

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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with individual right and duties.<sup>85</sup> Moreover, when \*\*\* international aid transfers are made they are made either between states or with the permission of the recipient state. Individual or private transfers can only be undertaken in stealth if they do not have the sanction of targeted sovereign states.

We live in a world entirely enclosed by equal sovereignty. International aid is profoundly affected by this juridical consideration. On closer inspection development rights look more like sovereign's rights than human rights. The fact of the matter is that southern sovereignty can direct development aid and even redirect it into the pockets of ruling elites. If northern countries could intervene when this happened, then the new sovereignty would be undermined and we would be witnessing a return to the old game of imperialism in which the developed states could legitimately dictate to the underdeveloped in matters affecting their domestic jurisdiction. Juridical statehood only embraces distributive justice insofar as it conforms to the rights of Third World sovereigns. The morality and the elaborate superstructure of international aid which is targeted specifically at countries rather than individuals is inconsistent with Kantian morality.

Kantianism, however, is primarily concerned with individual morality – classical natural rights – in international relations. It is revolutionary because it postulates the priority of human rights over sovereign's rights, which are secondary claims. The ultimate moral agents are individuals. The only authentic moral community is mankind. When statesmen claim rights above individuals or justify their exercise of power in violation of natural rights, injustice is committed. Kantianism, by subordinating sovereign rights to human rights, is therefore revolutionary in regard to the community of states.

Kant's vision of a community of mankind is incipiently evident today only among select developed states, particularly those of the European community, which have freely suspended although not permanently revoked their sovereignty in regard to some important civil rights. They have set up a wholly independent \*\*\* European Court of Human Rights which can sit in judgment of them in questions of human rights violations. Moreover, these bodies can hear cases brought by individuals against states and deliver binding judgments. "All this amounts to a

<sup>85</sup> See the characteristically subtle and discerning analysis by Stanley Hoffman, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse: Syracuse University Press, 1981).

substantial retreat from the previously sacred principle of national sovereignty.”<sup>86</sup> \*\*\* Arguably this achievement has been possible only in a region where domestic democracy and the rule of law is now widely entrenched. It is a historical confirmation of Kant’s belief that international humanitarianism is most likely in a league of constitutional states.

This can be contrasted with the UN human rights regime and the situation in Africa. Most UN human rights covenants, which are procedurally slack and deferential to member states, have been ratified and implemented to date only by a minority of those states. The 1981 African Charter on Human and Peoples’ Rights, \*\*\* explicitly acknowledges the supremacy of sovereign states by differentiating “peoples’” rights from human rights. It is evident that “peoples’ rights” is a code word for ex-colonial self-determination and therefore sovereign’s rights (Articles 19 and 20). \*\*\* The weakness and equivocation of both the UN and the African human rights regimes confirms an inference from Kant’s belief: namely that international humanitarianism is not likely to be advanced by a league of authoritarian states.

This interrogation of juridical statehood by Kantian revolutionism suggests that negative sovereignty is well entrenched in Africa and probably other parts of the Third World. At most, a kind of encapsulated revolutionism is evident in which positive laws and organizations of international humanitarianism exist but are subject to the sovereignty of southern governments. In North-South relations the Kantian revolution has yet to occur, and at present there is little prospect that it will soon happen. Revolutionism is therefore a weak theory in the terms of this article: it is recommendatory more than explanatory. In this regard, however, it is very Kantian.<sup>87</sup>

## CONCLUSION

Perhaps the threads of these remarks can now be drawn together. Although realism and revolutionism are certainly relevant, as I have

<sup>86</sup> Paul Sieghart, *The Lawful Rights of Mankind* (New York: Oxford University Press, 1986), p. 68.

<sup>87</sup> “For my part, I put my trust in the theory of what the relationships between men and states ought to be according to the principle of right. On the cosmopolitan level too, whatever reason shows to be valid in theory, is also valid in practice.” Immanuel Kant, “On the Relationship of Theory to Practice in International Right,” reprinted in Hans Reiss, ed., *Kant’s Political Writings* (New York: Cambridge University Press, 1977), p. 92.

indicated, the classical international theory most apposite to African quasi-states and the external order which sustains them at this time is one which places sovereignty at the forefront of analysis: rationalism. Neither Machiavellianism nor Kantianism adequately captures the practice of juridical statehood. This is only part of the story, however. As indicated, modern rationalist theories of Third World states are inclined to be inverted and idealist in character, unlike traditional European rationalism, which was far more empiricist and realist. If this observation has validity, rationalist theory today at least as regards sovereignty in the Third World is primarily disclosed not as a Grotian theory concerned with protecting the intrinsic value of existing states but as a constructivist theory aimed at creating political value and developing new states.

