INTERNATIONAL SOCIETY, LAW AND ORDER

Exam Strategies: Have your definitions straight! Focus forensically on the question and combine theoretical depth with empirical breadth. Relate your arguments with contemporary international issues! (e.g. on international law: Trump withdrawal from international treaties, on international society: move toward solidarist ideal)

My own position: *On international law: Though it is true that there is no judiciary on the international level like there is in the domestic arena, this does not mean that international law has no bite or is not upheld. Currency of international law is legitimacy: Countries want to be seen as legitimate and hence choose to follow IL, otherwise they might be shunned by other countries. IL matters fundamentally because it gives states a common ground, normative guidelines to operate in. Tells us what is "good" and what is "bad" behaviour.*

On international society: The world is shifting more toward a solidarist ideal (move to human security, globalization), and this is desirable, but that it might not be followed by all states – some will continue to uphold a pluralist ideal. So there are push and pull factors influencing this development.

The international society approach can explain why IL exists, and why states obey it – states still share a common interest in developing a common set of rules and norms, and this makes up IL. But how encompassing IL turns out to be is predicted differently between pluralists and solidarists. I would argue that the solidarist conception is more compelling and comprehensive, given that we have observed shifts in norms (move toward human security) that are not predicted by pluralists.

DEFINITIONS AND CLARIFICATIONS

〉 What is the English School (ES) about?
> > Maintains that there is a '***society of states'* at the international level**, despite the condition of anarchy. A political framework is provided by an international society of states containing norms of law and justice – this creates a form of **order in world politics** (Bull 1977).
> > Deviates from realism in that it stands for the conviction that ideas, rather than simply material capabilities shape the conduct of international politics.

〉 How is 'order' characterized?
> > As "*a pattern that leads to a particular result, an arrangement of social life such that it promotes certain goals or values* "(Hurrell 2007)
> > ▪ This framework sees order both as a **fact** – a regular pattern that is contrasted to chaos – but also as a **value**, namely a purposive pattern aiming at some outcome

〉 What is the **pluralist idea of sovereign states**?
> > Understands the political constitution of world politics by thinking primarily in terms of a **world made up of separate, sovereign states** which are linked through political practices and institutionalized structures (Hurrell 2007). It seems to still be the dominant idea of international society at present, though there have been advances to more solidarist ideals.
> > Pluralist conception of international law and society was to be constructed around the mutual recognition of sovereignty and aimed at creation of certain minimalist rules, understandings, and institutions designed to limit inevitable conflict. (Hurrell in Byers 2001)

〉 What are norms?
> > They are an **agreed set of common principles**. They have a compliance pull, as they are seen as a self-set "standard" in the international community.

⟩ What is international law?

 > A **collection of norms, rules and procedures** that governs the interactions between states and derives its authority from their consent.

⟩ ASIDE: How does the disciplines of IR track the nature and practices of actual international relations? Acharya and Buzan (2019) say that, though it is oversimplifying, it is still broadly true that "***contemporary mainstream IR theory is not much more than an abstraction of Western history interwoven with Western political theory.***"

 > Realism is an abstraction from 18th century European balance-of-power behaviour combined with 16th, 17th century and indeed ancient Greek political theory

 > Liberalism is an abstraction from 19th and 20th century Western intergovernmental organisations and theories of political economy

 > English School is an abstraction from 19th century European diplomatic behaviour and a long European tradition of legal theory resting on the assumption that all law, including international law, presupposes the existence of a society.

 > Constructivism is drawn from Western philosophy of knowledge.

WHAT TO MAKE OUT OF ANARCHY?

⟩ What do different theoretical lenses say about anarchy?

 > **Neo-realism**: Anarchical international system will be reproduced indefinitely, competition and conflict will remain endemic in the relations between sovereign states – especially in exchanges between great powers (Waltz 1990).

   ▪ Because states may at any time use force, all states must be prepared to do so

   ▪ Balance of power theory predicts that as one state is rising and gaining more power, other states will try to balance it. They do not try to maximize power, but rather just to build their power to match the power of the strongest states. "*Hegemony leads to balance*"

     • But there can also be ***complex balancing***, which is indirect balancing in bilateral or triangular relations, combined with a more ambitious aim of forging a regionwide balance of influence among the major powers (Goh 2008) – this is a strategy that can explain balance of power in the **South East Asia region.**

 > **Liberalism**: Says that formally there is anarchy, but this is balanced by shared norms, interests and institutions. Realists overstate the barriers to international collective action and cooperation.

