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# Politics, Norms and Peaceful Change

FRIEDRICH V. KRATOCHWIL

The best proof that E. H. Carr has written a true 'classic' is that *The Twenty Years' Crisis* provides much food for thought even now when some of its alleged foundational verities have become problematic. Rather than being limited to a 'realist' understanding of politics pure and simple, the reader encounters an analysis that is much more subtle though much less scientific than later realist interpretations would suggest. True, the first chapter is entitled 'The science of international politics' but the discussion about 'purpose', Carr's invocation of Marx, and the intellectual history he paints with a broad brush, make it clear that it is not a conception of natural science that informs his inquiry. Besides, as with every classic, different readings are possible.

One of the startling features for the contemporary student of international affairs is the much broader scope of the work when compared with the usual realist analysis of international politics. Carr not only writes a very explicit chapter about the limitations of the realist point of view, he also engages the topic of ethics and international politics, an issue which is nowadays at most addressed by some non-realist specialists, who 'do' ethics and international affairs. To that extent Carr bases his treatise implicitly on a substantive understanding of politics rather than on a method or some criteria derived from the philosophy of science, as has become the vogue ever since the 'second debate'.<sup>1</sup> For him, gaining a better understanding of international politics implies first and foremost coming to terms with the crisis into which our unreflected practices have led us, namely, constitution making and designing international organizations without much concern for their essential prerequisites. Gaining a better understanding also involves a critique of the prevailing ideology of liberalism which had given rise to such mistaken endeavours.

Carr's approach is, therefore, one of 'critical' rather than 'problem solving' theory in Cox's parlance.<sup>2</sup> It is perhaps not a theory at all, as all the trappings of a scientific theory are eschewed, and the mode of analysis develops out of the critical reflections of a student of history. The analytical tools are clearly those of an historiographer whose narrative emerges from the tensions engendered by the compositional principle of pairs of opposition. Thus 'utopia' and 'reality' become themes that serve as frames for further pairs of opposition that are supposed to illuminate political praxis. In this context the issue of determinism vs. free will, the opposition

<sup>1</sup> On the issue of the three debates that were constitutive of the 'discipline' see Steve Smith (ed.), 'The Self-Image of a Discipline: A Genealogy of International Relations Theory', in Ken Booth and Steve Smith (eds.), *International Relations Theory Today* (University Park, PA: Penn State Press, 1995), ch. 1.

<sup>2</sup> See Robert Cox, 'Social Forces, States, and World Orders', *Millennium*, 10 (Summer 1981), pp. 126–55.

between theory and praxis, between bureaucratic vs. intellectual modes of approaching political problems, between the 'Left' and the 'Right' make their appearance, as does the already mentioned opposition of ethics and politics.

Whether a mode of analysis that relies on a list of antinomies (in a way anticipating the binary oppositions which characterize the work of structuralists such as Levi Strauss) is sufficient is, of course, highly debatable. But it can be useful when one attempts to break out of the given conceptual schemes which are the reason for the observable crisis. Rather than starting with the state or the 'unit' in the system, Carr—as a student of history and in particular of the Russian revolution—is aware of the fundamentally different character of politics in the aftermath of World War I. Not only have the old elites shown their incompetence and bankruptcy, the new ideologies and their social manifestations showed the capacity of systematically subverting the measures by which traditional statecraft had attempted to create order.<sup>3</sup> A whole new dynamic was at work to which the traditional ideologies and their concomitant analyses had little to contribute. As Carr put it so aptly in his Preface to the first edition, which went to press in July 1939:

Yet even while war is raging, there may be some practical importance in an attempt to analyze the underlying and significant, rather than the immediate and personal, cause of the disaster. If and when peace returns to the world, the lessons of the breakdown which has involved Europe in a second major war within twenty years and two months of the Versailles Treaty will need to be earnestly pondered. A settlement which, having destroyed the National Socialist Rulers of Germany, leaves untouched the conditions which made the phenomenon of National Socialism possible, will run the risk of being as short lived and as tragic as the settlement of 1919. . . . The next Peace Conference, if it is not to repeat the fiasco of the last, will have to concern itself with issues more fundamental than the drawing of frontiers.<sup>4</sup>

Here the importance of domestic structures for a durable peace is clearly recognized. Beyond that, Carr himself suggests in the 'Conclusion' of *The Twenty Years' Crisis* that one of the problematic areas for a science of international politics is the divergence between the state as a territorial form of organization and the 'economy'. Nevertheless, his suggestions remain within the traditional paradigm of socialist thought: While indicating that the best 'hope for progress towards international conciliation' lies 'along the path of economic reconstruction', his remedy involves, for us contemporaries somewhat curiously, 'the frank acceptance of the subordination of economic advantage to social ends'.<sup>5</sup> In this way, he concludes should 'the increasing elimination of the profit motive from the national economy' also 'facilitate . . . its partial elimination from foreign policy'.<sup>6</sup> As I shall argue below, this might be a utopian hope, but the organizational innovation which the decision makers hit upon at Bretton Woods provided some temporary stabilization of the relations between the economy and the (welfare)-state<sup>7</sup> that has been called into question again by the liberalizing pressures that threaten to once more 'disembed' the economy.

<sup>3</sup> See Carr's remark: 'The real international crisis of the modern world is in the final and irrevocable breakdown of the conditions which made the nineteenth century possible'. E.H. Carr, *The Twenty Years' Crisis* (New York: Harper, 1946), p. 237.

<sup>4</sup> *Ibid.*, p. ix.

<sup>5</sup> *Ibid.*, p. 238.

<sup>6</sup> *Ibid.*, p. 239.

<sup>7</sup> See John Ruggie, 'International Regimes, Transactions and Change: Embedded Liberalism in the Post War Economic Order', in Stephen Krasner (ed.), *International Regimes* (Ithaca, NY: Cornell University Press, 1983), pp. 195–32.

It is here that the limitations of Carr's analysis become most visible. His inquiry is still informed by some conception of the national economy as a subordinate system of society. Both assumptions provide little guidance for analysing order problems in international relations, particularly when several processes of change converge in the processes of 'globalization' that we witness today. Deep-seated changes in the structure of production are paralleled by secular political changes, and both are linked and fed by the communications revolution that fundamentally transforms our way of thinking about global problems. It might be premature to conclude that the unit of international politics, the state, is on the decline but that it is affected and perhaps significantly altered by these converging streams of change can hardly be doubted. Already Carr had to admit in the Preface to the second edition that his analytical instruments were perhaps no longer adequate, that the main body of the book 'too readily and too complacently' accepted the nation state 'as the unit of international society'.<sup>8</sup>

With this admission, the challenge is squarely put to us to rethink and conceptualize anew the problematique of international politics at the century's end. This reflection has at a minimum to include a brief critique of the disciplinary understanding that developed in the aftermath of Carr's critique. Oddly enough, instead of a conception of politics which incorporates the tension between 'realism' and 'utopianism' which Carr advocated, the effect of the disciplinary emancipation of international politics from international law and history alike came at a heavy price: an implausible conception of politics was paralleled by an equally implausible conception of law, and the study of both was largely separated from that of history, a problem that the second debate correctly identified.

While I obviously cannot hope to untangle all the threads of the development of the discipline and its various internal criticisms,<sup>9</sup> I shall focus in this article on the role of international law and international organization in addressing one of Carr's main concerns: the issue of peaceful change. This in turn will involve me in a discussion of institution building in the international arena and the context in which such efforts take place. To that extent, the criticism of the disciplinary understanding has to be supplemented by a more constructive research agenda. Here I suggest that issues of legitimacy and the changing boundaries of the political are as important as technical knowledge or the problems of transparency. While the latter problem has received a great deal of attention in the realist and liberal perspective alike,<sup>10</sup> I want to suggest that a perspective focused on cheating and transaction costs is far too narrow. Notions of cost are crucially shaped by our normative understandings of legitimacy and by the available knowledge that provides for remedies but enters also into our definitions of problems that require international attention.

In other words, the article argues that if we accept Carr's challenge, we will have to engage in an inquiry into the possibilities and limitations of various organizational forms for resolving conflicts and for providing institutional grounding of cooperative endeavours. In this way, we neither submit to the error that the units of

<sup>8</sup> *Ibid.*, p. viii.

<sup>9</sup> As Roger Epp shows in his contribution to this Special Issue, the persistence of the English school dedicated to the exploration of the historical genesis of state systems demonstrated at least that not all international relations theorists had submitted to the *fata morgana* of a transhistorically valid theory.

<sup>10</sup> See, e.g., the argument on cheating and transaction costs that inform most of the analyses on cooperation under anarchy. See, for example, the special issue edited by Kenneth Oye (ed.), 'Cooperation under Anarchy', *World Politics*, 38 (Oct. 1985).

the international system are simply given and to its corollary of structurally determined conflict,<sup>11</sup> nor are we led to believe that the templates of organizations we know from domestic society are necessarily the ones that could ensure peaceful change in the international arena. As civil wars and the 'crisis' of the state have shown, hierarchies and central governments are by themselves no insurance against political instability. Furthermore, the recent trends of increased reliance on decentralized forms of decision making, domestically as well as internationally, raise not only the issue of the fit between international and domestic institutions, but the even more important question of how this development shall be appraised.

