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## Newsletter Spring 2019 Volume 4, Issue 2

Message from the Chair

Dear IHAP Members,

It's a real pleasure to introduce this issue of the newsletter, which is also my first as Section Chair. The topic of the roundtable book review in this issue – the prohibition on “aggressive” war, and more specifically the creation and impact of the 1928 Kellogg-Briand Pact in this trajectory – zeroes in on some of central substantive and methodological questions in international history and politics. Substantively, what can we learn about the prevention of war from a closer examination of historical sources? Methodologically, where do we look to understand history: how far can analyzing the role of influential elites take us, versus, for example, social forces, institutions, and economic processes? Moreover, what important features about war might be overlooked in focusing on any specific lens? As someone who examined numerous archival sources on the Pact for my first book, I can attest that the discussion that follows is fascinating.

I am not going to delay your plunging right into these questions, except to point out that my illustrious predecessor in this role, Karen Alter, kicks off the debate by zeroing in on whether recent incursions in Crimea and claims to the Golan Heights challenge the book's claims, or whether international law is stronger than the actions of a handful of autocrats. She and the rest of the great cast of contributors explore issues that provide a fine example of the relevance of our section to pressing international problems as well as the best means to study them.

Karen left the section in great shape, and I hope to continue that legacy. Towards that end, I also want to give a heads-up regarding our panels, Business Meeting, and Reception at this year's Annual Meeting from August 29 to September 1 in Washington, D.C. More details will be forthcoming, but we have a terrific slate of panels (*no manels*) put together by Stephen Nelson, our 2019 Program Chair. We also moved the Business Meeting to Thursday lunchtime, in order not to conflict with History and Politics, although we will once again collaborate on the reception with them on Thursday evening.

### In This Issue

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Message from the Chair.....	1-2
Roundtable: <i>The Internationalists</i> .....	3-18
IHAP at APSA .....	20
Upcoming Events & Workshops.....	21

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### Call for announcements

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Section members are invited to send their announcements about upcoming workshops, recent books, or anything else of general interest to the editors:

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As this is the time of year when I need to be thinking about the rotation of our Executive Committee, please let me know if you are interested in becoming more involved in the section.

This newsletter would not be possible without the terrific work of Peter Harris and Tom Le, who deserve our unending thanks, and certainly have mine. Peter and Tom will also be transitioning out of this role before too long, so I'd love to hear from anyone interested in pursuing their legacy as well!

Cecelia Lynch  
Professor, UC Irvine  
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## Roundtable Discussion of *The Internationalists*

### Introduction

By Peter Harris, Colorado State University,  
Tom Le, Pomona College,  
Hyeyoon Park, Colorado State University, and  
Paige Pepitone, Pomona College

This issue's roundtable is something new for the IHAP newsletter: a roundtable review of *The Internationalists: How a Radical Plan to Outlaw War Remade the World* by Yale Law School professors Oona Hathaway and Scott Shapiro (New York: Simon and Schuster, 2017).

*The Internationalists* is one of the most important works of international historical analysis to have been published in recent years. Its subject matter—the causes of war and peace among nations—is of urgent importance today, given the widespread belief that contemporary shifts in power are putting potentially fatal stresses upon the present world order, and that a breakdown of international stability might even be in the offing. Do the laws of war matter? What will be the future of international rule-making in a post-American world? How far can the fabric of public international law be expected to contain the jostling of tomorrow's great powers? One thing is certain, ideas matter. And by extension, people matter as well.

Hathaway and Shapiro's book offers a treasure trove of insights into these and related questions. The contributions to this roundtable go beyond reviewing *The Internationalists* to provide several such insights of their own. The result is a productive discussion of an excellent book and, more importantly, a critical set of real-world issues.

Several of these contributions were presented at the International Studies Association conference in Toronto in March 2019, where Shapiro was generous

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\* This contribution embellishes beyond a previously published review essay that compared *The Internationalists* to two global histories of contemporaneous international legal changes that were equally momentous. See Karen J. Alter, "The Empire of International Law?" *American Journal of International Law* 113, no. 1 (2019), pp. 183-199, at 198.

<sup>1</sup> Mark W. Zacher, "The Territorial Integrity Norm: International Boundaries and the Use of Force," *International Organization* 55, no. 2 (2001), pp. 215-50.

<sup>2</sup> Boaz Atzili, *Good Fences, Bad Neighbors: Border Fixity and International Conflict* (Chicago: University of Chicago Press, 2012).

enough to attend and offer thoughtful responses to his critics. The editors thank the contributors for their participation. ■

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### Is the Era of Internationalists Over? A Comment on Hathaway and Shapiro's *The Internationalists*\*

By Karen J. Alter, Northwestern University

*The Internationalists* explains the emergence of the legal prohibition on using force in international relations (with an exception for self-defense, and collective action authorized by the UN Security Council). Political scientists call this the territorial integrity norm<sup>1</sup> or the principle of border fixity,<sup>2</sup> a requirement that international borders only be changed through peaceable means. Border-fixity is enforced by non-recognition of forcibly annexed territory, and political scientists see this norm as a key reason for the decline of interstate war (although Atzili suggests this very norm might also increase the prevalence of civil war).<sup>3</sup> Recently, President Trump signed an executive order recognizing Israel's claim over the Golan Heights.<sup>4</sup> Many people saw this order, tailor-made to facilitate the reelection of Trump's political ally Benjamin Netanyahu, as an implicit nod in support of Russia's illegal annexation of the Crimea (an annexation that Russia tried to legitimize via a secessionist referendum).<sup>5</sup> Do these actions mean that the monumental change that is the focus of *The Internationalists* is passé? To draw such a conclusion would be to suggest that a handful of Presidents—Trump, Putin, Xi Jinping (who might be emboldened to annex Taiwan)—get to determine what international law is. To draw such a conclusion would be to fundamentally miss what Hathaway and Shapiro have argued about how international law develops and constrains.

This short contribution draws out Hathaway and Shapiro's argument about *how* international law on the use of force changed. We will see that ensuring

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<sup>3</sup> Atzili, *Good Fences, Bad Neighbors*.

<sup>4</sup> Noa Landau and Reuters, "Trump Signs Order Recognizing Golan Heights as Israeli Territory," *Haaretz* 26 March, 2019, <https://www.haaretz.com/israel-news/premium-trump-signs-order-recognizing-golan-heights-as-israeli-territory-1.7058996>.

<sup>5</sup> Howard LaFranchi, "Trump and the Golan: What It Could Mean, From Crimea to Kashmir," *The Christian Science Monitor* 29 March, 2019, <https://www.csmonitor.com/USA/Foreign-Policy/2019/0329/Trump-and-the-Golan-what-it-could-mean-from-Crimea-to-Kashmir>.

that conquest does not pay involves a number of corollaries that are not—at this point—being questioned. Second, I will tease out what is implicit in Hathaway and Shapiro’s building of evidence, and in doing so, reveal counter-arguments to any claim that a handful of national-populist presidents seeking to promote their own personal agendas get to determine international legal history. Finally, I will criticize *The Internationalists* for underplaying the role of contestation in the development of international law. Hathaway and Shapiro’s focus on big man articulators of ideas suggests that a new batch of great men can insert new ideas that change the law. This missing argument further underscores why presidents can influence, shape, but neither determine nor destroy entrenched international law. In short, Trump and Putin are contesting the order that constrains them, but others get to contest back.

**“Hathaway and Shapiro make a large claim about conquest no longer paying. In this respect, the Golan and Crimea examples suggest that a key part of their argument may be in question.”**

*What Changed? The Old World Order and the End of the War Convention*

The grossly simplified book-blurb version of *The Internationalists* is that the Paris Peace Accord of 1928 actually worked; US Secretary of State Frank Kellogg and French foreign minister Aristide Briand came together in 1928 to banish war as a tool of international relations, and their Peace Palace declaration truly portended a global ban on war. This synopsis has the virtue of being simple and counter-intuitive, since the Kellogg-Briand Pact has mostly been understood as a failure.<sup>6</sup> The book’s preface makes this claim, yet the actual claim is that the Peace Pact

“helped set in motion a series of events that would eventually lead to an unprecedented period of peace between states . . . [where] illegal conquests would no longer be recognized and would be reversed as soon as

possible. Indeed, the reversal of nearly all the post-Pact conquests at the end of the Second World War established that states could take the territory of other states, but if they did, they could not benefit from it and would never be entirely secure in their ownership. If states could not keep what they took in war, then what was the point of going to war in the first place?” (pp. 334–35)

If this actually were the full argument, we could well believe that a Trump-Putin-Xi meeting of the minds could portend the return of war as a tool of international relations.