 > **English School**: *See below for details*. Accept the realist assumption of an anarchical system, but lays emphasis on the potential for states to cooperate and establish common sets of norms and rules.

 > **Critical Approaches and Constructivism:** Reconstruct the modern state and the international states-system to permit the development of higher levels of universality (Linklater 1998).

   ▪ Anarchy is not inherent in the international system but rather a construct of the states in the system – it is "*what states make of it*" (Wendt 1992). **Self-help and power politics do not follow logically or causally from anarchy**. If we today find ourselves in a self-help world, then this is due to process but not due to structure.

   ▪ Structural arrangements, such as anarchy, are products of the shared meanings actors attach to their interactions and the wide world (Nexon 2009). Structures appear to actors "as if" they are objective features of their environment, but really just represent relative stabilities in the patterns of interactions among agents.

ON ORDER

⟩ An "order" framework can consist of two dimensions (Goh 2008)

 > **Processes** that regulate interstate relations and expectations toward common goals

 > **Outcomes** in terms of systemic attributes, particularly the distribution of power

⟩ Watts 2001: "*Power carries responsibility, and even the short-sighted must see that the alternative to the rule of law is anarchy and disorder, even chaos. Except possible in a short-term revolutionary context, the interests of no state can prosper in such circumstances*"
  > **Strong states still need law and institutions to share burdens** – doing everything via coercion would be too costly.
  > Additionally, increasing complexity of collective action problems (e.g. climate change) make institutions unavoidable in order to coordinate multilateral actions.

⟩ Keene (2002) argues that there have always been **two patterns of modern international order: Intra-European and beyond European borders**
  > One is the pattern that developed in the European states-system, through relations between European rulers and nations. The second one developed in the **colonial and imperial systems *beyond* Europe**. Whilst the main purpose of the former (the European order) was to promote the toleration of ethnic, cultural and political differences, the latter (the extra-European order) was dedicated to **transform "uncivilized" cultures and social, economic and political systems**.
    ▪ Bull's work can be criticized for only concentrating on the European order, thereby underestimating this dualistic nature of order in world politics.
  > This can be linked with Bowden's (2009) idea that a **concerted effort has been made**, and continues to be undertaken, **to impose a particular ideological rationale on the passage of history**. Dominant architects of international society continue to be influenced by a "*faith in the Enlightenment ideal of progress and humankind's universal linear march toward modernity*" – which is universally liberal democratic, market capitalist and cosmopolitan in appearance.
    ▪ Some of the driving forces behind this project are the **ideal of civilization and the idea of progress** (defined in terms of democracy?)

ON CHANGE AND TRANSFORMATION

⟩ **Structural realists** claim that anarchy inclines states to respond to shift in distributions of power either by developing their own capabilities (internal balancing) or by forming alliances to keep potential threats in check (external balancing) (Waltz 1979)
  > So over time, international systems will develop recurrent balances of power regardless of state-internal characteristics (e.g. regime type, governing ideologies)

⟩ **Constructivists** content that realists underestimate the role of transnational and sub-state actors in processes of international continuity and change. Realists cannot explain why things change, or why institutions persist even after their purpose has been eroded (e.g. NATO)
  > Keck and Sikkink (1998) stress the ability of "*non-traditional international actors to mobilize information strategically to help create new issues and categories and to persuade, pressure, and gain leverage over much more powerful organizations and governments*." What facilitates this ability are changes in communications, travel, economic globalization etc. which make "**transnational networks**" **effective sites of collective action**.

ENGLISH SCHOOL (ES)

⟩ Breaking down the English School into three relevant environments which co-exist:

  > **International System**: ES embodies the realist assumption that interactions of states are based on a systemic condition of anarchy.
    ▪ According to Bull (1995), an international system is formed "*when two or more states have sufficient contact between them, and have sufficient impact on one another's decisions to cause them to behave as part of a whole.*"

> **International Society**: States still share a certain common interest which leads to the development of a certain set of rules and norms:
  - International society exists when "… *a group of states which not merely form a system, in the sense that the behaviour of each is a necessary factor in the calculations of others, but also have established* **by dialogue and consent common rules and institutions for the conduct of their relations**, *and recognise their* **common interest** *in maintaining these arrangements*." (Bull and Watson 1984)
  - Bull: Any type of society needs to have rules about restraint on the use of force, about the sanctity of agreements and about property rights. **Without these elements, there would be no society.**

> **World Society**: Takes the global population as a whole as basis for a global identity – based on a Kantian understanding of the world. Emergence of identities and norms transcend the state-level and states are no longer the primary actors.

