kill the Americans and their allies – civilian and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque [Mecca] from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim." The letter seeks to establish the validity of its conclusion by citing two particular Koranic passages: "this is in accordance with the words of Almighty God, 'and fight the pagans all together as they fight you all together', and 'fight them until there is no more tumult or

---

<sup>650</sup> "Bin Ladin Declares Jihad on Americans," *Al-Islah*, 2 September 1996, translated and reproduced in *ibid.*, 19, 26.

oppression, and there prevail justice and faith in God’.” In addition, it adopts a justificatory argument parallel to that of the 1996 declaration; like the earlier document, the 1998 letter notes that “for over seven years the United States has been occupying the lands of Islam in the holiest of places, the Arabian peninsula.” Similarly, it maintains that the “best proof” of American hostility “is the Americans’ continuing aggression against the Iraqi people using the Peninsula as a staging post.” Finally, the 1998 *fatwa* draws on the authority of religious scholars (*ulema*) in justifying its position.<sup>651</sup> The innovations in the 1998 document are its relatively greater degree of formalization, especially its direct claim that it constitutes a *fatwa*, and the postulation of an individual duty to violently oppose the United States applicable to all Muslims – rather than the more equivocal position of the 1996 declaration, which called for Muslim unity but directed its call for action primarily at inhabitants of the Arabian peninsula.

The 1998 *fatwa* was followed, roughly six months later, by the so-called embassy bombings in Tanzania and Kenya. These attacks damaged relations between Western states and the Taliban significantly. The *fatwa* and attacks were not, however, bin Laden’s only attempts to communicate with the United States in this period. As he gained notoriety in the West, bin Laden gave two of his only interviews with Western media outlets. The first, which took place roughly two months before the embassy bombings, was conducted by John Miller for *Esquire*, who “told one of Bin Ladin’s agents, ‘we could frame his issues about America in such a way that people might find his arguments reasonable.’” The response was instructive: “The man smiled. ‘It may be better if he does not appear to be too reasonable,’ he said.” This exchange demonstrates that al Qaeda figures are aware of the differences in standards for evaluating arguments between the West and the Islamic world, and that they believe there are political

---

<sup>651</sup> “Text of World Islamic Front’s Statement Urging Jihad Against Jews and Crusaders,” *Al-Quds al-Arabi*, 23 February 1998, translated and reproduced in *ibid.*, 57-58.

advantages – either in communicating with the West, with Muslims, or both – in failing to conform, at least completely, with Western standards for institutional politics. The interview itself demonstrates this strategy of multi-vocal signaling. In it, bin Laden directly addresses the American people in two distinct ways. On the first occasion, he employed threatening and almost alien language: “So we tell the Americans... that if they value their lives and the lives of their children, to find a nationalistic government that will look after their interests and not the interests of the Jews.” There is a clear contrast with bin Laden’s second attempt to deliver his “message to the American people”. This second message was to “look for a serious government that looks out for their interests and does not attack others, their lands, or their honor.”<sup>652</sup> The second formulation avoids any direct threat, and calls for the US to adhere to a non-aggressive policy. The first formulation is more clearly aimed, at least in part, at fellow jihadis. It adopts the first-person plural pronoun ‘we’. One reason to do this is to make a claim directed at the other members of the ‘we’ – in this case, about the substance of what jihadis should demand from the United States. Another possibility is that bin Laden was demonstrating his solidarity with jihadis; rather than portraying his demands as personal in nature, he portrayed them as emanating from a broad social movement for which he was as much a spokesman as a leader. Further, the language about US policy advancing “the interests of the Jews” would be more easily understood in the Arab world, and especially among jihadis, as a reference to the Israeli-Palestinian conflict than it would be by a Western audience, which might see the statement purely as an expression of anti-Semitism.

It is worth asking why bin Laden would articulate these two messages in the same interview. Even if they were aimed primarily at different audiences, each audience would see

---

<sup>652</sup> “A Conversation with the Most Dangerous Man in the World,” *Esquire*, February 1999, reproduced in *ibid.*, 89, 99.

both messages. One possibility is that he simply sought to take advantage of an opportunity to reach the Muslim diaspora in the West. Another, more interesting, possibility takes his aide's statement to the interviewer more seriously. It is possible that bin Laden carefully calibrated the statements in order to appear committed, and dangerous, yet still socially comprehensible – in much the same way as Henry Kissinger had recognized in 1969 that the threat to use nuclear weapons in the context of Mutual Assured Destruction (MAD) could not be made “credible except by conducting a diplomacy that suggested a high irrationality”.<sup>653</sup> In much the same way as a leader must be both socially comprehensible enough to make a deterrent threat and appear irrational enough to make good on it, in order to compel the more conventionally powerful US to alter its policy, bin Laden must make his demands intelligible and yet appear committed enough to convince his opponents that conventional bargaining – in this case, positional politics – will not succeed in moderating his position.

Finally, bin Laden reiterated the claim in his 1998 *fatwa* that al Qaeda would target civilians in addition to military personnel. He stated that “we do not differentiate between those dressed in military uniforms and civilians”; he maintained that this decision is justified by American action: “American history does not distinguish between civilians and military, not even women and children. They are the ones who used bombs against Nagasaki. Can these bombs distinguish between infants and military?”<sup>654</sup> Again, the political purpose here is likely twofold. For moderate Muslims and liberal-minded Western citizens, the statement serves as an attempt to establish a degree of moral equivalency between al Qaeda and the United States in

---

<sup>653</sup> Henry Kissinger, quoted in Tod Lindberg, "Nuclear and Other Retaliation after Deterrence Fails," in *Getting Mad: Nuclear Mutual Assured Destruction, Its Origins and Practice*, ed. Henry D. Sokolski (Carlisle, PA: United States Army War College, 2004), 331.

<sup>654</sup> “A Conversation with the Most Dangerous Man in the World,” *Esquire*, February 1999, reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," 99.

order to generate sympathy. For most Western citizens, the purpose of the statement is to generate fear by demonstrating an absence of moral restraint.

The second interview bin Laden granted after the release of his 1998 *fatwa* came in late 1998, after the embassy bombings. In this interview, bin Laden sought to further justify his call for jihad against the US. He sought to do this by comparing American policy to criminal behavior: “Any thief or criminal or robber who enters another country in order to steal should expect to be exposed to murder at any time.” Bin Laden also addressed the issue of nuclear proliferation, expressing his opinion that “it would be a sin for Muslims not to try to possess the weapons that would prevent the infidels from inflicting harm on Muslims.” From the perspective of institutional politics, the most interesting aspect of the interview dealt with the relationship between al Qaeda and their Taliban hosts. Asked what he would do if his hosts asked him to leave Afghanistan, bin Laden answered only “that is not something we foresee.” Establishing the context for his piece, journalist Rahimullah Yusufzai wrote that after the embassy bombings, bin Laden “heeded the orders of his host, the Taliban militia” to avoid further attacks. Yusufzai attributes those orders to a belief that “the Taliban’s leaders evidently didn’t want to complicate their budding relations with the outside world.”<sup>655</sup>

Evidence indicates that the relationship between al Qaeda and the Taliban prior to 9/11 was complex and multifaceted; specifically, that the Taliban was in some ways less committed to contesting the rules of the international system, and that al Qaeda was constrained by the social legitimacy of the Taliban movement. Like al Qaeda, the Taliban is a Salafist jihad group with a lineage clearly traceable to the Soviet occupation of Afghanistan. Similarly, the Taliban employ

---

<sup>655</sup> “Wrath of God: Usama bin Ladin Lashes Out Against the West,” *Time Asia*, 11 January 1999, reproduced in *ibid.*, 83-85.

propaganda and rhetorical arguments in attempting to generate and maintain political support.<sup>656</sup> Both groups reject the notion that social rules can be legitimately made or altered by humans. The Taliban Deputy Foreign Minister reportedly defended implementation of sharia law to German diplomats in November 1996 on the grounds that “we have not introduced this law.” Similarly, Mullah Omar responded to Amnesty International criticism of his regime’s human rights record by asserting that “we are just applying the divine injunction.” Jurgen Kleiner concludes that, for the Taliban, any constitution can be “only declaratory”, and that “the divine injunctions are applied without being sanctioned by an act of law of men.”<sup>657</sup> The Taliban also accept a similar set of procedures for interpreting and applying rules drawn from the Koran and *hadith*; they moved to establish religious courts, supplemented by shuras, or tribal councils. Ultimately, however, decision-making authority rests in the hands of Mullah Omar and his immediate circle of advisors. Taliban spokesman Mullah Wakil Ahmed Mutakil has reportedly indicated that the Taliban “abide by the Amir’s [Mullah Omar’s] view even if he alone takes this view.”<sup>658</sup> More broadly, Kleiner finds that Taliban Mullahs are typically military commanders, and that they maintain authority over the ulema or scholars, who often serve in deputy roles.<sup>659</sup>

Despite their mutual acceptance of similar practices of institutional politics and of the desirability of political governance rooted in fundamentalist interpretations of Islam, the Taliban and al Qaeda have not always agreed on policy or tactics. The most striking difference can be found in their orientations toward the international system of sovereign states. While al Qaeda

---

<sup>656</sup> Thomas Elkjer Nissen, "The Taliban's Information Warfare: A Comparative Analysis of Nato Information Operations (Info Ops) and Taliban Information Activities," (Copenhagen, DK: Royal Danish Defence College, 2007).

<sup>657</sup> Jurgen Kleiner, "The Taliban and Islam," *Diplomacy and Statecraft* 11, no. 1 (2000): 21-22.

<sup>658</sup> *Ibid.*, 28.

<sup>659</sup> *Ibid.*, 20.

has sought to violently oppose and to undermine the American-led international system, the Taliban sought repeatedly to *join* it. William Maley describes securing recognition as the legitimate government of Afghanistan as the main objective of Taliban ‘foreign policy’. He notes that “the Taliban, upon taking Kabul, immediately demanded both recognition from other states as the government of Afghanistan, and Afghanistan’s seat in the General Assembly.” In order to press the latter claim, they repeatedly participated in a crucial procedural practice of international law. UN General Assembly Resolution 396(V), adopted on 14 December 1950, provides that “wherever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case.” The practical process for implementing this requirement is fulfilled by the Credentials Committee of the UN General Assembly, which voted annually from 1996 to 2000 not to recognize the Taliban as the legitimate occupant of the Afghan seat in the General Assembly.<sup>660</sup> While the Taliban failed to secure UN membership, in pursuing UN and diplomatic recognition they were required to engage with modern international practices of institutional politics. This may indicate potential for conscious efforts to forge broader consensus on legitimate procedural rules for international rule-making.

The Taliban effort to secure the Afghan UN seat was not the group’s only effort to secure international recognition. Indeed, the Taliban succeeded in gaining formal diplomatic recognition from Pakistan, Saudi Arabia and the United Arab Emirates (UAE). This foothold in international society provided the basis for a limited degree of learning and adaptation on the

---

<sup>660</sup> William Maley, "The Foreign Policy of the Taliban," (New York, NY: Council on Foreign Relations, 2000), 8-9.

part of the Taliban, introducing them to rudimentary elements of international practices for rule-making and rule interpretation. While this encounter was unable to induce the Taliban to fundamentally alter either their values or domestic policies, or to hand over al Qaeda leaders for criminal trial, it should be pointed out that relatively settled practices of rule-making have not eliminated violent conflict in the international system and that civil war continues to plague a wide range of states. The crucial point is that the case demonstrates the possibility that actors can be socialized to international practices of rule-making even if those practices are initially regarded with suspicion or hostility, and even if they are culturally alien to the new actor.<sup>661</sup>

Paul Sharp examines the experiences of Mullah Zaeef, the second and final Taliban ambassador to Pakistan. Zaeef served from October 2000 through November 2001, when he was stripped of diplomatic status, deported to Afghanistan and turned over to American custody. During his ambassadorial tenure, he performed an array of functions in a strikingly typical manner. In addition to the embassy in Islamabad, he oversaw consulates in Karachi, Quetta and Peshawar, and “worked closely with political and religious agencies which also operated in the Taliban interest.” He sought to manage bilateral relations with Pakistan, reaching agreements on dams, food aid, development assistance, treatment of prisoners, refugees and the movement of people.”<sup>662</sup> Despite the fact that he was accredited one week after the al Qaeda attack on the USS Cole, Zaeef was not excluded from contact with Western diplomats; rather, despite lacking formal recognition from any Western state, “Zaeef was precipitated into a series of high profile bilateral meetings with the American ambassador, William Milam, and the British High Commissioner, Hilary Sinott, which were to continue right up to the final outbreak of

---

<sup>661</sup> Important historical examples include the socialization of the Ottoman Empire, the Soviet Union, China and Japan into the international system.

<sup>662</sup> Sharp, "Mullah Zaeef," *Review of International Studies* 29, no. 4 (2003): 484.



hostilities.” The fact of these meetings is significant; it demonstrates the potential to extend and strengthen practices of institutional politics across significant intersubjective divides – and specifically to extend those practices to include actors accustomed to Islamic fundamentalist practices of rule-making. However, perhaps unsurprisingly, these meetings achieved little of substance. Sharp notes the crippling effect of the lack of agreement on secondary rules; the initial meeting “was not so much a negotiation... as an encounter between parties with little mutual understanding of what was supposed to be going on.” Like their Western counterparts, the Taliban displayed a degree of persistence in the face of adverse developments. While they had expected their capture of Taloqan,<sup>663</sup> the last remaining major Afghan city outside Taliban control, to result in diplomatic recognition at the UN, Zaeef nevertheless continued to meet Western diplomats after the General Assembly’s Credentials Committee denied the Taliban application for what would be the fifth and final time.<sup>664</sup>

In addition to engaging with Western practices of rule-making, Zaeef also sought to engage Western actors in discourse on the basis of Islamic secondary rules more clearly acceptable and intelligible to Taliban leaders. In the course of his discussions with Western diplomats, Zaeef dealt with four primary issues: the possibility of oil and gas pipeline projects; human rights concerns, especially related to Taliban treatment of women; the destruction of the Bamiyan statues; and the question of Osama bin Laden and al Qaeda. The question of pipeline construction is of minimal interest for my purposes here. On the remaining issues, Zaeef was engaged in structured discussion. Especially with respect to the Bamiyan statues and, surprisingly, the status of Osama bin Laden and al Qaeda, he made at least sporadic attempts to

---

<sup>663</sup> This expectation, in itself, is evidence that the Taliban were aware of international criteria for recognition, and that they understood these criteria on at least a rudimentary level.

<sup>664</sup> Sharp, "Mullah Zaeef," *Review of International Studies* 29, no. 4 (2003): 485-87.

‘translate’ Taliban understandings about legitimate practices of rule-making and rule interpretation for the international community.

On the question of women, “the Taliban had acted, Zaeef would maintain, to end the abuse of women under the warlords.” Further, they appear to have regarded these policies as “non-negotiable, one of their principal achievements to be defended against incursions.” With respect to the Bamiyan statues, Zaeef typically contrasted international concern with the statues with what he argued was a morally indefensible lack of concern with humanitarian conditions in Afghanistan. Despite this rhetorical ploy, Zaeef actually seems to have attempted to suggest a potential way to resolve the impasse. On 6 March 2001 he suggested that “maybe if there is a message from religious scholars of the Arabic world this may help” and that “so far we have not received any message or proposal which is based on reasons of Sharia law”. He further promised that “such a message... will be considered”. The international community took up this opening. Two days later, the Egyptian Foreign Minister “announced that the Mufti of the Republic had decided that destroying the statues did not express the spirit of Islam.” On 9 March, an Organization of the Islamic Conference (OIC) delegation arrived in Kandahar, accompanied by Zaeef. Zaeef pledged that “if both sides issue a unanimous fatwa (edict) saying the destruction of the statues is not proper, we will accept it.” However, after the meeting, the Taliban maintained “that while the Kandahar Ulema had listened to its counterpart from the other Islamic countries respectfully and would do so in the future, it had heard no good reason for halting the destruction.” In particular, the Kandahari scholars had concluded that “the ulema from abroad... had only acted under pressure from non-Islamic countries.” The Taliban

deliberately sought to alter the secondary rules being applied – to secure a discussion in terms of Islamic rather than Western international rules.<sup>665</sup>

Whether this move is best explained by consequentialist logic or a logic of appropriateness, the result was that the Taliban were drawn into a discursive exchange. That the OIC delegation failed to secure a change in Taliban action is similarly beside the point. Social practices are rarely determinative – especially when the practice is explicitly deliberative in nature. As I have argued throughout all the case studies, as well, rules are rarely obeyed completely. There are three important points. First, as my theory expects, the Taliban articulated a justification for their position – and, further, a justification rooted in procedural propriety. The Taliban claim was essentially that the OIC delegation had not fulfilled the requirement of conducting rule interpretation on genuinely Islamic grounds because the ultimate impetus for OIC action was Western pressure. Second, the Taliban explicitly reaffirmed the relevance and legitimacy of Islamic practices of rule creation and rule interpretation. While they maintained their freedom to destroy the statues, they publicly declared themselves bound to accept certain practices of institutional politics that could, in other cases, require them to alter their behavior. Though actors can certainly bend and manipulate procedural rules to suit their interests and their pre-conceived courses of action, their ability to persuasively do so in a public fashion is not infinite. Third, following the episode with the OIC delegation, the Taliban continued to assert justifications directed at international audiences for their refusal to discuss the issue of the Bamiyan statues. Zaeef and his staff consistently maintained that the issue of the statues was less important than humanitarian needs, and that international insistence to the contrary was indicative of disregard for Afghans' basic rights. When it became apparent that

---

<sup>665</sup> Ibid., 489-90.

changing the applicable secondary rules had not resolved the issue, at least to the satisfaction of the international community, the Taliban ambassador displayed a willingness and an ability to engage with international diplomatic rules and practices – in this case by employing a form of linkage politics.