After all, the description of the present sea change as liberalization suffers from the fact that certain of its consequences seem rather illiberal. There is an observable concentration of firms that results from deregulation in both the domestic and the international arenas. To that extent the economic side of liberalism, *laissez-faire*, seems increasingly at odds with the part of liberalism concerned with democratic theory. While the former part welcomes the growth of boundary-spanning networks, the latter has, at least traditionally, presupposed the existence of bounded communities which are now increasingly circumvented by such networks. Only by 'bounding' a number of 'subjects' a 'public' could be conceived which, in turn, provided the legitimizing basis of for binding decision, for ascribing rights and responsibilities, and for maintaining the community as a transgenerational concern. None of these presuppositions appears to be in place any longer and there seems to exist, therefore, a crisis in both political theory and political practice.

These are indeed troubling questions. While I obviously cannot hope to provide ready-made solutions, it is the task of this article to contribute to a better understanding of our predicament by engaging in an analysis of our disciplinary understandings and by subjecting some of the concepts that dominate the contemporary debate to further scrutiny. In order to make good on my claims, my presentation takes the following steps. In the next section I trace the development of the discipline of international politics. I show the oddly parasitic character that evolved between 'realism' and 'international law' as they lost their grounding in political praxis. By examining the respective disciplinary understandings of law and politics, their systematic blind spots as well as the parasitic character of the discourses—thus a legalistic and utopian understanding of law needs as its complement an equally unrealistic discourse of politics—we can critically reflect on the presuppositions of these two fields. We are also able to start afresh with a new set of substantive questions or puzzles, instead of relying on a methodology for defining a new approach to the study of international politics. In section three I take up organizational issues which resulted in two defining moments for institutionalizing peaceful change which David Kennedy has termed the 'move' to institutions at the end of World War 1. This section is devoted to the two episodes of the 'first move'. I suggest that this first move did not come to an end at Versailles, but that it had a second episode after World War Two. In the fourth section, I argue that we are in the midst of a *second move*. This move has less well defined historical benchmarks but is nevertheless as important as the first one for the analysis of

<sup>11</sup> For a discussion of this problem in the context of the end of the Cold War, see Reynold Koslowski, Friedrich Kratochwil, 'Understanding Change in International Politics: The Soviet Empire's Demise and the International System', in Ned Lebow and Thomas Risse-Kappen (eds.), *International Relations Theory and the End of the Cold War* (New York: Columbia University Press, 1995), ch. 6.

change in the international arena, since it draws attention to the impact of globalization on our domestic and international institutions.

### The symbiosis of legalism and realism

If we begin our reflections with the two themes in Carr's work, i.e. utopia and realism, it is clear why the second quickly overwhelmed the first, when realism began to define the disciplinary understanding of the new field of international relations. There was not only the manifest challenge of fascist and communist ideologies which made appeasement as well as the resort to traditional means of diplomacy impossible, but the events and their purported lessons gave more weight to those voices which had become highly critical of the liberal project. To that extent, it is not surprising that a recovery of the concept of the 'political' from its ideological deformations was one of the characteristics of political theorists, most obviously in the émigré community in the United States. Whatever the suggested solutions were, virtually all voices agreed that the traditional focus of a theory of politics on constitutions and law was highly problematic. Arendt and Strauß attempted to arrest this 'decline' of theory by a historical recovery of its sources.<sup>12</sup> Adorno, Marcuse and Horkheimer pursued the project of a 'critical theory', and people like Carl Schmitt and Hans Morgenthau, the latter deeply influenced by Schmitt<sup>13</sup> and quite suspicious of the liberal constitutional state, concluded that neither the understandings nor the practices of the *ius publicum Europaeum* could provide any guidance for the contemporary world.

The crisis that liberalism had on the Continent also became a crisis of law. True, there remained some doubt as to what this attempt of founding a new discipline was supposed to be about, as various labels for designating the field of study indicate: international relations vs. international politics are indicative. But the focus on power rather than constitutions of formal political structures seemed to provide a way out of the dilemmas between an unfocused view on simple cross-boundary relations, and the problem of putting sovereignty and the state as the sole or main actor at the centre of the analysis. As William T.R. Fox, the first editor of *World Politics*—the journal that helped to define the discipline—once pointed out:

Pitting "power" rather than the "state" at the center of political science makes it easier to view international relations as one of the political sciences. So conceived, it is possible for some scholars to move effortlessly along the seamless web which connects world politics and the politics of such less inclusive units as the state..and to emphasize the political process, group behavior, . . . conflict resolution and decision making.<sup>14</sup>

<sup>12</sup> For a discussion of the influence of these ideas on the development of the 'discipline' political science, see John Gunnell, *Between Philosophy and Politics* (Amherst: University of Massachusetts Press, 1986), especially chs. 2 and 3.

<sup>13</sup> For the roots of Morgenthau's thought in Schmitt, see Marty Koskenniemi, 'Carl Schmitt and Hans Morgenthau', in Michael Byers (ed.), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford University Press, forthcoming).

<sup>14</sup> William T.R. Fox, *The American Study of International Relations* (Columbia, SC: Univ. of South Carolina Press, 1968), p. 20.

Power seemed, therefore, to avoid the problems more substantive conceptions of politics have, in terms of its association with a common good or a human *telos*. By its conceptual links to *process*, power also abated the dangers of conceiving politics in terms of largely static legal structures, as traditional institutionalism had suggested. It could therefore remain the linchpin of analysis long after most of the tenets of realism had been subjected to severe criticisms by the behaviouralists in the second great debate.<sup>15</sup>

Nevertheless, while power seemed to constitute the field, many of the old problems reappeared, as various conceptions of power coexisted uneasily with one another. There was the notion of 'power' as a medium, suggested by Morgenthau in his 'Six Principles of Political Realism',<sup>16</sup> largely conceived as a resource in an (unfortunately entirely) mistaken analogy to money. But there was also the conception of power, going back to Weber, which emphasizes the relational and interactive dimension. Finally, there was the Weberian legacy of linking force and legitimacy and of deriving the domestic political order from the monopoly of legitimate force. In this derivation, 'power' was no longer a simple medium of exchange that could be maximized analogous to the *homines oeconomici*, nor was it a type of influence exercised over another on the basis of various available resources. Rather, it was a certain form of force, i.e. legitimate compellence (*öffentliche Zwangsgewalt*), exercised by public authorities that now defined the political space.

With that last conceptual move the circle was closed, as power was now again intrinsically linked with institutional structures (rather than being simply some neutral medium). The often observable Freudian slip among later realists, i.e. of forgetting Weber's normative layer and deriving order from the monopoly of force, was the cause of serious distortions. It suggested first that there are no sources of legitimacy in the international arena, which is patently false. Thus, even Morgenthau has to admit that:

Power exercised in self defense or in the name of the United Nations has a better chance to succeed than equivalent power exercised by an "aggressor" nation or in violation of international law . . . . Political ideologies . . . serve the purpose of endowing foreign policies with the appearance of legitimacy.<sup>17</sup>

Second, such a conception asserts that questions surrounding the legitimacy of actions are settled rather than contestable, as long as they are made by the proper public authorities. The discursive gambit of Morgenthau to use the opposition of 'appearance' vs. 'reality' in order to imply the importance of normative factors in the domestic realm when compared to their rhetorical character in international politics, however, will not do. *Normatively* it is not clear why the legitimizing function of norms should be different in the two realms. If Morgenthau means that justifications are often self-serving then he is obviously right. But unless he also demonstrates that by some necessity they *have to be* self-serving in the international arena, while at

<sup>15</sup> See Hedley Bull, 'International Theory: The Case for a Classical Approach', *World Politics*, 18 (April 1966), pp. 361–77; Morton Kaplan, 'The New Great Debate: Traditionalism vs. Science in International Relations', *World Politics*, 19 (Oct. 1966), pp. 1–20.

<sup>16</sup> See Hans Morgenthau, *Politics Among Nations*, 4th edn. (New York: Knopf, 1967), ch. 1.

<sup>17</sup> *Politics among Nations*, 5th edn. (New York: Knopf, 1985), p. 34, as quoted by Helen Milner, 'The Assumption of Anarchy in International Relations Theory: A Critique', *Review of International Studies*, 17 (Jan. 1991), pp. 67–85, reprinted in David Baldwin (ed.), *Neorealism and Neoliberalism* (New York: Columbia University Press, 1993), ch. 6, quote at p. 150.

least sometimes they deserve to be taken seriously in domestic politics, the implication is obviously unwarranted. *Empirically* one has to wonder what phantasmagoric political reality is conjured up by such theoretical lenses when one remembers the massive resistance to discriminatory laws during the civil rights era and the protest against the 'illegality' of the war in Vietnam in the USA, as well as presently the continuous actions of environmental groups in the courts and in political arenas.

