

Toward an Institutional Theory of Sovereignty

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INTRODUCTION.....	1750
I. THE MODEL: “WORLD POLITY” INSTITUTIONALISM AND THE STATE.....	1753
A. <i>Understanding Social Organization:</i> <i>Sociological Institutionalism</i>	1754
B. <i>Understanding the State as a Social Organization:</i> <i>An Introduction to the “World Polity”</i>	1757
C. <i>The Production and Legitimation of States in the World Polity</i>	1758
1. <i>Organizational structure of states.</i>	1759
2. <i>Global cultural processes.</i>	1761
3. <i>“Rational actorhood.”</i>	1762
II. WORLD POLITY AND NATIONAL SECURITY.....	1765
A. <i>National Security Practices</i>	1766
1. <i>National militaries.</i>	1766
2. <i>Arms procurement and production.</i>	1768
3. <i>Use of force—assassinations.</i>	1769
4. <i>Conduct during armed conflict—chemical weapons.</i>	1773
5. <i>Conduct during armed conflict—the wounded and sick.</i>	1776
B. <i>National Security Interests and Beliefs</i>	1778
III. IMPLICATIONS: RECONCEIVING THE RELATIONSHIP BETWEEN STATES AND THE INTERNATIONAL ORDER.....	1780
A. <i>State Behavior, Global Scripts, and the World Polity</i>	1781
B. <i>Compliance with International Norms and Obligations</i>	1783
C. <i>Sovereignty and International Legal Order</i>	1785
CONCLUSION.....	1787

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INTRODUCTION

Normative debates about how states should orient themselves to the international order dominate international legal scholarship. These debates typically presuppose a tension between the normative aspirations of state sovereignty and binding international obligation.¹ Given this shared presupposition, debates about a broad range of topics in international law—including the incorporation of international law,² the “democratic deficit” associated with international institutions,³ and the potential conflicts between constitutional principles and international law⁴—are predicated on questionable empirical assumptions about the nature of the state and its relation to the international order. The terms of these debates thus require systematic reexamination. In this Article, we propose a *sociological model of sovereignty* that illuminates (1) the ways in which global social constraints empower actors, including states; and (2) the ways in which institutions—including the bundle of rules and legitimated identities associated with state “sovereignty”—constrain actors. Here, we intend only to introduce these ideas by outlining the conceptual framework of the approach, identifying several foundational propositions of the theory, and summarizing existing empirical research supporting these views. This Article is, in this sense, the start of a much larger project.

Our proposal differs in important respects from prevailing conceptions of the state in international legal studies. Although prevailing approaches recognize some role for international institutions, they neglect important dimensions of the institutional environment in which states operate. As a consequence, several features of contemporary states cannot be adequately explained by conventional approaches. In addition, the limitations of these approaches preclude the development of a descriptively accurate and

1. See, e.g., DELEGATING STATE POWERS: THE EFFECT OF TREATY REGIMES ON DEMOCRACY AND SOVEREIGNTY (Thomas M. Franck ed., 2000); Phillip R. Trimble, *Globalization, International Institutions, and the Erosion of National Sovereignty and Democracy*, 95 MICH. L. REV. 1944, 1944-45 (1997) (arguing that “the practical devolution of decisionmaking authority to international institutions is the essence of the loss of national sovereignty” and that “it is a process that will continue as the forces of globalism accelerate in the next century”).

2. See, e.g., Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815 (1997); Curtis A. Bradley & Jack L. Goldsmith, *Federal Courts and the Incorporation of International Law*, 111 HARV. L. REV. 2260 (1998); Harold Hongju Koh, *Is International Law Really State Law?*, 111 HARV. L. REV. 1824 (1998).

3. See, e.g., Peter L. Lindseth, *Democratic Legitimacy and the Administrative Character of Supranationalism: The Example of the European Community*, 99 COLUM. L. REV. 628 (1999).

4. See, e.g., Curtis A. Bradley, Breard, *Our Dualist Constitution, and the Internationalist Conception*, 51 STAN. L. REV. 529 (1999); Curtis A. Bradley, *The Treaty Power and American Federalism*, 97 MICH. L. REV. 390 (1998).