The question of how to handle al Qaeda arose on two separate occasions during Zaeef's tenure: the fall of 2000, in response to the attack on the USS Cole, and the fall of 2001, in response to the 9/11 attacks. As with the Bamiyan statues, in both cases the Taliban sought to ensure that questions related to al Qaeda would be resolved according to Islamic rules and practices. The significance of this point deserves elaboration: the Taliban responded to Western demands by invoking what they understood to be legitimate standards – and what their supporters both in Afghanistan and in the broader Muslim world broadly understood to be legitimate standards – for determining whether the demand to hand over bin Laden and other senior al Qaeda leaders was binding. Established practices for rule-making and rule interpretation were regarded as relevant, and were actually employed. Further, Zaeef attempted to secure acceptance of these practices from the international community.

The basic Taliban position was that handing al Qaeda leaders over for trial was prohibited both by Islamic rules and by a body of Pashtun tribal rules referred to as Pashtunwali.<sup>666</sup> However, they made two alternate proposals that could potentially secure justice while remaining faithful to these rules. First, the United States could provide evidence to the (Taliban appointed) Supreme Court of Afghanistan, “which would try him with the aid of religious scholars from Saudi Arabia and a third or fourth country and possibly with monitors from the Organization of the Islamic Conference (OIC).” Second, even if the United States refused to

---

<sup>666</sup> On Pashtunwali, and the relationship between Pashtunwali and Sharia in Taliban thought, see Kleiner, "The Taliban and Islam," *Diplomacy and Statecraft* 11, no. 1 (2000): 25-26.

provide evidence leading to a mutually satisfactory trial, Sharp reports that the Taliban unilaterally pledged they “would ‘... contain and supervise...’ Bin Laden to prevent him using Afghan territory as a base for operations against third countries.” Zaeef also articulated a justification for the refusal to turn bin Laden over; to do so, Agence France Presse reported on 23 January 2001, would “amount to giving a kind of superiority to non-Islamic laws over Islamic laws.”<sup>667</sup> That is, it would violate legitimate practices for applying rules to particular cases.

Following 9/11, Zaeef declared the attacks inconsistent with Islam, but he also reportedly insisted they “were beyond the technical ability of Bin Laden, who was under surveillance and lacked trained pilots” and “reiterated the request for evidence if the US wanted Bin Laden tried.” Shortly after making these statements Zaeef accompanied a Pakistani delegation to Kandahar that was to present evidence in an effort to arrange extradition. The result of this diplomatic mission was “a request from the Kandahar Council of Ulemas to Bin Laden that he should leave Afghanistan”; however, Zaeef “explained that the request was advisory and non-binding until Omar approved it.” When Omar remained silent, “the delegation returned to Pakistan with a promise to meet again and a request for OIC and UN investigations of the bombings.” The final noteworthy comment from Zaeef on the question of bin Laden was his confirmation “that, Omar’s silence notwithstanding, the Ulema’s recommendation that he should leave had been given to Bin Laden, but that there had been ‘... no response...’.”<sup>668</sup>

It is unclear whether the Taliban was truly sincere in its offer to arrange a trial of bin Laden and his associates. An internet report on a Pakistani website on 3 April 2001, prior to the 9/11 attacks, quoted Mullah Omar as saying: “Half of my country has been destroyed by two decades of war. If the remaining half is also destroyed in trying to protect Bin Ladin, I’m

---

<sup>667</sup> Sharp, "Mullah Zaeef," *Review of International Studies* 29, no. 4 (2003): 487.

<sup>668</sup> *Ibid.*, 491.

prepared for this sacrifice.” Further, the report quoted a ‘Taliban source’ as insisting that bin Laden “is not going to be handed over if there is any prospect that he will be convinced.” These statements suggest that Zaeef’s overtures to the international community were cynical in nature – ploys to distract and delay. Even if this were the case, it would demonstrate at least that the Taliban were willing and able to employ international practices of institutional politics to achieve this goal. However, there is reason to suspect that the Taliban regarded Islamic rules and practices as binding, or at least constraining. The same internet report articulating Taliban commitment to protecting al Qaeda began as a report of *tension* between the two groups. It quotes a letter from bin Laden to Mullah Omar, in which bin Laden complains that “the United States is free to do whatever it feels like and I have been placed under restrictions.”<sup>669</sup> This appears to establish that the Taliban had followed through on their unilateral promise to ‘contain and supervise’ al Qaeda – at least to the best of their ability.<sup>670</sup> Bin Laden himself seems to have confirmed that al Qaeda was constrained not primarily by Taliban might, but rather by the social legitimacy the Taliban enjoyed. In an Al Jazeera interview conducting in December 1998 (and rebroadcast on 20 September 2001), bin Laden acknowledged that “we are in a state with an Emir of the Faithful.” As a result, al Qaeda was “legally bound to obey him in whatever that does not violate God’s words.”<sup>671</sup> This formulation is significant – it establishes the centrality of established Islamic practices of rule-making and rule interpretation in determining the limits of Mullah Omar’s authority over the Taliban. The crucial question would be whether Omar’s directives violated the requirements of Islam.

---

<sup>669</sup> Ismail Khan, “Usama Regrets Curbs by Taliban,” *Karachi Dawn*, 3 April 2001, reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 150-51.

<sup>670</sup> Zaeef’s insistence that the 9/11 attacks were beyond al Qaeda’s capability suggest that the Taliban capacity to restrain al Qaeda was far from perfect.

<sup>671</sup> “Al-Jazirah TV Broadcasts Usama Bin Ladin’s 1998 Interview,” 20 September 2001, translated and reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 171.

These same social rules appear also to have restricted al Qaeda, both in its relations with the Taliban and, partially by extension, with the outside world. Despite his complaints about Taliban restrictions bin Laden had, after all, publicly expressed the understanding that he was legally bound to obey the Taliban as long as he resided in Afghanistan. More specifically, bin Laden seemed to accept the legitimacy of a trial under Islamic law. In the Al Jazeera interview rebroadcast on 20 September 2001, bin Laden declared: “we are ready at any time to appear before any religious court, in which both plaintiff and defendant stand.” He added that “if the plaintiff is the United States, we will also sue it for many things and cardinal sins it committed in the land of Islam.” This possibility seems to have been understood as something more than a rhetorical canard. Bin Laden revealed that the US had asked the Taliban to hand him over before December 1998, presumably in response to the embassy bombings. He criticized this demand explicitly on the grounds that it failed to conform with what he understood to be legitimate practices of institutional politics, noting that the US “refused to apply the shari’ah” in dealing with him, and connected this refusal to the common narrative of American “arrogance”.<sup>672</sup>

The overall impression is of at least three different actors – the US government, the Taliban and al Qaeda – playing by two distinct sets of secondary rules. These rules shaped the options available to the actors, enabling and constraining them in the pursuit of their goals and in their responses to the actions of other actors. Al Qaeda publicly acknowledged Taliban authority, within the limits prescribed by secondary rules, and also accepted the prospect of participating in a trial – what would amount to an authoritative legal interpretation of the relative merits of contending positions with respect to the rules of the international system – so long as the trial was conducted according to legitimate secondary rules. The Taliban stands out for its

---

<sup>672</sup> “Al-Jazirah TV Broadcasts Usama Bin Ladin’s 1998 Interview,” 20 September 2001, translated and reproduced in *ibid.*, 164.

attempt – albeit inconsistent and very likely tactically motivated – to bridge Islamic and international practices of institutional politics. In fact, it is the only actor to have attempted such a fusion. This should not be understood as excusing Taliban behavior with respect to human rights; rather, it demonstrates the potential for expanding intersubjective acceptance of modified international practices for rule-making and interpretation in what is a fairly ‘hard case’ – a radical Wahhabist militant group. Even where the chasm between Western and Islamic practices could not be bridged, or in domestic cases where international practices had little obvious relevance, the Taliban seem to have been influenced by Islamic practices of institutional politics. The meetings with delegations of foreign Muslim scholars may not have stopped or altered Taliban policies, but they did commit the Taliban to an external process of review for their domestic policies that in some ways extends beyond baseline international obligations in the context of state sovereignty. Further, the Taliban seem to have concluded that while rules of hospitality enjoined them from extraditing bin Laden, they also established positive obligations of responsibility on the Taliban for the behavior of their guests. Finally, these same rules of hospitality led the Taliban to ask bin Laden to leave the country after 9/11, but still prohibited them from expelling him – even in the face of a virtually certain American reprisal that threatened the military gains they had made in consolidating their *de facto* hold on the Afghan state. The United States, along with its allies in the industrial world, made slight deviations from established international practice in order to accommodate and potentially integrate the Taliban, effectively according them informal diplomatic status ‘as if’ they constituted the formally recognized government of Afghanistan without ever extending official recognition. Further, it is likely that OIC and other Muslim efforts to engage the Taliban in reasoning on their own terms enjoyed at least the tacit acceptance of major powers. While it is impossible to say how these



attempts to find a *modus vivendi* would have developed absent the spectacular nature of the 9/11 attacks, it is noteworthy that integrative efforts were in many ways driven by major terrorist attacks – the embassy bombings and the attack on the USS Cole. Collectively, all of this suggests that there may have been developing (and ultimately missed) diplomatic opportunities prior to 9/11.<sup>673</sup> These opportunities were obscured and undermined by the insistence of the various actors on employing their own practices of institutional politics, and by their general inability to recognize the admittedly limited common ground between their divergent practices.

Regardless, the 9/11 attacks fundamentally altered the political dynamics of al Qaeda's attempts to change the international system. Just as the attacks drew Western engagement with the Taliban to a close, they raised the curtain on a new act of political theatre featuring the United States playing directly opposite bin Laden. In his televised address on 20 September 2001, American president George W. Bush referred to the attacks as an "act of war" and declared that "al Qaeda is to terror what the mafia is to crime." Despite the mixed analogies, Bush was clear that al Qaeda's "goal is remaking the world". He then noted that "the terrorists practice a fringe form of radical extremism that has been rejected by Muslim scholars and the vast majority of Muslim clerics – a fringe movement that perverts the peaceful teachings of Islam." Bush was clearly aware that al Qaeda sought changes to the international system, and his administration articulated a reply based in important part on an internal critique of al Qaeda's positions as being inconsistent not only with international practice, but also with proper *Islamic* standards for rule-making and interpretation. He went on to declare that "the United States of American makes the following demands on the Taliban: Deliver to United States authorities all the leaders of al

---

<sup>673</sup> It is unlikely a mutually satisfactory set of rules for such a trial could have been created. Rather, the point is a more general one – that conscious effort to broaden the legitimacy of international practices for rule-making and rule interpretation may yield positive long-term results that reduce the appeal of extremist actors in the Muslim world and elsewhere.

Qaeda who hide in your land.” Bush continued, insisting on release of and protection for all foreign journalists, diplomats and aid workers, and that the Taliban act to “close immediately and permanently every terrorist training camp in Afghanistan, and hand over every terrorist, and every person in their support structure, to appropriate authorities.” Bush insisted that these demands, along with provisions for the US to verify Taliban compliance, were “not open to negotiation or discussion.” Procedurally, the American demands were noteworthy for two reasons. First, they were directed not to al Qaeda but to the Taliban. This likely reflects both the international effort to engage the Taliban given its *de facto* control of Afghanistan, and a calculated move to deny standing in discussions over the rules of the international system to violent non-state actors. Second, the American demands were strikingly broad and invasive in their scope, penetrating deep inside Afghanistan’s sovereign prerogatives – especially considering that international law did not clearly authorize states to hold other states directly responsible for the actions of terrorist groups operating both inside their borders and transnationally.<sup>674</sup> The address articulated, in embryonic form, the core of what would become the ‘Bush Doctrine’: that “any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.” Perhaps as a result of the far-reaching nature of these positions and their significant implications for the functioning of the international system, the address concluded with a justification of the American position aimed at the international community. Bush argued that “this is the world’s fight. This is civilization’s fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom.” He also expressed the belief that members of “the civilized world... understand that if this terror goes unpunished, their own cities, their own citizens may be next. Terror, unanswered, can not only

---

<sup>674</sup> On the status of international law in this regard on 9/11, see Byers, "Not yet Havoc," *Review of International Studies* 31, no. 1 (2005): 55-57.

bring down buildings, it can threaten the stability of legitimate governments.” The statement reflects the Bush administration’s awareness that its proposals would face scrutiny from allied governments and world opinion, and that they therefore required justification in the context of existing international practices of institutional politics. Interestingly, the language employed in the address also evinces the belief that terrorism posed a potential threat to “the stability of legitimate governments.”<sup>675</sup> That is, in addition to destruction of property and loss of life, terrorism was a problem because it could undermine established practices of rule-making.

Al Qaeda had succeeded in changing the stakes of the institutional-political game; the United States was engaged in a fundamentally different manner – and saw the conflict in a different light than it previously had. Both sides were clear that the nature of the international system was at stake, but they also retained sharply divergent and incompatible views not only of the *substance* of desirable alterations to that system but also of the legitimate practices for creating such changes. The remarkable aspect of this situation is that these differing views did not cause either side to abandon what it regarded as legitimate practices of institutional politics. Instead, both continued to employ culturally relevant practices. As I will argue, this pattern seems best explained by two factors. First, realization on the part of both the Bush administration and al Qaeda leadership that even if they did not mutually agree on practical means for rule creation and interpretation, that each also sought to convince third-party audiences with which they *did* agree broadly on legitimate institutional-political practices. Each side not only sought to convince such audiences using arguments consistent with secondary rules – they also sought to leverage those secondary rules to undermine the legitimacy of the opposing side. Second, the reliance on practices of institutional politics is likely explicable in some

---

<sup>675</sup> Bush, "Address to the Nation," speech given at Washington, D.C., 20 September 2001, accessed at <http://www.presidentialrhetoric.com>.

measure by sincere belief on each side in the legitimacy of their preferred practices as instrumental to a particular notion of ‘the good life’. While it is ultimately extraordinarily difficult to impute motives to particular decision-makers, key figures on both sides repeatedly invoked such imagery using vivid and emotional language. Further, the link to the good life helps explain the rigidity shown by both sides with respect to procedural matters – rules of procedure, on this view, are not goods susceptible to easy substitution. If employing improper procedures for rule-making can threaten the fundamental aims of human community, stakes are raised immeasurably. This linkage may be functional in securing compliance within a community with what can easily seem abstract and arcane strictures, but it may significantly complicate efforts to conduct institutional politics between communities. This sincere belief, coupled with instrumental links to ‘the good life’, appear to have significantly reduced both the willingness and the ability of key decision-makers to even imagine potential compromises and alternative procedures for institutional politics.

Regardless of the reasons behind the determined resort to practices of institutional politics on the part both of al Qaeda and the Bush administration, it is hard to imagine an alternate, intelligible explanation of the overall pattern of behavior – especially the striking similarities in form despite highly distinctive political cultures. Both al Qaeda and the Bush administration – as well as their various third-party interlocutors – articulated proposals about the creation and interpretation of social rules in patterned ways that were intelligible as such to their listeners, to varying degrees. Further, they evaluated the proposals of other actors in a similarly patterned way, just as those audiences evaluated their own proposals. When presentation or evaluation of proposals broke from practices specified as legitimate, offending actors presented justifications and audience members engaged in critical responses. Finally,

when terms of evaluation were seen as incompatible, actors treated each other as secondary rule violators even as they employed violence against each other – showing little ability or willingness to collaborate improvisationally to create shared practices of rule creation and interpretation. At most, they engaged in critical responses rooted in their own existing institutional-political practices.