Nevertheless, the categorical distinction between internal and external politics, between 'anarchy' and 'order', became an intrinsic part of the disciplinary understanding.<sup>18</sup> Thus, in the writings of realists like Kenneth Waltz, a wholly unconvincing notion of politics emerges as the following passage intimates:

National politics is the realm of authority, of administration and of law. International politics is the realm of power, of struggle, and of accommodation. The international realm is preeminently a political one . . . . In politics force is said to be the *ultima ratio*. In international politics force serves, not only as the *ultima ratio* but as the first and constant one.<sup>19</sup>

This is an odd conception of politics indeed. Gone is not only the notion that political associations are based on common notions of the good and the just, as Aristotle suggested. Gone is the classical conception of a community as an association of people under a common law. Gone is also the notion that politics depends on bargaining and negotiation and nonviolent attitudes towards fellow-citizens (Aristotle's *peitho* and *philia* as political virtues). Gone is even the realism of the way in which we attempt to grasp social reality beyond the state, i.e. to understand international politics *via negativa* by means of the 'domestic analogy'. Now, we are held to a new standard, i.e. the criterion of *uniqueness*, which is to serve as the true foundation for our disciplinary understanding. Politics is not to be confused with all the epiphenomena, as real as they might appear to us. Its essence can be grasped only when we abstract from all that is familiar to us, when we cast radical doubt on all our practical experience and arrive, like Descartes, at the unshakable foundations that eliminate all further doubts.

In criticizing the attempts of some realists to establish such a disciplinary understanding, Judith Shklar points to the 'costs' that such a strategy entails for social analysis:

The rules of politics may never be confused (for realists) with those of morality or those of law. What the 'national interest' can be except an ideology is hard to say but one thing is clear to realists—it must never be conceived in terms of 'moral' or 'legalistic' values . . . .

The essential mark of politics is power. However taken as a formal concept, power is meaningless. Unless it is placed within a historical situation it is completely unimaginable. The only occasion in which it can be said to appear in 'pure' form, unconditioned by a host of circumstances, is in active combat. Here power means destroying an enemy physically or subordinating him to one will by the threat of destruction. This is why the only perfectly clear definition of politics as power is that of Carl Schmitt. The 'specific and self-evident distinguishing characteristic' of the 'realm of politics', analogous to the distinctions of good

<sup>18</sup> For a critical attempt to put this drawing of the 'inside' 'outside' distinction in perspective see R.B.J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993).

<sup>19</sup> *Ibid.*, p. 113.



and evil in morality, and beautiful and ugly in aesthetics, he wrote, is 'the distinction of friend and enemy'. The terms 'friend', enemy and struggle obtain their real significance from their relation to the real possibility of physical killing'; that is, politics is active or potential physical violence.<sup>20</sup>

There are several corollaries to this argument. First, oddly enough, the focus on force and violence inhibits us from developing an adequate theory of power. After all, the analysis of power, whether it is conceived as a resource or as a relationship, always presupposes the specification of a 'contingency framework'.<sup>21</sup> Second, unless we believe that concepts somehow capture the essence of a subject matter, distilling the unique feature from some empirical material thereby also satisfying the criteria of relevance, such a procedure is rather problematic. We may end up with some trivial definition which might be true in a logical or taxonomic sense but might be entirely useless for directing the inquiry toward some interesting substantive problems. Thus, one could easily define man as a 'featherless biped' but such a definition would be useless as a foundation for a discipline as it does not locate the subject matter in a set of empirically and conceptually interesting puzzles (whereas the definition of language endowment does, although we no longer believe in the usefulness of essential definitions). Third, even if we were to insist on the importance of the uniqueness criterion, the discussion above showed that such an attempt fails on its own terms. Conceptions of law impact via sovereignty or legitimacy on the concept of politics and often supply, even if only implicitly, the necessary steps for the inferences which otherwise would be unfathomable.

Consequently, there exists a paradox in that attempts to separate these two disciplines as much as possible leads not only to similar conceptual difficulties but also uncovers a certain symbiotic relationship between these two foundationalist attempts. In other words, legalism (of which the theory of 'pure law' is only the most recent and best articulated version) needs realism not only as an opponent in regard to concrete issues, but also for its own self-understanding. Since this disciplinary understanding leads precisely to some misconceptions that Carr characterized as 'utopian' it might be useful to examine this problem in greater detail.

The first observation in regard to the paradox is that law (and in particular international law) as a discipline dealing with norms has to demarcate its domain *vis-à-vis* morals and politics alike. For the purposes of the former, it is significant that the symbiotic character of realism is clearly manifested in Kelsen's pure theory of law in that he understands law as a 'sanctioning' order. To this extent, all legal norms imply at least implicitly a sanction by the state (aside from being part of a system).<sup>22</sup> Again the subtle influence of a Weberian conception of the state and of enforcement is characteristic of this conception of law. Legal rules only secondarily inform the individual how to act (as this is also the function of rules of comity and morals) but they are primarily instructions to *public officials* to sanction non-conforming behaviour. Since in international relations no such sovereign exists, self-help has to substitute. For Kelsen, self-help is obviously not simply conceived as a

<sup>20</sup> Judith Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1986), pp. 124f.

<sup>21</sup> On this point, see the fundamental article by David Baldwin, 'Power Analysis and World Politics', *World Politics*, 31 (Jan. 1979), pp.161–94.

<sup>22</sup> See also Hans Kelsen. *Principles of International Law*, 2nd edn. by R. Tucker (New York: Holt, Rinehart and Winston, 1966).

result of anomic anarchy, but rather as a legal institution, i.e. a remedy, governed by certain rules that allow or empower state officials to take retaliatory measures in the defence of violated rights.

There is no need to rehearse here the criticism against a concept of law that seems over- as well as under-inclusive. A brief discussion is sufficient to show the problems. As to the over-inclusiveness: the violation of all types of rules might trigger sanctions. Consequently, this definition of law is determinate only if we implicitly place it in a modern statist framework. But conflating law with the state or with a particular organizational form is neither heuristically fruitful nor analytically clean. As to under-inclusiveness: many rules in a legal system are constitutive and enabling rather than regulatory in character. They instruct the actors how to proceed, when they want to attach legal consequences to their actions, such as signing a paper and thereby transferring property, or concluding a treaty of friendship and commerce. H.L.A. Hart<sup>23</sup> has made these points clearly and convincingly and proposed, therefore, a concept of law, that is conceived as a system of rules. To that extent the character tag of a legal rule does not consist in a sanction but rather in membership in a system or in the rule's 'pedigree'. A rule is part of the system if it has been created in accordance with higher-order norms which, as secondary rules, authorize the creation, abolition or modification of the lower-order norms (primary rules).

Thus according to the concept of law as a system of rules, law is truly a product of its own creation. It creates not only its own rules; it also establishes organizations by statute or treaty. Even the state is a product of the rules making up its constitution. No wonder then that there appears to be no limit (besides those set by law itself) to what can be done with legal rules. But somehow the idea that legal concepts operate in a self-referential fashion is more than strange as it seems to imply that the discourse lacks a common subject of conversation and, thus, is from its inception a 'conversation without content'.<sup>24</sup> Indeed, it is this very notion that is responsible for the illusion that to establish a peaceful international order we only need the progressive development of international law and some dispute-settling mechanisms.<sup>25</sup>

It is this conception of law that occasioned Carr's most critical remarks about utopianism. A moment's reflection shows why this criticism is not far off the mark, since the error results from a simple equivocation of the term 'create'. When we view law for analytical purposes as an autopoietic system, we do not refer to actual historical facts or the genesis of a rule but rather to the validity a rule has in virtue of its membership in a system.<sup>26</sup> Metaphysically we can picture a rule arising out of an authorization by a higher rule or norm. Such an issuance, however, has nothing to do with a rule being created historically. The latter cannot be discussed outside of particular historical circumstances and the action of the designated actors involved in such a process.

There is, however, also a second and equally strong objection to the notion of law as a system of rules disembodied from any social and political context: it is that such

<sup>23</sup> H.L.A. Hart, *The Concept of Law* (New York: Oxford University Press, 1961).

<sup>24</sup> David Kennedy, 'Theses about International Law Discourse', *German Yearbook of International Law*, 23 (1980), p. 376.

<sup>25</sup> See, for example, Sir Hersch Lauterpacht's proof, that all political questions are justiciable, in his *The Function of Law in the International Community* (Oxford: Clarendon, 1933).

<sup>26</sup> See, for example, a clear exposition of this position by Gunther Teubner, *Recht als Autopoietisches System* (Frankfurt: Suhrkamp, 1989).

a conception leaves out crucial aspects of the function of rules in shaping *praxis*. After all, no rule or norm can also contain all the facts and circumstances to which it will be applied. Consequently, the *interpretation* of rules and norms is not a peripheral matter that can be neglected in a theory of law. Representing law, therefore, as a disembodied system of rules misspecifies the legal problematic, and modern approaches to law have therefore increasingly accorded pride of place to 'judging', i.e. applying the rules to a case.<sup>27</sup> This not only involves the interpretation of legal concepts; it also entails choosing among competing narratives that transform the facts of a case into the relevant facts of legal ontology. In law, people just do not simply walk or punch or cross a river but they trespass, commit battery, or aggression. This legal ontology nearly always transcends observables (by including unobservable mental states like *mens rea*, or consent) and continuously intertwines objective and subjective elements of interpretation.