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1751

normatively appealing theory of the relationship between states and the international legal order. Typically, the state is understood in either *realist* or *constructivist* terms. These approaches employ different logics of social action, generating different assumptions about the nature of the state and state behavior, particularly with respect to the role of institutions. These divergent theories of social action predict different conditions under which exogenous institutions influence (or reconfigure) state practice. Consider a brief exposition of these alternative approaches. Although these explanations are admittedly oversimplifications, we emphasize only general features of these approaches to facilitate the description of our model and its potential contribution to current debates.

For realist (or rational choice) approaches, the state is modeled as a rational, unitary actor pursuing fixed preferences in an anarchic international arena.⁵ On this view, state action reflects inherent needs and interests; culture, as such, is not a part of the model, and norms are “behavioral regularities” reflecting state power and interest.⁶ Therefore, the international order is reducible to transactions and interdependence between states. Some variants of this approach—most notably, neoliberalism and regime theory—recognize a more important role for international institutions. Under these approaches, self-interested states fashion international law and international organizations to prevent opportunistic behavior from hindering collectively optimal outcomes.⁷ International institutions do not reconfigure state interests and preferences, but they might, under certain conditions, constrain strategic choices by prescribing and stabilizing mutual expectations about state behavior.⁸ More generally, realist theories of social action posit that institutions influence state behavior primarily through pressure or coercion.⁹

5. See, e.g., KENNETH WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979); Jack L. Goldsmith & Eric A. Posner, *Moral and Legal Rhetoric in International Relations: A Rational Choice Perspective*, 31 J. LEGAL STUD. 115 (2002) [hereinafter Goldsmith & Posner, *Moral and Legal Rhetoric*]; Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113 (1999) (using game theory concepts to explain customary international law) [hereinafter Goldsmith & Posner, *Theory of Customary International Law*].

6. Goldsmith & Posner, *Theory of Customary International Law*, *supra* note 5, at 1120.

7. See, e.g., Stephen D. Krasner, *Regimes and the Limits of Realism: Regimes as Autonomous Variables*, in INTERNATIONAL REGIMES 355 (Stephen D. Krasner ed., 1983); Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, in INTERNATIONAL REGIMES, *supra*, at 1.

8. See, e.g., ROBERT O. KEOHANE, *AFTER HEGEMONY. COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984); Jeffrey W. Legro, *Which Norms Matter? Revisiting the “Failure” of Internationalism*, 51 INT’L ORG. 31 (1997).

9. See, e.g., Posner & Goldsmith, *Theory of Customary International Law*, *supra* note 5; Symposium, *Rational Choice and International Law*, 31 J. LEGAL STUD. 1 (2002). Some broadly realist models specify that institutions influence state behavior through differential empowerment and mobilization of local agents for change. See, e.g., THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, Stephen C. Ropp

Constructivist approaches, on the other hand, emphasize the role of social norms and institutions, stressing ways in which actors and their preferences derive from social structure.¹⁰ That is, social structures not only regulate behavior but also define the social identities and interests of actors.¹¹ On this view, the state is modeled as the product of social processes, and state action reflects a socially constructed “logic of appropriateness.”¹² Although some of this work analyzes the embeddedness of states in a wider social structure,¹³ an important line of thinking emphasizes the ways in which states are the product of national cultural and interpretative systems.¹⁴ In addition, constructivist theories of social action typically suggest that institutions influence state behavior through socialization and habitualization.¹⁵ Through processes of social learning and persuasion, actors “internalize” new norms and rules of appropriate behavior and redefine their interests and identities accordingly.¹⁶ Normative authority can persuade public and private actors to change their interests.¹⁷

The approach that we propose, in sharp contrast to realist approaches, is predicated on the view that states are organizational entities embedded in a wider social environment. In short, we argue that elemental features of states derive from worldwide models constructed and propagated through global cultural and associational processes. These models define and legitimate purposes of state action, and they shape the organizational structure and policy choices of states in many of these issue areas. These processes (1) define the organizational form of the modern state, (2) delimit the legitimate purposes of

& Kathryn Sikkink eds., 1999) [hereinafter *THE POWER OF HUMAN RIGHTS*] (outlining a pressure model of change).

10. See, e.g., James G. March & Johan P. Olsen, *The Institutional Dynamics of International Political Orders*, 52 INT’L ORG. 943 (1998).

11. See, e.g., ALEXANDER WENDT, SOCIAL THEORY OF INTERNATIONAL POLITICS (1999); Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of Power Politics*, 46 INT’L ORG. 391 (1992). See generally, Jeffrey T. Checkel, *The Constructivist Turn in International Relations Theory*, 50 WORLD POLITICS 324 (1998) (reviewing three books taking constructivist approaches).