Rationalism, realism, and revolutionism have a designated place of long standing in the theory of international relations. The point is locating their appropriate and relative position at any historical period. To reduce international theory to any one mode would be to limit the subject unduly. It would be like trying to operate effectively in practical political life only with the language of power or the language of law or the language of morality. Many political goods and certainly the good life would be unobtainable. One could not achieve in practice the modern constitutional democratic state which requires all of these languages. Likewise in theory. Methodological pluralism, although it obviously sacrifices parsimony and elegance, more than makes up for it by affording balance and comprehensiveness. This is, of course, the point of Martin Wight and others who write about international relations in a pluralist manner, as Hedley Bull observes: "the essence of his teaching was that the truth about international politics had to be sought not in any one of these patterns of thought but in the debate among them."<sup>88</sup> Methodological pluralism seeks to be faithful to the observed pluralism of international political life.

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<sup>88</sup> Bull, "Martin Wight and the Theory of International Relations," p. 110.

## Which Norms Matter? Revisiting the “Failure” of Internationalism

Jeffrey W. Legro

International relations theorists have in recent years shown an interest in international norms and rules not equaled since the interwar period.<sup>1</sup> This contemporary literature is, of course, quite different – ie., better – than that of the 1920s and 1930s: it has greater intellectual depth, empirical backing, and explanatory power. The promise of this research, bolstered by the opportunities of the post-cold war era, is that norms encouraging free trade, protecting the environment, enhancing human rights, and controlling the spread and use of heinous weapons may have a substantial impact on the conduct and structure of international relations. But pessimists also exist. Some have taken up the stick E. H. Carr skillfully shook at idealists in an earlier period, arguing that the anarchic power-shaped international arena is not so malleable and that international norms and institutions have relatively little influence.<sup>2</sup> On the one hand, we are pointed to the centrality of international norms; on the other, we are cautioned that norms are inconsequential. How do we make sense of these divergent claims? Which is right?

<sup>1</sup> For examples, see Axelrod 1986; Kratochwil 1989; Ray 1989; Nadelmann 1990; Goertz and Diehl 1992; Finnemore 1993; Reed and Kaysen 1993; Thomson 1993, 1994; Mayall 1990; Goldstein and Keohane 1993; Jackson 1993; Sikkink 1993; Paul, 1995; Price 1995; Klotz 1995; Gelpi 1995; Katzenstein 1996; Finnemore 1996a; and Cortell and Davis in press.

<sup>2</sup> Carr 1946. For an example, see Mearsheimer 1994–95, 7.

For their help on the ideas presented below, I am grateful to James Davis, Colin Elman, Hein Goemans, Paul Kowert, John Odell, Ido Oren, Richard Price, Brian Taylor, Mark Zacher, participants at seminars at Harvard University’s Olin Institute and Brown University’s Watson Institute, and several anonymous reviewers for *International Organization*.

I argue that neither of the polarized positions is sustainable. Contrary to what the skeptics assert, norms do indeed matter. But norms do not necessarily matter in the ways or often to the extent that their proponents have argued. The literature on norms has generally mis-specified their impact because of several conceptual and methodological biases. In short, by concentrating on showing that norms “matter,” analysts have given short shrift to the critical issues of which norms matter, the ways they matter, and how much they matter relative to other factors. The result has been a misguided sense of the range and depth of the impact of international norms. The social focus of norm analysis is indeed central, but recent analyses have overemphasized international prescriptions while neglecting norms that are rooted in other types of social entities – e.g., regional, national, and subnational groups. This oversight has led scholars to ignore significant subsystemic social understandings that can contradict and overwhelm international prescriptions.

To assess the promise and limits of focusing on norms, I draw on a set of cases involving the use of force where the conventional wisdom expects little impact from international prescriptions – that is, “least likely” cases.<sup>3</sup> Furthermore, the study focuses on a time period (the interwar and World War II years) that the standard historiography of international relations theory sees as decisively refuting ideational internationalism.<sup>4</sup> In the 1920s and 1930s, the international community stigmatized three types of warfare as heinous and immoral: submarine attacks against merchant ships, the bombing of nonmilitary targets, and the use of chemical weapons. These prohibitory norms are interesting (and similar to current efforts) because they were not simply part of the “deep structure” of the international system or “invisible” to the participants but instead were explicit objects of construction by states that later had to weigh the desirability of adherence versus violation. Yet, during World War II, these prohibitions had varying effects. Participants ignored the submarine warfare restrictions almost immediately. They respected strategic bombing rules for months and then violated them. But they upheld limitations on chemical weapons, despite expectations and preparations, throughout the war. Why were some norms apparently influential and not others?