Available alternate explanations do a poor job accounting for this overall pattern of behavior. While theoretical issues are dealt with in more detail in Chapters 1 and 2, some brief observations here may serve to illustrate the value-added in my approach for a skeptical reader. Realist theories cannot adequately account for instances in which actors passed up potentially better material outcomes for procedural reasons. Perhaps the most striking example in this case is the Taliban decision in fall 2001 to request that al Qaeda leave their country while simultaneously refusing to declare him *persona non grata* in the face of international invasion. They also fall short more fundamentally in explaining why anyone would bother creating all this remarkably patterned ‘cheap talk’. While neoliberal institutionalist theories offer some purchase on the ‘stickiness’ of institutions, they are less helpful in explaining actions driven by logics of appropriateness, or in explaining the formation of interests in the first place – let alone the formation of values or identities. While it is true that nothing written here represents a definitive statement on any of these issues, it should be equally clear that there is more going on socially in international politics than neoliberal institutionalists can account for, and that these additional facets of international relations are of fundamental importance in explaining and understanding the world. The reality of rule-guided practices of social rule-making at the international level is itself a demonstration of this point. Finally, though my theory is an avowedly constructivist one, it still seeks to build on existing constructivist work and to offer incremental advances in theory-

building. Most notably, I argue that insufficient attention has been paid to actual empirical cases of rule-making and rule-interpretation, and specifically to the standards and criteria that the relevant actors themselves believe are legitimate in performing these social functions. These standards can be operative only if they are intersubjectively real – that is, if groups and individuals are aware of them and regard them either as legitimate or as socially expected on pain of unacceptably costly sanctions. This first point is connected to the second major innovation in my work from the perspective of IR constructivism: that explaining the creation (or failure to achieve the creation) of intersubjectivity is fundamentally not about explaining the decision of a norm entrepreneur to champion a particular idea; rather, it requires explaining how relevant audiences for adjudicating such proposals are constituted as well as explaining the criteria and processes by which their decisions are reached. By filling these gaps, my theory advances the ability of constructivism to explain the dynamics of social structures; it does so while expanding the understanding of agency beyond the role of ‘norm entrepreneurs’ to include their audiences, thus partially addressing concerns that constructivism has privileged the explanatory role of social structure and has thus been insufficiently attentive to the role of agency.<sup>676</sup> In the remainder of this section, I seek to demonstrate that my theory can render intelligible the overall pattern of behavior by al Qaeda and the Bush administration in the period following the 9/11 attacks.

---

<sup>676</sup> There is an extensive literature on the so-called agent-structure debate, specifically as it applies to the study of international relations; it is not my purpose here to resolve this debate. Interested readers may wish to consult from among the following: Hollis and Smith, *Explaining and Understanding International Relations*; Colin Wight, *Agents, Structures and International Relations: Politics as Ontology* (Cambridge, U.K.: Cambridge University Press, 2006); Alexander Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization* 41, no. 3 (1987); Roxanne Lynn Doty, "Aporia: A Critical Exploration of the Agent-Structure Problematique in International Relations Theory," *European Journal of International Relations* 3, no. 3 (1997).

President Bush's 20 September address sought to deny standing to al Qaeda. From the perspective of international practice this was unsurprising: as al Qaeda, unlike the Taliban, did not even make a claim to status as the government of a state, it was not a legitimate participant in the institutional politics of the international system. However, denying standing to al Qaeda on procedural grounds did not necessarily require extending that status to the Taliban. While the Taliban had *de facto* control of Afghanistan, as well as formal recognition from three states in the region and a brief history of quasi-diplomatic interaction with the United States, it had been rebuffed five times in its efforts to secure UN recognition and had never been officially recognized by the United States. It may have been easier for the Bush administration to secure authorization from officials in the former Rabbani government, and to have intervened in Afghanistan on this basis. It seems reasonable to conclude that the American decision may have been driven at least in important part by a perceived need to secure legitimacy for military action by first exhausting all potential peaceful means of conflict resolution with the most state-like party available – the Taliban. Even if the underlying motivation to adopt this course of action was one of self-interest (for example, either a need to placate Pakistani officials given the close ties between the Taliban and elements of the Pakistani security establishment or a desire to attract a broader international coalition as a means to control the financial and other costs of intervention), the vital point is that the American decision to issue demands to the Taliban was not the only (or even the most obvious) course of action available. It was, however, a course of action consistent with a vital international rule requiring initial resort to peaceful means of conflict resolution in advance of military action, even when that military action could be convincingly portrayed as furthering international security.

As discussed above, the attempt to induce or compel the Taliban to hand over al Qaeda leaders ultimately failed, despite some indications that Taliban leadership searched for an internationally acceptable compromise consistent with their reading of what Islamic and Pashtun practices allowed. The failure to reach agreement led the United States to pressure Pakistan into rescinding the diplomatic status of Mullah Zaeef, who was deported to Afghanistan in late 2001 and subsequently taken into custody by the United States. Even before the final breakdown in relations between the United States and the Taliban, however, al Qaeda had spoken out – following up its spectacular tactical success with a series of discursive interventions in an effort to shape international discussions.

These initial interventions illustrate clear constraints on al Qaeda attributable to secondary rules. In a 28 September 2001 interview with *Karachi Ummat*, bin Laden initially *disavowed* direct responsibility for the attacks, stating that “I am not involved in the 11 September attacks in the United States.” He added: “Neither had I any knowledge of these acts nor I consider the killing of innocent women, children, and other humans as an appreciable act.” Finally, he acknowledged that “Islam strictly forbids causing harm to innocent women, children, and other people. Such a practice is forbidden even in the course of a battle.”<sup>677</sup> Bin Laden’s denial of his greatest triumph is striking, and surprising. There are at least two potential explanations rooted in institutional politics that render it intelligible. First, the denial of direct responsibility is actually the *norm* in al Qaeda operations prior to 9/11 rather than the exception.<sup>678</sup> It is likely that this pattern of denying direct involvement while asserting a right to

---

<sup>677</sup> “Exclusive Interview with Usama Bin Ladin on 11 September Attacks in US,” *Karachi Ummat*, 28 September 2001, translated and reproduced in “Compilation of Usama Bin Ladin Statements 1994 - January 2004,” 179.

<sup>678</sup> For instance, bin Laden denied responsibility for the 1998 embassy bombings in at least two interviews. See “Time Magazine Interview with Bin Ladin,” *Time*, 11 January 1999, reproduced in *ibid.* See also “A Conversation with the Most Dangerous Man in the World,” *Esquire*, February 1999, reproduced in *ibid.*



'rouse' attacks via *fatwas* and public statements reflect a carefully calculated effort to advance his political agenda without running afoul of Taliban restrictions on his activity that were the price for his protection against expulsion. In this way, Islamic practices of institutional politics meaningfully constrained bin Laden's attempts to capitalize politically not only on the 9/11 attacks but also on the embassy bombings. Second, as he directly admitted, bin Laden was aware that the 9/11 attacks would be seen by many Muslims as a violation of proper Islamic behavior. Thus, the denial of involvement was a means to shield himself against recrimination and criticism on Islamic grounds. In fact, as I will demonstrate, al Qaeda would later go to considerable lengths to develop explicitly Islamic justifications for the 9/11 attacks to more effectively counter such charges. While it is somewhat surprising that such justifications had not been prepared in advance for immediate articulation after the attacks, the point for now is merely that bin Laden was apparently constrained in publicly taking credit for the 9/11 attacks in part because he was unable to justify them in terms consistent with the expectations of the Islamic world regarding legitimate means of social or political protest.

Indeed, bin Laden's 28 September 2001 interview was preoccupied with shoring up support in the Islamic world. He articulated a Salafist argument establishing jihad as a sixth primary duty, or 'pillar' of the Islamic faith, and he also addressed the opposition to his political programme by major Muslim states, arguing that to "support the attack of the Christians and the Jews on a Muslim country like Afghanistan" was contrary to "the orders of Islamic Shariat". The interview is also important for an insight bin Laden provided on the importance he places on political discourse; he said that "today's world is of public opinion and the fates of nations are determined through its pressure." Bin Laden coupled this admission of his desire to be politically persuasive and assessment of the power of intersubjectivity with a warning to jihadists

about the dangers of international practices of institutional politics. He argued that “rejections, explanations or corrigendum only waste your time and through them, the enemy wants you to engage in things which are not of use to you.”<sup>679</sup> This observation clearly demonstrates a savvy political operator with a relatively sophisticated understanding of differing standards of argumentation employed in jihadi circles as compared to the corresponding international practices, and the significant political consequences associated with the terms on which processes of institutional politics are conducted.

In an interview dated 21 October 2001, bin Laden continued his intervention in Islamic debates surrounding the 9/11 attacks and attempted to respond both to Islamic critics and to the Bush administration. Asked again if he was connected to the 9/11 attacks, bin Laden replied by rejecting “the description of these attacks as terrorism.” Rather, he maintained, the hijackers “acted with God’s grace in the way we understand and uphold it and in self-defense. It was in defense of their brothers and sisters in Palestine and the liberation of their [the hijackers’] holy places.” The interview carried bin Laden’s rejection of the ‘terrorist’ label a step further, by directly invoking Bush’s own words. He noted that “Bush has said that the world must make a choice between one of two parties; there is the party that supports him, and that any state that does not join the Bush government and the world Crusade will necessarily be considered with the terrorists.” He then asked, rhetorically, “can there be a clearer terrorism than this one?” Finally, he asserted that “many states that do not control their own affairs had to go along with this powerful world terrorism.”<sup>680</sup> While still stopping short of directly claiming responsibility for the attacks, bin Laden defended them and articulated justifications for them. He also sought

---

<sup>679</sup> “Exclusive Interview with Usama Bin Ladin on 11 September Attacks in US,” *Karachi Ummat*, 28 September 2001, translated and reproduced in *ibid.*, 180-81.

<sup>680</sup> “Full Text of Interview Held with Al-Qa’ida Leader Usama Bin Ladin on 21 October 2001,” *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 238.

to make the case that the United States not only ‘terrorized’ Muslims, but also employed terror as a means of persuading states to accept its condemnation of al Qaeda. This last point is a procedural one; bin Laden accused the United States of corrupting processes of rule-making and rule interpretation with threats of force.

After noting bin Laden’s 1998 *fatwa* and its finding that Muslims were under an individual duty to kill Americans, the interviewer observed that “other ulema issued different *fatwas*. Some have supported you, but others have criticized or opposed your *fatwa*. Some have asked: under what basis must we kill a Jew, or Crusader or a Christian simply because of his religion?”<sup>681</sup> In response, bin Laden directly invokes three specific *fatwas* that reached similar conclusions and particularly notes that one was issued in Pakistan and another in Saudi Arabia. These appeals to concurring authority clearly establish bin Laden’s awareness of key Islamic standards for making and interpreting rules, and further provide geographic indications about his core audience.

Asked next about the charge that terror attacks kill innocent civilians, bin Laden displays the evolution of al Qaeda’s justificatory response over a short period of under a month. First, bin Laden indicates his awareness of such charges both from “the United States and some intellectuals”. He replies first to the international community by leveling a charge of hypocrisy. He asserts that “when we kill their civilians the whole world from East to West cries out” before claiming that the same standards are not applied to protect Muslims. In presenting this argument, bin Laden invoked two parables. First, he reported that “a tradition by the prophet [hadith] says: ‘A woman was put in hell for tying up a cat, without feeding it or letting it feed itself.’ This was just a cat. How about the millions of Muslims who are being killed?” He then

---

<sup>681</sup> “Full Text of Interview Held with Al-Qa’ida Leader Usama Bin Ladin on 21 October 2001,” *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 239.

invoked “Arab history” to make a point about the equal moral worth of human lives regardless of power or social station, relating a case in which “an Arab king once killed a man.” While “people then were used to kings killing people,” he noted that “the brother of the victim lurked for the king and killed him.” According to bin Laden, the brother defended his conduct by arguing that “souls are equal.” Leveraging this putatively analogical case, bin Laden asserted that he and his followers would “kill the kings of infidelity [Muslim rulers aligned with the West], the kings of the Crusaders [Western leaders], and the infidel civilians for killing our sons.” He maintained that “this is permissible legally and logically” – essentially making a claim that justice entailed an eye for an eye. Not content to treat that response as a sufficiently convincing reply to potential critics, bin Laden also contended that, under Islamic practice, “the ban on killing innocent children is not absolute. There are provisions that restrict it.” Reprising his prior argument about reciprocity, he invoked Koranic authority by quoting the following passage: “God says: ‘And if ye do catch them out, catch them out no worse than they catch you out.’” He then changed gears, and asserted what amounts to an Islamic rule of ‘double effect’: the 9/11 attacks were morally acceptable because the attackers “did not intend to kill children.” Instead, they had attacked the Pentagon – a military target – and the World Trade Center, which was a target of strategic economic importance.<sup>682</sup> Both of these arguments represented significant steps toward the development of a justification for the 9/11 attacks explicitly intended to counter criticisms both from inside and outside the Islamic community that could damage public support for al Qaeda and its positions. Both were also advanced in the context of Islamic practices for determining the applicability of rules – in this case concerning the legality and

---

<sup>682</sup> “Full Text of Interview Held with Al-Qa’ida Leader Usama Bin Ladin on 21 October 2001,” *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 240-41.

morality of taking human lives to further political goals – to particular, concrete cases. Such rules of interpretation or adjudication constitute Hart’s third category of secondary rules.

Next, bin Laden again sought to fend off the pejorative label of ‘terrorism’, though this time in a novel manner: by distinguishing ‘good’ from ‘bad’ terrorism. He sought to accomplish this by arguing that “not every kind of terrorism is censured. There is malignant terrorism and benign terrorism. The criminal thief is frightened of the police. Do you tell the police you are a terrorist because you frighten the thief? No, police terrorism of criminals is benign terrorism. The criminal’s terrorism of innocent civilians is malignant terrorism.” In its allegedly larcenous and murderous behavior toward the Islamic world, the United States represented the criminal committing malignant terrorism; in contrast, jihadis, dispensing justice and acting to remedy injustice (understood as an individual obligation in Islamic theology and jurisprudence) undertook benign terrorism.<sup>683</sup> This interpretation is decidedly outside the mainstream in Islamic society; bin Laden, who regularly engages in theological criticism of Muslim societies, was presumably aware of this. The fact that he made such a marginal argument, in terms of likely audience reaction, is potentially indicative of concern that the ‘terrorist’ label may have political power even within the Muslim community; the fact that he chose to reply by grounding his position in a problematic and somewhat tortured interpretation of Islam demonstrates the deep and consistent influence of Islamic practice on al Qaeda’s political speech.

The final noteworthy aspect of bin Laden’s 21 October 2001 interview is his discussion of pro-Western Islamic governments. In many ways, this is the most important aspect of al Qaeda’s political programme, the root grievance against the apostate ‘near enemy’ that instrumentally justifies the conflict against the ‘far enemy’. Bin Laden’s discussion of the issue

---

<sup>683</sup> “Full Text of Interview Held with Al-Qa’ida Leader Usama Bin Ladin on 21 October 2001,” *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 242.

in this interview is a direct response to criticism from the Saudi Interior Minister over al Qaeda's willingness to engage in the practice of *takfir*, or declaring other Muslims to be infidels or apostates. Bin Laden reported the charge directly: "He said we consider Muslims infidels, God forbid!" He then flatly denied it, maintaining "we believe Muslims are Muslims." However, bin Laden followed this denial with a curious qualification; he said "we do not consider any one of them infidel, unless he violated any of the known Islamic rules intentionally." Al Qaeda's position thus clearly accepts the practice of *takfir*. Bin Laden's defence against Saudi criticism essentially amounted to an assertion that the apostate himself ends his Islamic status before he is recognized as an infidel by a Muslim observer. It is worth quoting bin Laden at length on this issue:

I swear to God anyone who follows Bush in his plan is a renegade from the creed of Muhammad... This is one of the clearest rules in God's book and the traditions of the prophet... The ulema have issued fatwas on this subject. And the proof is in the words of God when addressing the faithful: 'O ye who believe take not the Jews and the Christians for your friends and protectors; they are but friends and protectors to each other. And he among you that turns to them (for friendship) is of them.'<sup>684</sup>

Bin Laden had spoken publicly on the interpretation of this same passage in a December 1998 interview with Al Jazeera, insisting that the phrase "is of them" meant that "he becomes an infidel like them."<sup>685</sup> The crucial point is to note that bin Laden defends the practice of *takfir* by directly invoking key Islamic sources of authority. In addition to his direct quotation from the Koran, bin Laden asserts that his position is consistent with the traditions of the prophet, or the *hadith*, as well as *fatwas* issued by Islamic *ulema*. Islamic rules and practices of rule interpretation were therefore central to bin Laden's response to the Saudi Interior Minister's criticism of al Qaeda's own arguments about the apostasy of the Saudi government and other

---

<sup>684</sup> "Full Text of Interview Held with Al-Qa'ida Leader Usama Bin Ladin on 21 October 2001," *Jihad Online News Network*, 21 January 2003, translated and reproduced in *ibid.*, 243.

