

The Constitution, De-Constitution, and Reconstitution of International Society

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COLIN CORDNER, JAN 5 2015

Underneath the frameworks of constructivism, of English School historicism, and of Weberian sociology, the four authors here under review share a common interest in enucleating the relationship between power, speech, and the general will or wills of states. More specifically, there seems to be an interest in addressing the issue of legitimacy (here referring only to the intersubjective recognition of lawfulness, legality, justice, or conformance to rules) and authority (here defined, following Barnett and Finnemore, as domination legitimated), and how they moderate, mediate, and transfigure political orders through acts of persuasion and rhetoric. However, alongside that interest in the constitution and reconstitution of order stands an equivalent interest in its de-constitution, or else the challenging of its established forms. Dynamics of constitution, de-constitution, and re-constitution of international society through deeds and speech seem to stand as an overarching theme, despite the variety of terminology, focus, and immediate subject matter.

Of the four authors here examined, Christian Reus-Smit (1997) displays the greatest interest in the issue of the constitution and elaboration of the modern society of states as such. Richard Price (1998) and the collaboration of Barnett and Finnemore (1999) have produced insights into the dynamics of de-constitution and re-constitution of international society. This is so, insofar as non-state actors (civil societies on the one hand, international organizations on the other) have successfully acted to alter the prevailing norms and practices of states, thereby implicitly challenging the norm of state sovereignty, and altering the society of which they are the explicit members. Finnemore (2009), in her later article, appears more immediately interested in the dynamics of the de-constitution of prevailing structures of unipolarity in an international society. Nevertheless, what at least underlies all four articles is the matter of the constitutive nature of society, and of the deeds and speech which bear upon it.

For its part, this article shall be structured in such a manner as to illuminate those points in turn, and to synthesize from them a common understanding of the phenomena which constitute, change, or de-constitute international societies. The proceeding section will address the initial problem of the constitution of the modern international society as it would seem to have stood in the twentieth century. It shall also relate that to the issue of authority and legitimacy, as defined by Barnett and Finnemore, in a clear nod to Max Weber. The following section will relate the observations of Reus-Smit, Barnett, and Finnemore regarding the force behind the (threatened) de-constitution of the established order of sovereign states. The final section shall attempt to address the matter of re-constituting international society, such that the authority of sovereign states can be said to exist alongside the oft unacknowledged authority of non-state actors – be they non-governmental organizations (NGOs), charismatic individuals (Price), or international organizations (Barnett and Finnemore). Throughout the essay, it shall be an explicit endeavour to draw-out the common, underlying insights of the authors by harmonizing the somewhat disparate language, and to draw them together for analysis under the concept of the general will.

The Constitution of Society

Reus-Smit can claim influence from a variety of writers of political theory, philosophy, and treatises of international relations. That variety, at a glance, ranges from Aristotle and Hannah Arendt, to Alexander Wendt, Hans Morgenthau, and Hedley Bull (Reus-Smit 1997, 585-587). It seems evident from the bibliography, however, that the

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chief sources of influence in the scripting of his 1997 article were luminaries of the English School, particularly Bull. In particular, this bears out in his interest in drawing-out the universalities of international societies as such, while revealing and explaining their particularities across time by referencing the influences of history and prevailing conditions at the time of their germination.

With regards to the first, Reus-Smit advances that international societies (of which he presents two exemplars, that of ancient Greece and that of modern nation-states) necessarily share a common, tripartite constitutive structure. Said structure, founded upon the moral purpose of the state, comprehends also an organizing principle of sovereignty, and a norm of pure procedural justice. These three together are said to comprise the necessary and sufficient conditions to constitute a society of states (Reus-Smit 1997, 567). Moreover, the peculiarities of a society would be a function of the factor of the moral purpose of the state, which, together with the contingencies of history, would give character to its norms of pure procedural justice. In and of itself, it is thus advanced that the bare existence of a state (be it a modern state or Greek *polis*) should be conceived as requiring both domestic legitimacy (in that the state, by and large, be considered the authoritative mediator of human goods, however delineated), and some degree of international legitimacy (its right to exist must be recognized in some manner, for some reason). That domestic and, to some extent, international legitimacy, together with the recognition of sovereignty, may be portrayed as reflections of the state's unquestioned authority – authority grounded upon the acceptance that it, and not some other form of legal or political order, is the proper vehicle for fulfilling human existence in some accepted sense.