<sup>3</sup> See Eckstein 1975; and King, Keohane, and Verba 1994, 209–10.

<sup>4</sup> For example, see Bull 1972.

Contrary to the conventional historiography, I argue that international norms were consequential for the use of force during World War II. The prohibitions shaped states' calculations and tactics, inspired leaders' justifications and rationalizations, and, most fundamentally, appear to be a key reason why certain means of warfare were even considered for restraint. Yet while international norms certainly mattered, a norm explanation cannot account for the variation that occurred in the use of force. The explanation is not that strategic security concerns overwhelmed social prescriptions, since neither the military effectiveness of the weapons nor opportunities for relative strategic advantage can explain the differential adherence of states to the three norms. Instead, it lies in an understanding of organizational culture. This approach does emphasize collective prescriptions, but the focus is on national society rather than on international norms. The dominant beliefs in military organizations about the appropriate ways to fight wars shaped how soldiers thought about and prepared for war, which in turn shaped the varying impact of norms on state aims.

This analysis has several implications for international relations theory. First, it demonstrates the value of providing clear concepts, of examining both effective and ineffective norms, and of considering alternative explanations – methodological additions that can advance both positivist and interpretivist norm research. Second, its results show the benefits of analyzing competing norm, belief, and cultural patterns in international politics. Although many recent accounts have usefully focused on global norms, few have examined such international injunctions in the context of national norms. Yet these intrastate prescriptions (i.e., those of organizational culture) can wield great influence. This, of course, is not to suggest that bureaucratic culture always supersedes international norms or relative power constraints, but it does highlight the need for conceptual tools to weigh the cross-cutting or synthetic effects of different types of cultural and material structures.

The article takes shape in four parts. First, it outlines the limitations of the extant norm literature and develops an approach that seeks to address those shortcomings. Second, it discusses the logic of a competing view based on organizational culture. It then assesses how persuasively these two perspectives explain state preferences on adherence to norms limiting the use of force in World War II. Finally, it addresses the implications of the argument for international relations theory, especially future work on norms.

## ON NORMS

Across a range of theoretical and methodological orientations, scholars have shown a renewed interest in the ways that norms – collective understandings of the proper behavior of actors – operate in international politics. Norms are seen as continuous, rather than dichotomous, entities: they do not just exist or not exist but instead come in varying strengths. Analysts typically portray norms as consequential in terms of either constituting, regulating, or enabling actors or their environments.<sup>5</sup> In any of these roles, the central proposition is that norms that are more robust will be more influential regardless of whether the dependent variable is identity, interests, individual behavior, or collective practices and outcomes. Yet in exploring these relationships, the extant norm literature has been prone to three types of biases.<sup>6</sup>

The first is a failure to conceptualize norm robustness independent of the very effects attributed to norms, thus leading to tautology. This failure is compounded because analysts must confront not a dearth but an apparent profusion of norms in the international arena. Given this availability, one can almost always identify a norm to “explain” or “allow” a particular effect. Since different norms can have competing or even contradictory imperatives, it is important to understand why some norms are more influential than others in particular situations. Thus, whether one emphasizes the behavioral or the linguistic/discursive facet of norms, avoiding circular reasoning requires a notion of norm robustness that is independent of the effects to be explained. This is not an easy task. For example, Alexander Wendt suggests that social structures (of shared knowledge) vary in the degree to which they can be transformed, but he does not specify what defines this trait.<sup>7</sup> In different ways, both Robert Keohane and Friedrich Kratochwil link a norm’s potency to its institutionalization.<sup>8</sup> But this pushes the problem back to one of theorizing the robustness of institutions, an exercise that has been prone to ambiguity or definition by effect.

A second problem is that efforts to explore norms suffer from a bias toward the norm that “worked.” Most studies of norms focus on a single, specific norm – or, at most, on a small set of norms. Typically, the norms

<sup>5</sup> See Kratochwil and Ruggie 1986; Kratochwil 1989, 26; and Dessler 1989, 454–58.