Thankfully, Hathaway and Shapiro’s argument is more complicated. Part I of *The Internationalists* reminds us of the extent to which gunboat diplomacy was a regular part of international relations. The authors also explain how international law inscribed a right to gunboat diplomacy, authorizing the coercive conquest of new markets, the blocking of ports and the seizing of lands and property. Finally, and crucially, Part I explains that the “privilege to use force” had numerous corollaries: a right to conquest, a legal license to kill, a regime of gunboat diplomacy, and the idea that to remain “neutral”—a non-combatant in a war—meant that a state had to be entirely impartial in their interactions with the states waging war (pp. 93–98). This set of legal norms, combined with the accepted notion that international law applied only to “civilized nations,” enabled and legitimized a legal right of imperial powers to coercively take what they felt was their due.

Hathaway and Shapiro make a large claim about conquest no longer paying. In this respect, the Golan and Crimea examples suggest that a key part of their argument may be in question. A second leg of the war convention also seems increasingly shaky. Russia and Saudi Arabia freely murder their political enemies, crossing borders to do so. One might also say that the US use of drones in an unending war on terror, alongside Israel’s deployment of international murder to fight its enemies, implies a diminished social cost to state-enacted assassination.<sup>7</sup>

These counter-examples mean that conquest and assassination *may* now *sometimes* pay. Still, we need to dig deeper into Hathaway and Shapiro’s argument about how most law gets enforced. *The Internationalists* offers a simplified version of

<sup>6</sup> Max Boot, “When the Governments of the World Agreed to Banish War,” *New York Times* 29 September 2017, <https://www.nytimes.com/2017/09/21/books/review/the-internationalists-oona-hathaway-scott-shapiro.html>.

<sup>7</sup> Ian Black, “Rise and Kill First: The Secret History of Israel’s Targeted Assassinations—Review,” *The Guardian* 22 July 2018, <https://www.theguardian.com/books/2018/jul/22/rise-kill-first-secret-history-israel-targeted-assassinations-ronen-bergman-review-mossad>.

Hathaway and Shapiro's broader theory, wherein outcasting is the primary way in which all law gets enforced.<sup>8</sup> Outcasting is a form of social shunning, a denial of the benefits of social cooperation for actors engaged in illicit activity. The Boycott, Divest, Sanctions movement is a contemporary example of outcasting, as is the sanction regime against Russia.

The degree to which an outsider can pressure, cajole, or coerce foreign powers via law or military force will always have limits. For example, one can observe the longstanding failure to influence North Korea's nuclear policy. The relevant question is: what do these limits actually mean? O.J. Simpson may get away with murder, and the current President of Syria may get away with *many* murders. Yet the fact of violations, even when coupled with impunity, does not mean that the prohibition against murder is irrelevant, or that murder is now profitable and more likely. Outcasting imposes costs in many ways—direct, indirect, subtle, short-term, and enduring. Meanwhile, legitimacy—the attainment of politically defensible goals through means that are both legal and legitimate—provides a windfall that may only be appreciated when contrasted with the costs of trying to force one's will on another.

The larger point is that even if the current decade becomes known as the time when Israel and Russia get rewarded for their violations of international law, the many changes that *The Internationalists* describes still endure. Thankfully, we remain far from a system where there is a normative or legal right to conquest, where gunboat diplomacy is a normal mode of international relations, and where states feel that they must remain neutral, no matter what a country does in its foreign policies.

#### *How Was War Actually Banished as a Tool of International Relations?*

It was a clever turn-of-the-pen to locate the beginning of the end in the 1928 Paris Peace convention. Yet this part of Hathaway and Shapiro's argument is probably the least convincing. Isabel Hull persuasively criticizes *The Internationalists* for ignoring the many antecedents that contributed to the end of the war convention,<sup>9</sup> suggesting that emerging legal-normative arguments and peoples' exhaustion with war—after the Napoleonic, First and Second World Wars—probably contributed to both the

creation and the adoption of a new attitude towards using force in international relations.

Causally, Hathaway and Shapiro credit the

***“Thankfully, we remain far from a system where there is a normative or legal right to conquest, where gunboat diplomacy is a normal mode of international relations, and where states feel that they must remain neutral no matter what a country does in its foreign policies.”***

progenitors of great ideas as the source of the war convention and of international legal change. Yet implicitly, the authors agree with Hull in that they look to many different sources to document the existence of a war convention—a legitimized and practiced right to use force. The authors analyze the writings of Hugo Grotius, who defended the view that war was a legitimate tool for enforcing legal rights. Yet they also collected war manifestos (chapter 2), looked at common practices in many countries (such as the trial of Plenty Horses, (pp. 58-62)), analyzed debates about “who owns California” (p. 52) and examined how countries rewarded and punished others for their transgressions. The authors thereby suggest that a privilege to use force manifests in many ways, both overt and presumed. This account in itself suggests that no single meeting or accord on its own establishes, let alone entrenches, a legal convention. Contributions to this symposium have criticized the authors' turn to social science to vindicate their claim that inter-state war has been banished. I tend to agree with Stephen Pinker that the decline of violence remains meaningful.<sup>10</sup> This is because the very norms that underpin outcasting as a means of enforcing international law still operate. In any event, to truly unwind Hathaway and Shapiro's argument, we would need to recreate their examination of the war convention. We would need to look beyond presidential proclamations, examining practices and behaviors of diverse actors. We would thus look to legal writings, journalistic accounts of proclamations, responses to the proclamations by political parties and

<sup>8</sup> Oona A. Hathaway and Scott J. Shapiro, “Outcasting: Enforcement in Domestic and International Law,” *Yale Law Journal* 121, no. 2 (2011), pp. 252-469.

<sup>9</sup> Isabel Hull, “Anything Can Be Rescinded,” *London Review of Books* 40, no. 8 (2018), pp. 25-26.

<sup>10</sup> Stephen Pinker, “Frequently Asked Questions about The Better Angels of Our Nature: Why Violence Has Declined,” <https://stephenpinker.com/pages/frequently-asked-questions-about-better-angels-our-nature-why-violence-has-declined>.

civil society groups, public opinion, and the policies and diplomatic practices of leaders and diplomats in different parts of the world. Since the question is whether de facto customary international law on the use of force is evolving, we would also need to look at the practices of judges, legal scholars, and public intellectuals. Only then could we ascertain if using force is returning as a normal, expected, legal, and legitimized tool of international affairs. I am hereby implicitly criticizing the big-man intellectual-history approach that is a key part of *The Internationalists*, using Hathaway and Shapiro's own arguments as critique.

My claim is that while great ideas may matter, it is the everyday actions of many peoples in many places that ultimately make legal violations costly. We are definitely experiencing a moment of normative flux. Populist leaders are actively flouting social and international norms, seeking to numb us into expecting and tolerating a return to many shunned behaviors. If they succeed, coercion that can easily escalate into violence may indeed become a more prevalent feature of international relations.

***“We cannot forget about the many people who suffer when international law becomes a tool that facilitates local, regional, and global domination of others. This larger social resistance, in the form of people who migrate, marry, birth, and trade in defiance of what the law proscribes both inspires and forces political leaders to change their ways. The people will ultimately determine if conquest pays.”***

Yet this will not mean that the change described by Hathaway and Shapiro no longer applies. Hyeyoon Park's contribution to this symposium asks whether China is the new internationalist, suggesting that perhaps the mantle is merely being transferred. On the one hand, I don't see many signs that China is committed to maintaining the international liberal

order that Hathaway and Shapiro's Internationalists worked towards.<sup>11</sup> Yet China is pursuing its international interests through legal contracts, in the form of China's One Belt and One Road Initiative (BRI). The BRI may well portend Chinese imperialism. Yet if one compares how Britain, France, Belgium, the Netherlands and Germany pursued their search for natural resources and land, China *is* using law—not force—as a tool of international relations.

Meanwhile few lawyers, journalists, judges, or observers are acting in ways that might dismantle the ban against vigilante justice to enforce legal rights. And surprisingly, Trump's actions seem to be strengthening popular support for the very international legal principles he maligns.<sup>12</sup> In short, international law is not made and unmade by presidential decrees or by enouncing great ideas. Rather, international law is made and unmade through legal practices. In this respect, we can see that the transformation Hathaway and Shapiro described remains largely intact.

#### *Contestation as the Way that Law Evolves*

My biggest criticism of Hathaway and Shapiro's book is that their triumphalist intellectual history of how Western international lawyers and politicians changed the world is “a throwback in time that ignores [the] many efforts [of global historians] to complicate the “old history” approach of linear, Eurocentric (or in this case American-centric) narratives in which international law is portrayed in purely progressive terms.”<sup>13</sup> Scholars from the developing world—Anthony Angie, Arnulf Becker-Lorca, Sundhya Pahuja, Balakrishnan Rajagopal, BS Chimni—have persuasively identified fundamental flaws in this Western legalist narrative, and they have demonstrated that push-back from the Global South against both the law and the ideology is how strong powers have been forced to change both the law and their practices. Said differently, domination in any form is usually resisted, and this resistance forces power-wielders to change tactics.