Given these characteristics of jurial ontology it seems clear that we cannot be satisfied with a concept of law that limits it to a system of disembodied rules. After all, we invoke legal rules in order to ascertain that (1) certain events or actions occurred, which (2) exemplify some concept of the legal ontology, that (3) this concept is part of some institutional arrangement (diplomatic protection, anti-trust etc.), which, in case of violation, provide the wronged party with a remedy. Thus, contrary to what we might expect from the picture that Kelsen and Hart painted, a decision attains its validity not simply by being decided by a designated official, who simply subsumes the facts under some norms whose pedigree (s)he checks. Rather, rendering a legal decision is the result of quite different procedures: choosing the relevant facts and defining the issues, weighing up competing norms that might have a bearing on the case, evaluating actions and outcomes in terms of prevailing customary practices, thereby introducing *prima facie* extra legal standards into the decision-making process.<sup>28</sup>

In other words, the issue of judging can never be reduced to an exercise of formal authority by a public official, i.e. simply applying the rules of a legal system to some facts. To that extent the notion that the reasons provided by the official for the choices (s)he made in arriving at a decision need to be justified solely intra-systemically is open to serious challenge. These various points have been well made by the Critical Legal Studies Movement<sup>29</sup> as well as by adherents of the 'process approach' to international law, both of which view normativity not as a simple matter of rules, of their pedigree or membership, but largely as a matter of the pragmatic context.<sup>30</sup>

<sup>27</sup> See, for example, the various works of Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978); and Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986).

<sup>28</sup> On a further elaboration of this point, see my 'How do Norms Matter?', in Michael Byers (ed.), *The Role of Law in International Politics*.

<sup>29</sup> For a good overview of the main positions espoused by this movement, see Mark Kelman, *Critical Legal Studies* (Cambridge, MA: Harvard University Press, 1987).

<sup>30</sup> This was, of course, the point which the New Haven school under McDougal made. See Myres McDougal, 'Some Basic Concepts about International Law: A Policy Oriented Framework', reprinted in Richard Falk and Saul Mendlovitz (eds.), *The Strategy of World Order*, vol. 2, *International Law* (New York: World Law Fund, 1966), pp. 116–33; Myres McDougal and Harold Lasswell, 'The Identification and Appraisal of Diverse Systems of Public Order', *ibid.*, pp. 45–74. See also the writings of contemporary adherents to the process approach: Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon, 1994); see also Harald Koh's review essay 'Why do Nations Obey International Law?', *The Yale Law Journal*, 106 (1997), pp. 2559–659.

It is here that the analogous conceptual cleansing that we observed in the case of politics also eliminates any form of realism from law. In defining justice as the purpose of law and giving it a legalist interpretation, i.e. constructing justice as strict adherence to rules, 'the law' is cleansed from all political distortions. Not only the notion of politics as violence is eschewed, but any notion of bargaining or unprincipled adjustment is similarly 'ruled out'. As Shklar put it aptly:

The uncompromising character of justice . . . militates against any latitudinarian view of social morality. Instead legalism is apt to disparage every other type of social policy. All politics must be assimilated to the paradigm of just action—the judicial process. Direct bargaining, for instance, is often treated as a matter of disreputable expediency, a sort of ideological anarchy . . . Again, extreme legal formalism puts politics in brackets as rigidly, as it does morals, for here it is not logical deduction but pure chaos that reigns . . . Thus to maintain the contrast between legal order and chaos and to preserve the former from any taint of the latter it is not just necessary to define law out of politics; an entirely extravagant image of politics as essentially a species of war has to be maintained.<sup>31</sup>

For international law these considerations might seem irrelevant, as obviously adjudication plays a rather modest role. But, as Ulrich Fastenrath has shown, similar problems arise when we try to identify the sources of law, or when the parties to a treaty argue about the proper interpretation of some rule or principle.<sup>32</sup> What impact legal norms have on actual decisions is, of course hotly contested. Aside from seeing in norms simply the reflection of power, realists accord to rules and regimes, at best, the role of an intervening variable. But even some international lawyers emphasize the defects of international law and see it hopelessly suspended between the antinomies of 'Apology and Utopia'.<sup>33</sup> The answer is, of course, more complicated, since it depends not only on our concept of law<sup>34</sup> but also on a variety of tricky theoretical and epistemological issues which cannot be settled by simply looking harder at the facts and seeing whether rules and norms matter.<sup>35</sup>

Thus, one thing seems rather uncontroversial, that the weakness of international law has several reasons, not the least of which is its insufficient institutional underpinnings. There is not only the problem that, given the absence of precedent and legislative action, it is often unclear what the law *is*. There is also the further problem that law can be an effective means of conflict resolution and peaceful change only when the *political process* is well institutionalized. To that extent the undeniable weakness of international law is as much the result of the weakness in the institutionalization of the political process, as it is ascribable to the flaws of the international legal system. In this perspective a rather different connection emerges than we found in the disciplinary understandings of realists and legalists, as the conditioning of law and politics is not only embraced but theorized. It neither

<sup>31</sup> Judith, Shklar, *Legalism*, p. 122.

<sup>32</sup> See Ulrich Fastenrath, 'Relative Normativity in International Law', *European Journal of International Law*, 4 (1993), pp. 305–40.

<sup>33</sup> See, for example, Martti Koskenniemi, *From Apology to Utopia: The Structure of Legal Arguments* (Helsinki: Finnish Lawyers Publishing Co., 1989).

<sup>34</sup> This point is forcefully made by Benedict Kingsbury, 'The Concept of Compliance as a Function of Competing Conceptions of International Law', *Michigan Journal of International Law*, 19 (Winter 1998), pp. 345–72.

<sup>35</sup> See my *Rules, Norms, and Decisions, On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989), particularly ch. 2.

makes one the servant of the other, nor does it engage in the denials and Freudian slips mentioned above. Rather, this perspective assesses 'law' and 'politics' from the perspective of a theory of social organization. It is in this context that some interesting puzzles arise for the analysis of peaceful change. The next section elaborates on this theme.

### **The first move to institutions: Versailles and the UN system**

Whatever differences might exist among realists, idealists, peace-advocates or security specialists, there is a near universal consensus that World War I and the subsequent settlement represented a sharp break with the past. The new beginnings came in response to the changing external and internal conditions, as the Toquevillian vision of the USA and Russia determining the course of events loomed large on the horizon. Internally, the bankruptcy of the old political elites had been demonstrated not only in the case of the losers but also of the victors. The revolutionary stirrings, evidenced by the October Revolution and some uprisings in Germany (only to be ruthlessly suppressed by the proto-fascist 'free cops'), indicated the end of complacency and of the confidence in the inevitability and nearly automatic progress of civilization. All these events also suggested that a return to business as usual was not possible and that fundamentally new ways of organizing international and domestic politics would have to be considered.

There were, of course, some innovations attempting to address these changing conditions. The new concept of a 'collective security system', the idea of self-determination, and the recognition that the conditions of the working class were no longer simply only a matter of benign neglect or 'domestic politics' all belong here. Although of minor practical import, the founding of the ILO and the admission for the first time of non-state representatives into the inner sanctum of an inter-governmental organization indicated a fundamental change in thinking. While the 'new' and largely Wilsonian ideas were hotly contested among the European establishments and the various social movements who mobilized public opinion, there seemed to have been a sweeping feeling that the problems had to be addressed by new forms of organization. Somehow most of the official and social actors agreed that formal institutions were necessary in order to deal effectively with the contemporary challenges. To that extent the 'move to institutions' which David Kennedy has so painstakingly documented, appears to have transcended liberal, syndicalist and even radical feminist lines.

The belief in the effectiveness of formal organization seems to have been buttressed by two converging notions, i.e. that political problems could be solved by bringing to bear some technical know-how—an idea that had been gaining currency since St. Simon—and that formal organizations represented, because of their greater efficiency, the 'solution'. Bureaucracies would, as Weber suggested, sooner or later crowd out other forms of organizing. But the 'move to institutions' might actually have been much more subtle than the wholesale adoption of the technical-bureaucratic perspective attaining its full expression in functionalism. Liberal statesmen, even the 'idealist' Woodrow Wilson, like Kant before him, seem to have been less than enamoured with the prospects of some inchoate world governmental

structure. Rather they hoped that the spread of democracy and the preponderance of the economic and military potential of democratic states in the aftermath of the war would make peace possible.<sup>36</sup>

It is, of course, the peace movements contesting the monopoly of the decision-making elites in negotiating the peace settlement and the belief in the efficacy of formal structures that Carr castigates as utopianism. In identifying these movements with the liberal tenets of the 'harmony of interest' and the bureaucratic mode of problem-solving, Carr not only suggested the inappropriateness of these efforts – quite puzzling in view of his socialist leanings and that ideology's privileging of the 'masses'—he also misconstrued the actual events, an error that prevents us from critically appraising the changing nature of organization in the international arena and from drawing the appropriate lessons.<sup>37</sup> As a matter of fact, some of the gravest shortcomings of the post-war settlement were not those identified by realists, but had to do with the insufficient attention given at Versailles to the management of the international economy.