<sup>6</sup> Thanks to Paul Kowert for his contribution to this section. For a developed discussion on the strengths and weaknesses of norm research, see Kowert and Legro 1996.

<sup>7</sup> Wendt 1995, 80.

<sup>8</sup> Keohane 1989, 4–5; Kratochwil 1989, 62.



under consideration are “effective” norms that seem to have obvious consequences.<sup>9</sup> Yet, in order to understand how norms operate, studies must allow for more variation: the success or failure, existence or obsolescence of norms. Research on norms has tended to overlook the emerging rules, principles, prohibitions, and understandings that might have had influence but did not. These cases, analyzed in conjunction with comparable cases of norm effectiveness, are critical to the development of this line of thinking.<sup>10</sup> Why norms did not emerge or were not consequential is as important as why they did or were.

The final (but less pervasive) problem of many studies is a neglect of alternative explanations, particularly ideational ones, for the effects attributed to norms. The dangers of not doing so are apparent. One risks spuriously crediting international norms with consequences (e.g., the shaping or enabling of particular identities, interests, beliefs, or actions) that are better explained by other types of factors.

I attempt to avoid these biases by developing an explicit scheme for assessing norm strength; by comparing norms that seem to have been very effectual, such as those proscribing chemical warfare (CW), with those that were less so, such as those concerning submarine warfare and strategic bombing; and by explicitly contrasting a norm approach with an alternative organizational culture explanation and, to a lesser degree, a conventional realist account.

To gauge the robustness of the norms, I propose a conceptualization based on three criteria: *specificity*, *durability*, and *concordance*.<sup>11</sup> These three traits are, in principle, as applicable to informal institutions as they are to formal ones. Specificity refers to how well the guidelines for restraint and use are defined and understood. Is there a laborious code that is overly complex or ill-defined or is it relatively simple and precise? Do countries argue about what the restraints entail or how to implement them? Specificity is thus assessed by examining actors’ understandings of the simplicity and clarity of the prohibition.

Durability denotes how long the rules have been in effect and how they weather challenges to their prohibitions. Have the norms had

<sup>9</sup> See, for example, Ray 1989; Finnemore 1993; Jackson 1993; Thomson 1994; Price 1995; Klotz 1995; and Price and Tannenwald 1996.

<sup>10</sup> Examples include Nadelmann 1990; and McElroy 1992.

<sup>11</sup> Though this is my own schema, it is influenced by traits often implicit in discussions of norms and in the institutionalist literature, for example, Keohane 1989, 4–5; Smith 1989, 234–36; and Young 1989, 23.

long-standing legitimacy? Are violators or violations penalized, thus reinforcing and reproducing the norm? Violations of a norm do not necessarily invalidate it, as is seen, for example, in cases of incest. The issue is whether actors are socially or self-sanctioned for doing so. These questions can be assessed by examining the history of a prohibition and agents' related understanding of and reaction to violations.

Concordance means how widely accepted the rules are in diplomatic discussions and treaties (that is, the degree of intersubjective agreement). The concordance dimension may be a sword that cuts both ways. Public efforts to reaffirm a norm may be a sign, not that it is viable, but instead that it is weakening. Which is the case may depend on its context. In the cases examined here, affirmation is more reinforcing because the focus is largely on "nascent" or evolving norms where affirmation seems to contribute to robustness. Do states seem to concur on the acceptability of the rules? Do they affirm their approval by committing reputations to public ratification? Do states put special conditions on their acceptance of prohibitions, thus diminishing concordance? Or do they take the rules for granted, never even considering violating their prescriptions? These questions can be assessed by reviewing the records of national and international discussions that involve the norms.

Overall, the expectation of the norm approach developed above is that the clearer, more durable, and more widely endorsed a prescription is, the greater will be its impact. With respect to the variation in World War II, this suggests, *ceteris paribus*, that states' adherence to norms is most likely in areas where norms are most robust in terms of specificity, durability, and concordance. Conversely, where norms are less robust, states will be more inclined toward violations. If a norm account is right, we should see restraint in those areas where prohibitions are most developed. States' expectations of future use should shift as the accord becomes more ingrained as part of international society. Leaders should make reference to the norm in making decisions and recognize the penalties of nonadherence. Alternatively, the norm may be so robust, violation of it is not even considered. Countries should react to constrain transgressions of principles, especially ones that are clear, long-standing, and widely endorsed. In those areas where agreements have not been concluded or are thinly developed, restraint is more likely to break down. The costs of violation will be seen as nonprohibitive. Leaders will attempt to cut corners on restrictions. The related norms will not be identified with self-interest or identity. In short, the effect of prohibitions on actors, decision making, and practices will be minimal.