<sup>685</sup> "Al-Jazirah TV Broadcasts Usama Bin Ladin's 1998 Interview," 20 September 2001, translated and reproduced in *ibid.*, 175.

pro-Western governments in the Islamic world. Both sides clearly understood their dispute as susceptible to resolution according to particular practices and methods of interpretation. While broad agreement on standards for evaluating claims about appropriate rules of social behavior has not resulted in resolution of this dispute about the legitimacy of *takfir* or the dispute over the Saudi relationship with the United States, both sides continue to employ relevant practices of institutional politics. Furthermore, although al Qaeda continues to advance its arguments, there is little evidence that they have broadened their appeal beyond the small minority of Sunnis that adhere to Hanbali and Wahhabist doctrines. Even within the Wahhabi community, the official Islamic sect in Saudi Arabia, al Qaeda's interpretations remain controversial. Indeed, the entire strategy of attacking the 'far enemy' is born of al Qaeda's inability to achieve broad gains in establishing its position within the Islamic world. Though bin Laden and his associates ascribe this failure publicly to material support from the United States for the apostate regimes, an alternate analysis might attribute the outcome in part to the poor fit between al Qaeda's argument and relevant secondary rules. The historical rejection of *takfir* within the Islamic community stems from its role in early Islamic sectarian conflicts that threatened the political and social community of the *ummah*. The eventual resolution of this conflict was premised on a compromise banning judgments pertaining to the authenticity of another Muslim's beliefs.<sup>686</sup> Reopening this compromise thus represents a major breach of Islamic tradition and practice on the part of al Qaeda; as my theory expects, many in al Qaeda's audience have accordingly rejected the conclusions flowing from this discursive move, and they have done so on the grounds that *takfir* is procedurally illegitimate.

---

<sup>686</sup> The emergence of this practice of tolerance is discussed by Levy, *The Social Structure of Islam*, 183-85; Josef van Ess, "Political Ideas in Early Islamic Religious Thought," *British Journal of Middle Eastern Studies* 28, no. 2 (2001): 153-54.

In the period immediately following the 9/11 attacks, al Qaeda was constrained in taking public credit for its act, and invested considerable energy in developing progressively more complex justifications for the attacks that were clearly informed by Islamic practices of institutional politics. These statements replied directly to different lines of criticism both from the international community but especially from within the Islamic world. There were few efforts to speak directly to the target of the 9/11 hijackings. These patterns are consistent with the expectations of my theory in cases where parties do not possess a common stock of mutually acceptable practices for making and interpreting social rules. Further, primary concern with domestic, or in-group, audiences and determined adherence to existing practices of institutional politics also characterized American activity after 9/11. In his first State of the Union address following the attacks, on 29 January 2002, Bush spoke of American objectives in military terms. He pledged that the United States would “continue to be steadfast and patient and persistent in the pursuit of two great objectives. First, we will shut down terrorist camps, disrupt terrorist plans, and bring terrorists to justice. And second, we must prevent the terrorists and regimes who seek chemical, biological, or nuclear weapons from threatening the United States and the world.”<sup>687</sup> The speech was silent on al Qaeda’s grievances, and did not acknowledge the existence of an instance of institutional politics. Instead, it advanced propositions about rule changes in the international system that the Bush administration would pursue at least through its first term of office.<sup>688</sup> Bush insisted that if other states “do not act” to combat terrorism, “America will.” This frank expression of American readiness to disregard procedural norms of

---

<sup>687</sup> Bush, "Address before a Joint Session of the Congress on the State of the Union," speech given at Washington, D.C, 29 January 2002, accessed at <http://www.gpoaccess.gov/sou/index.html>.

<sup>688</sup> Philip H. Gordon has argued persuasively that the Bush administration was essentially forced to abandon pursuit of the Bush Doctrine in its second term of office, primarily due to (material and social) resource constraints. Philip H. Gordon, "The End of the Bush Revolution," *Foreign Affairs* 85, no. 4 (2006).



multilateralism, as well as potentially United Nations restrictions on the use of force and even basic norms of sovereignty, would later be asserted in the form of a new ‘Bush Doctrine’ that sought to justify and legitimate the preventive use of force by the system’s hegemon. He justified these changes by drawing attention to Iranian and North Korean nuclear programs before famously asserting that “states like these and their terrorist allies constitute an axis of evil, arming to threaten the peace of the world.” Insisting that ‘rogue states’ “pose a grave and growing danger” to the United States and its allies, he maintained that “the price of indifference would be catastrophic.”<sup>689</sup>

In addition to these nascent arguments about necessary alterations to the rules of the international system, Bush made comments on the importance of differences in legitimate practices of rule-making between the international community and al Qaeda, casting the two systems as alien and mutually exclusive. He maintained that “no people on Earth yearn to be oppressed”, and sought to exploit cleavages within the Muslim world by inviting “skeptics” to “look to Islam’s own rich history, with its centuries of learning and tolerance and progress.” He then declared that “America will lead by defending liberty and justice because they are right and true and unchanging for all people everywhere.” While the practical implications of this statement can be called into doubt by the lack of agreement on the substantive content of liberty and justice even within the Western tradition, Bush clarified his position somewhat in enumerating “the non-negotiable demands of human dignity”, which he specified as entailing “the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious tolerance.”<sup>690</sup> These criteria, while obviously of broad

---

<sup>689</sup> Bush, "Address before a Joint Session of the Congress on the State of the Union," speech given at Washington, D.C, 29 January 2002, accessed at <http://www.gpoaccess.gov/sou/index.html>.

<sup>690</sup> Ibid.

relevance to everyday life, also have clear significance for practices of rule-making far beyond the immediate issue of whether attacks by non-state groups on military and civilian targets are acceptable means of social protest. Bush's only reply to al Qaeda was thus an indirect one – that al Qaeda was an illegitimate participant to be denied standing in the institutional politics of the international system because of its choice of tactics, but also because its preferred practices of rule-making and governance were regarded by the United States as illegitimate even for use at the domestic level.

Bush would build on these themes in a major address at the United States Military Academy at West Point, New York on 1 June 2002. He insisted that American views on combating terrorism were consistent with a desire to “preserve the peace by building good relations among the great powers.” Further, he defended the idea of a grand strategy premised on preventive use of force by insisting that the prior strategy of deterrence had been rendered insufficient; “deterrence – the promise of massive retaliation against nations – means nothing against shadowy terrorist networks with no nation or citizens to defend.” Similarly, “containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies.”<sup>691</sup> The unstated conclusion derived from these premises was that restrictions on the use of force had been rendered inapplicable by a change in circumstances. This amounted to a claim of *clausula rebus sic stantibus* under customary international law, an exception to the general rule *pacta sunt servanda* codified in Article 62 of the Vienna Convention on the Law of Treaties, which is entitled “Fundamental Change of Circumstance.” The Vienna Convention stipulates that such claims are valid only in two specific cases: if the circumstances prior to the change were “an

---

<sup>691</sup> George W. Bush, "Commencement Address at the United States Military Academy at West Point," speech given at West Point, N.Y., 1 June 2002, accessed at [www.presidentialrhetoric.com](http://www.presidentialrhetoric.com).

essential basis of the consent of the parties to be bound by the treaty” (A.62.1.a), or if “the effect of the change is radically to transform the extent of the obligations still to be performed under the treaty” (A.62.1.b).<sup>692</sup> The most obviously applicable general treaty restricting the use of force is the Charter of the United Nations. It is doubtful that the absence of terrorist groups was “an essential basis of the consent of the parties” to this treaty both because of the broad scope of the United Nations and the clear intent of the parties to establish an ongoing regime “to save succeeding generations from the scourge of war.”<sup>693</sup> Further, an argument under A.62.1.a would likely be unpersuasive because terrorism pre-dated the creation of the United Nations, thus undermining the factual basis of any truly changed circumstance. It is at least more plausible to present such a claim under A.62.1.b and to argue that mass-casualty terrorist attacks present a fundamentally new problem. This line of argument, in fact, closely resembles the actual Bush administration position, suggesting that the language in the West Point speech (later elaborated more extensively in the 2002 National Security Strategy, discussed below) was crafted with knowledge of the relevant provisions of international law and also with the expectation that the administration’s claims would be evaluated on these criteria. In fact, this process of evaluating American policy according to international legal criteria was already underway by June 2002, not only in foreign capitals but also within the American legal community.<sup>694</sup>

Finally, Bush’s speech at West Point returned to his insistence that al Qaeda’s vision of ‘the good life’ and of legitimate governance practices were fundamentally flawed. He went so

---

<sup>692</sup> "Vienna Convention on the Law of Treaties," [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

<sup>693</sup> "Charter of the United Nations," <http://www.un.org/en/documents/charter>.

<sup>694</sup> Major international law journals devoted considerable attention to these issues. See, for example, Harold Hongju Koh, "The Spirit of the Laws," *Harvard International Law Journal* 43, no. 1 (2002); Jonathan I. Charney, "The Use of Force against Terrorism and International Law," *American Journal of International Law* 95, no. 4 (2001); Thomas M. Franck, "Terrorism and the Right of Self-Defense," *American Journal of International Law* 95, no. 4 (2001).

far as to insist that “the 20<sup>th</sup> century ended with a single surviving model of human progress” and that this model was “based on the non-negotiable demands of human dignity” he had enumerated in his State of the Union address and which he subsequently went on to repeat.<sup>695</sup> The consistency of this message between two major addresses separated in time by over five months suggests that the choice of words was deliberate and politically significant. The point was that secondary rules were both critically important in the eyes of the Bush administration and not subject to debate or revision.

While the State of the Union address and the West Point speech were critical, public elaborations of American thought, the most detailed defence of administration policy is found in the September 2002 National Security Strategy (NSS). The document reviews American policy under several sub-headings that constitute major planks essential to enhancing national security. Despite criticism of the Bush administration policy as excessively unilateral and myopically focused on terrorism,<sup>696</sup> the strategy memo on which this policy was based presented a more nuanced and restrained perspective. This reflects its purpose, which was at least partially to address actual and anticipated objections to American policy both from domestic and international critics. The first substantive means of enhancing national security discussed by the paper is a commitment to “champion aspirations for human dignity”; the section commits the United States to working toward the global realization of the same list of “non-negotiable demands of human dignity” Bush articulated in his State of the Union and reiterated in his West

---

<sup>695</sup> Bush, "Commencement Address at the United States Military Academy at West Point," speech given at West Point, N.Y., 1 June 2002, accessed at [www.presidentialrhetoric.com](http://www.presidentialrhetoric.com).

<sup>696</sup> The literature on the Bush Doctrine, and on Bush administration foreign policy, is immense. See, for example: Gordon, "The End of the Bush Revolution," *Foreign Affairs* 85, no. 4 (2006); David Hastings Dunn, "A Doctrine Worthy of the Name? George W. Bush and the Limits of Pre-Emption, Pre-Eminence, and Unilateralism," *Diplomacy and Statecraft* 17, no. 1 (2006); Walter Lafeber, "The Bush Doctrine," *Diplomatic History* 26, no. 4 (2002); Ralph, "The Laws of War," *Review of International Studies* 35, no. 3 (2009).

Point address. Anticipating potential accusations of cultural insensitivity, the report allows that “these demands can be met in many ways.” Most significantly, in addition to advancing human rights and democracy, it pledges that “our principles will guide our government’s decisions about international cooperation” and that “they will guide our actions and our words in international bodies.” Thus, the advancement of human rights, the rule of law and other core liberal values are both a means to enhancing American security and procedural commitments that the United States affirms are applicable in the practice of rule-making and rule interpretation.<sup>697</sup>

The second substantive section of the NSS deals with alliances to combat terrorism. Here, again, the memo is clear on the procedural illegitimacy of al Qaeda’s tactics. While conceding that “grievances deserve to be, and must be, addressed within a political process” it insists that “no cause justifies terror.” Accordingly, it declares that “the United States will make no concessions to terrorist demands and strike no deals with them”, and that “we make no distinction between those who knowingly harbor or provide aid to them.” Despite this ostensibly principled refusal to engage in institutional politics, the memo details several more proactive steps in furtherance of “a war of ideas to win the battle of ideas against international terrorism.” The first is “using the full influence of the United States and working closely with allies and friends, to make clear that all acts of terrorism are illegitimate so that terrorism will be viewed in the same light as slavery, piracy or genocide: behavior that no respectable government can condone or support and all must oppose”. Accomplishing this goal entails engaging in the kind of discursive criticisms that constitute practices of institutional politics. The same is true of the second strategy elaborated in the memo – supporting moderate and modern government, especially in the Muslim world”. Insofar as sustainably establishing such moderate, modern

---

<sup>697</sup> The White House, "The National Security Strategy of the United States of America," 3-4.

government requires either genuine internalization of international norms or marginalization of fundamentalist interpretations of Islam in favour of reformist or liberal ones, this task requires employing means for creating and altering social rules. Finally, the strategy paper called for “using effective public diplomacy to promote the free flow of information and ideas to kindle the hopes and aspirations of freedom in societies ruled by the sponsors of global terrorism.”<sup>698</sup>

Despite the deliberately neutral language employed in this formulation, such ‘public diplomacy’ is, by its very nature, *political* speech designed to persuade or to otherwise achieve a purpose. Conducting public diplomacy amounts to engaging in institutional politics. Processes of institutional politics were vital in several ways to American attempts to deal with the security threat posed by al Qaeda. While the Bush administration sought to deny al Qaeda standing, it also pursued additional avenues to press its position and to undermine al Qaeda’s support not only in the international community but also within the Muslim world.

The NSS provides one additional illustration of institutional-political behavior by the United States. While there was significant international sympathy for American efforts to pursue al Qaeda leaders, the assertion of a general doctrine of preventive use of force was more controversial.<sup>699</sup> The NSS took pains to address such concerns, tying the necessity of preventive intervention to changed circumstances created by the combination of ‘rogue states’ pursuing weapons of mass destruction and transnational terrorist networks. In addition to invoking the allegedly precarious status of deterrence, the NSS directly addressed extant international rules for the use of force. It did so in a fashion that explicitly responded to potential objections to the American position. The memo asserted that “for centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend against forces

---

<sup>698</sup> Ibid., 5-6.

<sup>699</sup> Byers, "Not yet Havoc," *Review of International Studies* 31, no. 1 (2005): 57-58.

that present an imminent danger of attack.” It continued, maintaining that “legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat – most often a visible mobilization of armies, navies, and air forces preparing to attack.” The memo concluded that the changed circumstances made evident by the 9/11 attacks meant that the international community “must adapt the concept of imminent threat” in order to allow what it referred to as *preemptive* force.<sup>700</sup> This analysis was a socially competent and politically daring attempt to change a major rule of international law. It demonstrated awareness of the existing state of international law regarding the use of force, which is based on the *Caroline* case. However, as Michael Byers has argued, it studiously avoided reference to the UN Charter’s more restrictive statutory expression of the customary legal standards developed in the *Caroline* case. This focus on the more permissive standards was a consistent part of the American response to 9/11, and had been evident as early as the Security Council resolutions of 12 and 28 September 2001, which “were carefully worded to affirm the right of self-defence in customary international law” at the expense of Charter authority.<sup>701</sup> The American NSS also elided the concepts of preemption and prevention. International law typically distinguishes these precisely on the presence or absence of imminent threat,<sup>702</sup> and even as the Bush administration argued for the expansion of preemption it studiously adopted forward-looking language that proactively applied its desired definition to its present behavior. In this respect, the NSS is a demonstration of the malleability embodied in practices of institutional politics. However, even if existing practices provided opportunities for the United States to make a self-serving and self-interested proposal, the fact remains that the world’s sole remaining superpower participated in a

---

<sup>700</sup> The White House, "The National Security Strategy of the United States of America," 13-15.

<sup>701</sup> Byers, "Not yet Havoc," *Review of International Studies* 31, no. 1 (2005): 58.

<sup>702</sup> *Ibid.*, 52.

practice of justifying a decision of core concern to its national security according to intersubjectively shared standards restricting the use of force.

Further, the NSS also made a subsidiary argument that contemplated the *rejection* of its primary proposal for the expansion of the concept of imminent threat. Regardless of the status of its argument about the impact of changed circumstances and the alteration of standards of imminent threat, it asserted that “the United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security.” In effect, this claim amounts to a legal reservation, an accepted practice in international law providing for an ‘escape clause’. Finally, the United States also took steps both to limit the scope of its own freedom under this reservation and, presumably, to limit the ability of other states to invoke the American claim as a basis for their own interventions. The memo pledged that “the United States will not use force in all cases to preempt emerging threats” and insisted that states should not “use preemption as a pretext for aggression.” It specified that, in conducting a ‘preemptive’ intervention, “the purpose of our actions will always be to eliminate a specific threat to the United States or our allies and friends.” Procedurally, it also pledged that “the reasons for our actions will be clear, the force measured, and the cause just.”<sup>703</sup> These self-imposed restrictions are intelligible only if the United States regarded them as a necessity for securing acquiescence to its reservation regarding the legitimacy of preventive action, or if it was worried about other states making parallel arguments to justify interventions of their own; this latter concern makes sense only if the United States either believed that such arguments would be legitimate or expected that other members of the international community would regard them as such. Thus, the episode illustrates the impact

---

<sup>703</sup> The White House, "The National Security Strategy of the United States of America," 15-16.



of secondary rules on American policy and diplomacy in an area intimately connected to the 'high politics' of national security.