12. See March & Olsen, *supra* note 10, at 951.

13. See, e.g., MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY 3 (1996) (focusing on the “socially constructed nature of international politics”).

14. See, e.g., GABRIEL A. ALMOND & SIDNEY VERBA, *THE CIVIC CULTURE* (1963); Pierre Bourdieu, *Rethinking the State: Genesis and Structure of the Bureaucratic Field*, in *STATE/CULTURE: STATE FORMATION AFTER THE CULTURAL TURN* 53 (George Steinmetz ed., 1999).

15. See, e.g., Jeffrey T. Checkel, *Norms, Institutions, and National Identity in Contemporary Europe*, 43 INT’L STUD. Q. 83 (1999).

16. See, e.g., Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997).

17. See, e.g., FINNEMORE, *supra* note 13, at 64-65; *THE POWER OF HUMAN RIGHTS*, *supra* note 9; Andrew P. Cortell & James W. Davis, *How Do International Institutions Matter? The Domestic Impact of International Rules and Norms*, 40 INT’L STUDIES Q. 451 (1996).

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1753

the state, and (3) constitute states as the principal legitimate actors in the world polity. The institutionalization of world models also helps explain many characteristics of the contemporary state system, such as striking similarity in purposes and organizational structure across states despite wide diversity in material and cultural conditions; and structural decoupling between functional task demands and persistent state practices. The central insight of our approach is that the international order can (and should) be understood as a distinct level of social and political reality. As we detail below, this insight recasts debates about the utility and prospects of reconciling state sovereignty and international law.

Of course, our approach is broadly constructivist in that we argue that states are products of cultural and associational processes. But the approach advanced in this Article qualifies (and supplements) conventional constructivist theories in important respects. First, our approach differs sharply from bottom-up constructivist models. Our model views states as shaped by cultural processes that are substantially organized on a global level. This approach emphasizes the ways in which states reflect their wider institutional environment. Second, our model identifies different social mechanisms from those identified by traditional constructivist approaches. Rather than emphasizing persuasion and habituation as the processes through which institutions influence state action, we stress the ways in which orthodoxy and mimicry shape state identity, interests, and organizational structure. Finally, in terms of methodology, our approach supplements, or perhaps serves as a corrective to, constructivist legal scholarship by using empirical and quantitative methods that help specify when, under what conditions, and to what extent, state behavior is shaped by social structure.

We outline this approach in Part I, emphasizing (1) the ways in which the structure of states suggests the organizational presence of global culture, (2) the cultural processes that define “legitimate actorhood,” and (3) how these processes operate on the global plane. In the balance of the Article, we explore the explanatory power of this theory by examining the institutionalization of world models of “national security.” In Part II, we rely on—while at the same time qualifying—recent empirical work in international relations and security studies. Our analysis shows how national security is constructed through these global cultural and associational processes. In Part III, we identify several descriptive and prescriptive implications of our approach.

I. THE MODEL: “WORLD POLITY” INSTITUTIONALISM AND THE STATE

How should we understand the state and its relation to the international order? In this Part, we describe the contours of our approach. We first outline the general theoretical framework and identify several important propositions that issue from this framework. This outline has two components: (1) We briefly describe the building blocks of a sociological theory of the state, and (2)

we distill from these general propositions several concrete characteristics of the “state” and “international society.” Finally, we summarize the substantial body of empirical work supporting these claims.

A. *Understanding Social Organization: Sociological Institutionalism*

Sociologists have developed robust general theories of formal organization—theories that would, in our view, inform international legal analysis. In this section, we introduce briefly the central concepts (and empirical insights) of sociological institutionalism—the sociological study of organizations and their environments. At bottom, our approach emphasizes the ways in which state behavior and state identity are influenced by exogenous social forces. States are formal organizations and these organizations are, in turn, part of (and reflect) a wider social order. Both aspects of the state merit closer scrutiny, and both aspects underscore the utility of sociological analysis. In particular, we utilize *institutional theories of organizations* to explain some puzzling (yet common) features of states.