It is disagreement over the moral purpose of the state, Reus-Smit argues, which ultimately flowered into the qualitatively different international societies of ancient Greece and modernity (1997: 571). In the case of ancient Greece and its *poleis*, the salient characteristics were as follows. First, its communitarian ethos, and conception of human beings as political animals, fitted for and to a *bios politikos* (political life) (1997: 571-572). Second, the *polis* in particular, was conceived as the preeminent vehicle for political life, and thereby of the engagement of reason in the rational pursuit, through speech, deeds and deliberation, of justice and the good life (1997: 572). The legitimacy of the *polis* and the recognition by *poleis* of each others sovereignty, is thus contingent upon the authority of its moral purpose – its status as a “meta-norm”, or a fundamental or hegemonic norm, to use alternate terms employed by the authors. One might add that in so far as this moral purpose of the *polis* constituted its authority, it remained difficult for the ancient Greeks to conceive of willingly belonging to alternate forms of political order. Even federations were a late reaction to the rising threat of Hellenistic empires, and those empires themselves found themselves in considerable difficulty legitimizing their power over the *poleis* under their control. Their authority was thus often precarious, at least vis-à-vis the Greeks under their rule.

By Reus-Smit's account, this moral purpose of the Greek state also came to be reflected in that society of states' norms of procedural justice, here defined as the correct procedures which legitimate or good states collectively employ in order to formulate rules of interstate conduct (1997: 567). They are, furthermore, the metanorms which structure the process of communicative action that surround the production and reproduction of fundamental institutions (1997:569). In the Greek case, the procedure for settling inter-state disputes peaceably is characteristically discursive, with contending parties making recourse to arbitration. Such arbitration would then consist in the implicated parties submitting the justice of their cases to the “sense of justice” of a third party arbitrator, recognized for their just character. The model for inter-state arbitration thus reflected the proceedings of domestic law cases, which centred around appeals for justice, and proceeded in attempts by the parties to establish their righteousness (and, conversely, the unrighteousness of their opponents) through persuasion and rhetoric (1997:573).

Similarly, Reus-Smit perceives the fundamental institutions of the modern society of states – sovereignty and multilateralism – to exist upon a moral foundation of individualism, contractarianism (i.e. a general will), and the free pursuit of state-sanctioned interests of a primarily economic nature (1997:571). The individualist, contractarian conception of the state, along with the conception of human purpose as, by and large, a matter of economics, thus lent itself to a particular conception of pure procedural justice and of sovereignty [1]. In essence, it led to a form of former which has been based upon the standards, precedents, and practices of the modern law court, with its greater concern with the interpretation and application of points of law, rather than justice *per se* (1997:571-572).

In either event, the constitution of the society of states, and its continual upkeep, is presented with its roots deep

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inside the domestic realm of the constituting states themselves. It is the authoritative, moral purpose of those states, as legitimated by their communities, which provides the *raison d'être* of sovereignty as an institution; both that *raison d'être* and the form of procedural justice employed to help achieve those moral purposes serve, then, to maintain that sovereignty. Power itself thus manifests a nebulous presence, one which concentrates within states by virtue of the authoritative status of a moral purpose which they are perceived as capable of mediating. So long as that moral purpose is upheld, state power is, to some extent, legitimated. And so long as states and not other forms of political order (such as suzerain systems, empire, or world states) are perceived as the means and vessels to that purpose, sovereignty remains a norm to be upheld, even in the breach [2].

Indeed, as Finnemore suggests, a certain kind of hypocrisy is often required in international relations, such that the values of states may indeed reveal themselves as irreconcilable at certain times and places. In such circumstances, upholding the values while proclaiming the conflict with them becomes necessary in order to legitimate seemingly hypocritical acts, while also maintaining the norms which they breach (Finnemore, 2009:81). By way of example, Reus-Smit emphasizes the drive of the Athenian hegemony to constantly legitimate itself by the act of submitting itself to arbitration when conflicts arose between itself and subject *poleis* – arbitrations which it often lost. As he emphasizes, the *poleis* apparently felt themselves compelled to self-legitimate through recourse to the prevailing norms and practices of justice. This, he submits, indicates the extent to which identity must be constituted through communicative action (Reus-Smit, 1997: 575).