The relevance and impact of secondary rules are affirmed in two further passages of the NSS. The first, in the context of its discussion of great power relations, expresses the expectation that these leading states "can build fruitful habits of consultation, quiet argument, sober analysis, and common action." Further, it notes that "these are the practices that will sustain the supremacy of our common principles and keep open the path of progress." Finally, the document pledges that "in exercising our leadership, we will respect the values, judgment, and interests of our friends and partners" and that "when we disagree on particulars, we will explain forthrightly the grounds for our concerns and strive to forge viable alternatives."<sup>704</sup> The overall tone of these statements, in particular, may strike the reader as sharply at odds with the general tendencies and reputation of the Bush administration (particularly in its first term) and tempt the conclusion that these statements were simply meaningless platitudes distracting from a nakedly power-political, unilateralist foreign policy. While it would be unconvincing to suggest either that the Bush administration lived up to the commitments made in the NSS, or perhaps even that they consistently made good-faith efforts to do so, these inconsistencies do not warrant the conclusion that secondary rules are ineffective or irrelevant, for two primary reasons. First, by virtue of its power (social as well as material), the United States is a clear outlier in the international community. It should not be surprising to expect that it may therefore enjoy a greater degree of freedom than a typical state, or that it would be inclined to make maximum possible use of that freedom after an unexpected, mass-casualty attack on its capital and its financial hub. Second, even in these extraordinary circumstances, a unilateralist administration

---

<sup>704</sup> Ibid., 28, 31.

behaved in a procedurally orthodox manner even as it sought to alter the rules of the international system. The more appropriate conclusion is that contemporary international practices of institutional politics are, at least in the core of the international system, remarkably robust even in difficult circumstances – and that they are resistant to change even when willingness to construct mutually acceptable standards with a social outsider could pave the way for compromise or for peaceful conflict resolution.

In October 2002, taking advantage of the anniversary of the 9/11 attacks and the American intervention in Afghanistan, bin Laden made two efforts to speak directly to the United States. The first, reported by Al Jazeera on 6 October 2002, purported to deliver the following “message to the American people”: “Peace be to those who follow the right path. I am an honest adviser to you. I urge you to seek the joy of life and the afterlife and to rid yourself of your dry, miserable, and spiritless materialistic life. I urge you to become Muslims, for Islam calls for the principle of ‘there is no God but Allah’, and for justice and forbids injustice and criminality. I also call on you to understand the lesson of the New York and Washington raids, which came in response to some of your previous crimes. The aggressor deserves punishment.” This relatively brief passage deserves comment for two reasons. The call for Americans to adopt Islam provides a direct parallel to Bush administration assertions of the superiority of its value system – including its practices of institutional politics. The statement also articulates bin Laden’s fundamental claim that American policy has unjustly harmed Muslims, and that the 9/11 attacks were therefore justifiable as punishment. This statement makes clear the political content of those attacks, and their relation to al Qaeda’s broader political programme including its desire to alter the international system. Bin Laden concluded the message by communicating the

potential for a reduction in hostilities, contingent on American reaction, stating that “whether America escalates or de-escalates this conflict, we will reply to it in kind, God willing.”<sup>705</sup>

Bin Laden’s second attempt to speak to the American audience took the form of an open letter posted in English on the jihadist website [www.waaqiah.com](http://www.waaqiah.com) on 26 October 2002. The letter is much more detailed than the earlier message broadcast on Al Jazeera, and is more sophisticated in its performance of institutional-political tasks. It begins by placing itself in the proper context:

Some American writers have published articles attempting to explain the motivation behind our fight against the United States of America and others who have the blood of Muslims on their hands. These articles have generated a number of replies from a spectrum of people, with a variety of sources from which they quote. Some explanations have been made based on Islamic Law, yet some quite clearly have not.

Bin Laden demonstrates his awareness of debate over al Qaeda’s motivations and demands, and makes clear that he regards Islamic law as the proper background for understanding them. He then announces that the remainder of the letter will “outline our reply to two questions addressing the Americans”; namely, (1) “why are we waging jihad against you?” and (2) “what advice do we have for you and what do we want from you?” He then insisted that “the answer to the first question is very simple: because you attacked us and continue to attack us.” He then goes on to specify the places in which the United States has attacked Muslims, specifically mentioning Somalia as well as purported American support (and therefore responsibility) for Russian conduct in Chechnya, Indian conduct in Kashmir, and Israeli conduct in Lebanon. However, the most significant justifications for hostility to the United States focus on the status of Palestine and on American support for secular Muslim regimes. Bin Laden discusses both topics in some detail, providing justifications for his positions clearly rooted in Islamic practices.

---

<sup>705</sup> “Bin Ladin Threatens Attacks on ‘Key Sectors’ of US Economy,” 6 October 2002, translated and reproduced in "Compilation of Usama Bin Ladin Statements 1994 - January 2004," 205.

With respect to Palestine, bin Laden describes American support for Israeli statehood as based on “your fabricated lies saying that the Jews have a historical right to live in Palestine as it was promised to them in the Torah.” He then seeks to refute this position not by focusing on questions of international law, or claims about the illegitimacy of the international action in establishing the modern state of Israel, but rather by delving into the proper interpretation of the Old Testament. He argued that “the Arabs of Palestine are pure Arabs and are the real Sams (from the prophet Sam). Muslims are the followers of Musa [Moses] (peace be upon him) and it is the Muslims who have inherited the real Torah that has not been changed.” On the basis of this lineage, he asks: “when those who say that the Torah mentions that the followers of Musa should live in Palestine, do they not also see that the Muslims are best suited for this position?” Bin Laden’s argument is that the international community has used illegitimate man-made rules to determine the status of contending claims to Palestine. The proper procedure is instead based on the interpretation of divinely provided texts.<sup>706</sup>

The grievance stemming from American support for secular Muslim states is justified in slightly different terms. Bin Laden explains that “the policies employed in these countries stop our nation from establishing the Islamic Shariah, thereby causing great harm to this Ummah.” Further, the American client states structure their economies “so that a few of the elite may indulge themselves whilst the general population starves to death.” According to bin Laden, “the removal of these policies is an individual obligation” for Muslims “so as to make the Shariah the supreme law and to regain Palestine.” Because Americans “are the chief designers and sponsors for these policies”, it follows that “our fight against these policies is the same as fighting against you.” In addition to articulating his justifications for al Qaeda’s opposition to American policy,

---

<sup>706</sup> “Letter from Usama Bin Ladin to the American People,” [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 214.

bin Laden dealt with the legitimacy of al Qaeda's tactics. He wrote that the articulation of arguments criticizing al Qaeda for targeting civilians "contradicts your claim that America is the land of freedom and democracy, where every American... has a vote." He maintained that "it is a fundamental principle of democracy that the people choose their leaders, and as such, approve and are party to the actions of their elected leaders." In support of this position, he noted that "time and time again, polls show that the American people support the policies of the elected Government." This argument is a different one than bin Laden had employed in justifying the 9/11 attacks to a Muslim audience, illustrating the al Qaeda leader's expectation that the two audiences would respond to different rationales. Despite this effort to frame his arguments consistent with Western practices of institutional politics, however, bin Laden seems to recognize the underlying difficulty; he concludes his explanation of his hostility to the United States by informing his audience that "in our religion, Allah, the Lord of the Worlds, gave us the permission and the option to take revenge and return to you what you gave us." The determination to employ this legitimate reciprocal resort to force is warranted by the alleged 'fact' that "since its inception, America has illustrated that it does not understand the language of love and manners." Because of these persistent differences in standards for evaluating rules, he and his followers "are using the language [violence] they understand."<sup>707</sup> Where shared secondary rules do not exist, the legitimate resort entails strict reciprocity – up to and including the use of violence.

Next, bin Laden turned to the question of al Qaeda's demands and its 'advice' to the United States. He began by reiterating that "the first thing we are inviting you to is Islam, the religion of Tawheed and to association with Allah." This would entail "the discarding of all the

---

<sup>707</sup> "Letter from Usama Bin Ladin to the American People," [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 215-17.

opinions, orders, theories and religions which contradict with Allah's orders." This demand, however unrealistic, is essentially an attempt to secure the adherence of Americans to Islamic practices for making and interpreting rules, as bin Laden makes clear when he criticizes Americans as "the nation who, rather than ruling by the Law of Allah, choose to implement your own inferior rules and regulations, thus following your own vain whims and desires" and failing to realize the 'good life'.<sup>708</sup> This passage highlights, again, the importance placed by leaders from both sides on the fact that the parties employed starkly different conceptions of legitimate secondary rules. While it is certainly possible that these moves were at least partially tactical attempts to rally third-parties or simply to ensure any potential agreements were reached on favorable procedural terms, the consistency with which such arguments were made, the pride of place accorded to them relative to other arguments, and the emotional language employed in making them at least suggest that the arguments were genuinely regarded as important. Further, even if a reader is inclined to treat them as entirely tactical, the mere fact of a relatively consistent emphasis on the importance of procedural rules by actors with clearly divergent understandings of the *substance* of these rules requires explanation. This overall pattern is intelligible only if both sides have a conception of the generic practice of institutional politics – regardless of whether they employ it cynically or in good faith.

After making his general argument for the United States to embrace Islam, bin Laden connected American reliance on its man-made, "inferior rules and regulations" to various failings in American foreign and domestic policy, including compound interest, the consumption of alcohol, the spread of HIV/AIDS, refusing to sign the Kyoto Protocol, and the use of nuclear weapons in 1945. He also criticized what he called a "major characteristic" of American policy

---

<sup>708</sup> "Letter from Usama Bin Ladin to the American People," [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 217.

– a “duality in both manners and law” entailing differential treatment of Americans and non-Americans in such areas as democracy and respect for election outcomes, the legitimacy of various governments possessing weapons of mass destruction, respect for UN resolutions, war crimes prosecutions, and human rights. The letter concludes with a list of specific demands for American policy; the most notable of these are demands that the United States withdraw its forces and personnel from Muslim countries, end its support for Israel and other states involved in conflicts against Muslims, and end its support for pro-Western governments in the Islamic world.<sup>709</sup> The most interesting aspect of these demands, collectively, is that they are couched specifically in terms of American foreign policy rather than in the systemic terms bin Laden has adopted in other documents examined in this study. I cannot definitively explain this choice. It may be a difference in audience – he may have been comfortable conducting discussion in systemic terms with an Islamic audience and less so with a western one. Alternately, he may have believed that the American public is more inclined to think in terms of parochial foreign policy rather than in systemic terms. Regardless, his demands can be relatively easily translated from one vocabulary to the other; for instance, the insistence that the United States leave Muslim states and cease interference in the domestic politics of Muslim states would likely apply equally in bin Laden’s view to China or Russia. Further, the fact that the diagnosed cause of illegitimate American policy (reliance on illegitimate secondary rules) is structural in nature suggests – as demonstrated in his other writings and statements – that bin Laden does understand his cause in systemic terms. On this basis, it is appropriate to understand this letter to the American people as part of an attempt to alter the international system, in part by articulating and justifying demands. Though the lack of mutually agreeable secondary rules complicates these efforts, and

---

<sup>709</sup> “Letter from Usama Bin Ladin to the American People,” [www.waaqiah.com](http://www.waaqiah.com), 26 October 2002, reproduced in *ibid.*, 219-30.

on bin Laden's interpretation of Islamic rule-making practice justifies the use of violence against civilians as a means of pursuing such changes, bin Laden still attempted at least sporadic communication of his demands and their justifications, though he did so with frequent reference to Islamic practices and with limited ability or willingness to articulate demands in a fashion consistent with contemporary international expectations.

Bin Laden's efforts to engage the American audience in October 2002 took place alongside continuing efforts to conduct institutional-political debates within the Muslim world. A statement signed by bin Laden and dated 12 October 2002 was posted in Arabic on a jihadist website two days later. The statement began by noting "the passage of one year since the start of the Crusade against Afghanistan" and American preparation "for a new round in its Crusade against the Muslim world" expected to take place in Iraq. It then presented a harshly critical appraisal of American operations, alleging failure to destroy al Qaeda or the Taliban, failure to create a strong government in Kabul, the commission of major human rights violations and the infliction of civilian casualties, as well as failure to rebuild the country. He then alleged that the United States was "seeking to cover up its failure in Afghanistan... by beating the drums of the war on Iraq." Despite the American failures, bin Laden insisted on several necessary steps "if we want Allah to assign victory to us and achieve for us this triumph in this confrontation". According to bin Laden, "the first thing we should do is to turn to Allah with sincere repentance... by letting shari'ah rule all aspects of our work and dealings, of every minor and major detail of our lives."<sup>710</sup> The point of reference for this demand is the governance arrangements employed in Islamic states and communities.

---

<sup>710</sup> "Al-Qa'ida Issues Statement Under Bin Ladin's Name on Afghan War Anniversary," *Al-Qal'ah*, 14 October 2002, translated and reproduced in *ibid.*, 206-08.



Second, bin Laden argued for Muslim unity, quoting a Koranic passage that exhorts believers to “hold fast all together to the rope of Allah.” Bin Laden justified this demand by arguing that “if it is axiomatic that dispute and difference are one of the most significant causes of the failure and loss of power from which our nation is suffering today, then it is also axiomatic that unity, consensus, and holding fast to the rope of Allah is the key to victory and triumph and the door to sovereignty and leadership.” Anticipating objections that many differences among Muslims have their roots in differing religious doctrines and interpretations, bin Laden wrote that his position “does not necessarily need putting an end to disputes over all small questions and minor issues.” Rather, he was concerned with “the unity of the constants of the creed, the dogmatism of the religion, and the schools of shari’ah.” This second demand, taken together with the first, represents a call – justified with appeals to Islamic authority – for acceptance of al Qaeda’s resistance to the United States, and its interpretation of the Muslim faith. The third proposal in bin Laden’s message, pertaining to “mobilizing and unleashing the nation’s resources”, focused on the particular social roles of various groups in accomplishing al Qaeda’s political programme. Bin Laden praised Muslim youths, referring to them as “the knights of the fight and the heroes of the battle.” He exhorted them to live up to Koranic passages drawn, respectively, from Surah al-Tawbah and Surah al-Anfal: “fight and slay the pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war)”, and “fight them until there is no more tumult or oppression”. However, the document is more interesting for its discussion of the role of scholars, who are given pride of place in bin Laden’s discussion of groups vital to achieving his aims. He writes that scholars “are the prophet’s heirs and the bearers of the trust of learning, the duty of propagation, and the upholding of the rules that this entails.” In particular, he wrote that their “first duty is to tell the truth to the nation and

to declare it in the face of darkness without equivocation or fear” and justified this claim by invoking a passage stating that “Allah took a covenant from the People of the Book, to make it known and clear to mankind, and not to hide it.” The political significance of these general comments is made clear by bin Laden’s own words, telling scholars: “the importance of your task stems from the dangerous act of deception and misguidance practiced by the authority’s scholars and the rulers’ clerics who are trading with religion, who were put in charge of it before the nation, and who have sold their soul for temporal gain.”<sup>711</sup> The document, taken together, reads as a criticism of moderate Muslim scholars as corrupt traitors who have violated the trust placed in them to deliver corrupt religious rulings that are not based on proper interpretive practices.

Despite these harsh criticisms, bin Laden extends an olive branch by allowing that “there are some differences in interpretations between those working for Islam that can be ignored”; however, despite the possibility of such good faith differences, he argues that “it is neither acceptable nor reasonable for us to remain the prisoners of some dispute over small questions and minor issues, thus disrupting action in accordance with the rules of religion and the schools of shari’ah at such a critical time in the nation’s history.”<sup>712</sup> The argument is that the conflict against the United States takes precedence over intra-Islamic conflicts because the defeat of the ‘far enemy’ is a condition of possibility for the realization of the properly-ordered *ummah*, regardless of the particular account of what that entails.

These arguments were controversial, and al Qaeda appears to have been placed on the defensive. On 19 January 2003, the Saudi-backed website *Al-Sharq Al-Awsat* published an

---

<sup>711</sup> “Al-Qa’ida Issues Statement Under Bin Ladin’s Name on Afghan War Anniversary,” *Al-Qal’ah*, 14 October 2002, translated and reproduced in *ibid.*, 208-09.