Late-nineteenth- and twentieth-century sociological thought was, in no small measure, preoccupied with developing a general theory of formal organizations. Despite widely varying theoretical approaches, Emile Durkheim,¹⁸ Max Weber,¹⁹ Talcott Parsons,²⁰ and Michel Foucault²¹ all sought to explain the organizational features of social life. The central problems for any such theory are: (1) how to explain organizational structure, and (2) how to understand the relationship between organizations and their environments. Formal organizations are commonplace: corporations, schools, hospitals, civic associations, and, of course, governments. Traditional approaches emphasize functional explanations of these units—that is, organizations are understood (to put it crudely for the moment) as tools fashioned to address some collective problem. And if formal organizations are simply tools, then organizational structure will reflect task demands conditioned by the impediments and resources extant in the relevant organizational environments. Organizations, on this view, are “the structural expression of rational action.”²² Accordingly, “environments,” in functionalist accounts, present *technical* challenges and opportunities.

18. See, e.g., EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (W.D. Halls trans., Free Press 1997) (1893).

19. See, e.g., MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* (Guenther Roth & Claus Wittich eds., Ephraim Fischhoff trans., 1978) (1924).

20. See, e.g., TALCOTT PARSONS, *THE STRUCTURE OF SOCIAL ACTION; A STUDY IN SOCIAL THEORY WITH SPECIAL REFERENCE TO A GROUP OF RECENT EUROPEAN WRITERS* (Free Press 2d ed. 1949) (1937).

21. See, e.g., MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

22. Philip Selznick, *Foundations of the Theory of Organizations*, 13 AM. SOC. REV. 25 (1948).

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1755

Since the mid-twentieth century, sociologists have substantially qualified traditional functionalist accounts. These contemporary approaches understand organizations as products of “institutions.” As discussed more fully below, the concept of “institution” is a general one referring to any regulative or cognitive feature of an organizational environment (such as rules, laws, norms, and cognitive frames). The transformative insight of these approaches was that formal organizations are, over time, “infuse[d] with value beyond the technical requirements of the task at hand.”²³

Drawing heavily on these institutional theories of organizations,²⁴ we emphasize “the socially constructed normative worlds in which organizations exist.”²⁵ On our view, these “normative worlds” constitute important constraints on (and enablers of) organizational action. Once socially defined institutional environments are in place, changes in organizational form are driven more by considerations of legitimacy than by concern for rational adaptation or efficiency. This causes structural “isomorphism” in organizational fields—that is, *formal organizations become more and more like one another*.²⁶

One important point of clarification is in order. Institutional approaches often focus on understanding organizations *as* institutions or cultural patterns.²⁷ Our approach, in contrast, clearly differentiates between organizations and institutions by emphasizing (1) the processes of institutionalization that comprise the broader environment in which organizations exist, and (2) the effects of these processes on organizations.²⁸ That is, we do not analyze organizations as institutions; rather, we study the effects of institutions (understood here as the regulative and cognitive environment) on organizations. Therefore, our approach is “institutionalist” in that we emphasize the ways in which actors and purposive action are embedded in and constructed by institutions.

23. PHILIP SELZNICK, *LEADERSHIP IN ADMINISTRATION; A SOCIOLOGICAL INTERPRETATION* 17 (1957).

24. See, e.g., *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* (Walter W. Powell & Paul J. DiMaggio eds., 1991); W. RICHARD SCOTT & JOHN W. MEYER, *INSTITUTIONAL ENVIRONMENTS AND ORGANIZATIONS* (1994); John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 *AM. J. SOC.* 340 (1977); Lynne G. Zucker, *Institutional Theories of Organization*, 13 *ANN. REV. SOC.* 443, 443-64 (1987); Lynne G. Zucker, *The Role of Institutionalization in Cultural Persistence*, 42 *AM. SOC. REV.* 726 (1977).

25. Marco Orru, Nicole Woolsey Biggart & Gary G. Hamilton, *Organizational Isomorphism in East Asia*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS*, *supra* note 24, at 361, 361.

26. See, e.g., *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS*, *supra* note 24; Meyer & Rowan, *supra* note 24.

27. See, e.g., PHILIP SELZNICK, *TVA AND THE GRASSROOTS* (1949); Lynne G. Zucker, *Organizations as Institutions*, 2 *RES. SOC. ORG.* 1 (1983).