It was only on their second try, after World War II at Bretton Woods, that the designers of institutions hit upon the felicitous solution of 'multilateralism'<sup>38</sup> as an organizational form. Only multilateralism was able to accommodate the new responsibility of states for full-employment while taking care of the externalities which the beggar-thy-neighbour policies had created when states had attempted to pursue full-employment policies. Similarly, today new externalities arise for states from 'liberalization', when point-of-entry barriers to trade have been virtually eliminated, when production has been globalized, and financial markets have been integrated. A new balance between positive and negative effects, creating new winners and losers, has to be struck. Otherwise the political consensus that sustained the 'first move to institutions', and which is essential for the functioning of new institutions, is in danger. True, a return to classical protectionism and the conflicts of yesteryear seem unlikely—not least because many of the protectionist measures which governments could formerly use have lost their bite<sup>39</sup>—but there is the possibility that conflicts might arise out of the growing disenchantment with some of the illiberal consequences of globalization. In a way, the increased liberalization of the economy might result in a serious incompatibility with another tenet of liberalism: democratic theory and the notion of positive rights. To that extent, the second move to institutions could not only undo much of the achievements of the first, but fundamentally alter once more the social bases on which domestic and international legal and political orders rest. To that extent Carr's mistrust in the liberal belief that all good things go together and that a natural harmony might eventually prevail is a useful reminder of the difficulties that lie ahead. A further discussion of the 'first' and the 'second' move to institutions seems in order.

<sup>36</sup> For a good discussion of these points see Andrew Moravcsik, 'A Liberal Theory of International Politics', *International Organization*, 51 (Autumn 1997), pp. 513–54.

<sup>37</sup> For a further discussion of the role of the various peace movements in the pre- and post-WWI era, see Cecilia Lynch, *Beyond Appeasement: Reinterpreting Interwar British and US Peace Movements* (Ithaca, NY: Cornell University Press, forthcoming).

<sup>38</sup> For a definition of this institutional form and its role in post WWII policy, see John Ruggie (ed.), *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993); see also John Ruggie, *Winning the Peace: America and World Order in the New Era* (New York: Twentieth Century Fund, 1996).

<sup>39</sup> For a fundamental discussion of these points, see Richard Cooper, *Economic Policy in an Interdependent World* (Cambridge, MA: MIT Press, 1986).

Let us begin again with the first move. At the outset, we notice that the first move was reformist and perhaps far less radical than some of the contemporary movements and, with hindsight, also its realist critics had thought. Indeed, as David Kennedy suggests,<sup>40</sup> the ambiguous 'history' of the founders of the League and the inconsistencies in the narratives are important indicators for appraising the actual transformation. While originally the American peace movement was characterized by establishment figures such as Elihu Root, William Howard Taft, Andrew Carnegie and Theodore Marburg, the decade following the outbreak of the war saw a decisive shift towards radical feminist and progressive movements. These movements pushed the project from the institutionalization of legal settlement to international and social reform. However, as the war drew to a close, the initiative passed again to the more statist lawyers and officials who were engaged in post-war planning. Thus, the plans produced by Wilson's aids hardly mentioned judicial settlement. Instead they envisaged a political assembly for the resolution of international disputes and attempted to bring war into the framework of institutional sanctions and collective security. In other words, the institutionalization of the international *political* process, rather than radical social reform or pacifism, provided the main source of inspiration.

While it might be understandable that the actors in 1919 could have felt that they were riding the wave of the future, the many exclusions that occurred as well as the shifts in the positions of the participants themselves make such accounts highly problematic. A closer look reveals that many of the pre-war pragmatists became utopians at Versailles or after. For instance, the realist Smuts had, at times during the negotiations, utopian moments, as evidenced by his optimism when he saw the League as the heir to 'Europe's great estate'. Thus, most of the historical accounts maintain a narrative structure implying some system transforming progress within a continuity. While emphasizing reform, they were as distant from radical and allegedly irresponsible demands of social reform as they were from the calls for a return to the old order. As Kennedy points out:

By mobilizing the rhetoric of war and peace, law and politics, or utopianism and realism, participants and historians have characterized the establishment of the international institutional regime as the crest of a progressive wave breaking forward from extremes which an institutionalized and redeemed international process must continually exclude. The architects of the new order both situated themselves at the cutting edge of a tradition and sought to continue and displace the work of earlier peace advocates. By contrast to wartime resisters and agitators, the institution builders styled their work a return to order from chaos and to reason from religious ideological passion. Sane hands were again at the helm. At the same time, these men represented the worldly embodiment of a human ideal. The torch of idealism had been passed to an institutionalized generation, inheriting, as it excluded the vision of women and wartime radicals.<sup>41</sup>

Nowhere does the ambiguity of the narrative that emphasizes the transformative character of the move become more visible than in the case of war. War, one of the traditional and accepted institutions of the state system, was now seen as a radical 'rupture' to be exorcised from inter-state relations. By identifying war with chaos, and peace with systematic organization, the 'move to institutions' created the topos

<sup>40</sup> David Kennedy, 'The Move to Institutions', *Cardozo Law Review*, 8 (April 1987), pp. 841–988.

<sup>41</sup> *Ibid.*, pp. 897f.

that peace was synonymous with organization. Violence and disintegration were now thoroughly externalized from international relations and projected upon actors beyond the pale, such as terrorists or aggressors. The transformative effect of this narrative was that it not only imparted coherence to efforts at institutionalization in the past, but it sometimes suggested that the main achievement of this move was not so much the victory of law over politics, but rather that both violence and radical demands for systemic transformation had been cast aside in favour of crisis management. At the same time this move suggests that the repetition of history and its cycles of war and peace-making recognized by realists as the only means for ordering the international system<sup>42</sup> had been transcended.

To that extent the new understanding established a coherence between past and present. It legitimized an understanding in which different organizational forms were shown to be the 'forerunners' of the present organizational system, while not challenging the state system and its operation. Thus, the Concert is the forerunner of the Council, the former river commissions become antecedents to the functional agencies, and efforts at arbitration are the 'roots' for the Permanent (or International) Court of Justice. To that extent the establishment of the UN can be viewed just as the second part of this first move which attempted to incorporate the lessons learned from the failure of the League. These lessons made it necessary to have an organization with teeth instead of relying on the good will of its members. It placed universal responsibility for peace and security on the Great Powers thereby attempting to solve the collective action problem that is bound to arise when enforcement becomes an issue.

The story of the failure of the collective security arrangement, the emergence of alliances and blocs, and the substitution of peace-keeping for classical enforcement measures envisaged by Chapter 7 of the Charter have all been told many times. So has the story of human rights and the mandate system that facilitated decolonization by basing the justification of colonial rule increasingly on notions of 'trust' and a right to self-determination. The realization that the governmental authority of the colonial powers could no longer be justified by the classical international law principle of conquest or unequal treaties served, in turn, as a crystallization point for the local opposition and led finally to the rather smooth emancipation of the colonial world. It is in this context that political problems of legitimization and delegitimization rather than those of the management of force became one of the main contributions of the UN to peaceful change. In a way, though, the success of the world organization was also its bane. In the increasingly heated debates of the seventies where automatic majorities passed condemnation after condemnation, the instrument of censoring lost much of its bite. First the Great Powers and then increasingly also other industrial states refused to participate in these 'politicized' spectacles.

But the narrative of continuity and change on the basis of lessons learned hides some of the discontinuities and innovations that characterized this second episode of the first move. It also concerns the story of one 'lesson' whose organizational implementation had no forerunner or precedent, namely, 'multilateralism' as a new organizational form. These multilateral institutions proved surprisingly resilient in

<sup>42</sup> See, for example, Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981).



the post-war era, even though fundamental changes had undermined many of its foundations and the various *ad hoc* adjustments for meeting the emergencies seemed hardly promising. In short, this second episode of the first move concerns the institutionalization of the world economic system on the basis of shared understandings. John Ruggie has called this compromise between liberalism's laissez-faire prescriptions and the policy commitment to full employment, 'embedded liberalism'.

The multilateral institutions based on this compromise provided a solution for several problems which deep-seated changes in the nature politics, of economics and society, had thrust upon decision-makers in the inter-war period and for which the conventional wisdoms and ideologies had no answers. Accustomed to separating neatly politics and the economy and defining the role of the state as a guarantor for functioning markets, liberalism had in the Great Transformation<sup>43</sup> of the nineteenth century succeeded in dismantling most of the laws and privileges that stood in the way of an efficient allocation of resources. The establishment of a labour market, of arms-length free trade and of the 'private' gold standard set the parameters for economic activity. Even if not fully realized, the fundamental social and economic changes of this Great Transformation affected the architecture of both internal and external politics. Internally, social dislocations together with the slow but increasing emancipation of the working class created incentives to organize in to order counteract the deleterious effects of unrestrained laissez-faire. Externally, imperialism could be seen as a response to both economic crises and fears that the existing economic arrangements of free trade might be too fragile to ensure access (quite aside from the empirically dubious arguments of the higher returns on investment that Hilferding and Lenin invoked).