<sup>712</sup> “Al-Qa’ida Issues Statement Under Bin Ladin’s Name on Afghan War Anniversary,” *Al-Qal’ah*, 14 October 2002, translated and reproduced in *ibid.*, 209-10.

article reporting on “a new message prepared by the ‘Islamic Studies and Research Center’ in Pakistan, the main mouthpiece for the Al-Qa’ida organization.” The Saudi website reports bin Laden as writing a foreword that presents this message as part of “the commendable efforts that are closing an important gap” between Muslims regarding differing religious positions on al Qaeda’s causes. Bin Laden is reported to have described the message’s method as setting out “the most important evidence from the Holy Book, the Sunnah, and the sayings of the nation’s ulema concerning the need for unity and consensus and renunciation of disunity and differences.” The website reported that the substantive purpose of the message was to assert “the need for adhering to the course followed by the people of the Sunna and for a set of shari’ah rules that govern the relationship between Muslims and those working for Islam so as to protect their Islamic brotherhood even if they hold different scholastic views and practical interpretations.” The al Qaeda message also reportedly addresses “mistakes” made by jihadist leaders and scholars; it is quoted as arguing that “rules ought to be laid down that protect their dignity from being destroyed and their status from being wrecked for some mistakes they make.” The importance of this message is that it demonstrates an ongoing conflict over proper interpretation of the Islamic faith and what it requires in terms of opposition to American policy and general orientation toward the West. Al Qaeda is centrally engaged in this conflict, but it is apparent that it does not command an overwhelmingly strong position. Even the defensive stance taken in this message proved controversial; *Al-Sharq Al-Awsat* concluded that “there is contradiction in the message that ignores the mistakes of Al-Qa’ida’s leaders and demands that rules be laid down to protect its ulema’s dignity while at the same time not ignoring the mistakes of” ulema that disagree with its positions.<sup>713</sup> The crucial point is that the dispute is

---

<sup>713</sup> “Bin Ladin Message Urges Islamic Factions to Unite, Fight ‘External’ Enemy,” *Al-Sharq Al-Awsat*, 19 January 2003, translated and reproduced in *ibid.*, 231-34.

centrally concerned with rules for resolving disputes between religious scholars over the political implications of the Islamic faith for contemporary politics. As such, it is part of an ongoing practice of institutional politics. As my theory expects, the various parties to this practice were actively engaged in evaluating and criticizing proposals and arguments according to their consistency or inconsistency with relevant procedural rules.

Bush's 2003 State of the Union address likewise provides a picture of an actor concerned primarily with justifying a controversial position to a skeptical audience with which it agreed broadly on legitimate practices of institutional politics; in this case, Bush sought to address domestic and international criticism of his plan to invade Iraq. He relied heavily on his argument from 2002, linking rogue states and weapons of mass destruction. In his speech, he declared that "the gravest danger in the war on terror, the gravest danger facing America and the world, is outlaw regimes that seek and possess nuclear, chemical, and biological weapons." He also alluded to the alleged inadequacy of deterrence in a manner that portrayed his speech as the continuation of an ongoing debate, noting that "some have said we must not act until the threat is imminent" before asking rhetorically "since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike?" Bush's answer to his rhetorical question was consistent with that advanced by the 2002 NSS; he argued that "if this threat is permitted to fully and suddenly emerge, all actions, all words, and all recriminations would come too late." These justifications, like those articulated in 2002, are properly understood in relation to rules drawn from customary international law and from the UN Charter pertaining to restrictions on the legitimate force and in the context of the general procedural rules of international law and diplomacy. However, the 2003 State of the Union address also sought to justify the American position on Iraq as consistent with pre-existing UN Security Council

resolutions and as a matter of enforcing existing rulings – rather than merely an attempt to assert a somewhat controversial claim of self-defence.<sup>714</sup> The president first pursued this line of argument when he stated that the United States had “called on the United Nations to fulfill its charter and stand by its demands that Iraq disarm.” This construction presents a demand to the United Nations and, indirectly, to its member states, calling on them not to acquiesce to an American claim of self-defence, but instead to enforce prior Security Council resolutions. In support of this demand, Bush noted that “almost 3 months ago, the United Nations Security Council gave Saddam Hussein his final chance to disarm” and alleged that his failure to meet those demands “to show exactly where it is hiding its banned weapons, lay those weapons out for the world to see, and destroy them as directed” amounted to “utter contempt for the United Nations and for the opinion of the world”. Accordingly, he declared that “the United States will ask the U.N. Security Council to convene on February the 5<sup>th</sup> to consider the facts of Iraq’s ongoing defiance of the world.” While he promised that “we will consult”, he also insisted that “if Saddam Hussein does not fully disarm, for the safety of our people and for the peace of the world, we will lead a coalition to disarm him.” The complex politics, foreign and domestic, of the Iraq war have been extensively debated and are in any case beyond the scope of this study.<sup>715</sup> My purpose here is merely to illustrate the on-going and thorough engagement of the Bush administration with established practices of publicly arguing about the status and interpretation of social rules. Rather than a sporadic, epiphenomenal distraction from the true ‘stuff’ of international relations, such practices are at the heart of relations between political communities in addition to the domestic governance of these individual communities. Further, the

---

<sup>714</sup> George W. Bush, "Address before a Joint Session of the Congress on the State of the Union," speech given at Washington, D.C., 28 January 2003, accessed at [www.gpoaccess.gov/sou/index.html](http://www.gpoaccess.gov/sou/index.html).

<sup>715</sup> For an excellent history of the war, see Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (New York, NY: Penguin, 2006).

deployment by the Bush administration of multiple independent rationales for its position suggests that attention was paid to multiple audiences that may react differently to the proposal, as well as that decision-makers sought to avoid rejection of their proposals.

The Iraq war, which would begin on 19 March 2003, altered the political dynamics of this instance of institutional politics to the extent that it can more accurately be treated as a distinct case. Whereas Afghanistan and its environs are predominantly Sunni, Iraq's population consists of a Shi'a majority. Further, the Iraq war introduced a host of new tribal and ethnic players. Whereas American operations against al Qaeda enjoyed a strong presumption of international legitimacy as a result of their reactive nature, the invasion of Iraq was rooted in controversial post-9/11 claims about a broader right of preventive self-defence that were not broadly accepted by the international community and that also remained controversial within the United States itself. Finally, missteps in planning and executing the war rendered it a topic of debate in its own right, and thus distracted from debate about the proposals al Qaeda had advanced regarding the international system. Given al Qaeda's lack of an institutional platform to articulate its message,<sup>716</sup> as well as the determined efforts of the international community to deny it standing and voice, its inability to sustain its challenge to the international system is perhaps unsurprising; however, al Qaeda has not been decisively crippled as a viable network.<sup>717</sup> Accordingly, al Qaeda's institutional-political goals and strategies remain relevant even if its ability to pursue them have waned for the moment.

---

<sup>716</sup> On the importance of such infrastructure, see Phillips, "The Protestant Ethic and the Spirit of Jihadism," *Review of International Studies* 36, no. 2 (2010).

<sup>717</sup> Hoffman, "The Global Terrorist Threat," *Middle East Policy* 14, no. 2 (2007).

## 5 Conclusion

The central findings of this case are that: (1) both al Qaeda and the Bush administration consistently engaged in practices of institutional politics, despite lacking mutually legitimate secondary rules; (2) in the absence of such rules, each party made primary use of practices drawn from their own cultural and political traditions; (3) each party was constrained by these secondary rules not only in dealing with the other, but also in its interactions with other relevant audiences stipulated by those rules – namely, broader Islamic public opinion in the case of al Qaeda and domestic and international opinion in the case of the Bush administration; and that (4) each party regarded, or at least publicly treated, the other’s use of different practices of rule-making and rule interpretation as an issue of primary concern and as an important reason for their inability to peacefully resolve their differences. As a result, the case provides confirming evidence for the expectations of my theory that actors generally present proposals in a manner consistent with what they understand to be the requirements of applicable secondary rules; that listeners will criticize, and typically reject, proposals not presented in what they understand to be a procedurally proper way; and that the lack of legitimate practices of rule-making and rule interpretation increases the likelihood that actors will attempt to resolve institutional-political disputes using violent means.

Unlike the two previous cases I have examined, it is not yet possible to draw final conclusions about the overall outcome of this process of institutional politics. While I have demonstrated instances where secondary rules constrained and shaped the decisions made both by al Qaeda and the United States about how to present their proposals and about how to react to the other’s proposals, and while I have alluded briefly to instances in which other listeners reacted to al Qaeda, Taliban and American proposals according to the standards set by secondary

rules, it is simply not yet possible to determine whether the individual proposals made by either party will succeed or fail. Indeed, it may be more accurate to say that, to date, the post-9/11 period contains two separate processes of institutional politics proceeding according to different sets of secondary rules. Though I believe that this overlooks limited, albeit often cynical and self-interested, attempts by actors on both sides to engage listeners across the intersubjective divide evident in understandings about legitimate practices for decision-making, I also conclude that an outcome mutually regarded as legitimate would be more likely if participants had access to common, or at least less incompatible, practices of institutional politics.

The findings in this case thus have relevance for the handling of the ‘war on terror’. If it is – as the Bush administration maintained – a ‘war of ideas’, then ‘winning’ that war would logically seem to require substantial progress in enhancing the legitimacy of international practices for making and interpreting social rules in the eyes of the Muslim world. This, in turn, is likely to require an explicit, conscious effort both to make the case for existing practices in terms that are socially intelligible to Muslims and to undertake renovation of existing practices so as to enhance confidence in them on the part of Muslims while maintaining or augmenting their legitimacy in the eyes of Western public opinion. It is not immediately obvious whether there are modalities for existing practices of institutional politics that can satisfy these conditions; however, the lack of certain prospects for success should not deter scholars or practitioners from attempting to find out.

The broader context of this breakdown in consensus on legitimate practices of rule-making is the increasing cultural diversity in the international system, given the long-term process of decolonization and the increasing political and economic importance of communities with little cultural or historical connection to the existing Western practices employed in the



international system. The dispute between the United States and a small yet highly committed group of Muslims may represent something of a ‘canary in the coal mine’, or a harbinger of more – and more intractable – disputes over the creation and interpretation of social rules. Given the risks to human welfare presented by the prospect of breakdowns in such elementary mechanisms of conflict resolution, it is difficult to escape the conclusion that a broad-based, global effort to renovate and publicly reaffirm the legitimacy of secondary rules and their resulting practices of institutional politics is a fundamental, yet overlooked, diplomatic interest. The complexity of such a task suggests the need for an extended diplomatic effort, with broad global participation and leadership from major powers – a parallel in spirit (though not in form) to the creation of the United Nations.



## Conclusion

To this point, I have been concerned with demonstrating the existence of a social practice of rule-making and rule interpretation in the international system, as well as the causal significance of that practice to explaining the success or failure of particular attempts to change social rules and institutions. Rather than summarize either the theoretical argument or the empirical cases, I conclude this study by further developing its theoretical and policy implications, and highlighting important avenues for future research. The heart of the study consists of two advances, one descriptive and the other causal. The descriptive advance entailed by the identification of the practice of institutional politics is significant, because it provides an endogenous foundation for a generative and reproductive capacity in the international system. The causal or explanatory advance builds on the descriptive achievement by identifying a specific causal mechanism that decisively shapes outcomes with respect to the intersubjective status of proposals for social change.

Overall, the core expectations of my theory are well supported by the cases examined here. Secondary rules consistently shaped the manner in which key actors presented and evaluated proposals for social change; properly presented proposals were more likely to be accepted than improperly presented ones; and both actual and anticipated charges of violating secondary rules were typically met with mutually intelligible discursive justifications. The consistency of state practices in making and interpreting rules is perhaps the most striking empirical finding of my study. Across almost two hundred years, and in significantly variegated social contexts, participants in international relations have had a clear sense of how to go about making and interpreting the 'rules of the game' in a collective fashion, despite the fact that the

specific rules for doing so have continued to evolve alongside the other rules and institutions that comprise the international system. This notion of a practice of rule-making has survived the emergence of nationalism, the spread of democracy, multiple systemic wars, and the Cold War. On one level, then, the overarching narrative here is of a remarkable success story – of a social technology that has operated, however imperfectly, to place social relations between political communities on at least minimally certain footing. However, this narrative is at once too modest and too sanguine.

It is too modest because it does not adequately capture the importance of the practice of institutional politics to social life. While I have been exclusively concerned in this study with institutional politics in the international system, I am convinced that this practice can be found in any social context that evinces a fairly minimal degree of organization and coherence. This conjecture has two critical implications: first, it suggests that we can significantly improve our understanding of this basic mode of political action by expanding the potential universe of cases to include not only cases drawn from contemporary domestic settings, but also historical cases that antedate the modern international system; second, and following from the prior point, it suggests the need to critically evaluate the fundamental organization of political science as an academic discipline. If politics across levels of analysis in fact proceed according to isomorphic logics and analogous social practices, distinguishing and segregating domestic and international politics constitutes a real barrier to understanding the social world. In addition, identification of a generic practice of rule-making suggests potential gains from breaking the Westphalian hold on the imaginations of international relations scholars. Ultimately, the intellectual project of International Relations is to understand the governance of relations between political communities. While it is easy to acknowledge that political communities have been conducting

organized relations for thousands of years, international relations scholars have been primarily focused on the Westphalian system.<sup>718</sup> Explicitly recasting our field to revolve around the fundamental problem of understanding and explaining patterns and changes in governance of relations between political communities recovers, and renders visible, a far broader universe of empirical data and thus offers significant overlooked potential for improving and testing our extant and future stocks of theories. The first vital avenue for future research is therefore to further push the empirical frontiers of IR theory beyond the temporal, spatial and conceptual boundaries of the Westphalian system, in order to incorporate potential insights from historical (and especially non-Western) as well as domestic instances of institutional politics. Crucially, however, realizing the potential gains from such research requires ruthlessly asking Rosenau's question: "of what is this an instance?" Without conceptual language and categories that can abstract beyond the contemporary international system, we run grave risks of committing and reproducing errors of classification and description that are especially destructive to efforts to understand and explain change.

The baseline narrative I have suggested, of a robust social practice of rule-making crucial to understanding and explaining change in the international system, is also too sanguine because it can too easily be abridged in order to obscure or minimize the potential for breakdown in the intersubjectively constituted rules that comprise the practice. Indeed, the final two empirical cases each provide evidence of troubling cracks in the foundation of the international system. In Chapter 4, I demonstrated the existence of divisions between American and European leaders relating to the relevant rules of international law and diplomacy that constituted practices of rule-

---

<sup>718</sup> The most systematic exception to this trend is Adam Watson, *The Evolution of International Society: A Comparative Historical Perspective* (London, U.K.: Routledge, 1992). Another interesting exception is Raymond Cohen, "On Diplomacy in the Ancient Near East: The Amarna Letters," *Diplomacy and Statecraft* 7, no. 2 (1996).

making and rule interpretation relevant to the creation of the ban on warfare ultimately enshrined in the Kellogg-Briand Pact. These differences were real and important; they eliminated certain options and commended others, and they shaped the responses and evaluations each side articulated. These different ideas also seem relevant to both the sharp partisan divide in contemporary American domestic politics and the Euro-Atlantic divide of the early twenty-first century.<sup>719</sup> However, such differences were, and remain, relatively minor and technocratic in nature, and have not thus far resulted in the breakdown of the Atlantic alliance or the ability of western democracies to operate, create and alter social institutions. The more troubling evidence of breakdowns in the legitimacy of contemporary practices of rule-making can be found in Chapter 5, which examined institutional politics between the United States and al Qaeda in the aftermath of the 9/11 attacks. In this more recent case, there are clear and sharp differences between the parties precisely over the question of legitimate practices for making and interpreting social rules. While it might be objected that such a case amounts to reason for scepticism of my conjecture about the universality of institutional politics, if not my entire theory of social change, the evidence shows something significantly more than simple absence of institutional politics. Instead, in the absence of mutually agreeable rules at the international level, both parties consistently employed and resorted to practices of rule-making drawn from pre-existing and culturally accepted practices of institutional politics. Lack of agreement on secondary rules, in other words, did not dissuade either side from engaging in institutional politics; it merely diminished the chances not only of reaching intersubjective agreement but also of conducting productive discourse. Both sides accepted the notion that the situation called for

---

<sup>719</sup> Walter Russell Mead has argued, for instance, that American foreign policy has been driven primarily by the interplay of four 'schools of thought'; I take his argument to be compatible with mine, in that he shows the influence of basic ideas about the organization of the public sphere on policy positions. Walter Russell Mead, *Special Providence: American Foreign Policy and How It Changed the World* (New York, N.Y.: Alfred A. Knopf, 2001).

institutional politics – they were simply unable or unwilling to play the same version of the game.