28. See, e.g., Meyer & Rowan, *supra* note 24.

Of course, the term “institution” is imprecise, and we invoke it only to describe a very general idea. “Institutions,” in our model, are the *rules and shared meanings that define social positions (and the structural relationships between these positions)*. Institutions, on our view, guide interaction by providing frames or sets of meanings to interpret the behavior of others.²⁹ Institutions, at the highest level of generality, are the normative, cognitive, and regulative environments in which organizations (and other actors) operate. Institutions thus structure the field of possible action and the ways in which organizations inherit and satisfy specific expectations.³⁰ “Institutionalization” is, on this view, the process by which these rules and shared meanings move from abstractions to specific expectations and, in turn, to “taken for granted” frames.³¹

The model we propose provides a useful way to think about the context of interaction that produces and reproduces these “institutions.” These “contexts of interaction” are central to institutionalist thought of all stripes, and many important sociopolitical concepts build upon the notion of contextualized interaction: “fields,”³² “organizational fields,”³³ “sectors,”³⁴ or “games.”³⁵ Our approach, in this sense, concerns how these fields of action come into existence, remain stable, and can be transformed.

The important point is that organizations are, in important respects, enactors of institutional models derived from cultural processes. States are, of course, organizations embedded in complex, global fields of action. And it is unsurprising that strands of neoinstitutionalist thought have developed theories of the state and international politics. One such approach—“world polity institutionalism”—has generated substantial empirical work emphasizing the cultural and associational aspects of international politics. We maintain that this body of research and the theoretical propositions generated by it provide an alternative conception of state sovereignty. Our central theoretical contention is that states, as formal organizations, are defined by and legitimated through

29. See generally W. RICHARD SCOTT, *INSTITUTIONS AND ORGANIZATIONS* (1995).

30. See, e.g., *id.* at 33-35; Mark A. Covalleski & Mark W. Dirsmith, *An Institutional Perspective on the Rise, Social Transformation, and Fall of a University Budget Category*, 33 ADMIN. SCI. Q. 562 (1988); Roger Friedland & Robert R. Alford, *Bringing Society Back In: Symbols, Practices, and Institutional Contradictions*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS*, *supra* note 24, at 232; W. Richard Scott, *Institutions and Organizations: Toward a Theoretical Synthesis*, in SCOTT & MEYER, *supra* note 24, at 50, 68.

31. See Ronald L. Jepperson, *Institutions, Institutional Effects, and Institutionalism*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS*, *supra* note 24, at 143.

32. PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* (1977).

33. Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147 (1983).

34. ORGANIZATIONAL ENVIRONMENTS: RITUAL AND RATIONALITY (John W. Meyer & W. Richard Scott eds., 1983).

35. ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1757

these fields of action. On this view, states are defined by and legitimated through global cultural models. In the balance of this Part, we demonstrate that this approach illuminates several striking features of states and helps explain some perplexing patterns of state behavior. This theoretical framework also sheds light on important controversies in international legal studies.

B. *Understanding the State as a Social Organization: An Introduction to the "World Polity"*

This "institutionalist" approach emphasizes the role of world-level cultural models that "press all countries toward common objectives, forms, and practices."³⁶ Accordingly, theories of state sovereignty should account for the general sociocultural character of the contemporary nation state. States are organizational forms reflecting the institutional environment in which they are embedded. The "new institutionalism" in sociology has indeed inspired a substantial body of empirical work on the sovereign nation state as a unique organizational form. This work and the theoretical propositions growing out of it yield an innovative and, in our view, illuminating conception of state sovereignty (and the relationship between states and the international order). In this section, we outline this theory of the state, and in the course of so doing, we reference much of the empirical work supporting this approach.

The central problem is how best to understand the state as an organizational actor—including the form, structure, and practices of states. In organizational theory, the conventional wisdom views organizations too narrowly. As previously discussed, organizations are traditionally viewed as "adaptive vehicle[s]";³⁷ that is, organizations are designed by individuals to perform specific task demands.³⁸ As discussed in the Introduction, prevailing conceptions of the state, explicitly or implicitly, rely on these views. Although this understanding of organizational behavior is indispensable to any fully satisfactory theory of social organization, we maintain that this approach cannot account for many common features of states.

Based on empirical studies in sociological institutionalism, we advance several related propositions. First, several distinctive properties of the state are *constructed by cultural processes*. Second, these cultural processes are substantially organized at the *global* level. Third, specific features of world society *reinforce the legitimacy* of global cultural principles and *accelerate the diffusion* of global scripts.

36. Connie McNeely, *Cultural Isomorphism Among Nation-States: The Role of International Organizations* 3 (1989) (unpublished Ph.D. dissertation, Stanford University) (on file with authors).