I sympathize with Hathaway and Shapiro's larger objective—to remind the complacent Internationalist West that international law is diminished when those committed to internationalism stop fighting for international law. But we cannot forget about the many people who suffer when

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<sup>11</sup> Karen J. Alter, “Trump's tariffs aren't the biggest trade problem. Will China step up to protect the WTO?” *The Washington Post* June 18, 2018, <https://www.washingtonpost.com/news/monkey-cage/wp/2018/06/18/trumps-tariffs-arent-the-biggest-trade-problem-will-china-step-up-to-protect-the-wto/>.

<sup>12</sup> The Chicago Council, *America Engaged: 2018 Chicago Council Survey*,

<https://digital.thechicagocouncil.org/america-engaged>.

<sup>13</sup> Karen J. Alter, “The Empire of International Law?” *American Journal of International Law* 113, no. 1 (2019), pp. 183-199, at 198.

international law becomes a tool that facilitates local, regional, and global domination of others. This larger social resistance, in the form of people who migrate, marry, birth, and trade in defiance of what the law proscribes both inspires and forces political leaders to change their ways. The people will ultimately determine if conquest pays.

In sum, Presidents Trump and Putin can tweet, rant and sign a thousand executive orders; presidential decrees only create a new social reality insofar as people and the many public and private institutions around the world accept these actions as legal and legitimate. The world has regressed to the Dark Ages before, and dystopian novels suggest that we could very easily regress again. But it is also true that colonialism—“legal” as it was—ended. This

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## **The Role of Institutions in the New World Order: A Reflection on The Internationalists**

*By Michelle Allendoerfer, George Washington University*

*The Internationalists: How A Radical Plan to Outlaw War Remade the World* is an engrossing intellectual journey that traces the legality of war over more than four centuries of history. Oona A. Hathaway and Scott J. Shapiro argue that the 1928 Paris Peace Pact is an overlooked document which changed history by outlawing war. Throughout the book, they chronicle how the idea of outlawing war transformed the world from a “Might Makes Right” Old World Order to a “Might No Longer Makes Right” New World Order. Rather than present a typical academic account of this transition, the authors weave together a series of narratives that chronicle key figures, many that history has largely forgotten.

The book is structured around stories of individuals—the Internationalists—who changed the world through their “radical plan to outlaw war,” presenting the challenges they faced and the path the plan took. The narrative stories are compelling and shed light on how individuals and their ideas can bring great change. Their story of the decline of interstate war becomes a story of individuals and ideas. However, in telling the story in this way, Hathaway and Shapiro give scant attention to other factors, namely institutions, without which it is not clear the outlawing of war would have had the lasting effect that it did.

From the beginning of the book, Hathaway and Shapiro build a narrative around individuals and ideas. Grotius’s legal defense of his cousin, Jacob van Heemskerck, opens the book and motivates the Old World Order legal structure of “Might Makes Right.”

means that as long as our social norms abhor the use of force as a tool of international political leverage, and as long as people resist international (and neighborly) practices that cause them and others harm, the world that the Internationalists helped to remake will stay remade. Violence, war, or impunity will never be forever banished. But even when some powerful people profit from conquest, war, lying and cheating, we should not conclude that the world is bending to their image. To draw such a conclusion will be to collude in the generation of a self-fulfilling prophecy. ■

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By framing the discussion of Grotius’s legal scholarship as a personal story, Hathaway and Shapiro capture the reader’s attention from the outset of the book.

Grotius drives much of the Old World Order section of the book and his name is familiar to those already interested in international law. Moving into the transformation period, Hathaway and Shapiro uncover names that have largely been lost to history. In particular, the stories of Salmon Levinson and James Thomson Shotwell are effective ways to illustrate the role of individuals and ideas. Among others, they decided that war should be avoided and worked to make that idea a reality. There are countless other names and stories presented throughout the book. As a whole, these stories breathe life into what could have been a dry intellectual exercise.

But these stories are not just stories; Hathaway and Shapiro build a theory that these ideas led to the 1928 Paris Peace Pact and that this very Pact changes the course of history by outlawing war. To evaluate the claim that the Paris Peace Pact was this key turning point, Hathaway and Shapiro draw on data from the *Correlates of War*. Here, they highlight a few key trends. First, they find an average of roughly 1.2 territorial conquests per year in the 1816-1928 and 1928-1948 periods. But after the end of World War Two, territorial conquests fell sharply, to about 0.26 per year. Although territorial conquests do not dramatically decline until the end of World War Two, one of the most compelling findings is how territorial conquests in the 1928-1948 period snapped back to 1928 borders. This backs up their claim that the key effect of the Paris Peace Pact was no longer legally recognizing territorial conquests, and, failing recognition, there was little value in states holding onto lands gained illegally.

I wish, however, that Hathaway and Shapiro had given more attention to other 20th century trends

that occurred concurrently with the evolution of the Peace Pact and the subsequent decades that gave the Peace Pact teeth. In particular, the spread of democracy and emergence of regional institutions seem to be critical in shaping how the world responded to the outlawry movement. In the absence of either of these factors, it is not clear that the legal prohibition on war would have been as effective in changing the interests and behavior of states. Hathaway and Shapiro seem to undersell the importance of the spread of democracy that happens in the same time frame as the New World Order takes hold. Without minimizing the importance of the Peace Pact, it may be the combination of the normative and legal ideas codified in the Pact, plus the spread of democracy, that precipitated the decline of interstate war in the post-World War Two period.

***“It is unlikely that the idea for outlawing war would have emerged and taken root if not for the fact that these countries were democracies, with expanding suffrage and deepening accountability, accompanied by a global spread of democracy in the same time period.”***

There are at least two potential reasons for the importance of democracy to the story that Hathaway and Shapiro tell. First, the literature on the democratic peace theory suggests that a decline in interstate war in this time period may not be surprising, because democracies spread in the mid-twentieth century and democracies are less likely to fight each other.<sup>1</sup> That the outlawing movement began in democracies is consistent with the normative explanations for the democratic peace theory: these countries sought to avoid war. The outlawry movement gave a legal framework for doing so, but the desire to avoid war arguably stems from the increasing accountability these democratic states faced. In other words, it is unlikely that the idea for outlawing war would have emerged and taken root if not for the fact that these countries were democracies,

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<sup>1</sup> See, for example, Zeev Maoz and Bruce Russett, “Normative and Structural Causes of Democratic Peace, 1946-1986,” *American Political Science Review* 87, no. 3 (1993), pp. 624-638; Bruce Bueno de Mesquita, James D. Morrow, Randolph M. Siverson, and Alastair Smith, “An Institutional Explanation of the Democratic Peace,” *American Political Science Review* 94, no. 4 (1999), pp.

with expanding suffrage and deepening accountability, accompanied by a global spread of democracy in the same time period. That these countries are democracies appears to be a critical part of the story, not just of the legal outlawing of war, but also the empirical observation of a decline of interstate war. By ignoring the vast literature on the democratic peace, Hathaway and Shapiro miss an opportunity to integrate their thesis more deeply with the international relations scholarship that has explored, in depth, the decline of interstate war in the 20th century.

A second reason democracy matters is the literature that suggests democracies are more likely to comply with international law.<sup>2</sup> The 1928 Peace Pact provided democracies with a legal framework with which, once ratified, they were likely to comply. Democracies are, in general, more likely to comply with international law, so the spread of rule-of-law democracies and the legal framework of the Paris Peace Pact worked together.

In fact, Hathaway and Shapiro note that Soviet Union did gain territory as a result of World War Two. They write these concessions to Stalin off as “regrettable deviations from accepted law” (p. 322). However, as the non-democratic allied victor of World War Two, an alternative explanation is that, as a non-democracy, the Soviet Union did not feel compelled to comply with international law. The democratic allies, on the other hand, did comply. The book ends with a discussion of challenges to the New World Order, including the Islamic State and Russia’s occupation of Crimea. These challenges to the New World Order come from nondemocratic states, again suggesting the importance of regime type to the outlawry narrative.

This is not to dispute Hathaway and Shapiro’s main claim that the Paris Peace Pact is an important document; to be sure, if democracies used the legal framework to avoid war, then the Pact is important. However, the fact that the countries that advocated for outlawing war are democracies is a significant part of the story that the book seems to gloss over.

A second important factor that is given scant attention is the role of the institutions themselves. The United Nations is discussed, but regional institutions that also played significant roles in minimizing interstate wars are largely ignored. Of note, the rise of

791-807; and John R. Oneal and Bruce Russett, “The Kantian Peace: The Pacific Benefits of Democracy, Interdependence, and International Organizations, 1885–1992,” *World Politics* 52, no. 1 (1999), pp. 1-37.