One point, however, was pretty clear to all decision-makers who were engaged in World War I. Because of the impossibility of adjusting the classical European balance by traditional means, the classical nostrums for reviving the European balance were no longer available. Territorial concessions were, if not directly unavailable, nevertheless costly. Because of nationalism no self-respecting government could conceive of the 'treason' of transferring part of its territory in the same way as the sovereigns of the *ancien regime* had done without many qualms. Furthermore, the fact that power increasingly depended more on industrial capacity than territory made the task of balancing even harder, since one had to control the *economic growth* and *innovative capacity* of one's competitors. Only under the condition that key economic areas were adjacent to one's own territory could one even consider territorial incorporation. Furthermore, it became clear to all chancelleries that a dynamic economy required far greater territorial units than even the largest European nation states provided. Finally, the tremendous costs of the war made the vision of a return to normalcy afterwards all the more unlikely the longer the hostilities continued. Consequently, when the war was not over as expected within a few weeks or months, most Foreign offices engaged in speculations on how this quandary could be resolved in a post-war settlement.

In Germany, the Chancellor, Bethman Hollweg, had already written on Sept. 9th 1914 a memorandum addressing this issue. The document has been quoted by Fritz

<sup>43</sup> For a comprehensive treatment of this issue, see Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1957).

Fischer<sup>44</sup> as proof of the imperialist design of the German government and has been dubbed the '*Septemberprogramm*'. According to Fischer, Germany adhered to these war goals until the end of the war. Although the programme considered some territorial annexations in France and Belgium, newer historical research<sup>45</sup> has cast doubt on Fischer's main theses, i.e. that this programme represented a masterplan (it was rather an occasional piece that might have been written in order to preempt the Kaiser's enthusiasm for much larger annexations in Poland, Flanders, northern France and the Baltic region), and that Germany was determined to pursue these options throughout the war. Rather, historians such as Georges Henri Soutou maintain that the actual aim of this document was the idea of a customs union which was to guarantee German economic recovery and strength after the war.<sup>46</sup>

In France, Etienne Clementel, the minister for industry and commerce, engaged in similar planning exercises in 1915. His proposal provided, aside from the return of Alsace-Lorraine to France, a regime of control over the Saar area and Luxembourg and a Customs Union with Belgium and Italy in order to cement France's economic hold on Western Europe. Encouraged by the Czar, who predicted the collapse and disintegration of the Reich,<sup>47</sup> the French position became increasingly punitive as the war went on.

In Britain, discussions about economic security took longer to shape up,<sup>48</sup> as here the conflicts between the goal of economic security through control and discrimination of Germany, and the aim of re-establishing British commercial and financial preponderance, became painfully obvious. After all, the latter goal depended on the revival of intra-European trade and the maintenance of a liberal economic order. Only the Inter-allied Conference on economic relations of June 1916 resolved this conflict in favour of economic security, since close economic cooperation among the Entente was linked to the continuation of discriminatory measures against Germany after the war. In April of 1917 the Imperial War Committee 'having due regard to the interest of our Allies' pleaded for the introduction of an imperial preference system and thus laid the foundation for transforming the Empire into an economic bloc.

When in 1918 London finally accepted that a revival of the British economy should be financed by reparations from Germany, the idea of a European economic reconstruction and the return to a liberal trading order were doomed. The rest of the story is well known. For a while, the informal recycling scheme let Germany pay its reparations with US loans, so that Great Britain and France could pay their debts to the US. But failure to pay reparations led to the occupation of the Rhineland, thereby creating new scores, as the pursuit of security had entirely subverted the liberal idea that the economy was a self-regulating system of private exchanges. Besides, the structural issue of how a general recovery could be achieved was never faced up to. On the one hand much depended on reparations extracted from the

<sup>44</sup> Fritz Fischer, *Griff nach der Weltmacht: Die Kriegszielpolitik des Kaiserlichen Deutschlands 1914–1918* (Düsseldorf: Droste, 1961).

<sup>45</sup> See, for example, Georges Henri Soutou, *L'Or et le Sang. Les Buts de Guerre Economiques et la Première Guerre Mondiale* (Paris: Fayard, 1989).

<sup>46</sup> Georges Henri Soutou, 'Die Kriegsziele des Deutschen Reiches', in Wolfgang Michalka (ed.), *Der Erste Weltkrieg. Wirkung, Wahrnehmung, Analyse* (Munich: Piper, 1994), pp. 28–53.

<sup>47</sup> Horst Günther Linke, 'Rußlands Weg in den Ersten Weltkrieg' und seine Kriegsziele 1914–18', in Wolfgang Michalka (ed.), *Der Erste Weltkrieg*, pp. 54–94.

<sup>48</sup> See Matthias Peter, 'Britische Kriegsziele und Friedensvorstellungen', *ibid.*, pp. 95–124.

vanquished, but economic security also made discrimination against that very country necessary, jeopardizing Germany's capacity to earn the sums necessary to meet the bill. The crash of 1929 ended all illusions. The radical delinking from the world economy and the erection of economic blocs were the result. The Schachtian system of bilateral economic relations based on barter and non-convertible currencies was one (exploitative) answer to the economic crisis, as was the Imperial Preference tariff. Beggar-thy-neighbour policies were designed to place the burdens of unemployment on others, as states scrambled to find solutions for the realization of the new state goal: full employment.

Only during the post-Second World War planning phase did the US decision-makers hit upon a solution that allowed for both the welfare state and a liberal international economic order. Through the organizational implements of 'multilateralism', structures were created that established not only the compatibility between international and domestic political structures,<sup>49</sup> but could also solve the problem of externalities which otherwise result from unilateral actions. International supervisory institutions like the IMF and GATT (after the demise of the plans for an international trade organization) were charged with providing and maintaining the non-discriminatory liberal regimes. Instead of blocs, convertible currencies and non-discrimination provided for the integration of losers and winners alike. Economies flowing from complementary endowments in resources were also utilized through the encouragement of the integration (rather than unilateral control) of entire sectors of the economy for which, e.g., the High Authority of the European Coal and Steel Community was given special powers. Loans and grants rather than reparations provided the initial capital for putting Europe back on the track of recovery. In an ironic twist 'security' was again identified with economic prosperity (until Korea, when notions of security again became militarized), although the measures adopted here were not those of control by a victor. In Kennan's original analysis and in the rationale of the Marshall Plan the threat to a peaceful world emanated less from the military threat of a Soviet invasion than from the likelihood of internal political disorder caused by the inability to initiate a rapid recovery. Consequently, economic rather than military means were considered the appropriate measure for meeting this threat.<sup>50</sup>

It is not possible to provide a comprehensive historical account of the 'peaceful change' that these organizations allowed and that led rather quickly to unprecedented prosperity. For our purposes it is sufficient to point out that the system functioned perhaps as much by fortuitous circumstance as by design. There was above all a structural problem in the world monetary system that could not be resolved. As the economist Triffin had already demonstrated in the 1950s, the dilemma consisted in the fact that sufficient liquidity was only provided when the US consistently ran deficits and engaged in expansionary monetary policies. But such a strategy eventually had to transmit inflationary pressures to the entire system thereby upsetting the balance of rights and duties among the members for structural

<sup>49</sup> On the link between the regulatory state structures emerging from the 'New Deal' and the organizations of the Bretton Woods system, see Ann Marie Burley, 'Regulating the World: Multilateralism, International Law and the Projection of the New Deal Regulatory State', in John Ruggie (ed.), *Multilateralism Matters*, ch. 4.

<sup>50</sup> On this point, see my 'The Embarrassment of Changes: Realism as a the "science" of *Reapolitik* without Politics', *Review of International Studies*, 19 (1993), pp. 1-18.

adjustment. The inability of creating a new consensus for this problem came to a head with the closing of the 'gold window'. The failure to re-establish a viable new regulatory regime ushered in not only the era of floating exchange rates, it also prepared the way for the integration of the world's financial markets. Capital controls—seen by Keynes as an absolute must in order to preserve free trade on the one hand but shelter the governments from the dangers of speculative flows on the other hand—no longer worked and were successively abandoned by virtually all states. To that extent the eroding consensus on the respective rights and duties of states for adjustment, the lack of effectiveness of the old policy prescriptions, the increasing disembeddedness of the world economy have engendered a crisis in our understanding and in designing new institutions that would facilitate peaceful change.

### **The 'second move' to institutions: liberalization**

On the surface the dominant theme of the narrative of the demise of the Cold War is that of the success of liberalism in its philosophical, economic, and political dimensions. Not only has liberalism succeeded in making human rights a matter of universal concern, the United States has 'won' the Cold War, and even the former opponents are busy designing constitutions modelled on those of the Western liberal states. Internationally, the UN is no longer blocked from taking actions, and the defeat of aggressors as well as various peace-keeping operations promise, if not a new world order, at least a new vigour in the attempts by international institutions to prevent conflicts from escalating. Finally, the call for a New International Economic Order has ceased, and many of its former advocates are following the advice of monetarists by dismantling the structures credited with having inhibited economic growth in the past.

True, a few years after the 'end of history'<sup>51</sup> many of these claims seem somewhat hollow. The ugliness of civil war in Bosnia, the horrors of genocidal massacres in Rwanda, and the abject misery and poverty that have engulfed many states of the former Soviet empire provide sufficient doubt about the appropriateness of such a narrative. Nevertheless, doubts can be assuaged. Is the American economy not booming, contrary to all expectations? Is the expansion of NATO not a step in the direction of giving the notion of democratic peace some institutional underpinnings? And could not the growth of human rights movements and the expansion of non-governmental organizational networks be ushering in a new, and for the first time, truly global civil society?