37. W. Richard Scott, *The Adolescence of Institutional Theory*, 32 ADMIN. SCI. Q. 493, 494 (1987).

38. PHILIP SELZNICK, *LEADERSHIP IN ADMINISTRATION* 15-18 (1957).

We suggest that these propositions, taken together, support an inference that states operate in an institutional environment that can be usefully described as the “world polity.”³⁹ By “polity,” we mean a “system of creating value through the collective conferral of authority.”⁴⁰ This system is constituted by a set of rules—embodied in global frames and models, and actors in this system are “entities constructed and motivated by enveloping frames.”⁴¹ The world polity contains no central authority. Rather, “the culture of world society allocates responsible and authoritative actorhood to nation-states.”⁴² The authority of states is rooted in a world culture reflected in universally applicable models that define the legitimate actors in world society, the legitimate goals of these actors, and the most appropriate means of pursuing these goals.

C. *The Production and Legitimation of States in the World Polity*

As described above, institutionalization presses organizations toward increasing “isomorphism”—that is, structural similarity across organizations.⁴³ In world society, global models produce considerable isomorphism among differently situated states. As many commentators have pointed out, the extent of this isomorphism is striking.⁴⁴ Several organizational characteristics of states, when considered in some detail, suggest the presence of world cultural processes and provide some evidence of how these processes work. In this section, we (1) describe several structural similarities across states—examples of isomorphism, (2) outline the global cultural processes that shape these “actors” to produce such isomorphism, and (3) identify the common features of state structure that enact the global model of “rational actorhood”—that is, the features of the state essential to its status as a legitimate actor in global politics.

39. John W. Meyer, John Boli, George M. Thomas & Francisco O. Ramirez, *World Society and the Nation-State*, 103 AM. J. SOC. 144 (1997).

40. John W. Meyer, *The World Polity and the Authority of the Nation-State*, in STUDIES OF THE MODERN WORLD-SYSTEM 111-12 (Albert Bergesen ed., 1980).

41. John Boli & George Thomas, *World Culture in the World Polity: A Century of International Non-Governmental Organization*, 62 AM. SOC. REV. 171, 172 (1997).

42. Meyer et al., *supra* note 39, at 169.

43. See generally THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS, *supra* note 24 (explaining the empirical predications of various institutional approaches).

44. See, e.g., CONSTRUCTING WORLD CULTURE: INTERNATIONAL NONGOVERNMENTAL ORGANIZATIONS SINCE 1975 (John Boli & George M. Thomas eds., 1999) [hereinafter CONSTRUCTING WORLD CULTURE]; David John Frank, Suk-Ying Wong, John W. Meyer & Francisco O. Ramirez, *What Counts as History: A Cross-National and Longitudinal Study of University Curricula*, 44 COMP. EDUC. REV. 29 (2000); Meyer et al., *supra* note 39.

1. *Organizational structure of states.*

Substantial empirical work documents common characteristics in the organizational structure of states. Several constitutive features of contemporary states suggest that states are, in significant ways, “constructions of a common wider culture, rather than as self-directed actors responding rationally to internal and external contingencies.”⁴⁵ First, states exhibit a high degree of *isomorphism* in their structures and policies. Specific organizational characteristics are indeed increasingly prevalent among states. Second, this structural similarity is accompanied by extensive *decoupling* between shared purposes and structure on the one hand, and disparate functional demands and results on the other. Decoupling suggests that structural similarity does not reflect converging task demands, or, put differently, structure is not determined by function. Finally, as described more fully in Part III, several explanatory propositions issue from these empirical claims.

Isomorphism. Structural similarity between states (the prevalence of particular organizational forms and purposes) strongly suggests the institutionalization of world models. Many studies document isomorphic developments in state structure and policies.⁴⁶ Consider several examples. States increasingly enact national constitutions that are the loci of state power and responsibility. States adopt constitutional forms that correlate with ideologies and rights contained in other national constitutions written at the time.⁴⁷ States are educators; they carry out this responsibility through compulsory mass schooling and follow a strikingly similar curriculum.⁴⁸ States protect the environment, and this common goal is pursued through standardized policies and regulatory frameworks.⁴⁹ States are also in the business of promoting socioeconomic development.⁵⁰ And isomorphic

45. Meyer et al., *supra* note 39, at 152.

46. *See generally id.* (providing a general review of this literature); Boli & Thomas, *supra* note 41 (same).