<sup>2</sup> Beth A. Simmons, “Compliance with International Agreements,” *Annual Review of Political Science* 1, no. 1 (1998), pp. 75-93.

the precursors to the European Union in the form of the European Coal and Steel Community and the European Economic Community in the aftermath of World War II are critical to changing the interests and behavior of Western European countries, tying them together in ways that made future great wars more costly. A second regional institution to note is the Organization of African Unity. As Jeffrey Herbst points out, the Organization of African Unity explicitly created norms about border stability to avoid chaos and interstate wars as countries in Africa gained their independence.<sup>3</sup> It was in the interests of leaders in both regions to use regional institutions to tie their hands to avoid future wars. Again, the presence of the Paris Peace Pact and the international movement towards outlawing wars is not irrelevant to how these regional institutions were able to create

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### **The New World Order and the Rise of Intrastate Conflict: Is There Such a Thing as a ‘Local’ War?**

*By Ghadeer Awwad, Georgetown University*

The ongoing conflict in Syria is predominantly described as a classic civil war scenario. An outbreak of protests against the Assad regime was followed by a violent government crackdown, which spread throughout the nation and led to the rise of violent non-state actors such as the Islamic State (IS).

However, a closer look into the situation in Syria reveals another story. As the war escalated, a network of foreign players beyond Syria’s borders has become involved in the conflict. On the one hand, the Syrian Baathist regime derives political and military support from Russia, Iran, and Hezbollah. On the other hand, the Syrian opposition has received military, financial, and political support from Saudi Arabia, Jordan, Turkey, and Western countries such as the United States, France, and the UK. Concurrently, the rise of IS led to the formation of a coalition force that was composed of actors from opposite sides fighting on the same front against IS. This situation in Syria—a transnational war, convoluted and difficult to understand—is typical of how wars are fought in the twenty-first century.

In their book, *The Internationalists*, Oona A. Hathaway and Scott J. Shapiro trace the transformation of international legal rules over the use of force from the so-called Old World Order to New World Order, which began with the signing of the Paris Peace Pact, also known as the Kellogg-Briand Pact, in 1928. Kellogg-Briand was a stepping

interstate stability in their respective regions. But at the same time, the singular focus on the international outlawing of war ignores the importance of these institutions in shaping how the decline of interstate war happened.

Hathaway and Shapiro’s significant contribution is uncovering the importance of the Paris Peace Pact of 1928 as a key turning point in the historical trajectory towards the decline of interstate war. They highlight the role of individuals and ideas in shaping state interests and behaviors. The narrative style of the book tells these stories in a compelling way, leaving the reader the impression that had it not been for these individuals and their radical ideas, we would still live in the Old World Order. ■

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stone towards establishing world peace, the authors argue, by outlawing war, prohibiting states from using force to resolve disputes, and giving birth to a New World Order shaped by a revolution in human rights, the use of economic sanctions as a tool of statecraft, and the aggrandizement of the role of international organizations as monitors and enforcers of law (p. 304). In their account of this New World Order, Hathaway and Shapiro delineate the countless changes that shaped our current times including the relatively peaceful postwar order, decrease in instances of territorial conquest, increased respect for state sovereignty, the spread of democracy, and the emergence of a robust global trade order in which powerful states could be counted upon to police the New World Order’s principles even when they were not directly affected (p. 332).

**“States conceded their right to conquest in exchange for a globalized world governed by a system of international trade agreements, in which the desire to participate in a global trade regime has rendered war less attractive.”**

This review will focus on three pivotal arguments made in *The Internationalists*: (1) that not only did the outlawry of war marked by the Peace Pact lead to the disappearance of conquest, but it precipitated an unprecedented period of peace between states (p. 333); (2) that the outlawry of war and the onset of the New World Order removed powerful pressures on

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<sup>3</sup> Jeffrey Herbst, “War and the State in Africa,” *International Security* 14, no. 4 (1990), pp. 117-139.

states to act aggressively and put in place the conditions for international cooperation (p. 341); and (3) intrastate conflict proliferated drastically as a result of unpolished decolonization (p. 355), the limited scope of the Peace Pact (p. 353), and the lack of prohibition of internal conflicts (p. 368). I will argue that outlawing war did not necessarily make our world far more peaceful, but rather shifted the nature of conflict in the New World Order to be more localized and indirect. Hathaway and Shapiro fail to acknowledge that while territorial conquest and interstate war decreased after the signing of the Peace Pact, powerful states turned to achieving political and economic dominance via ‘geo-economics.’

### *The End of Interstate War*

Analyzing 254 instances of territorial changes between 1816 and 2014, Hathaway and Shapiro conclude that conquest not only nearly disappeared after the signing of the Peace Pact but that 1928 heralded an era of unprecedented peace between states (p. 334). The authors attribute this decline in war to the recognition among states that, in the New World Order, violating the laws of conquest would not provide any benefits (p. 335). Thus, the outlawry of war eased the pressure on strong states to seek territorial domination; war was replaced as a tool of statecraft by more peaceful means of influencing others, such as international trade.

In effect, states conceded their right to conquest in exchange for a globalized world governed by a system of international trade agreements, in which the desire to participate in a global trade regime has rendered war less attractive. This trade-off has established a New World Order where economic tools of coercion have become the established means of achieving geopolitical advantage. As the international economy has flourished with the spread of globalization and international trade in the post-cold war period, the focus of the world’s great powers has shifted to maximizing economic gains. Edward Luttwak argues that in the New World Order “methods of commerce are displacing military methods – with disposable capital in lieu of firepower. States...will not disappear but reorient themselves toward ‘geo-economics’ ... the admixture

of the logic of conflict with the methods of commerce.”<sup>1</sup>

Robert Blackwill and Jennifer Harris adopt Luttwak’s term of geo-economics and define it as the “use of economic instruments to promote and defend national interests, and to produce beneficial geopolitical results; and the effects of other nations’ economic actions on a country’s geopolitical goals.”<sup>2</sup> Contrary to the argument presented by Hathaway and Shapiro, the outlawry of war and the establishment of the New World Order did not remove the pressure on states to dominate other states, but rather shifted the logic of war and conflict to include geo-economics. While states in the New World Order are still organized spatially as territorial entities, their actions have been transformed.<sup>3</sup>

The systematic shift of states towards the use of economic instruments as tools to accomplish geopolitical objectives is not to suggest that military power is irrelevant in the New World Order. The outlawry of war and global trade came to reinforce each other as states generally did not have to fear their trading partners would turn on them and take their land (p. 333). However, countries with fragile economies and weak monetary policies have struggled to deal with the emerging integration of the global economy led by global powers, which has, in turn, exacerbated economic problems and increased local political instability.<sup>4</sup> Such instability—the result of geo-economics competition—can even help to explain Russia’s invasion of Crimea in 2014.<sup>5</sup>

### *The Proliferation of Intrastate War*

*The Internationalists* suggests that the outlawry of war has enabled the survival of weak states by reducing external threats to their existence, and that this, in turn, has led to a worsening of weak states’ internal tensions and even the phenomenon of “failed states” (pp. 366-369). In other words, the decrease of interstate wars in the New World Order has led to an increase in intrastate wars, as weak and fragile states do not die but succumb to infighting. But while Hathaway and Shapiro identify state failure as an integral part of (intrastate) violence in the New World Order, they fail to acknowledge the connections between the outlawry of war, the concomitant rise of global trade and economic cooperation, the pressure

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<sup>1</sup> Edward N. Luttwak, “From Geopolitics to Geo-economics: Logic of Conflict, Grammar of Commerce,” *The National Interest* 20 (1990), pp. 17-23.

<sup>2</sup> Robert D. Blackwill and Jennifer M. Harris, *War by Other Means: Geo-economics and Statecraft* (Cambridge: Harvard University Press, 2016), p. 20.

<sup>3</sup> Luttwak, “From Geopolitics to Geo-economics: Logic of conflict, Grammar of Commerce,” p. 18.

<sup>4</sup> Taisiya Krushelnytska, Olena Kakhovska, Oleksandr Kurinnyi, and Olga Matveieva, “Main Features of Ukrainian Monetary Policy during the Post-crisis Economy Reformation,” *Banks and Bank Systems* 12, no. 4 (2017), pp. 189-202.

<sup>5</sup> Krushelnytska, Kakhovska, Kurinnyi, and Matveieva, “Main Features of Ukrainian Monetary Policy.”

upon developing states to open their economies and enter the global market, and the phenomenon of increasing civil conflicts; they do not account for how the rise of geoeconomics and unbalanced global growth has been a cause of civil wars via increased the levels of poverty, unemployment, economic decline in many developing economies.