The potential corrosion of intersubjective agreement regarding international practices of rule-making and rule interpretation has both theoretical and policy implications. I will take up the policy implications below; before doing so, however, it is necessary to conclude discussion of the theoretical implications of my study. Any such discussion would remain incomplete without mention of a crucial issue raised by my argument but not addressed in detail. The existence of multiple sets of secondary rules in the contemporary international system, as well as the demonstrable temporal evolution of secondary rules in the international system, indicates the importance of accounting for secondary rules. Where do they come from? What accounts for why we employ certain secondary rules and not others? How, and why, do they change? These are all critical questions. With respect to the contemporary international system, I suspect that any satisfactory account of diverging systems of secondary rules must begin with the expansion of the Westphalian system via the vehicle of European colonialism and the troubled, post-colonial history of much of the Third World. However, these questions demand much more systematic and general investigation, and thus constitute a second vital avenue for future research.

The final theoretical significance of my study lies in a trio of incremental contributions to the constructivist literature from which I have learned so much. As I argued in Chapter 2, the existing constructivist literature developed over the last twenty-five years is both theoretically innovative and empirically rich; however, it is still characterized by an array of concepts and processes that are not yet fully understood in relation to one another. I do not claim to have ‘solved’ this problem; indeed, many constructivists would be hesitant, I think, to describe it as a

‘problem’, for good reason. While I accept that theoretical coherence and creativity are often in tension, I do not believe that this tension warrants the position that dialogue among scholars and their theories cannot achieve hard-won gains in understanding about the social world, provisional in nature though these must be. Accordingly, I am convinced it is a worthwhile project to attempt to find common denominators among constructivist ideas about social processes and mechanisms even if the outcome of such an attempt remains unclear. Specifically, I contend that a great deal of the constructivist literature has been concerned with the creation and alteration of intersubjectivity – and therefore with the social practice of institutional politics central to my theory of social change. My goal is not to replace talk of persuasion, socialization, learning, norm entrepreneurship, argumentation, or any of the other mechanisms constructivists have identified; rather, it is to provide a common language for understanding them in relation to one another, in order to sharpen understanding of all of them. I also seek to define the basic social problem constructivists are concerned with as broadly as possible, in order to make clear the immense potential of constructivism for understanding the social world and to facilitate the broadest possible comparison of empirical findings from constructivist research. This call for dialogue regarding conceptual consolidation and comparison within constructivist international relations theory constitutes a third important avenue for further research.

If I am correct that constructivists are concerned with the creation and alteration of intersubjectivity, it follows that they are necessarily concerned with understanding and explaining social change. For this reason, I have always found charges that constructivism is a static theory privileging structure over agency (and thus ill-suited or even unable to account for social change) perplexing. My second contribution to the constructivist literature is, therefore, what I hope to be a successful demonstration that constructivist theories are not simply able to



account for social change and agency but are in fact *necessary* to that enterprise. I expect that some readers may be surprised by this claim, since my theory of social change is based largely on the importance of secondary rules – which are themselves part of the intersubjective structure that comprises the international system. It may appear that I am claiming that structure creates changes in structure or, alternately, that rules explain change in rules. Both of these, left on their own, are problematic claims. More complete answers to these questions are given in Chapters 1 and 2; the crucial point is that secondary rules function indirectly in my theory, by constituting the social practices of institutional politics that actors employ in particular social contexts. Without such intersubjective rules, there is no possibility for stable, mutually intelligible social action. Further, while actors can (and do) break or ignore secondary rules, such acts have relatively predictable social consequences – as demonstrated in the empirical cases I have examined – that are themselves a function of secondary rules. We cannot completely untangle and isolate the respective influences of structure and agency; however, it is also true that simply invoking structure does not obliterate agency. Taking their mutual constitution seriously requires letting them co-exist simultaneously in our theories. The key innovation in doing so is a widening of analytical focus, moving beyond the important role of norm entrepreneurs to also encompass the vital evaluative acts performed by their audiences. These evaluative acts are made mutually intelligible and socially meaningful by the secondary rules that constitute the social practice of institutional politics of which they are a part.

The irony of the current state of the international relations literature on change in the international system is that it takes insufficient account of structure because it consistently misspecifies the international system in such a way that it renders the relevant structure invisible. My approach, in contrast, builds off a more accurate portrayal of the international system in

order to develop a theory that integrates structure and agency in explaining social change. This integration is achieved by harnessing the concept of ‘social practice’. The third contribution of this study to the constructivist literature is to provide additional empirical verification of the essential role of defined social practices in the operation, and especially the *transformation*, of the international system. The ability of a practice-based theory to account for as fundamental a puzzle as explaining social change highlights the enormous potential of practice-based theories for understanding other aspects of international relations and of the social world more generally. Accordingly, I believe that expanding upon the recent ‘practice turn’ in constructivism constitutes a fourth vital area for further research.

Thus far, I have been concerned with showing that this study has importance in terms of debates within international relations theory that matter to (at best) a few thousand people in universities, largely in the industrial world. Beyond its theoretical contributions, however, my study of social change offers considerable insight for policymakers and for activists. I will focus on three such insights – two of which are of a general nature, and one which relates directly to the potential breakdown in the legitimacy of practices of institutional politics that I identified in Chapter 5. First, my theory establishes that social institutions should be treated by actors not simply as background policy constraints but also as conscious objects of policy. While leaders and activists alike have pursued changes in international treaties and organizations that take the basic institutional architecture of the international system for granted, it is also possible for them to pursue deeper changes that alter and potentially even replace key social institutions that constitute the contemporary international system. Such changes are uncommon, but low-probability, high-consequence events still warrant attention. The other side of this coin is that

actors should be aware that others may also attempt such changes, and that they may need to prepare responses to such attempts.

The second policy implication of my theory is that knowledge of secondary rules is a power resource. One thread running through the cases I have examined in this study is that actors who are consciously aware of intersubjectively-held standards for evaluating proposals for making and interpreting rules are both more able to advance their own causes and to oppose those of their adversaries. Metternich, Kellogg and (perhaps to a lesser degree) bin Laden showed clear awareness of how their arguments would be received by their various audiences, and were often able to achieve preferred outcomes and avoid undesirable ones by playing the social game of institutional politics in a skilful manner. While international relations theorists have previously noted the importance of skill,<sup>720</sup> this particular skill has gone unappreciated. Governments and other actors wishing to either promote or resist attempts at changing the social rules and institutions that comprise the international system can enhance their effectiveness by promoting awareness of relevant secondary rules and by cultivating individuals' skills at operating this vital social technology.

Finally, my theory has focused on the importance of intersubjectively agreed-upon secondary rules to resolving a critical class of conflicts – conflicts about the basic rules of life governing relations between political communities. Historically, this practice has not been completely successful in avoiding violence; in fact, for much of the international system's history, war was the mutually accepted last resort for resolving such disputes. The significance of the Kellogg-Briand Pact lay partly in altering this state of affairs. However, the current state of play may be more dangerous than the period preceding the Kellogg-Briand Pact, for two

---

<sup>720</sup> David A. Baldwin, "Power Analysis and World Politics," *World Politics* 31, no. 2 (1979).

reasons. First, military technology (conventional and unconventional) has massively increased in destructive power since the early twentieth century. More important, practices of rule-making have remained largely static, especially in contrast to the significant growth in the cultural diversity of the international system after decolonization. As a result, current practices of institutional politics risk intersubjective collapse at the level of the international system – that is, they may increasingly be relevant and operative only between the historical core members of the international system, with disaffected groups of states and other actors ‘opting out’ or actively contesting these practices. In turn, this may lead to an increase in violent conflict as a means of resolving institutional-political disputes.

The institutional-political disjuncture between the Muslim world and the West, examined in Chapter 5, appears to be one such case. The controversial nature of al Qaeda’s understandings of legitimate practices for rule-making and rule interpretation, even within the Muslim world, indicate that a *modus vivendi* may be available in this case, at least between the international community and the moderate majority in the Islamic world. However, such an outcome is not inevitable – it must be socially constructed, and this task must be accomplished against the background of significant political tension and mistrust. Even if this case is resolved, though, the international system contains other such latent cases of conflict over secondary rules that could undermine the routine operation and governance of the international system and lead to considerable violence.

In order to stave off such an outcome, it is imperative that states engage in an explicit renovation and renegotiation of practices for making and interpreting rules in the international system. This process must be reflexively oriented toward incorporating marginalized and non-Western perspectives and voices, so as to secure as broad an intersubjective agreement on

revised rule-making practices as possible. While existing secondary rules seem primarily to be the result of accretion and evolutionary adaptation stemming from Western liberal traditions of thought, the importance of legitimate practices of institutional politics to conflict resolution in the international system makes relying on similar accretive and evolutionary practices between Western and non-Western perspectives impractical and highly dangerous. The fundamental issue, of course, is to find acceptable intersubjective grounds on which to initiate and conduct a discourse that can be effectively participated in, and broadly endorsed as legitimate, by as diverse a set of actors as possible. Without better information on the genesis and dynamics of secondary rules, this is a difficult task, and one that must be approached in pragmatic terms and conducted on the basis of trial and error. Though such a process is less than ideal, the prospect of systemic conflict and violence suggests that in the long run, there is no alternative.

## Bibliography

- Abrahms, Max. "What Terrorists Really Want." *International Security* 32, no. 4 (2008): 78-105.
- Acharya, Amitav. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism." *International Organization* 58, no. 2 (2004): 239-75.
- Adler, Emanuel. *Communitarian International Relations: The Epistemic Foundations of International Relations*. New York, N.Y.: Routledge, 2005.
- . "Seizing the Middle Ground: Constructivism in International Relations." *European Journal of International Relations* 3, no. 3 (1997).
- Adler, Emanuel, and Vincent Pouliot. "International Practices." *International Theory* 3, no. 1 (2011): 1-36.
- Albrecht-Carrie, Rene. *The Concert of Europe*. New York, N.Y.: Walker and Company, 1968.
- . *A Diplomatic History of Europe*. Revised ed. New York, N.Y.: Harper & Row, 1973.
- Ashley, Richard K. "The Poverty of Neorealism." In *Neorealism and Its Critics*, edited by Robert O. Keohane. New York, N.Y.: Columbia University Press, 1986.
- Baldwin, David A. "Power Analysis and World Politics." *World Politics* 31, no. 2 (1979).
- Barkin, J. Samuel. "Realist Constructivism." *International Studies Review* 5, no. 4 (2003): 325-42.
- . "Realist Constructivism and Realist-Constructivisms." *International Studies Review* 6, no. 2 (2004): 348-52.
- Barnett, Michael N., and Raymond Duvall. "Power in International Politics." *International Organization* 59, no. 1 (2005): 39-75.
- Bartlett, C.J. *Castlereagh*. London, U.K.: Macmillan, 1966.
- Best, Jacqueline. "Civilizing through Transparency: The International Monetary Fund." In *The Global Standards of Market Civilization*, edited by Leonard Seabrooke and Brett Bowden. London, U.K.: Routledge, 2006.
- Bially Mattern, Janice. *Ordering International Politics: Identity, Crisis, and Representational Force*. New York, N.Y.: Routledge, 2004.
- . "Power in Constructivist Research." *International Studies Review* 6, no. 2 (2004): 343-46.
- Biersteker, Thomas J., and Cynthia Weber. "The Social Construction of State Sovereignty." In *State Sovereignty as Social Construct*, edited by Thomas J. Biersteker and Cynthia Weber. Cambridge, U.K.: Cambridge University Press, 1996.
- Botcheva, Liliana, and Lisa L. Martin. "Institutional Effects on State Behavior: Convergence and Divergence." *International Studies Quarterly* 45 (2001): 1-26.
- Boyle, Francis Anthony. *Foundations of World Order: The Legalist Approach to International Relations, 1898-1922*. Durham, N.C.: Duke University Press, 1999.
- Brunnee, Jutta, and Stephen J. Toope. *Legitimacy and Legality in International Law: An Interactional Account*. Cambridge, U.K.: Cambridge University Press, 2010.
- Bukovansky, Mlada. *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*. Princeton, N.J.: Princeton University Press, 2002.

- Bull, Hedley. *The Anarchical Society: A Study of Order in World Politics*. Third ed. New York, N.Y.: Columbia University Press, 2002.
- Bush, George W. "Address before a Joint Session of the Congress on the State of the Union." Speech given at Washington, D.C., 29 January 2002. Accessed at [www.gpoaccess.gov/sou/index.html](http://www.gpoaccess.gov/sou/index.html).
- . "Address before a Joint Session of the Congress on the State of the Union." Speech given at Washington, D.C., 28 January 2003. Accessed at [www.gpoaccess.gov/sou/index.html](http://www.gpoaccess.gov/sou/index.html).
- . "Address to the Nation." Speech given at Washington, D.C., 20 September 2001. Accessed at [www.presidentialrhetoric.com](http://www.presidentialrhetoric.com).
- . "Commencement Address at the United States Military Academy at West Point." Speech given at West Point, N.Y., 1 June 2002. Accessed at [www.presidentialrhetoric.com](http://www.presidentialrhetoric.com).
- Buzan, Barry. *From International to World Society?* Cambridge, U.K.: Cambridge University Press, 2004.
- Byers, Michael. "Not yet Havoc: Geopolitical Change and the International Rules on Military Force." *Review of International Studies* 31, no. 1 (2005): 51-70.
- Carr, Edward Hallett. *The Twenty Years' Crisis*. 3rd ed. New York, N.Y.: Palgrave, 2001.
- Charney, Jonathan I. "The Use of Force against Terrorism and International Law." *American Journal of International Law* 95, no. 4 (2001): 835-39.
- "Charter of the United Nations." <http://www.un.org/en/documents/charter/>.
- Checkel, Jeffrey T. "Why Comply? Social Learning and European Identity Change." *International Organization* 55, no. 3 (2001): 553-88.
- Cohen, Raymond. "On Diplomacy in the Ancient Near East: The Amarna Letters." *Diplomacy and Statecraft* 7, no. 2 (1996): 245-70.
- Cohrs, Patrick O. *The Unfinished Peace after World War I: America, Britain and the Stabilisation of Europe, 1919-1932*. Cambridge, U.K.: Cambridge University Press, 2006.
- "Compilation of Usama Bin Ladin Statements 1994 - January 2004." Reston, VA: Foreign Broadcast Information Service, 2004.
- "The Covenant of the League of Nations." [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp).
- Cox, Robert W. "On Thinking About Future World Order." In *Approaches to World Order*, edited by Robert W. Cox and Timothy J. Sinclair. Cambridge, U.K.: Cambridge University Press, 1996.
- . *Production, Power and World Order: Social Forces in the Making of History*. New York, N.Y.: Columbia University Press, 1987.
- . "Social Forces, States, and World Orders: Beyond International Relations Theory." In *Approaches to World Order*, edited by Robert W. Cox and Timothy J. Sinclair. Cambridge, U.K.: Cambridge University Press, 1996.
- Craig, Gordon A., and Alexander L. George. *Force and Statecraft: Diplomatic Problems of Our Time*. 3rd ed. Oxford, U.K.: Oxford University Press, 1995.
- Crawford, Neta C. *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*. Cambridge, U.K.: Cambridge University Press, 2002.
- Daws, Gavan. *Shoal of Time: A History of the Hawaiian Islands*. Honolulu, H.I.: University of Hawai'i Press, 1968.