47. John Boli, *World Polity Sources of Expanding State Authority and Organizations, 1870-1970*, in *INSTITUTIONAL STRUCTURE: CONSTITUTING STATE, SOCIETY, AND THE INDIVIDUAL* (George M. Thomas, John W. Meyer, Francisco Ramirez & John Boli eds., 1987).

48. JOHN W. MEYER, DAVID KAMENS & AARON BENAVIDES, *SCHOOL KNOWLEDGE FOR THE MASSES: WORLD MODELS AND NATIONAL PRIMARY CURRICULAR CATEGORIES IN THE TWENTIETH CENTURY* (1992); John W. Meyer, Francisco O. Ramirez & Yasemin Soysal, *World Expansion of Mass Education, 1870-1980*, 65 *SOC. EDUC.* 128 (1992).

49. David John Frank, Ann Hironaka & Evan Schofer, *Environmentalism as a Global Institution*, 65 *AM. SOC. REV.* 122 (2000) [hereinafter Frank et al., *Environmentalism*]; David John Frank, Ann Hironaka & Evan Schofer, *The Nation-State and the Natural Environment over the Twentieth Century*, 65 *AM. SOC. REV.* 96 (2000) [hereinafter Frank et al., *The Nation-State*].

50. *See, e.g.,* Martha Finnemore, *Norms, Culture, and World Politics: Insights from Sociology's Institutionalism*, 50 *INT'L ORG.* 325 (1996); Evan Schofer, *Science Associations in the International Sphere, 1875-1990, The Rationalization of Science and the Scientization of Society*, in *CONSTRUCTING WORLD CULTURE*, *supra* note 44, at 249.

tendencies pervade national economic policies. For instance, states measure and pursue development through standardized, rationalized recordkeeping, employing standardized measures of progress and economic well-being,⁵¹ and states redress economic disparities through universalistic welfare systems.⁵² States promote public health and, in doing so, they employ standard definitions of disease and common models of health care institutions.⁵³ States promote and direct science, and they establish science policy bureaucracies configured in similar ways to carry out these objectives.⁵⁴ States, to be sure, also promote public order and protect “national security”—which we analyze more fully in Part II.

Decoupling. Despite significant structural isomorphism, states are not “tightly coupled” structures. That is, the constituent features of the state do not reflect functional requirements or local cultural values. Because global cultural models are not sensitive to context, this produces “decoupling of general values from practical action.”⁵⁵ Many states adopt the high forms of world culture without closely linking these forms to practice. Therefore, high-level organizational structures, plans, and policies often do not correlate with direct implementation or efficacious organizational outcomes on the ground.⁵⁶ For example, states adopt welfare policies that correlate not with domestic levels of industrialization, unemployment, or labor unrest, but with international definitions of state responsibility.⁵⁷ States create national science bureaucracies “regardless of whether they have any science to coordinate,”⁵⁸ for example, when scientists and engineers comprise less than 0.2% of the population, and research and development spending is infinitesimal.⁵⁹ And

51. CONNIE MCNEELY, *CONSTRUCTING THE NATION-STATE: INTERNATIONAL ORGANIZATION AND PRESCRIPTIVE ACTION* (1995).

52. Andrew Abbott & Stanley DeViney, *The Welfare State as Transnational Event: Evidence from Sequences of Policy Adoption*, 16 *SOC. SCI. HIST.* 245 (1992); David Strang & Patricia Mei Yin Chang, *The International Labour Organization and the Welfare State: Institutional Effects on National Welfare Spending, 1960-80*, 47 *INT'L ORG.* 235 (1993); George M. Thomas & Pat Lauderdale, *State Authority and National Welfare Programs in the World System Context*, 3 *SOC. FORUM* 383 (1988).

53. See, e.g., Patricia Thornton, *Psychiatric Diagnosis as Sign and Symbol: Nomenclature as an Organizing and Legitimizing Strategy*, 4 *PERSP. ON SOC. PROBS.* 155 (1992).

54. FINNEMORE, *supra* note 13, at 34-68.

55. Meyer et al., *supra* note 39, at 155.

56. See, e.g., JAMES G. MARCH & JOHAN P. OLSEN, *AMBIGUITY AND CHOICE IN ORGANIZATIONS* (1976); Meyer & Rowan, *supra* note 24; D.J. Orton & Karl E. Weick, *Loosely Coupled Systems: A Reconceptualization*, 15 *ACAD. MGMT. REV.* 203 (1990); Karl E. Weick, *Educational Organizations as Loosely Coupled Systems*, 21 *ADMIN. SCI. Q.* 1 (1976).