Thus, sovereignty and the prevailing norm of procedural justice are argued to reflect the identity of the state, its members, and their moral purpose. It therefore follows that one might expect that actors would, through speech and deeds, attempt to maintain that reflected image of themselves in order to constantly reconstitute that fundamental identity. At least for as long as the authority of that identity and that purpose remain unchallenged.

The De-Constitution of Society

Reus-Smit spends a not inconsiderable amount of time outlining the structure of the constitution of international society. Price, Barnett, and Finnemore, on the other hand, have developed analyses of the rising authority of non-state actors, and have thereby spoken either implicitly or explicitly to the issue of such a society's de-constitution.

As we have found argued by Reus-Smit, the modern society of states has been constituted as a tripartite structure of individualism, state sovereignty as an expression of a general will (contractarianism), and legalistic multilateralism. Insofar as the individual of the modern, liberal state is conceived as "restless, acquisitive, and competitive", the moral purpose of the state would be construed as one of both balancing and freeing said drives amongst the society of individuals. Perhaps due to lacking in the Greeks' faith both in the "sense of justice" of judges and arbitrators, and in the saving grace of reason and persuasion, the modern state is emphasized as possessing a clear preference for formal and reciprocally binding rules of conduct (Reus-Smit, 1997:577). This sense of procedural justice, in turn, is said to have been reflected in its legalistic, contractarian form as the norm of procedural justice in the realm of interstate relations.

The sovereignty of modern states was thus upheld in two ways. First, by its moral purpose as the expression of the general will of its members (however that will be expressed or conceived) [3]. Second, by its conception as a representative entity capable of entering into binding contracts, compacts, or covenants with other states. States, represented as the legitimate powers generated by the general wills of their members, were the principle subjects of international law as a consequence, if not necessarily its exclusive subjects. The modern international society could therefore be distinguished from the Greek, at least in ideal form, as a society of general wills – ever restless, acquisitive, and competitive – attempting to mediate and moderate their activities through the procedures of multilateral institutions. The authority of the general will would thus serve to constitute the primal identity of the state, and of the modern international society by extension.

Recently, however, that authority which had been conferred upon the state by the general will has been rather overtly challenged. Price has demonstrated, through his genealogy of the worldwide campaign to ban anti-personnel (AP) land mines, that that campaign had been initiated and initially organized at the level of civil society and individuals.

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His work thus indicated the extent to which both are capable of capturing the hearts and minds of wide segments of international society. In effect, the success of the campaign would appear to demonstrate the ability of non-state actors to capture and to direct the general wills which constitute and legitimate modern states – at least with regards to narrow issues. Insofar as this reveals the ability of NGOs and “norm entrepreneurs” to frame the kinds of state actions (e.g. purchasing, producing, and deploying AP land-mines) which shall be construed as legitimate, moral, or legal, it presents a clear challenge to the unquestioned authority of states. For if the moral purpose of the modern state lies in reflecting the general will of its people, then when its actions are successfully framed as non-legitimate by non-state actors to that same people, a choice is seemingly forced upon affected states. On the one hand, to flout the will which legitimates it (thus undermining its own authority, by definition), or to harmonize its words and deeds with agendas which have perhaps originated outside itself.

Price points out a particularly obvious instance of this quandary when analyzing the response of the American government at the time to calls, both foreign and domestic, to destroy its stockpiles of the devices, and to sign on to a comprehensive ban (Price, 1998:636-637). While deeply opposed to such a sweeping policy, and thinking it against the military interests of the state, the Clinton administration, by late 1997, felt a need to proclaim its support for the principle. Shortly thereafter, it proceeded to announce its intention to develop technological alternatives to AP mines, to destroy its stockpiles of “dumb mines”, and to end their use outside of Korea by 2003. Certainly, by Reus-Smit’s account, the international campaign had been successful in steering the public will against the use of such munitions. It thereby created something of a legitimacy problem for an American administration which would rather have continued with their use. To go against the ban would be to go against the grain of the general will, upon which the moral purpose of the state is constituted. To go along with the ban would be both apparently to undermine the sovereignty of the state to decide internally its own policies, and potentially to impair its military.

