

Thinking About Ethics, Thinking Across Fields

Written by Nicholas Onuf

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NICHOLAS ONUF, JUN 22 2016

The fields of International Law and International Relations (IL and IR) have overlapping substantive concerns, entangled histories and a striking divergence in craft and sense of purpose. For many decades, the two fields grew part; only recently have there been signs of rapprochement. Nevertheless I rather doubt that overlapping substantive concerns will win out over deep differences not just in the way that members of the two fields do what they do, but even more in the way they justify what they do. To illustrate this rather grand assertion, let me point out that IR has experienced a much discussed 'turn to practice,' an embrace of 'reflexivity' first seen in sociology, and finally a wide, uneven turn to ethics. Nothing comparable seems to have taken place in International legal theory.

I have toiled in these two fields for fifty years. I have given IR a good deal more attention in the last twenty years than I have given to IL (the first twenty years were the other way around). It is altogether possible that I'm just too distant from IL these days to see everything that's been happening. Nevertheless, I have come to think there is a large reason, a background condition, for both the rather limited signs of rapprochement between the two fields and the apparent fact that a significant number of IR scholars have turned to ethics, but few scholars in IL have done so. As one might suspect, the reason is related to the divergence in craft and sense of purpose that I just alluded to.

IR has always had a difficult relation to the world of policy—to statecraft. In this context, the practice turn is just one more futile attempt to breach the theory-policy gap, not to mention the fact-value distinction embedded in science as craft. By contrast, law makes practice a vocational imperative. Persuasion is the point of legal argument. Advocacy means that values actively shape the lawyer's interpretation of the facts in any case, including the facts of law. (I should point out parenthetically that this interpretation of what lawyers do reflects the Anglo-American way of thinking about law as a vocation; scholars trained in Continental law will see things somewhat differently. I should also point out that the Anglo-American way has decisively affected the way international law is practiced—no doubt a reflection of two centuries of Anglo-American hegemony.)

As Martti Koskenniemi so forcefully demonstrated in *From Apology to Utopia* (1989), the practice of international law is suffused with liberal assumptions. International law is indeed a major element in liberalism as a global project and an integral feature of the modern world. I need not dwell on the specifically Anglo-American origins of this project and the many ways that liberalism is imbued with Anglo-American psycho-cultural assumptions. I do want to emphasize that liberalism is an ethical project. Nothing makes this clearer than the importance of human rights in contemporary international legal theory and practice. The startling emergence of scholarly interest in 'global constitutionalism' is additional evidence that liberalism as an ethical project is alive and well in modern circumstances.

Of course liberalism also has a longstanding presence in IR theory. If we stand back, it is pretty clear that liberalism is IR's dominant discourse and realism is the post-World War II upstart. Since the end of the Cold War, liberalism has reasserted its dominance, much of it in the guise of constructivism. Here again, human rights have been an enveloping concern. Quite a number of IR scholars have also joined their colleagues in IL in the global constitutionalist movement, which now serves as a successor to the world order movement peaking forty years ago.

That said, IR scholars do not take liberalism and its relation to ethical conduct for granted. Ascendant realism put many liberals on the defensive and pushed some of them to pick up on the surge of interest in ethics among political philosophers. In this turn, John Rawls figured prominently, and later Immanuel Kant and his deontological ethics have

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come to the fore. While legal philosophers followed suit, liberal international lawyers did not. This I attribute to the dramatic increase in the practice of international law. Where practice is paramount, and in great measure self-justifying, jurisprudence holds little interest.

Now let me go back to IR again. Somewhat surprisingly, realism's recent eclipse has also inspired a modest revival of interest in ethics. By turning back to so-called classical realism, and thus to such figures as Reinhold Niebuhr and Hans Morgenthau, some scholars in IR have rediscovered ethics without so much as a nod to liberalism and its normative concerns. Rather too narrowly, they tend to content themselves with prudence as an ethical guidepost. More generally in IR, and especially in Europe, there has been a reaction against the embrace of science, the infatuation with rational choice theory, and the presumption that good social science requires the use of quantitative methods.