〉 Bull characterizes **five institutions of modern international society**:
  i. Balance of power – mechanism for countering hegemony
  ii. Great powers – ought to think of themselves as great responsible actors
  iii. War – fighting war on behalf of values of the international society
  iv. International law – "master" institution of international society, has a compelling power and is a **vehicle to push states into better behaviour**
  v. Diplomacy
  So from here we see that international society very well does offer an account of international law!!
〉 Some notes on Bull

One attractive feature of Bull's work is his **strong defence of the view that in certain respects, international relations are social relations**. He challenges the argument that, because the international system is anarchic, all states have to obey the brutal logic of *Realpolitik* – because that argument **underestimates the importance and frequency of cooperation and regulated intercourse among states** (Keene 2002)

INTERNATIONAL SOCIETY APPROACH

〉 Main point of IS approach is that IR should be understood as a "society" of sovereign states. It is to enter the "realm of human experience", which international politics is, and which has its own distinctive characteristics, problems and language (Wight 1991)
〉 **IS scholars are traditionalists**, in the sense that they do not see IR theory as a value neutral science in which models and hypotheses are applied and tested. Instead of applying positivist social science methodologies, they use human-focused, interpretive, normative and historical approaches (Jackson and Sorensen 2003)

PLURALISM VS. SOLIDARISM

〉 What are internal divisions within the International Society approach?

> **Pluralists** argue that diversity of humankind is best contained within a society that allows for the greatest possible independence for states. Rights and duties in the IS are conferred upon sovereign states, individuals have only the rights given to them by their own states.
  - Under a pluralist idea of the international order, the relevant question is not "How might human beings create forms of international society or schemes of cooperation?" but rather: "*How might states do each other the least possible harm and survive as species*?" (Hurrell 2007)
    - **Core goals are survival and coexistence**

> **Solidarists** argue that the society of states should do more to promote the causes of human rights, as opposed to the rights of states to political independence and non-intervention in internal affairs. So solidarism stresses the importance of individuals as the ultimate members of international society (Jackson and Sorensen 2003)
>> ▪ **Core idea: constant appeals to the existence of an 'international community'** capable of fulfilling a broader range of political and moral purposes (Hurrell 2007)

Hence, the tension between the two can be understood as presenting two distinct answers to the **question of whether state sovereignty or human rights should outweigh.**
Pluralism would say that principles of respect for sovereignty and non-intervention always come first. (*link to Humanitarian intervention topic*)

> How are pluralist views challenged by the more far-reaching solidarist conceptions of the legal order?
>> ▪ Four crucial dimensions:
>>> • **Content of norms**
>>> • Source of these norms: In solidarist conception, **process of norm creation is opened to a wider range of actors, both states and non-state groups**
>>> • Justification and evaluation of norms
>>> • Implementation of the norms: giving more "teeth" to the norms of this more ambitious society

⟩ It has been argued that there are **powerful constraints which prevent a transition from a pluralist to a solidarist society of states.** But radical encroachments on state sovereignty are possible within small pockets of international society, e.g. Western Europe. (Linklater 1998)
> Obj.: Hurrell (2007) argues that we are not dealing with a vanished Westphalian world, but rather with a **world in which solidarist and cosmopolitan conceptions of governance coexist, often rather unhappily, with many aspects of the old pluralist order.** He defends the pluralist understandings and practices. *"Together with the seriousness of value conflict, **global inequality** represents the other great obstacle to the achievement of legitimate forms of global political order."*
> Response: Majority of states may remain committed to pluralist principles, others may participate within solidarist arrangements, and small minority may embark upon collaborative projects which breach the sovereign principle (Linklater 1998)

⟩ There is a strong case that the English School belongs partly into realism, liberalism but also constructivism!

INTERNATIONAL LAW

⟩ **Working Def.**: Set of norms, rules and procedures that governs the interactions between sovereign states and other international actors and derives its authority from their consent, and which is thus generally accepted in relations between nations.
> Does not exist in one written document – rather, it is a collection of treaties, international organisation resolutions, judgments of international courts or even "customary practice" of states, developed over long periods of diplomatic relations (Franck 1990)
> No international organ is invested with legislative power unless states have specifically entrusted it with this role (De Brichambaut in Byers 2001). This goes to show that (groups of) states are still the primary actor in the creation of international law.
> Higgins (1994) suggests that international law aren't simply "rules" but that **it is a normative system itself.** All organized groups, which a society is, requires a normative system. The role of law is then to provide and operational system for securing desired values.