The rise of global economic prosperity throughout the last century has correlated with an increase of civil wars. Macartan Humphreys argues that the relationship might be causal.<sup>6</sup> For instance, Humphreys explores how Structural Adjustments Programs (SAPs) strongly promoted by international financial institutions such as the World Bank and the International Monetary Fund (IMF) throughout the 1980s and 1990s spawned civil conflicts.<sup>7</sup> Generally, SAPs required governments to cut public spending, eliminate subsidies for food, raise interest rates, cut public sector jobs, and increase exports—as these measures were thought to generate growth by attracting foreign direct

investment. But studies suggest that the involvement of international financial institutions—established in the New World Order to enhance global trade—has engendered “expanding poverty, inequality insecurity around the world,” leading in many cases to increased social tensions and fueling extremist movements.<sup>8</sup>

Similarly, in an attempt to explore the World Bank and the IMF’s involvement in Zimbabwe, Ghana and Côte d’Ivoire, Asad Ismi argues that the opening of these developing economies to global markets subjected them to unfair trade practices, higher competition, and strict, internationally-mandated instructions that ultimately increased their debt burdens, increased poverty, and slowed growth.<sup>9</sup> While the institutional failures of weak states is part

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## The Rise of China in the New World Order

By Hyeyoon Park, Colorado State University

Increasing international instability, in part caused by the recent revival of nationalism worldwide, has led

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<sup>6</sup> Macartan Humphreys, “Economics and Violent Conflict,” working paper, Harvard University (2003): 1-28,

[https://www.unicef.org/socialpolicy/files/Economics\\_and\\_Violent\\_Conflict.pdf](https://www.unicef.org/socialpolicy/files/Economics_and_Violent_Conflict.pdf).

<sup>7</sup> Humphreys, “Economics and Violent Conflict,” 6-7.

<sup>8</sup> “The Policy Roots of Economic Crisis and Poverty: A Multi-Country Participatory Assessment of Structural Adjustment,” Structural Adjustment Participatory Review

of the story of increased intrastate violence in the New World Order, the inability of many emerging economies to adjust to the emerging global geoeconomics increased their vulnerabilities to internal violence and civil wars. *In short, the end of conquest unleashed greater economic cooperation. It did not, however, make our world more peaceful.*

### Conclusion

This review argues that, contrary to the Hathaway and Shapiro’s contentions, conflicts in the New World Order are not mainly a product of internal tensions exposed as a result of increased respect for states sovereignty and the enabling of the survival of weak states. Rather, shifts in global attitudes towards war caused governments and militaries around the world

to change the means by which they pursued their strategic objectives. Alongside increased public aversion to interstate war, the New World Order has witnessed an increase of geoeconomics and the attendant burgeoning of economic instruments as tools of power. The

increase of intrastate conflict around the world cannot be understood without acknowledging these shifts in the expanding global economy, systems established as integral parts of the New World Order that have enormous effects upon weak and small economies. In the New World Order, the approach of states has shifted from conquests and seizing lands to an indirect approach of modern power and influence. Civil war, proxy wars, poverty, suffering, and human insecurity are all part and parcel of what has replaced interstate war: the logic of geoeconomics competition. ■

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to a controversial debate over whether the current world order will continue. China’s growing influence in international politics and President Trump’s foreign policy of rejecting existing international cooperation mechanisms are two developments in particular that have triggered concerns of a chaotic future world order. Meanwhile, international society

International Network (SAPRIN), November 2001, p. 24, <http://documents.worldbank.org/curated/en/158561468163457548/pdf/647580WP0v10Bo0N0Synthesis011016001.pdf>

<sup>9</sup> Asad Ismi, “Impoverishing a Continent: The World Bank and the IMF in Africa,” Canadian Centre for Policy Alternatives, (2004): 2-23, <http://www.halifaxinitiative.org/updir/ImpoverishingAContinent.pdf>.

has seemed to lose its enthusiasm for developing a common vision to overcome political uncertainties. The authors of *The Internationalists* provide insights for understanding our current international order and how world order evolves. Their historical analysis shows that, in the past, international order has been shaped by people and that we, as people, can overcome global challenges today (p. 423). This review will apply a Realist Constructivist lens from International Relations (IR) theory to the authors' main conceptual framework and focus on the implications of the book regarding the issue of rising China and world order.

### *The Realist Constructivist view on the New World Order: power and norms*

The authors seem to share many ideas with Realist Constructivism regarding how to understand world politics, including an emphasis on the dialectic relationship between power and morality.<sup>1</sup> From this perspective, neither material power nor norms are solely responsible for changing the behavior of states. Realist Constructivists reject both the realist's notion of the balance of power determining world politics and constructivism's focus on norms based on universal morality.<sup>2</sup> Agency needs norms and materiality simultaneously, because power politics is relational;<sup>3</sup> the power of an agent is recognized by others intersubjectively in a moral context.<sup>4</sup> This dialectic relationship between power and norms is reflected in Hathaway and Shapiro's argument.

According to the authors, the Kellogg-Briand Pact (1928) created a new international legal norm<sup>5</sup> that changed the actions of states such that the law actually created a new dimension of power. The treaty transformed the Old World Order, which had allowed the military conquest of territory, into the New World Order, in which "right cannot be settled with might" (p. 363) and *military* victories achieved by armed conquest could not last without a *legal* victory, the latter necessary for legitimacy. True power is constructed by law because law shapes the normativity of exercising material power. In this sense, the authors' approach to explaining world order resembles the Realist Constructivist understanding of the interaction between material power and norms. The New World Order particularly reveals that the theoretical lens of Realist Constructivism is well applicable to explain how national competition operates differently in world

politics. The outlawry of war demolished the old legal order and changed the concept of power politics among states from military competition to competition over legitimacy and ideas (pp. 408, 422). In the words of Realist Constructivism, the law (a new norm) changed the intersubjective understanding of power in the New World Order.

Like Realist Constructivists, the authors do not disregard global politics based on material power. For instance, they acknowledge the significance of military capacity by saying that "the outlawry revolution would have failed had the Allies not won the war" (p. 331). Similarly, Realist Constructivists recognize that who interprets norms does matter. The common conceptual ideas between the authors and Realist Constructivists provides a new way of understanding changes in world politics (including changes of both norms and power relations), which conventional realism does not explain.

***"The South China Sea dispute is explained as a gap in the 1928 Pact: the territorial boundary in this region was not clear in 1928, and so it remains a conflict between China and neighboring countries."***

### *The rise of China in the New World Order: a new Internationalist?*

If world order changes as *The Internationalists* argues, will the current New World Order also change in the near future? China's growing economic and military capacities have triggered a debate among IR scholars about whether China is a threat to the current global order. The book informs abundant anecdotes showing how China's behaviors in international politics can be understood through the lens of the New World Order. For example, the issue of South China Sea dispute is explained as a gap in the 1928 Pact: the territorial boundary in this region was not clear in 1928, and so it remains a conflict between China and neighboring countries (p. 362). On the other hand, the authors explain that the change of law through the UN Convention on the Law of the Sea

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<sup>1</sup> J. Samuel Barkin, *Realist Constructivism: Rethinking International Relations Theory* (Cambridge: Cambridge University Press, 2010), p. 135.

<sup>2</sup> Barkin, *Realist Constructivism*, p. 140.

<sup>3</sup> Barkin, *Realist Constructivism*, p. 36.

<sup>4</sup> Barkin, *Realist Constructivism*, p. 169.

<sup>5</sup> Even though the authors mostly use the terms 'law' and 'idea,' these concepts seem to be interchangeable with the concept of a 'norm' in IR.

made the islands in the South China Sea valuable so that, ironically, international law has exacerbated the territorial dispute in this region (p. 363).

Despite this dark side of the New World Order, the 1928 Pact still had (and has) a positive impact on the behavior of contemporary China. This is because the Pact withdrew the legal right of using force for territorial occupation. China's normative obligation following the core principle of the Pact seems to be valid, at least until now. If international law did not matter, China as the greatest regional power in East Asia might have annexed disputed areas through an interstate war. It has not. Moreover, China is taking measures to pursue *legitimate* power and style itself as a responsible great power in international society.<sup>6</sup> Even though China's material power has grown, its

**“One of the main weakness of the New World Order is the mismatch between the rule-makers in 1928 and current rule-takers.”**

power is bounded by legal norms—something explained by Hathaway and Shapiro and Realist Constructivists. Instead of using military force, China seems to be using other tactics to achieve its national interests such as large-scale loans and investment in resource-rich countries—for example, through its Belt and Road Initiative (BRI).<sup>7</sup> While Washington is drawing down its leadership in international affairs, Beijing seems to be attempting to fill the leadership vacuum through developing China's influence in multilateral settings.<sup>8</sup> In this way, the US-China relationship is not only based on material power competition, but also normative competition within the boundaries set by the current international legal order. So long as this pattern holds, the possibility of military confrontations between the US and China is reduced.