Positivist science rigorously enforces the fact-value distinction and effectively disallows any consideration of ethics. This is convenient for scholars in the US who simply equate American hegemony with liberal values. Everywhere else, this smug American assumption is seen for what it is and fiercely resented. Again we see an incentive or inducement for the turn to ethics in IR. Let me repeat, no such turn urges itself on international lawyers because international law is *already* pervasively liberal in its assumptions.

There is another feature of modernity that we need to take into account. I have already commented on the rise of the rights culture and emphasized its liberal character. Now I want to bring administration and the rationalization of the public sphere into the picture. Here, of course, Max Weber casts a giant shadow, and we all know that Weber was deeply concerned with the ethical implications of public service, not to mention capitalist endeavor and bourgeois life.

The contemporary social sciences very much reflect and support the rise of administration in the modern world. There is, of course, an ethical backdrop to administration as a craft oriented to certain obvious values such as efficiency and proportionality. That backdrop takes the form of consequentialist ethics—a way of thinking that goes back to Jeremy Bentham and his utilitarianism. It is also a way of thinking that functionally differentiated activity in complex modern societies tends to promote.

Functionalism has had relatively small place in IR, thanks chiefly to David Mitrany's *A Working Peace System* (1946), and only then as an adjunct to liberal international thought. Recently international lawyers have had to grapple with the proliferation of functionally specific legal regimes featuring technicians not always working for governments but often working at cross-purposes. Suddenly global administrative law (GAL) is a major interest, yet no one seems to have considered its ethical import. Discussion of individual or institutional accountability hardly counts—in liberal IR, GAL or, for that matter, the burgeoning field of business ethics.

While liberal autonomy is now routinely framed as a Kantian project and rational administration relies on consequentialism for ethical support, no one in IR seems to be troubled by the obvious dissonances in these two ethical systems, both of which claim to have universal applicability. Indeed, as Rob Walker pointed out in *Inside/Outside* (1993), a fused 'liberal utilitarianism' describes both talk about world order and the study of international regimes. We see this tendency in IL: liberal utilitarianism underwrites discussion of global constitutionalism and GAL (here see Kratochwil 2014 for a telling assessment). If there is a developing rapprochement between IL and IR, it is, in my view, entirely consistent with this too easy fusion of discordant, universalizing ethical systems. With an unreflective liberal utilitarianism as the common ground, IR provides the theoretical framework and IL the body of practice from which to generalize.

Critical scholars in IL and IR seem not to have experienced the same sort of nascent rapprochement. At least I see no signs of it, not least because critical legal scholars have shown little interest in their counterparts in IR. One might think it would be otherwise. After all, critical scholars in many fields have long directed their emancipatory zeal against liberal modernity and its assumptions about universal relevance. A distaste for liberal utilitarianism could serve as common ground for mounting any campaign for a coherent alternative to modern ethical systems, and not just against such liberal hypocrisies as 'the rule of law.' Instead we see critical resistance to universal claims combined with the fetishization of 'the other.' At least David Kennedy's thoughtful discussion of *The Dark Side of*

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Virtue (2005) reveals a critical lawyer's consequentialist concern with rational administration in the practice of international development.

It should be clear that I am dissatisfied with the state of ethical discourse in both IL and IR. Liberal modernity's mindless merger of Kant and Bentham is only the beginning of the problem, and a general critique of this condition is no answer. If we were to disaggregate the implications and requirements of modernity's two great ethical systems, to ask why we insist that international regimes or 'global civil society' advance individual autonomy, or to show how global constitutionalism and GAL work against each other—projects I am happy to endorse—we would still have to face the inadequacies of both modern ethical systems.

I believe the only plausible move would take us to virtue ethics. Philosophers and political theorists have rediscovered virtue ethics; such an ethics has always been closely associated with daily life and the claims of common sense. In IL, Jan Klabbers (2013) has moved in this direction. In my view, virtue ethics goes hand in hand with the revival of republican political theory, which has attracted a modest interest in IR, due largely to Daniel Deudney (2010) and myself (Onuf, 1998). Lately I have been trying to reformulate virtue ethics as an ethical system in its own right—a system suiting today's world, a system without universalizing pretensions. Indeed these reflections were adapted from a lecture I gave recently at the European University Institute sketching such an ethical system (and see Onuf, forthcoming). Whether this is the moment for such a turn, or any turn, remains to be seen.

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