## ORGANIZATIONAL CULTURE

An alternative approach to understanding the varying use of force in World War II comes from a conjunction of cultural and organization theory. An organizational culture approach focuses on the way that the pattern of assumptions, ideas, and beliefs that prescribes how a group should adapt to its external environment and manage its internal affairs influences calculations and actions.<sup>12</sup> In a sense, this approach focuses on “norms” that dominate specific organizations: culture is, in effect, a set of collectively held prescriptions about the right way to think and act.<sup>13</sup> Applied to military bureaucracies, an organizational culture perspective highlights how government agencies tasked with vague formal purposes (“provide security”) concentrate on modes of warfare that subsequently condition organizational thinking and behavior. Their dominant way of war tends to become such a locus of activity that, in effect, means become ends.<sup>14</sup> Culture shapes how organizations understand their environment: it acts as a heuristic filter for perception and calculation much the same way a theoretical paradigm shapes intellectual thought or a schema structures individual cognition.<sup>15</sup> Culture also has material consequences. Collective beliefs dictate which capabilities are perceived as better and are worthy of support. Organizations will channel resources to weapons suited to culture. Those weapons will appear more feasible than those that are incompatible with culture and that are subsequently deprived of funding and attention.<sup>16</sup>

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\*\*\* Governments, however, consist of multiple agencies, so the question is which bureaucracies will matter and when? The brief answer offered here is that a bureaucracy’s impact varies with what I call its organizational salience, consisting of at least three dimensions: the extent to which the bureaucracy has monopoly power on expertise, the complexity of the issue, and the time period available for action. When one organization has a monopoly on expertise and no competitors, it faces less pressure to change and no checks on organizational biases. In terms of complexity, the intricacy of an issue affects the degree to which specialist

<sup>12</sup> This definition is loosely based on Schein 1985, 9.

<sup>13</sup> For a thoughtful review of the work on culture in security affairs, see Johnston 1995. Kier 1996 provides an excellent analysis of organizational culture and military doctrine.

<sup>14</sup> See Wilson 1989, especially 32.

<sup>15</sup> See Kuhn 1970; and Khong 1992.

<sup>16</sup> Levitt and March 1988, 322.

knowledge is required for decisions. The more complex the issue, the less effective senior authorities will be in objecting to or intervening in operations and the more organizational preferences will be felt. The time frame for decision making can also affect bureaucratic effect. When decision-making cycles are short, so is time for adjusting prearranged plans.

These traits all suggest that military organizations will have a high salience in choices on the use of force in war. Militaries are key players in such situations because they generally have monopoly control over expertise in the use of force, military operations are complex and not easily understood by nonspecialists, and the time periods for altering prearranged plans are limited. Civilians may have authority to make final choices, but often contrary to their wishes and efforts, military propensity can prevail in the midst of war due to the organizational salience of the armed forces.

In sum, organizational culture is important because it shapes organizational identity, priorities, perception, and capabilities in ways unexpected by noncultural approaches. Those means compatible with the dominant war-fighting culture will be developed and advocated by the military; those that are not will suffer benign neglect. Even as the cultural tendencies of militaries can remain fairly consistent, their heightened organizational salience in war may lead to change in national policy on the use of force. With regard to World War II, this view predicts that, *ceteris paribus*, a state will favor adherence to norms proscribing a particular form of combat if that form is antithetical to the war-fighting culture of its military bureaucracy. States will prefer violations regarding means that are compatible with organizational cultures. \*\*\*

#### NORMS AND ORGANIZATIONAL CULTURE IN WORLD WAR II

To assess the relative explanatory power of the two approaches, I rely on two methods. The first is a macrocorrelation of each approach's ability to predict outcomes across a number of cases. The second is an in-depth analysis of some of the history to illustrate the validity of the causal mechanisms.

The cases I examine relate to submarines, strategic bombing, and CW in World War II. These are a good focus because they were the three main types of combat that states had considered for limitation in the interwar period. These three also make sense for assessing the propositions because they allow for variation in both the "independent" (norms and culture) and the "dependent" (state preferences on the use of force) variables, and they "control" other factors, such as the personalities,