Nevertheless, this hopeful scenario depends upon both superpowers maintaining supporting for the New World Order regarding the outlawry of war, at least implicitly. Yan Xuetong argues that China may take military action in the event of a Taiwanese independence referendum and US support for it, for

example.<sup>9</sup> Meanwhile, Trump is pursuing an isolationist approach to US foreign policy, such as by loosening ties with US allies including the NATO members. But if US and Chinese support is critical to the survival of the New World Order, how can their support be ensured and the disastrous possibility of an interstate war between the two great powers be prevented? Something missing from *The Internationalists* is a discussion of this question: under what conditions does the New World Order operate best? Answering it is crucial for knowing how international society can curb interstate conflicts, especially those that might be caused by competition between the US and China.

*The normativity of international law: a necessary condition for the continued success of the New World Order*

Regarding the question of ‘under what conditions’ international law works best, Realist Constructivism might help to elaborate several of the authors’ points that are discussed implicitly throughout the book. For example, Realist Constructivism emphasizes norm contestation among actors based on their multidimensional power. Even though the material power of the actors is one of the influencing factors to win in the competition, the power of legitimacy is important too. Norms vary in terms of their legitimate power—in other words, “the normativity of norms.”<sup>10</sup> From this perspective, a pre-requisite condition of the well-functioning legal order may be a strongly unified normative/legal community, including a broad-based membership which provides a high level of legitimate power to the normative essence of the legal system. One of the main weaknesses of the New World Order is the mismatch between the rule-makers in 1928 and current rule-takers. Despite most states’ adoption of the UN Charter, there has been a continuous debate on whether the UN system has sufficient legitimate power, particularly regarding the UN Security Council. Moreover, the exceptional clauses of the use of force can be interpreted by powerful states arbitrarily. In this sense, I agree with the opinion of Geir Ulfstein that “inclusion” (bringing more

<sup>6</sup> See the debate on China's responsible power in David Shambaugh *China goes Global: The Partial Power* (Oxford: Oxford University Press, 2016).

<sup>7</sup> “China's belt-and-road plans are to be welcomed—and worried about,” *The Economist* 26 July 2018, <https://www.economist.com/leaders/2018/07/26/chinas-belt-and-road-plans-are-to-be-welcomed-and-worried-about>.

<sup>8</sup> For instance, we can see the growing China's leadership in G20. See Xiao Ren “The G20: Emerging Chinese Leadership in Global Governance?” *Global Policy* 8, no. 4 (2017), pp. 433-442.

<sup>9</sup> Yan Xuetong, “The Age of Uneasy Peace: Chinese Power in a Divided World,” *Foreign Affairs* 98, no. 1 (2019), pp. 40-46.

<sup>10</sup> Antje Wiener, *A Theory of Contestation* (London: Springer, 2014).

members into the legal system) is an important goal.<sup>11</sup> In this way, the current international legal system can improve its democratic accountability and offer even

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## **Embedded Legalism and the Limits of Law**

*By John G. Oates, Florida International University*

Hathaway and Shapiro have written an enthralling and provocative account of the effort to make aggressive war illegal under international law. Filled with odd and brilliant personalities, the story is one of personal ambition, principled commitments, and political machinations worthy of an episode of *Game of Thrones*. Underlying the colorful biographies and compelling accounts of key historical junctures is a narrative about the power of international law to transform human civilization. Through legal argumentation and formal treaties, in particular the Kellogg-Briand Pact of 1928, aggressive war was outlawed, and the resulting “New World Order” governing the use of force has contributed to a more peaceful and stable international order. Though the authors recognize that other factors played a role in producing this new legal order, they argue that international legal agreements have been key instruments in helping to save humanity from the scourge of war. IR scholars have long debated the sources of the “long peace,” the period since the end of World War II which has seen an absence of great power war, a decline in battle deaths, and a decrease in the number of inter-state wars (though the number of civil wars remains high). Some have pointed to the role of nuclear weapons in generating a reliable deterrent against aggression, others to the growing economic interdependence of states, which has transformed the calculus of conquest, and others to the role of international organizations, such as the UN, in promoting mutual understanding and trust among states. To this list of factors, Hathaway and Shapiro add international law, and they muster an array of data to support their claim that the key turning point between the Old World Order, when aggressive war was a permissible tool of statecraft, and the New World Order was the signing of the Kellogg-Briand pact of 1928. After 1928, they show, conquest becomes much less “sticky” or durable. “For every 100 kilometers taken through sticky conquests before 1929,” they note, “just 6 square kilometers were thus obtained after 1948” (p. 321). This transformation in the recognized legitimacy of territory acquired through aggressive war represents

stronger normativity to that all important norm, the outlawry of war. ■

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an epochal change in the practice of war, and it suggests that international law and those who promote it can be powerful engines of peace in world politics.

The narrative Hathaway and Shapiro tell thus elevates international law and its practitioners to a station that IR scholars have long been reluctant to grant it. For realists, the security exigencies of life under anarchy render international law little more than a rhetorical flourish on the dynamics of power politics. Liberals adopt a more optimistic view, viewing law as an

***“This transformation in the recognized legitimacy of territory acquired through aggressive war represents an epochal change in the practice of war, and it suggests that international law and those who promote***

important informational tool for solving collective action problems, but the power of law is rooted in its ability to clearly communicate commitment and intent through precise legal obligations rather than any normative valence it might carry. Hathaway and Shapiro challenge these presumptions in their book, and they show that law shapes world politics by both changing how states think of their own interests through the internalization of legal norms, as seems to have been the case with the United States and the Stimson Doctrine, and by changing the structure of incentives that other states face, who, after 1928, confront a situation in which their territorial conquests will no longer be recognized as legitimate by others.

*The Internationalists* convincingly shows that outlawing war has mattered for world politics, and it offers plausible mechanisms for how it matters. What is less convincing, however, is the claim that the epochal changes they point to have been produced by changes to law itself. Hathaway and Shapiro note at the outset (p. xxi) that their story is about ideas and how they change politics. The ideas in question are those developed and advanced by international lawyers and diplomats, such as Lauterpacht, Welles and Levinson, in their effort to conclude an

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<sup>11</sup> Geir Ulfstein, “The Role of Outcasting in the World Order,” *Global Constitutionalism* 7, no. 3 (2018), pp. 368-373.

international agreement to outlaw war. The emphasis on ideas and intellectual history is one of the great strengths of this work, and it serves as an important corrective to the traditional focus on national interests and military power among IR scholars.

Nevertheless, the focus on international law remains too narrow to fully explain the role of ideas in shaping the practice of war. There is a much broader intellectual and political context beyond the domain of international law and its intellectual history that made the outlawry movement possible, and this context, I want to suggest, provides a key condition of possibility for international law to serve as a constraint on state behavior. Beginning in the late 19th century and accelerating after World War I, a robust, transnational peace movement emerged as a major public voice on questions of war, peace and justice.<sup>1</sup> The key groups and spokespeople for this movement, such as the Women's Peace Party, emphasized the dangers of imperial competition, the need to limit modern armaments, and the importance of public, legal commitments to peace among governments, and it played an important role in shaping the policy choices of decision-makers from the creation of the League of Nations to the founding of the United Nations. These movements reflected a deeper cultural transformation that was sweeping western societies at the time, which saw a turn away from traditional ideals of militarism and towards pacifism and nonviolence. Hathaway and Shapiro do not ignore these peace movements, but they do not give them the importance they deserve. The social movement to outlaw war organized by Levinson plays an important role in their story, helping to mobilize popular support for the Kellogg-Briand Pact, but little attention is paid to the broader social and cultural movements during this period and the role they played in constituting a normative landscape wherein ideas like the outlawry of war could take root. These movements helped generate and sustain the critical normative arguments

***“Beginning in the late 19th century and accelerating after World War I, a robust, transnational peace movement emerged as a major public voice on questions of war, peace and***

and commitments that allowed legal arguments about the use of force to resonate with public audiences. This resonance, in turn, enabled the public to understand the value of restraint in both instrumental and normative terms, helping to legitimate this novel legal move, and generated popular pressure on leaders to respect the limits laid down in the law. Without embedding law within this broader normative landscape, formal legal rules lack the social and cultural force needed to shape political behavior. The ideational dynamics of publicity and legitimation have long been the focus of constructivist IR scholarship,<sup>2</sup> but appreciating the role these dynamics played in the success of the outlawry of war movement demands a broader perspective on the ideological landscape of the interwar period than the one embraced by Hathaway and Shapiro. Neglecting the relationship between law, social forces and shared normative commitments is particularly problematic once we appreciate the permissive quality of international law. IR scholars, such as Ian Hurd (2017) and Búzás (2018), show how law not only limits and constrains but also permits and authorizes certain behaviors.<sup>3</sup> This boundary between prohibition and permission, moreover, can never be permanently fixed by precise legal rules; it evolves and changes in response to state practice, legal interpretation and political interests. The prohibition on the use of war as a means of statecraft, for example, also permits the use of force in self-defense, and since 1945, we observe an expansion in how legitimate self-defense is understood in international law. The United States has sought to broaden the definition of anticipatory self-defense beyond the customary Caroline doctrine to justify preventive war, as in the case of Iraq. A number of governments have also endorsed the controversial “unable or unwilling” standard to justify the use of force in circumstances where it was previously prohibited. It is no accident that the US has been at the forefront of

<sup>1</sup> Cecelia Lynch, *Beyond Appeasement: Interpreting Interwar Peace Movements in World Politics* (Ithaca: Cornell University Press, 1999).