By a similar token, Barnett and Finnemore, through their analysis of the rational-legal authority of bureaucracies, and bureaucratic pathology, do much to highlight the power of international organizations (IOs) as powers in their own right. Following in the footsteps of Max Weber, they describe the unusual authority as stemming not from states in general, or from hegemonic states in particular, but rather from their ostensible embodiment of rationality, their allegedly depoliticized nature, aura of efficiency, and apparently egalitarian procedures and practices (Barnett and Finnemore, 1999:705-708).

A certain authority is thus seen to attach itself to IOs, one which is quite independent of any legitimacy or powers conferred upon them by states. Indeed, IOs themselves, the authors insist, have a demonstrated capacity capability to flout the principle of sovereignty, and to effect the internal structures of states (1999:714, 721). As Price as well as Barnett and Finnemore relate, IOs, in fact, act to confer legitimacy upon courses of action (or de-legitimize kinds of actions, or of non-actions) for which state actors may feel little or no enthusiasm – as the AP land-mine ban bears out (1999:712, 714).

This rational-legal authority of IOs, moreover, is professed to be backed-up by the not insubstantial power of the information gathered and wielded by those institutions. That power is given further weight by the concentration of expertise within the bureaucracy’s membership – expertise which it exercises in several ways. Among them, the authors single-out classification, the fixing of meaning, and the diffusion of norms (1999:710,711,712).

These various acts, substantially communicative in nature, derive power from the authority associated with the appearance of expertise and from the modern persuasiveness of scientific and quasi-scientific language, and have several effects. Among them, the authors count the definition and discrimination of social objects (and, conversely, the bracketing-out of things undefined), the authoritative interpretation of meaning, and thereby the imposition of meanings upon the world (or, alternatively, the imposition upon something the status of “meaningless”), and the diffusion of the values of the implicated organization. Thus, IOs, with their independent sources of authority and power, are not only seen to stand in potential opposition to particular states, but even to the traditional model of modern international society. Inasmuch as their power and rational-legal authority can be directed towards harnessing the general will of states’ populations to goals contrary to state interests – at least as defined by state leaders or rulers – the legitimacy of a particular leadership, or the state generally, may be called into question.

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By either account, the constitutive structure of the society of states, if not the legitimacy of the modern state *qua* natural representative of humankind, is implicitly challenged – and has been successfully challenged – by alternate authorities. Charismatic figures, representatives of tradition, NGOs, and IOs successfully usurped the normal, multilateral procedures of international society to promote the ban on AP land mines. In doing so, they've also challenged the unquestioned, sovereign authority of the state as such. IOs have also challenged the state where and insofar as they have undermined the confidence in a state's, or even *the* state as a species of political phenomenon, ability to fulfill its putative moral purpose – chiefly economic expansion and acquisition [4]. Thus, all three aspects of the structure of international society denoted by Reus-Smit would seem to be facing challenges, as power, legitimacy, and authority have diffused somewhat to non-state actors.

The Re-Constitution of the Society

Given the challenges which have been outlined, it is necessary to ask why and how international society has continued on, or may continue on, rather than succumb to some radical transformation or replacement. On this matter, Price and Finnemore provide some insight.

Price, for his part, indeed highlights the successful de-legitimation of AP land mines by non-state actors, and the challenge given to the legitimacy of governments which did not follow the popular tide, or “norm cascade”. However, he also notes that numerous states, including South Africa and Mozambique, unilaterally announced their intent to destroy their stockpiles of the weapons, regardless of the outcome of international disarmament talks. Whether or not the new taboo against such devices was a value created by state actors, it was legitimated by states. Those states, in turn, were legitimated by their acquiescence to the general will [5]. It is given that the basis of the modern state has been defined by its status as the representative whole of the general will of its members. Its legitimacy and authority would therefore be reconstituted so long as its deeds were commensurate with that will, and with the state's specific moral purpose. The authority of states *per se*, and of international society *per se*, would not seem, *ex hypothesi*, to be damaged or dissipated by the initiation of a norm cascade by non-state actors, so long as state governments responded to the general will, or successfully redirected it.

Finnemore's work on hypocrisy and its implications for unipolar power also provides fodder for consideration. By her account, one key to maintaining legitimacy lies in communicating the extent to which any disparity between the words and deeds of states (e.g. promoting democracy in principle, while installing autocratic governments in South America in fact) has been necessitated by the incommensurability of clashing values under given circumstances (Finnemore, 2009:81). In doing so, however, Finnemore warns against moral hypocrisy – an actual lack of the principles espoused, but never acted upon – as deeply anathema to maintaining legitimate authority. In lieu of the intersubjective conferral of legitimacy, she reasons, there lies only the application of material force as a means of maintaining order (2009:62). As she further notes, the appearance or reputation of virtue is indispensable in maintaining or developing authority (2009:74-75). While she speaks directly to the particular problem of unipolar authority, the principles, adapted as they are from the theoretic insights of Weber and Machiavelli, logically apply to the general problem of authority of the modern state.