- de Bertier de Sauvigny, G. *Metternich and His Times*. Translated by Peter Ryde. London, U.K.: Darton, Longman and Todd, 1962.
- Derry, John W. *Castlereagh*. London, U.K.: Allen Lane, 1976.
- Diehl, David, and Charlotte Ku. *The Dynamics of International Law*. Cambridge, U.K.: Cambridge University Press, 2010.
- Diehl, David, Charlotte Ku, and Daniel Zamora. "The Dynamics of International Law: The Interaction of Normative and Operating Systems." *International Organization* 57, no. 1 (2003).
- Doty, Roxanne Lynn. "Aporia: A Critical Exploration of the Agent-Structure Problematique in International Relations Theory." *European Journal of International Relations* 3, no. 3 (1997): 365-92.
- Dunn, David Hastings. "A Doctrine Worthy of the Name? George W. Bush and the Limits of Pre-Emption, Pre-Eminence, and Unilateralism." *Diplomacy and Statecraft* 17, no. 1 (2006): 1-29.
- Emon, Anver. "Techniques and Limits of Legal Reasoning in *Shari'a* Today." *Berkeley Journal of Middle Eastern and Islamic Law* 2, no. 1 (2009): 101-24.
- Esposito, John L., and Dalia Mogahed. "Battle for Muslims' Hearts and Minds: The Road Not (yet) Taken." *Middle East Policy* 14, no. 1 (2007): 27-41.
- Ferrell, Robert H. *Peace in Their Time: The Origins of the Kellogg-Briand Pact*. New Haven, C.T.: Yale University Press, 1952.
- Finnemore, Martha, and Kathryn Sikkink. "International Norm Dynamics and Political Change." *International Organization* 52, no. 4 (1998): 887-917.
- . "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics." *Annual Review of Political Science* 4, no. 3 (2001).
- Franck, Thomas M. "Terrorism and the Right of Self-Defense." *American Journal of International Law* 95, no. 4 (2001): 839-43.
- Gelvin, James L. "Al-Qaeda and Anarchism: A Historian's Reply to Terrorology." *Terrorism and Political Violence* 20, no. 4 (2008): 563-81.
- Gerges, Fawaz. *The Far Enemy: Why Jihad Went Global*. Cambridge, U.K.: Cambridge University Press, 2005.
- Gilpin, Robert G. *War and Change in World Politics*. Cambridge, U.K.: Cambridge University Press, 1981.
- Gong, Gerrit W. *The Standard of Civilization in International Society*. London, U.K.: Clarendon, 1984.
- Gordon, Philip H. "The End of the Bush Revolution." *Foreign Affairs* 85, no. 4 (2006): 75-86.
- Grieco, Joseph M. "Understanding the Problem of International Cooperation: The Limits of Neoliberal Institutionalism and the Future of Realist Theory." In *Neorealism and Neoliberalism: The Contemporary Debate*, edited by David A. Baldwin. New York, N.Y.: Columbia University Press, 1993.
- Haas, Peter M., ed. *Knowledge, Power, and International Policy Coordination*. Columbia, S.C.: University of South Carolina Press, 1997.
- Hall, Rodney Bruce. "Moral Authority as a Power Resource." *International Organization* 51, no. 4 (1997): 591-622.
- Hart, H.L.A. *The Concept of Law*. Oxford, U.K.: Clarendon Press, 1994.
- Hinde, Wendy. *Castlereagh*. London, U.K.: Collins, 1981.



- Hoffman, Bruce. "The Global Terrorist Threat: Is Al-Qaeda on the Run or on the March?" *Middle East Policy* 14, no. 2 (2007): 44-58.
- Hollis, Martin, and Steve Smith. *Explaining and Understanding International Relations*. Oxford, U.K.: Clarendon, 1990.
- Holsti, Kalevi J. *Peace and War: Armed Conflicts and International Order 1648-1989*. Cambridge, U.K.: Cambridge University Press, 1991.
- . *Taming the Sovereigns: Institutional Change in International Politics*. Cambridge, U.K.: Cambridge University Press, 2004.
- House, The White. "The National Security Strategy of the United States of America." Washington, D.C.: Government Printing Office, 2002.
- Ikenberry, G. John. *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*. Princeton, N.J.: Princeton University Press, 2001.
- Jackson, Patrick Thaddeus, and Daniel H. Nexon. "Constructivist Realism or Realist-Constructivism?" *International Studies Review* 6, no. 2 (2004): 337-41.
- Jacobson, Jon. *Locarno Diplomacy: Germany and the West, 1925-1929*. Princeton, N.J.: Princeton University Press, 1972.
- Jensen, Richard Bach. "The International Campaign against Anarchist Terrorism, 1880-1930s." *Terrorism and Political Violence* 21, no. 1 (2009): 89-109.
- Jervis, Robert. "From Balance to Concert: A Study of International Security Cooperation." *World Politics* 38, no. 1 (1985).
- Jessee, Devin D. "Tactical Means, Strategic Ends: Al Qaeda's Use of Denial and Deception." *Terrorism and Political Violence* 18, no. 3 (2006): 367-88.
- Johnston, Alastair Iain. "Treating International Institutions as Social Environments." *International Studies Quarterly* 45, no. 4 (2001): 487-516.
- Kaplan, Morton A. *System and Process in International Politics*. New York, N.Y.: Wiley, 1957.
- Kaufmann, Chaim D., and Robert A. Pape. "Explaining Costly International Moral Action: Britain's Sixty-Year Campaign against the Atlantic Slave Trade." *International Organization* 53, no. 4 (1999): 631-68.
- Keck, Margaret E., and Kathryn Sikkink. *Activists Beyond Borders*. Ithaca, N.Y.: Cornell University Press, 1998.
- Keene, Edward. "A Case Study of the Construction of International Hierarchy: British Treaty-Making against the Slave Trade in the Early Nineteenth Century." *International Organization* 61, no. 2 (2007).
- "Kellogg-Briand Pact." [http://avalon.law.yale.edu/20th\\_century/kbpact.asp](http://avalon.law.yale.edu/20th_century/kbpact.asp).
- Kelsay, John. "Al-Qaida as a Muslim (Religio-Political) Movement: Remarks on James L. Gelvin's 'Al Qaeda and Anarchism: A Historian's Reply to Terrorology'." *Terrorism and Political Violence* 20, no. 4 (2008): 601-05.
- Keohane, Robert O. *After Hegemony*. Princeton N.J.: Princeton University Press, 1984.
- . "Institutional Theory and the Realist Challenge after the Cold War." In *Neorealism and Neoliberalism: The Contemporary Debate*, edited by David A. Baldwin. New York, N.Y.: Columbia University Press, 1993.
- . "International Institutions: Two Approaches." *International Studies Quarterly* 34, no. 2 (1988).
- . "Realism, Neorealism and the Study of World Politics." In *Neorealism and Its Critics*, edited by Robert O. Keohane. New York, N.Y.: Columbia University Press, 1986.

- Keohane, Robert O., and Lisa L. Martin. "Institutional Theory as a Research Program." In *Progress in International Relations Theory: Appraising the Field*, edited by Colin Elman and Miriam Fendius Elman. Cambridge, M.A.: MIT Press, 2003.
- Keohane, Robert O., and Joseph S. Nye. *Power and Interdependence*. 3rd ed. New York, N.Y.: Longman, 2001.
- Kindred, Hugh M., Karin Mickelson, Rene Provost, Linda C. Reif, Ted L. McDorman, Armand L.C. deMestral, and Sharon A. Williams. *International Law: Chiefly as Interpreted and Applied in Canada*. 6th ed. Toronto, ON: Emond Montgomery, 2000.
- King, Gary, Robert O. Keohane, and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press, 1994.
- Kissinger, Henry A. *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-22*. 2nd ed. London, U.K.: Phoenix Press, 2000.
- Kleiner, Jurgen. "The Taliban and Islam." *Diplomacy and Statecraft* 11, no. 1 (2000): 19-32.
- Klotz, Audie. "Transnational Activism and Global Transformations: The Anti-Apartheid and Abolitionist Experiences." *European Journal of International Relations* 8, no. 1 (2002): 49-76.
- Koh, Harold Hongju. "The Spirit of the Laws." *Harvard International Law Journal* 43, no. 1 (2002): 23-39.
- Krasner, Stephen D., ed. *International Regimes*. Ithaca, N.Y.: Cornell University Press, 1983.
- . *Sovereignty: Organized Hypocrisy*. Princeton, N.J.: Princeton University Press, 1999.
- . "Structural Causes and Regime Consequences: Regimes as Intervening Variables." In *International Regimes*, edited by Stephen D. Krasner. Ithaca, N.Y.: Cornell University Press, 1983.
- . "Westphalia and All That." In *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, edited by Judith Goldstein and Robert O. Keohane. Ithaca, N.Y.: Cornell University Press, 1993.
- Kratochwil, Friedrich V. *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*. Cambridge, U.K.: Cambridge University Press, 1989.
- Lafeber, Walter. "The Bush Doctrine." *Diplomatic History* 26, no. 4 (2002): 543-58.
- Lebow, Richard Ned. "Constructive Realism." *International Studies Review* 6, no. 2 (2004): 346-48.
- Levy, Reuben. *The Social Structure of Islam*. Cambridge, U.K.: Cambridge University Press, 1962.
- Lia, Brynjar. "Doctrines for Jihadi Terrorist Training." *Terrorism and Political Violence* 20, no. 4 (2008): 518-42.
- Lindberg, Tod. "Nuclear and Other Retaliation after Deterrence Fails." In *Getting Mad: Nuclear Mutual Assured Destruction, Its Origins and Practice*, edited by Henry D. Sokolski. Carlisle, PA: United States Army War College, 2004.
- MacMillan, Margaret. *Paris 1919: Six Months That Changed the World*. New York, N.Y.: Random House, 2003.
- Maley, William. "The Foreign Policy of the Taliban." New York, NY: Council on Foreign Relations, 2000.
- Martin, Lisa L., and Beth A. Simmons. "Theories and Empirical Studies of International Institutions." *International Organization* 52, no. 4 (1998): 729-57.

- Mead, Walter Russell. *Special Providence: American Foreign Policy and How It Changed the World*. New York, N.Y.: Alfred A. Knopf, 2001.
- Mearsheimer, John J. *The Tragedy of Great Power Politics*. New York, N.Y.: W.W. Norton, 2001.
- Memoirs of Prince Metternich*. Translated by A. Napier. Edited by Richard Metternich. Vol. 3. New York, N.Y.: Howard Fertig, 1970.
- Mendelsohn, Barak. "Sovereignty under Attack: The International Society Meets the Al Qaeda Network." *Review of International Studies* 31, no. 1 (2005): 45-68.
- Miller, David Hunter. *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*. New York, N.Y.: Knickerbocker Press, 1928.
- Moghadam, Assaf. "Motives for Martyrdom: Al-Qaida, Salafi Jihad, and the Spread of Suicide Attacks." *International Security* 33, no. 3 (2008-2009): 46-78.
- Morgenthau, Hans J. *Politics among Nations: The Struggle for Power and Peace*. Brief ed. New York, N.Y.: McGraw-Hill, 1993.
- Nicolson, Sir Harold George. *The Congress of Vienna: A Study in Allied Unity, 1812-1822*. London, U.K.: Constable & Co., 1946.
- Nissen, Thomas Elkjer. "The Taliban's Information Warfare: A Comparative Analysis of Nato Information Operations (Info Ops) and Taliban Information Activities." Copenhagen, DK: Royal Danish Defence College, 2007.
- Onuf, Nicholas Greenwood. *World of Our Making: Rules and Rule in International Relations*. Columbia, S.C.: University of South Carolina Press, 1989.
- Orbach, Benjamin. "Usama Bin Ladin and Al-Qa'ida: Origins and Doctrines." *Middle East Review of International Affairs* 5, no. 4 (2001): 54-68.
- Payne, Roger A. "Persuasion, Frames and Norm Construction." *European Journal of International Relations* 7, no. 1 (2001): 37-61.
- Phillips, Andrew. "The Protestant Ethic and the Spirit of Jihadism - Transnational Religious Insurgencies and the Transformation of International Orders." *Review of International Studies* 36, no. 2 (2010): 257-80.
- Philpott, Daniel. *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*. Princeton, N.J.: Princeton University Press, 2001.
- Post, Jerrold M. "Killing in the Name of God: Osama Bin Laden and Al Qaeda." Montgomery, AL: United States Air Force Counterproliferation Center, 2002.
- Pouliot, Vincent. *International Security in Practice: The Politics of Nato-Russia Diplomacy*. Cambridge, U.K.: Cambridge University Press, 2010.
- . "'Subjectivism': Toward a Constructivist Methodology." *International Studies Quarterly* 51, no. 2 (2007).
- Ralph, Jason. "The Laws of War and the State of the American Exception." *Review of International Studies* 35, no. 3 (2009): 631-49.
- Rappard, William E. *The Quest for Peace since the World War*. Cambridge, M.A.: Harvard University Press, 1940.
- Reus-Smit, Christian. "International Crises of Legitimacy." *International Politics* 44, no. 2 (2007): 157-74.
- . *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*. Princeton, N.J.: Princeton University Press, 1999.
- Ricks, Thomas E. *Fiasco: The American Military Adventure in Iraq*. New York, NY: Penguin, 2006.

- Risse, Thomas. "Let's Argue!": Communicative Action in World Politics." *International Organization* 54, no. 1 (2000): 1-39.
- Rogan, Hanna. "Jihadism Online: A Study of How Al-Qaida and Radical Islamist Groups Use the Internet for Terrorist Purposes." Kjeller, Norway: Norwegian Defence Research Establishment, 2006.
- Rosecrance, Richard N. *Action and Reaction in World Politics: International Systems in Perspective*. Boston, M.A.: Little, Brown, 1963.
- Rosenau, James N. "Signals, Signposts and Symptoms: Interpreting Change and Anomalies in World Politics." *European Journal of International Relations* 1, no. 1 (1995): 113-22.
- Ruggie, John Gerard. "Multilateralism: The Anatomy of an Institution." *International Organization* 46, no. 3 (1992): 561-98.
- . "Political Structure and Dynamic Density." In *Constructing the World Polity: Essays on International Institutionalization*. New York, N.Y.: Routledge, 1998.
- . "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge." In *Constructing the World Polity: Essays on International Institutionalization*. New York, N.Y.: Routledge, 1998.
- Ruggie, John Gerard, and Friedrich V. Kratochwil. "Epistemology, Ontology, and the Study of International Regimes." In *Constructing the World Polity: Essays on International Institutionalization*. New York, N.Y.: Routledge, 1998.
- Saco, Diana. "Gendering Sovereignty: Marriage and International Relations in Elizabethan Times." *European Journal of International Relations* 3, no. 3 (1997).
- Schroeder, Paul W. *The Transformation of European Politics, 1763-1848*. Oxford, U.K.: Oxford University Press, 1994.
- Schweller, Randall L. "The Progressiveness of Neoclassical Realism." In *Progress in International Relations Theory: Appraising the Field*, edited by Colin Elman and Miriam Fendius Elman. Cambridge, Mass.: MIT Press, 2003.
- Sharp, Paul. "Mullah Zaeef and Taliban Diplomacy: An English School Approach." *Review of International Studies* 29, no. 4 (2003): 481-98.
- Spruyt, Hendrik. *The Sovereign State and Its Competitors*. Princeton, N.J.: Princeton University Press, 1994.
- "Statute of the International Court of Justice." <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>.
- Sterling-Folker, Jennifer. "Realist-Constructivism and Morality." *International Studies Review* 6, no. 2 (2004): 341-43.
- Sylvester, Christine. *Feminist International Relations*. Cambridge, U.K.: Cambridge University Press, 2002.
- Tickner, J. Ann. *Gender in International Relations*. New York, N.Y.: Columbia University Press, 1992.
- . *Gendering World Politics*. New York, N.Y.: Columbia University Press, 2001.
- Torres, Manuel R., Javier Jordan, and Nicola Horsburgh. "Analysis and Evolution of the Global Jihadist Movement Propaganda." *Terrorism and Political Violence* 18, no. 3 (2006): 399-421.
- "Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy." [http://avalon.law.yale.edu/20th\\_century/locarno\\_001.asp](http://avalon.law.yale.edu/20th_century/locarno_001.asp).
- van Ess, Josef. "Political Ideas in Early Islamic Religious Thought." *British Journal of Middle Eastern Studies* 28, no. 2 (2001): 151-64.

- "Vienna Convention on Diplomatic Relations."  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf).
- "Vienna Convention on the Law of Treaties."  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).
- Wallerstein, Immanuel. "Introduction: The Lessons of the 1980s." In *Geopolitics and Geoculture: Essays on the Changing World-System*. Cambridge, UK: Cambridge University Press, 1991.
- . *The Modern World System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*. New York, N.Y.: Academic Press, 1974.
- . *World Systems Analysis: An Introduction*. Durham, N.C.: Duke University Press, 2004.
- Waltz, Kenneth N. *Theory of International Politics*. Boston, Mass.: McGraw-Hill, 1979.
- Watson, Adam. *The Evolution of International Society: A Comparative Historical Perspective*. London, U.K.: Routledge, 1992.
- Wendt, Alexander. "The Agent-Structure Problem in International Relations Theory." *International Organization* 41, no. 3 (1987): 335-70.
- . "Anarchy Is What States Make of It: The Social Construction of Power Politics." *International Organization* 46, no. 2 (1992).
- . "Driving with the Rearview Mirror: On the Rational Science of Institutional Design." *International Organization* 55, no. 4 (2001): 1019-49.
- . "On Constitution and Causation in International Relations." *Review of International Studies* 24, no. 5 (1998): 101-18.
- . *Social Theory of International Politics*. Cambridge, U.K.: Cambridge University Press, 1999.
- Wheeler-Bennett, J.W. *Information on the Renunciation of War, 1927-1928*. London, U.K.: George Allen & Unwin Ltd., 1928.
- Wiener, Antje. "Contested Compliance: Interventions on the Normative Structure of World Politics." *European Journal of International Relations* 10, no. 2 (2004): 189-234.
- Wight, Colin. *Agents, Structures and International Relations: Politics as Ontology*. Cambridge, U.K.: Cambridge University Press, 2006.
- Young, Oran R. "Regime Dynamics: The Rise and Fall of International Regimes." In *International Regimes*, edited by Stephen D. Krasner. Ithaca, N.Y.: Cornell University Press, 1983.