<sup>2</sup> Martha Finnemore M and Stephen J. Toope, “Alternatives to “Legalization”: Richer Views of Law and Politics,” *International Organization* 55, no. 3 (2001), pp. 743–758; Jennifer Mitzen, “Reading Habermas in Anarchy: Multilateral Diplomacy and Global Public Spheres,” *American Political Science Review* 99, no. 3 (2005), pp. 401–417; Jens Steffek, “The Legitimation of

International Governance: A Discourse Approach,” *European Journal of International Relations* 9, no. 2 (2003), pp. 249–275.

<sup>3</sup> Ian Hurd, *How to Do Things with International Law* (Princeton: Princeton University Press, 2017); Zoltán Búzás, “Is the Good News About Law Compliance Good News About Norm Compliance? The Case of Racial Equality,” *International Organization* 72, no. 2 (2018), pp. 351–385.

these changes, for law “empowers states – and empowers them unequally.”<sup>4</sup> While Hathaway and Shapiro spend time discussing the collective effort to “outcast” Russia after its illegal annexation of Crimea, the more troubling trends reflected in US security practice are left largely unexamined.

None of this is to deny that the legal prohibition on aggressive war matters, but the permissive quality of international rules does raise questions about how the legal prohibition works in practice. While legal rules can shape politics by the altering incentives for those contemplating aggression, these effects are made possible by a larger normative environment in which the value of peace and nonviolence are communicated to and embraced

by a broader public. When law becomes dis-embedded from this normative context, it risks becoming a tool for the interests of powerful states who exploit the permissive quality of law to redefine the rules of the game. Sustaining the achievements of the “Internationalists” thus calls for an awareness of the limits of law, a more thorough understanding of the mechanisms through which ideas shape world politics, and a greater appreciation of the role that the social and cultural movements of pacifism and nonviolence play in restraining the move to war. ■

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## The Dark Side of the “New World Order”

By James D. Morrow, University of Michigan

*The Internationalists* by Oona A. Hathaway and Scott J. Shapiro provides a sweeping historical account of how international law and the ideas underlying that law have changed the world and reduced the occurrence of war in the international system. Although the publicity for the book makes the oft-derided Kellogg-Briand Pact that outlawed war the hub of the argument,<sup>1</sup> the broad development of international law drives the decline in international conflict in their view. This thickening of legal developments advances not only through treaties but also through jurisprudence elaborating that law and mechanisms that exclude states that refuse to accept the system from its economic and social benefits (which they call “outcasting”), thereby helping to enforce the system. They describe how the “old world order”, which empowered states to use war as a legal remedy for their disputes and created the

concept of neutrality for states not engaging in an on-going war, was replaced by the “new world order”, which outlawed war except in self-defense and required states outside war to act against the party that broke the peace. They have a provocative story to tell, and they tell it well.

Political scientists have also noticed the decline in warfare, both a long-term trend over centuries and a more pronounced decrease after the Second World War, which quickens in the post-Cold War world.<sup>2</sup> A myriad of plausible explanations have been advanced for these trends: the rise of the standing army,<sup>3</sup> the move to national armies based on conscription,<sup>4</sup> the deepening of the democratic peace over time,<sup>5</sup> industrialization undercutting the motivation for territorial conquest and replacing it with trade,<sup>6</sup> the permanent resolution of territorial conflicts,<sup>7</sup> the replacement of combat as means for males to achieve status in society with economic activity,<sup>8</sup> among others.<sup>9</sup> To this list, *The Internationalists* adds its own explanation about the creation of a legal order that effectively outlaws war. The book also documents the decline in territorial transfers between states, particularly by force (pp. 315-333).

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<sup>4</sup> Hurd, *How to Do Things with International Law*, p. 129.

<sup>1</sup> And this makes the book a “poke-in-the-eye” to realists who have mocked that treaty for almost a century now.

<sup>2</sup> Bethany Ann Lacina and Nils Petter Gleditsch, “The Waning of War is Real: A Response to Gohdes and Price,” *The Journal of Conflict Resolution* 57, no. 6 (2013), pp. 1109-1127; and Nils Petter Gleditsch, Steven Pinker, Bradley A. Thayer, Jack S. Levy, and William R. Thompson, “The Decline of War,” *International Studies Review*, 15, no. 3 (2013), pp. 396-419. Hathaway and Shapiro make this point using the Correlates of War data collection of wars (pp. 311-315).

<sup>3</sup> Bruce Bueno de Mesquita and David Lalman, *War and Reason* (New Haven, CT: Yale University Press), pp. 129-134.

<sup>4</sup> Lars-Erik Cederman, T. Camber Warren, and Didier Sornette, “Testing Clausewitz: Nationalism, Mass

Mobilization, and the Severity of War,” *International Organization*, 65, no. 4 (2011), pp. 605-638.

<sup>5</sup> Lars-Erik Cederman, “Back to Kant: Reinterpreting the Democratic Peace as a Macrohistorical Learning Process,” *American Political Science Review* 95, no. 1 (2001), pp. 15-31.

<sup>6</sup> Erik Gartzke, “The Capitalist Peace,” *American Journal of Political Science* 51, no. 1 (2007), pp. 166-191.

<sup>7</sup> Douglas M. Gibler, “Bordering on Peace: Democracy, Territorial Issues, and Conflict,” *International Studies Quarterly* 51, no. 3 (2007), pp. 509-532.

<sup>8</sup> Azal Gat, A. (2006). *War in Human Civilization*. New York: Oxford University Press.

<sup>9</sup> I undoubtedly have missed both some other arguments advanced and many possible citations within each candidate explanation.

The authors' argument, however, fails to explain how legal principles and understandings change politics and so induce national leaders to choose peace over war. This failing is common with a number of the other candidate explanations listed in the prior paragraph; many of them point to a factor that has changed at the same time as the decline in war but do not provide a causal mechanism to explain how the change in that factor altered decisions to go to war. To be fair, *The Internationalists* is a historical account aimed at a wide public audience, not a research monograph in political science attempting to demonstrate causality. International law and legal arguments pose a stiff challenge to those who seek to establish that they change politics. Law is open to multiple interpretations both in general form and in its application to specific cases. Politicians may seek the interpretation that allows them to justify what they would like to do. Others may not accept an interpretation advanced as justification, and there is no single source of definite interpretation to resolve this disagreement. The power of international law to order world politics and shape state action depends on the common acceptance of it and its interpretation.<sup>10</sup> But precisely in the key moments of *The Internationalists*, that shared understanding of the law did not exist.

***“Ideas of appropriate conduct and proper replies to inappropriate conduct help actors form expectations about each other will act, allowing them to anticipate the consequences of their actions.”***

One of the central accounts of *The Internationalists*, the parallel stories of Hans Kelsen and Carl Schmidt, illustrates my concern. The lives of these two men, both recognized as brilliant legal minds, were linked in many ways even while they were opposed in their thought. Kelsen helped Schmidt secure a position at the University of Cologne; Schmidt then drove Kelsen out of that university and into exile. Kelsen provided a central and novel legal theory to the prosecution of the Nazi

leadership—individual responsibility for national leaders when their state commits criminal acts—at Nuremberg after the war; Schmidt wrote a memo that Hathaway and Shapiro believed formed the core of the defense of the accused. More broadly, Kelsen, along with Hersch Lauterpacht, was a champion of legal arguments for the “New World Order,”<sup>11</sup> while Schmidt was the intellectual defender of the “Old World Order.” But these legal issues were not settled during the interwar period or the aftermath of the war. These legal scholars provided arguments that were taken up opportunistically by political leaders such as Hitler (in Schmidt’s case) and the prosecutors at Nuremberg (in Kelsen’s case). Did Kelsen’s position prevail in the long run because his arguments were superior or because the side that won saw that those arguments suited their aims? Did those who rejected those arguments come to accept them as legally sound or were their views silenced by their loss of influence?