All this being said, the authors do not appear to reach the level of a theoretic penetration into the issue of the re-constitution of the modern international society, but only allude to the responses of states to unprecedented challenges to their authority. As a consequence, the problem of the unresolved tension between the international society of states and a possible, yet nascent, transnational society – let alone of world society or world state – remains unaddressed. No answer seems forthcoming as to whether the challenge and response mode by which states have reacted to challenges to their legitimacy by either following, capitulating to, or appropriating them is a sustainable method of reconstituting the society. The question is apropos, given that, by Reus-Smit's model, it would appear that all three constitutive features of international society have been put into dispute in the twentieth century, though not universally, and not to such an extent that the legitimating principle behind individual modern states does not remain their ability to reflect a general will of the rational, self-interested citizens (or subjects) of modern, atomistic societies.

Nevertheless, in spite of the this relative lack of clarity, some significant contributions have been made by through

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these writings. Not the least of which, of course, is calling into question the givenness of the society of states – a thought which must be thought, if only to decide upon its value. What remains to be done, however, is for a clearer penetration into the quintessential issue: to what extent may it be concluded that transnational or international actors are altering the substance of international society or international order, if their chief effect (when effective) is only to persuade a plurality of general wills, i.e. a plurality of societies? Logically, this achieves a goal (e.g. a ban on land-mines), without necessarily altering anything essential about international society – it remains a loose society of general, collective wills or sovereign states. Hyperbole aside, there remains no general, sovereign will of the world, nor government of the world, which reduces other collective wills to the illegitimate status of mere partial wills; the modern state remains the legitimate, sovereign actor for modern societies.

The question is not merely of theoretical importance, for if world opinion is but a red herring, then it is a matter for consideration for political actors seeking to effect any action across state boundaries which they see requiring some degree of tacit or active support from international society. If the object of persuasion is not singular and universal, but is rather a plurality of sovereigns (bracketing even the obvious additional problem of societies which are not individualistic and contractarian), then effecting international change becomes a much more complex, more political, and even more human issue, requiring more than a broad appeal to a sovereign and disinterested world opinion which may not actually exist.

Notes

[1] Reus-Smit does not expand upon this point at any great length, but rather seems to be leaning on the theoretical observations either of Rousseau or Hobbes, or else other thinkers in the Enlightenment's contractarian tradition. Generally speaking, in that stream of the tradition, the state (or the government on behalf of the state or subjects) operates through the promulgation and enforcement of the positive or explicit procedural laws which themselves reflect the general interests of an individualistic, contractarian society.

[2] Reus-Smit (1997:567) is a bit thin on explicit details, but we may surmise that, in modern, individualistic societies, sovereign states and their governments can be taken to be the only logical bearer of the mantle of legitimacy, given that legitimacy is a function of the general will of a populace of atomistic, rationally self-interested individuals. That at least seems to be Rousseau's conclusion, though some later, Hegelian thinkers argue from the same premises that modern societies lend themselves to empires and even world states. Cf. (Kojève, 1945) and (Kojève, 1969).

[3] For the theoretical exposition on the nature of the general will and of the sovereign state, see Jean-Jacques Rousseau. *The Social Contract*. (United States of America: Boston, St. Martin's Press Inc, 1978), Bk II. ch. 1-4.

[4] Barnett and Finnemore provide the specific examples of development and restructuring programs initiated by International Monetary Fund and World Bank (1999:721).

[5] The theoretic importance of the fact that the general will inside of states was shaped by the norm cascade, or world public opinion, does not seem to be an issue directly or clearly addressed by Price. Logically, however, it could be taken to indicate that state sovereignty is not fundamentally challenged by transnational or international actors, but only that the expression of the general will of any particular state (or any number of states) may be swayed by non-citizens. This is so because sovereignty remains a function or characteristic of the general will, and may entirely change as to its objects – even so far as to engage in a complete *volte face* – without altering in its essence.

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