⟩ How does it **differ from domestic law?**
> Primarily (but not exclusively) **applicable to countries, rather than to individuals**

> **Operates largely through consent**, as there is no universally accepted authority to enforce it upon sovereign states, no international legislature.
>   - In the domestic area, courts and the executive have more coercive power. But states are equal and sovereign – thus, **international law operates in horizontal order, while domestic law operates vertically** (Higgins 1994)

> Sanctions of violating a law are "softer" in nature
>   - In the domestic area, one can disobey the law, but it will still hold with the same sanctions against violation (e.g. fines, prison sentence etc.).
>   - But in the international sphere, **norms rely on other states or international organisations to impose sanctions,** e.g. economic sanctions or "shunning" the perpetrator state. In an extreme case, the violation of a norm/law may make it more acceptable to break that rule in the future.
>   - Example: Trump pulling the US out of international treaties and agreements, like the Paris Agreement from 2015, INF Nuclear Treaty, or withdrawal of support for the WTO, with countries like Brazil wanting to follow.
>   But also, the US was shunned for the withdrawal from the Paris Agreement – because there is widespread support for greater climate action. And it has hence led to US leaders on state and community level to openly declare support for the norms of the Paris agreement.

〉 What is the scope of international law?
>   - It used to only apply to states. But it has enlarged its scope treating intergovernmental organizations and NGOS, minorities (including indigenous and tribal peoples) and individual human beings as subjects of international law (Nardin 2019)

SOURCES AND HISTORY OF INTERNATIONAL LAW

〉 **Sources** include (as per statute of the ICR, Art. 38 (1))
>   - International conventions (Treaty Law),
>   - International Custom (Customary Law),
>   - General Principles of law recognized by civilized nations (e.g. pacta sunt servanda),
>   - Judicial Decisions

〉 Who **contributes to International Law and works to strengthen it?**
>   - Primarily, it is states who, in their sovereign authority, consent to adhere to certain rules or decision-making processes.
>   - But international organizations also contribute to set norms and standards, as does **civil society**
>   - Example: Climate Action more or less a bottom-up movement which has broad popular support → led to **Paris Agreement** which contributes to International Environmental Law.

〉 **Security Council resolutions are** (only) **a source of rights and obligations, not a true legislative power**
>   - Example: SC passed resolutions in 1993 and 1993 creating two international criminal tribunals were created in order to prosecute individuals who were alleged to be responsible for grave violations of international humanitarian law in former Yugoslavia and Rwanda
>   - Thus, it created a subsidiary organ, which themselves apply existing law. But the SC itself did not create new law.
>   - SC plays a significant role in the international legal system – **but not so much as an original source of law, but as an organ in charge of implementing the law**, more precisely, the Charter of the UN (De Brichambaut in Byers 2001)

〉 Anghie (2004) examines the historical relationship between international law and the "Third World". Broad argument is that **colonialism was central to the constitution of international law** in that many of the basic

doctrines of international law – including the sovereignty doctrine – were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation.

> "*doctrinal and institutional developments in international law cannot be understood simply and always as logical elaborations of a stable, philosophically conceived sovereignty doctrine, as an outcome of the continuing attempt to create order among sovereign states. Rather, we might see **these doctrines and institutions as being generated by problems relating to colonial order**.*"

〉 Nardin (2019) argues that the international legal order from 1919 to 2019 has persisted ("a story of continuity in the midst of change" the organization of societies into separate states has proven **robust**.

WHAT MAKES INTERNATIONAL LAW BINDING? WHY DOES IT MATTER?

〉 **Legitimacy** is the currency in the international system (Franck 1990)
> It exercises a 'compliance pull' which draws members of the international community closer toward a lawful, ordered state.
    ▪ Why? If a rule is perceived as highly legitimate, then the chance that states violate this rule decreases. **States are more legitimate actors if they uphold such agreed upon rules in the international society.** The failure to do so comes at the expense of their legitimacy, too.
    ▪ Thus, "*powerful nations obey powerless rules*", because they perceive the rule and its institutional framework to have a high degree of legitimacy and the higher the degree of legitimacy, the higher the pull to compliance. **Legitimacy is a matter of degree.**

> **Analogy of a membership club**: International law is like the house rules of a membership club. Being a member of the club and enjoying benefits and privileges gives incentives to conform to the club's rules – as long as they are coherent, sensible and communicated clearly (Franck 1990)

〉 Can international law still be referred to as "law"?
> **Realist view**: Not really. Laws only enter the analytical framework to the extent that they enhance the capacity of states to protect themselves.
    ▪ Morgenthau, influenced by his experiences in the Weimar Republic (where the constitution was challenged from both the political right and left) had a very weak image of international law and regarded it as a mere "**moral illusion" that is unable to maintain the international order**.