These are indeed important developments, but I have serious doubts whether all, or even most, of the conclusions follow. After all, an equally plausible counter narrative would draw attention to the following questions. What happened to the hopes for a new world order and future Great Power cooperation? Where is the optimism now about the prospects for Russia being able to redefine its role in a stable—has it foundered in the face of economic collapse and national humiliation? Are we not ruining NATO by expansion and are we not bringing about the very threat we allegedly want to deter by moving the defensive glacis farther East? Have

<sup>51</sup> See, for example, Francis Fukuyama, *The End of History and the Last Man* (London: Penguin, 1992).

the experiences of Rwanda and Bosnia not shown the limits of the old recipes of peace-keeping? Are the operations of peacemaking that require different techniques and potentially open-ended commitments politically and financially feasible, especially if such commitments further proliferate? Is the speculation of the emergence of a global civil society based on human rights committing a similar mistake to that of legalism after World War I, in that one is led to believe that laws and norms can create new structures by simply following the logic of the law? Is the success of the American economy bringing benefits to all, or will the impact of declining real wages and the increasing income gap ruin the middle class and thus one of the foundations for a liberal democratic order?

These are indeed troubling questions, and the fact that we cannot answer them in a straightforward fashion does not augur well for our grasp of the problems involved. There is indeed ample reason to move away from the original triumphalism and to focus first of all on the development of better analytical tools for assessing our predicament. Indeed, similar to the situation eighty years ago, we are again facing a crisis of momentous proportions. While I cannot, of course, provide ready-made solutions, I want to cast some doubts upon the generative themes of the narrative of 'liberalization'. It seems to misinterpret the events and provide faulty guidance for the design of the institutions in this second move. In particular, I want to call into question the proposition that the changes brought about by globalization are either insignificant and thus do not challenge our institutional structures, or of a 'liberal' nature and thus are necessarily compatible with, or even enhancing, our liberal *democratic* institutions. Furthermore, while I do not believe that these changes can be interpreted as the ascendancy of the 'market' over the state, the increasing disembeddedness of economic processes from its political and social moorings creates distinct dangers for our domestic and international order.

That increasing interdependencies can have significant impact on the state and its capacity to govern has been grist to the mill of international relations scholars, economists and futurologist alike. Thus one of the first questions concerns whether or not interdependence has increased or not. To that extent the view, whether propagated by Kenneth Waltz<sup>52</sup> or by Milton Friedman,<sup>53</sup> that levels of interdependence characteristic of today's economy were not unknown in previous eras, seems to suggest that there is nothing new under the sun; and that both the political system and the market can continue to work in the same way as before, only perhaps a bit more efficiently. The usual empirical support for such a proposition relies on comparing the size of the external sector of the economy as measured by the percentage of GNP. But such an analysis fails to take into account the changing structure of trade. While it was formerly arms-length trade in products, most of today's trade is intra-firm trade. The fundamental change in the structure of production makes it difficult to decide what an 'American' automobile is nowadays, as its component parts come from all corners of the world. But this observation also implies that trade occurs now in the form of exchanges among *administrative hierarchies* rather than external markets.

<sup>52</sup> See Kenneth Waltz, 'The Myth of National Interdependence', in Charles Kindleberger (ed.), *The International Corporation* (Cambridge, MA: MIT Press, 1970).

<sup>53</sup> Milton Friedman, 'The world is less internationalized in any immediate, relevant pertinent sense today than it was in 1913, or in 1929', in Milton Friedman, 'Internationalization of the US Economy', *Fraser Forum*, Feb. 1989, p. 8, as quoted in John Ruggie, *Winning the Peace*, p. 145.

It is already clear that historical analogies to previous periods of interdependence are rather problematic, and that increases in trade do not follow the liberal paradigm of decentralized exchange with all the virtues imputed to it. Indeed, the strongly ideological character of many policy prescriptions becomes visible when we realize that they are based on the notion that we are still dealing here with arms-length exchanges to be safeguarded from the interference of either national or international agencies. Here, legalism is experiencing a new revival. Unlike the advocates of the 'first' move who had learned from the failures of the inter-war period and attempted to supplement national regulatory agencies with strong international regimes and dispute-settling mechanisms, many proponents of privatization and liberalization today consider a policy only advisable if it rigorously eliminates restrictions to production and trade.<sup>54</sup> To that extent, shoring up the tottering regulatory state, or reproducing it on the international level through new international regimes, is like trying to drive a care whilst looking through the rear-view mirror. Whereas the 'first move' was animated by welfare concerns and the prophetic vision of 'forging swords into ploughshares' the 'second move' when viewed through the lenses of experts in trade law seems to be inspired by little more than the notion that ploughshares have to be forged into resumes, so that the service economy can be run properly by experts who will restore its competitiveness.

The above discussion should have driven home the fact that the reality of modern trade is no longer that of arms-length exchange or that of an exchange between countries with different factor endowments. The international division of labour and the benefits of trade that accrued originally to 'countries' are now internalized at the level of the firm. This observation has several corollaries. First, it suggests that purely national firms will experience a decrease in the margins of classical comparative advantage when compared to multinationally organized firms. Second, multinational firms, because of their organizational form, can move either through the actual transfer of production, or through bookkeeping operations, the location where value is added and taxes are assessed. Third, since the gains from trade no longer accrue to the country as such, especially not to the immobile factors of production such as labour (with the exception of highly skilled and mobile managers), firms become serious contenders in the international arena. Furthermore, these considerations explain: the boom of the stock market (as profits rise), the increasing concentration of industries and the formation of strategic alliances; the decline of real wages in most industrial countries; the growing wage differentials particularly in the upper brackets since there no meaningful market exists; finally it explains the lack of significant 'trickle down effects' of the boom, and the increasing difficulties of states to act as redistributive agencies and provide for social welfare.

From that it should also be clear that such a trend cannot be described as 'liberalization' in any meaningful way, since it leads inevitably to concentration (a situation which classical economic analysis considered detrimental to welfare). Even if newer models suggest that, contrary to classical analyses, competition might not cease even in oligopolistic markets and thus prices might actually decline when firms collaborate on research and product development, there remains a certain uneasiness with such arguments. It does not take much reflection to see that these developments

<sup>54</sup> For a general discussion of this point, see the critical review of some standard textbooks on international trade law by David Kennedy, 'International Style in Postwar Law and Policy', *Utah Law Review* (no volume) (1994), pp. 7-103.

are potentially dangerous, as fewer and fewer people benefit from both the boom and the lower prices. Therefore, visceral reactions from the great majority who feel that they are the losers of this globalization trend are rather likely. The disembedding of the economy puts economic market liberalism squarely at odds with another part of liberalism: democratic theory and its notions of distributive justice.

The predicament is not helped by the fact that this fundamental transformation cannot be understood simply as the ascendancy of the economy over the state and that the realization of the anarchist ideal of the possibilities of private ordering is around the corner. Consequently, one has to question the implication that politics will become less important, as networks will become the dominant organizational form in the future. It is certainly true that changes in production increasingly depend on access to capital and 'know-how', embodied in transnational networks. But the conclusion therefore that states as territorial organizations have ceased to be important does not follow for two interdependent reasons, one legal, the other political. The legal argument turns on the issue of property rights, which makes the image of a purely 'private ordering' rather problematic *ab initio*. As Peter Evans recently remarked:

If an economically stateless world could deliver in practice a global equilibrium that met the needs of TNCs, then eclipse (of the state) might indeed be in the offing. In fact, transnational investors trying to integrate operations across a shifting variety of national context need competent predictable public sector counterparts even more than do old-fashioned domestic investors who can concentrate their time and energy on building relations with a particular individual apparatus.<sup>55</sup>

Thus oddly enough the process of globalization requires the state, and a 'strong' state at that, and, by extension, also international regulatory regimes and dispute-settling mechanisms of considerable bite. The importance of secure property rights is even further enhanced by the emergence of a service economy where increasingly ideas and skills, not tangible products, are traded. Since the cost of production of ideas is practically zero, the 'franchising' of ideas is not subject to decreasing returns (other than fashions, or changes of taste) so that profits increase continuously with the size of the market. To that extent the limits result not from marginal costs in production but in the duration and scope of the patents, or the generally recognized intellectual property rights. Thus, the role of the state as guarantor of rights is more important than ever before. It is not the state *per se* that has not lost its rationale, rather its *functions* have been dramatically changed by the developments that we lump together under the heading of globalization.<sup>56</sup>

The picture of globalization as a process of homogenization, leading towards technocratic forms of rule in the economic as well as the political realm is rather superficial. First, as several studies have indicated, politics still matters and domestic institutions channel liberalization in quite different ways.<sup>57</sup> Even global

<sup>55</sup> Peter Evans, 'The Eclipse of the State? Reflections on Stateness in an Era of Globalization', *World Politics*, 50 (Oct. 1997), pp. 62–87.

<sup>56</sup> For a good discussion of this point, see Philip Cerny, 'Globalization and the Changing Logic of Collective Action', *International Organization*, 49 (Autumn 1995), pp. 595–626. See also his *The Changing Architecture of Politics* (London: Sage 1990).