This is not to argue that law is irrelevant or epiphenomenal to international politics. Rather politics and law are intertwined.<sup>12</sup> Ideas of appropriate conduct and proper replies to inappropriate conduct help actors form expectations about each other will act, allowing them to anticipate the consequences of their actions. Actions in accord with international law reinforce those expectations drawn from law and strengthen the confidence of all in the system of international law that structures international politics. Understanding this system and how it sustains itself over time requires grappling with both political incentives and legal principles and interpretation. *The Internationalists* is strong on the latter and thin on the former. It describes outcasting as “a rich set of tools to replace war as a way of enforcing international law” (p. 370), but even their own discussion of how outcasting works casts doubt on its efficacy as a tool of enforcement (pp. 381-382, 390-395).

The domestic politics of countries shape their leaders’ motivations for territorial expansion.<sup>13</sup> All leaders answer to a coalition of supporters who sustain their hold on power, whether challenges to their power come through open elections or from plotters behind closed doors. For democracies, this support coalition ultimately rests on a coalition of voters who support the current leader; in non-democracies, this support coalition is much smaller

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<sup>10</sup> James Morrow, *Order within Anarchy: The Laws of War as an International Institution* (New York: Cambridge University Press, 2014).

<sup>11</sup> *The Internationalists* does show that the Kellogg-Briand Pact was central to Kelsen and Lauterpacht’s arguments. In the following decades, it was replaced by the UN Charter as the central legal document on when

force can be used lawfully. Do any recent arguments on the unlawful use of force in world politics draw on the Peace Pact?

<sup>12</sup> Morrow, *Order within Anarchy*.

<sup>13</sup> Bruce Bueno de Mesquita, Alastair Smith, Randolph Siverson, and James Morrow, *The Logic of Political Survival* (Cambridge, MA: MIT Press, 2003).

because it depends on those who protect the leader against challenges from inside and outside the regime. How large this support coalition must be for the leader to hold power influences the policies she follows to hold the loyalty of her supporters. As it expands, leaders shift their effort away from the provision of goods that benefit only those supporters who receive them and towards public goods that benefit all in society. Territorial expansion, particularly the acquisition of territory that increases state revenue, provides leaders with greater ability to reward supporters with private benefits. Additionally, leaders personally benefit from increasing state resources because they are residual claimants. In democratic systems, political competition rests on who can provide public goods more effectively, a contest where greater state revenues do not advantage the incumbent. Consequently, the political incentive for territorial expansion declines as the size of the winning coalition expands. Historically, this expansion started as constitutional governments replaced absolute monarchies, beginning with the French Revolution. Although these systems were not democratic, they did bring the bourgeoisie into political systems where previously only the nobility had been politically relevant, thereby expanding the winning coalition. Democratization, followed by the expansion of suffrage to first all adult men and then to women, increased the winning coalition further. Territorial conflict receded at the same time even if it did not disappear, leading to the long-term decline in war. The changes in domestic systems alone were not sufficient because there were and still are non-democratic systems in the world.<sup>14</sup> The democracies pushed for international law that sought to outlaw territorial acquisition through force, first in the Covenant of the League of Nations and then the UN Charter. These legal proscriptions helped to create expectations that territorial aggrandizement was unacceptable and helped to coordinate state responses in support of the targets of such efforts. The two developments supported one another. Law and the expectations it

**“Democracies pushed for international law that sought to outlaw territorial acquisition through force, first in the Covenant of the League of Nations and then the UN Charter.”**

created helped to enforce the territorial peace, while the change in domestic systems reduced states’ interests in such expansion.

Expansion of the winning coalition, however, also induced the decline of the norm of non-intervention,<sup>15</sup> the dark side of my title. Before the French Revolution, states and their monarchs fought frequently over territory, but they did not seek to overthrow one another or subvert their opponents by supporting domestic rivals.<sup>16</sup> This changed with the French Revolution, which triggered a long-term rise in violent intervention into the politics of other states. Regime change is the most dramatic violation of non-intervention, but states also supported political opponents, rebels, and subversive movements in one another. The standard data sets understate the importance of such conflicts because they focus on large-scale wars. Regime change requires the complete conquest of the target country which raises the costs of war for the state seeking that change. It is then most likely when the side seeking to overthrow the enemy regime is much more powerful. Think of the U.S. invasion of Panama in 1989 as an illustration; both sides committed troops to the conflict, but the military superiority of the United States kept the costs for both sides below the standard threshold of 1000 battle deaths.<sup>17</sup> Consequently, these conflicts often fail to appear in the standard lists of interstate wars.

Additionally, the war data includes intervention into a civil conflict only when the military involvement of the intervening state rises to the standard thresholds for an interstate war. The end of absolute monarchy after the French Revolution opened a new avenue for states to press their claims against one another. Further, as territory declined as an issue of

contention, other issues took its place. The change from territorial to political issues raised commitment problems, that is, ensuring that the defeated would comply with the post-war settlement. Regime change was one possible solution, meaning that the shift from contentious issues from territorial to political motivated state leaders to seek to overthrow the leaders of other countries. Combined, the new

<sup>14</sup> James Morrow, Bruce Bueno de Mesquita, Randolph Siverson, and Alastair Smith, “The Domestic Foundations of International Law: Territorial Integrity versus Non-Intervention.” Draft, University of Michigan.

<sup>15</sup> Morrow, et al., “The Domestic Foundations of International Law.

<sup>16</sup> However, John M. Owen argues that non-intervention was a norm from 1648 to 1789. See his *The Clash of*

*Ideas in World Politics: Transnational Networks, States, and Regime Change, 1510-2010* (Princeton: Princeton University Press, 2010).

<sup>17</sup> J. David Singer and Melvin Small, *The Wages of War* (Beverly Hills, CA: Sage Publications, 1972).

avenues of bringing pressure to bear on opposing countries and the motivation to solve issues through regime change eroded the norm of non-intervention over the last 200 years.

International law sought to arrest this erosion but failed. Both the Covenant of the League of

Nations and the UN Charter sought to outlaw armed intervention, but these efforts have not succeeded in stanching the erosion. Law alone is not sufficient to create order; law reinforced by politics that support its aims may suffice. ■

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## IHAP at APSA

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The 115<sup>th</sup> APSA Annual Meeting & Exhibition will be held August 29<sup>th</sup>–September 1<sup>st</sup> in Washington, DC, and is themed “Populism and Privilege.”

**The Fall 2019 edition of this newsletter will include details of all the IHAP panels, roundtables, and poster sessions taking place at the APSA meeting. It will be distributed in advance of August 29<sup>th</sup>.**

However, we can announce that the number of panels this year has been increased to 10. Special kudos goes to Stephen Nelson, the section’s Program Chair, for handling submissions. In keeping with IHAP’s established norms, Stephen ensured that there would be no manels at the APSA meeting.

### **IHAP Business Meeting**

Thursday August 29, lunchtime

*Exact time and location TBA*

### **IHAP Reception—Jointly hosted with History and Politics**

Thursday August 29, evening

*Exact time and location TBA*

# Upcoming Events and Workshops

## June 2019

APSA-PSA-BISA-ECPR Joint International  
Teaching and Learning Conference

*June 17-19<sup>th</sup>, Brighton, England*

[More Information](#)

CEEISA-ISA 2019 Joint International  
Conference

*June 17<sup>th</sup>-19<sup>th</sup>, Belgrade, Serbia*

[More Information](#)

## July 2019

ISA Asia-Pacific Conference

*July 4<sup>th</sup>-6<sup>th</sup>, Singapore*

[More Information](#)

ISA-IDSS/KAIS Joint Conference 2019, Seoul

*July 4<sup>th</sup>-6<sup>th</sup>, Seoul, South Korea*

[More Information](#)

Social Science Education Consortium, Inc. 2019  
Annual Conference. Theme: “The Divide Within:  
Intersections of Realities, Facts, Theories &  
Practices”

*July 17-21, University of North Carolina—  
Charlotte, USA*

[More Information](#)

## August 2019

University of Ghana-ISA 2019 Joint International  
Conference

*August 1<sup>st</sup>-3<sup>rd</sup>, Accra, Ghana*

[More Information](#)

2019 APSA Annual Meeting & Exhibition

*August 29 - September 1, 2019, Washington, DC*

[More information](#)

## September 2019

EISA 13th Pan-European Conference on  
International Relations

*September 11-14, Sofia, Bulgaria*

[More Information](#)

## October 2019

ISA-PEACE/PHS Joint Conference, Kent State  
University

*October 24<sup>th</sup>-26<sup>th</sup>, Kent, Ohio, USA*

[More Information](#)

## March 2020

ISA Annual Convention

*March 25-28<sup>th</sup>, Honolulu, Hawaii, USA*

[More Information](#)