> Liberal, or constructivist response: Even if international law differs significantly from domestic law, it does not mean that it does not exist, or that it does not have binding force.
    ▪ Empirical fact: That states, by and large, do keep agreements and treaties and adhere to international rules and norms. They even voluntarily decide to yield some of their sovereign power to supranational institutions, respecting their rules and norms. (Franck 1990)

〉 States recognize and reject the alternatives of disorder and instability, and acknowledge that **international law provides the only available framework for order and stability** (Watts in Byers 2001)
> Empirically, **states do keep their appointments and adhere to international rules of conduct** – so even if international law is not "law" in a strict sense, it does not deprive the international system of any normative foundation (Franck 1990)
> But the importance of international law is a function of its effectiveness and its ability to respond to change.
〉 **Legalization can be defined in terms of rule characteristics**, not effect, thereby moving us away from the definition that law needs to be enforced by a coercive sovereign (Abbot, Keohane et al. 2000)

International law contributes to the international order by identifying a common ground, a set of principles and a legal framework which we draw upon for evaluating international agents' actions.

⟩ This matters fundamentally, because it means that in virtue of its normative character, international law gives us guiding principles and rules which are **considered to be "good" or desired**. Conversely, it **tells us what acts are "bad" or immoral** and which should hence be prohibited and shunned – e.g. Geneva Conventions condemning genocide.

⟩ Classical view: "*Law codifies the basic rules of social coexistence and establishes a society of States as the basic organizing principle of world politics; it regulates international cooperation and places constraints on international conflict and it helps to (…) develop a shared normative discourse.*" (Hurrell in Byers 2001)

INTERNATIONAL LAW IN PRACTICE: TRADE LAW

⟩ Founding of the WTO in 1995 as the most important development in the history of international trade law. It regulates trade and is founded upon:
  > Principle of non-discrimination
  > Market access – reduction of tariff and non-tariff barriers to trade
  > Balancing trade liberalization and other societal interests
  > Harmonization of national regulation

⟩ If there are disagreements or conflicts about tariff and trade issues, there is the WTO's dispute settlement procedure.

CASE STUDIES WHERE INTERNATIONAL LAW SEEMINGLY HAS BITE/NO BITE

⟩ **1999 Pinochet Case**: Judicial Appeals Committee of the House of Lords judged that General Pinochet had no immunity for acts of torture allegedly committed while he was head of state in Chile during the 1970s and 1980s.
  > Arguably most important dates in contemporary history of international law – a "*public triumph of law over politics in the international arena*" (Byers 2001)

⟩ **1999 NATO intervention** in Former Yugoslavia
  > Considered a clear violation of the UN Charter which prohibits the use of force without SC mandate
  > So this goes to show that law is sometimes broken. It is not absolute, only one consideration amongst many for states to take into account.

INTERSECTION OF LAW AND POLITICS

⟩ Central question: Is law a constraint on the use of power to achieve desired ends or itself an instrument for achieving ends?

⟩ The authority which characterizes law exists not in a vacuum, but exactly where it intersects with power. **Law is the interlocking of authority with power**. Thus, law and politics are closely intertwined (Higgins 1994, Abbot, Keohane et al. 2000)

⟩ Legal rules and relations are important in so far as they **stabilize and legitimize the power of particular actors** (Hurrell in Byers 2001)
  > More than realists acknowledge, states need international law and institutions to share the material and political costs of protecting their (political) interests – crude power can never do this on its own.

⟩ Claim: International law is not simply a direct manifestation of the actual relations of social power (i.e. that dominant actors determine the international agenda. Even though international law is heavily influenced by patterns of power and hierarchies, international law can still provide a degree of empowerment and protection.
  > Example: WHO dispute settlement system provide relatively weak states with significant benefits. Stern: this represent a "*retreat of politics and an advancement of law*"

- Nevertheless, large and **powerful states have more options** – e.g. to shape the agenda of international law and to use coercive measures to support their own interests.
- But arguably, IL gives smaller states at least a chance to have a voice, and to be treated on the same grounds.

This only underpins the **importance of a commitment to legal processes and taming the unequal political order within which those processes are embedded**. (Hurrell in Byers 2001)

〉 We shouldn't be too quick in positing a clash between law on the one hand and crude politics on the other – e.g. in the debate over Western bombing in Serbia

> This case needs to be understood at least in part as clash between conflicting principles in which ideas of **humanitarian intervention** play a central role (Hurrell in Byers 2001)

MAIN AUTHORS

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