<sup>57</sup> See, for example, Louis Pauly, *Opening Financial Markets: Banking Politics on the Pacific Rim* (Ithaca, NY: Cornell University Press, 1988).

firms differ significantly in their make-up,<sup>58</sup> as there does not seem to exist only one way of tackling problems. Thus, organizational structures which have been sedimented by past decisions continue to exert considerable influence. Second, quite different from the philosophical argument that we are part of just another episode of the relentless historical process leading to ever more inclusive forms of political organization, the spread of 'universalism' is strongly counteracted by the equally strong assertion of particularities. Precisely because the 'packed imagery of the visionary global culture is either trivial or shallow, a matter of mass commodity advertisement',<sup>59</sup> the norm of self-determination has served as a powerful tool for groups which seek to assert their independence in order to preserve their identity. To that extent we had better remember that the state as a political community is also a *membership organization* and the issue of belonging addresses more than some irrational needs.

Conceiving of a community as something which 'unites' all its citizens is important precisely because it provides the means of ascribing responsibilities and of indicating the levers for political action. Thus, persons who are excluded from influence, because they cannot participate in networks or markets owing to their lack of resources, are still part of the 'public' to which decision-makers and bureaucrats have to answer. In other words, the point is not so much that functioning markets and networks need regulators, although this is certainly a problem when national regulations can be avoided and equivalent international institutions are not in place, as the debt crisis showed. The point is rather to whom do these regulators have to answer? Is it only shareholders, inventors and marketing agencies which have acquired intellectual property, or is it the public at large? But which public, since networks are characterized by the disappearance of publics?

In short, what is missing in debates about strong vs. weak states, the ascendancy of the market over the state, and so on is *politics* plain and simple. By identifying it—different from realists who saw politics as potential violence—with government and governmental structures, the advocates of the strong state submit to the illusion of a neo-Weberian vision of bureaucratic efficiency and rationality. But, as we all know, politics is different: it is not only about dilemmas (rather than about simple administrative measures); it is also about representative choices and their legitimization; in modern times it is about gaining the consent of the governed. Precisely because the present transformations deeply affect our accustomed ways of dealing with problems, rules that affect our way of life need to be buttressed by a broad-based consensus. Administrative rationality is insufficient to deal with those problems, as has been demonstrated by Ulrich Beck.<sup>60</sup> Starting from the traditional notion of risk, Beck shows that such notions cannot guide us in dealing with modern risks. The uninsurability of an increasing number of problems suggests this much. Years ago, Habermas pointed to the legitimization crisis of the modern state<sup>61</sup> in which administrative procedures—a modern version of applied legalism, in which not judges but administrators play now the main role—overwhelm efforts at building political consensus. These pressures have increased and it is cold comfort to know

<sup>58</sup> Louis Pauly and Simon Reich 'Enduring MNC Differences Despite Globalization', *International Organization*, 51 (Winter 1997), pp. 1–30.

<sup>59</sup> Anthony Smith, *Nations and Nationalism in a Global Era* (Cambridge: Polity Press, 1995), p. 23.

<sup>60</sup> Ulrich Beck, *Risikogesellschaft: Auf dem Weg in eine andere Moderne* (Frankfurt: Suhrkamp, 1986).

<sup>61</sup> See Jürgen Habermas, *Legitimationsprobleme im Spätkapitalismus* (Frankfurt: Suhrkamp 1973).



that networks and strong bureaucracies will continue to be part of our social reality as we face the 'second move'.

This argument certainly does not imply that nothing has changed in the international arena, or that the states with which we are familiar will persist. Rather it raises precisely the question of the basis of which criteria the 'units' of the system are going to be differentiated and what organizational forms between hierarchy and anarchy will develop and interact in the future. That politics will increasingly revolve around membership questions is suggested by the brief discussion above. To that extent we should perhaps ponder more carefully Benedict Anderson's astute observation, made long before the end of the Soviet Union, that there is in nearly every country a tomb of the unknown soldier, but none of the unknown Marxist.<sup>62</sup> The obliviousness of a discipline, which on the one hand calls itself 'international' relations or 'international' politics, but, on the other hand, fails to theorize the 'national' in its definition, is indeed more than surprising.<sup>63</sup> Such failures are not minor glitches but threaten the adequacy of our conceptual approaches. There is apparently some force to nationalist ideology that other ideologies have difficulty in matching, even though it might have nothing to do with primordialism, but might be a response to the changes of modernity. After the death of God—the traditional guarantor of order—'the people' remain the only source of legitimacy. By joining pre-modern ties and sentiments, characteristic of traditional ethnic communities, with modern ideas of popular sovereignty, nationalism provided a partial answer to the crisis of meaning engendered by modernity.

To that extent, notions of a world society and of the victory of universalism against the assertions of more particular identities seem rather anaemic, as are the strangely technocratic visions of 'private ordering', or of networks that displace the common space that a political order is able to create. Perhaps this is the warning that Carr tried to impart to us when he criticized utopian schemes while insisting that every conception of politics must have a utopian element. Since politics is about *projects* which are never complete and which constantly move between the is and the ought, its analysis cannot be reduced to the logic of law, to the structural constraints of the international system, to the economy of force, or to a historical trend. Those who had contributed to the institution-building of the 'first move' failed in a way because of their inadequate understanding. Their failure was costly, even though it made the success of the second episode of the 'first move' possible. But even those lessons seem of limited use to us who are now faced by the problems of a 'second move'.

## Conclusion

This article had several purposes. Occasioned by an anniversary of the birth of the discipline, as seen through the prism of Carr's *The Twenty Years' Crisis*, it began by putting Carr's work into perspective. It did so by a fresh reading that was not

<sup>62</sup> Benedict Anderson, *Imagined Communities* (London: Verso, 1983), p. 10.

<sup>63</sup> See the critical discussion of this point by Yosef Lapid, Friedrich Kratochwil, 'Revisiting the "National": Toward an Identity Agenda in Neorealism', in Yosef Lapid and Friedrich Kratochwil (eds.), *The Return of Culture and Identity in IR Theory* (Boulder, Co.: Lynne Rienner, 1996), ch. 6.

encumbered by the 'realist' tradition which had tried to appropriate it. By focusing on the principles of construction that underlaid Carr's analysis I wanted to show that his work is much richer than subsequent interpretations suggested, and that it actually contradicts the dominant realist interpretation on several important dimensions.

A second task was to subject this analysis to criticism and show its possibilities and limitations for an understanding of our contemporary problems of order in the domestic as well as international arena. The disciplinary boundaries between 'politics' and 'law', as they emerged from the discussions generated by Carr, were examined in order to show not only the implausibility of their respective concepts of law and politics but also the mutual dependence on each other. The analysis of legalism, exemplified by the theories of law of Kelsen and Hart on the one hand, and of realism, rooted in a Schmittian conception of politics, on the other, were intended to bear out my contentions.

Finally, in order to assess the contribution of norms to the problem of peaceful change, one of the main themes in Carr's book, I examined the efforts of institutionalization during the last 80 years. For that purpose I utilized the notion of a 'move'. This analytical gambit was introduced by David Kennedy, who focused on the constitutive principles of our conventional narratives concerning the Versailles settlement and the creation of formal organizations. But where my analysis differs from Kennedy's is that I examined not only the legal narratives of the settlement but also that of the lessons learned in the inter-war period which served as the basis for the UN and the Bretton Woods System in the aftermath of World War II.

By showing the continuity (despite some decisive innovations) that made these two episodes part of one move, I then contrasted it with the crisis in our present understanding. This crisis is occasioned by the growing interdependencies that have since the late 70s called into question the appropriateness of most of our conceptual tools for the analysis of change in the international arena. By undermining the effectiveness of traditional international organizations that were designed for the abatement of the externalities flowing from the domestic order problems of the welfare state, the present situation is characterized by a crisis comparable to that which occasioned Carr's reflections. I argued that this problem can be described in terms of a 'second' move and utilized again the method of deconstructing the narratives of liberalization that has as its two underlying themes: the triumphalism of the 'end of history' and the argument about the inevitability of new forms of organizations that are going to overwhelm our traditional forms of organizing political life.

By showing the problematic character of both the 'end of history' argument and characterizing the secular change we are witnessing as moves towards liberalization, I brought to bear some of the insights of modern economic thought that takes the question of organization seriously. In this context I showed that the interpretation of the ascendancy of the market over the state is unconvincing, although such a reading does identify some important changes in the architecture of politics. Finally, having argued that the changes can remain peaceful if they are channelled by new strong domestic and international institutions, I nevertheless criticized the dominant strong state argument and its underlying neo-Weberian emphasis on administrative rationality. Instead, I argued that the problems of modern societies cannot be addressed by traditional modes of administrative decision making and that ques-

tions of consensus and legitimacy, as well as responsibility to a 'public', have not ceased to be political problems of the first order. I argued, therefore, that membership questions are going to regain new virulence, as the revival of nationalism also seems to indicate. Thus, the challenge of the 'second move' consists in building not only networks, but *political institutions* that can manage the present dislocations and channel them into avenues of peaceful change.