57. Strang & Chang, *supra* note 52; Thomas & Lauderdale, *supra* note 52.

58. Martha Finnemore, *International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy*, 47 *INT'L ORG.* 567, 593 (1993).

59. *Id.* at 571-73.

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1761

although states embrace, as a formal matter, remarkably similar constitutional commitments to fair trial rights, state practice on the ground varies widely. The disconnect between local circumstances and universally applicable global models is not, however, an impediment to the diffusion of global norms—as conventional wisdom would suggest. Rather, the diffusion of global models and the resultant organizational isomorphism is, in important respects, made possible by this local “decoupling.”⁶⁰

2. *Global cultural processes.*

This overview of structural characteristics of states provides substantial evidence that common attributes derive from global models. We also consider it important to identify separately the cultural processes by which world society produces and legitimates states as isomorphic, rational actors. Our approach to this issue, again following the precepts of sociological institutionalism, emphasizes the cultural processes that construct actors and their preferences. At this stage, we reference two such processes relevant to the broader agenda of the Article. First, world society systematically constructs state identity and purpose. Of all the possible organizational forms political collectivities could assume, the contemporary nation state is the “preferred form of sovereign, responsible actor.”⁶¹ And, as a consequence, “all sorts of collectivities have learned to organize their claims around a nation-state identity.”⁶² Second, world cultural elements ensure the systemic maintenance of scripted modes of actor identity. World society structures provide authoritative external support to assist states in pursuing legitimated purposes.⁶³ For example, the United Nations provides a broad range of “technical advisory services” to states in areas such as human rights, refugee protection, and education. In addition, these world society structures apply external pressure on states to enact and implement world cultural principles.⁶⁴ The enactment of global models by states also legitimates and empowers certain subnational actors in their effort to promote these global models, norms, and principles.⁶⁵

60. Meyer & Rowan, *supra* note 24.

61. Meyer et al., *supra* note 39, at 158.

62. *Id.*

63. Deborah Barrett & David John Frank, *Population Control for National Development: From World Discourse to National Policies*, in *CONSTRUCTING WORLD CULTURE*, *supra* note 44, at 198; Finnemore, *supra* note 50.

64. Meyer et al., *supra* note 39, at 159, 163-65.

65. See, e.g., David John Frank & Elizabeth McEneaney, *The Individualization of Society and the Liberalization of State Policies on Same Sex Sexual Relations*, 77 *SOC. FORCES* 911 (1999).

3. “Rational actorhood.”

Global culture constitutes states as *bounded, rational, and purposive actors* systematically organized according to formal rules. “[I]n world culture the nation-state is defined as a fundamental and strongly legitimated unit of action. Because world culture is highly rationalized and universalistic, nation-states form as rationalized actors.”⁶⁶ States invariably represent themselves—both internally and externally—as rational, purposive actors. Several common features of state structure enact the global model of “rational actorhood.” That is, states understand and present themselves as bounded, rational, legitimated “actors.” In short, global culture legitimates purposive states with the formal responsibility for promoting certain globally legitimated goals (such as economic development, environmental protection, public safety, equality, and individual liberty).⁶⁷

* * *

To make these concepts more concrete, we apply them in detail to two examples—environmental protection and public education. These examples illustrate how the concepts of “isomorphism,” “decoupling,” and “actorhood” are employed, the kinds of phenomena they track, and, indeed, what they mean.

Consider environmental protection. In this domain, states share many organizational features and the variation across states is decreasing (isomorphism): Increasingly (and now pervasively), states have an environmental ministry;⁶⁸ increasingly, states join intergovernmental environmental organizations;⁶⁹ increasingly (and now pervasively), states create national parks dedicated to maintaining biodiversity or natural resources;⁷⁰ and increasingly, states adopt environmental impact assessment laws.⁷¹ These shared structural features are often “decoupled” or “loosely coupled” with local functional demands. In particular, ecological deterioration

66. Meyer et al., *supra* note 39, at 153.

67. See, e.g., Robert H. Jackson & Carl G. Rosberg, *Why Africa's Weak States Persist*, 35 *WORLD POL.* 1 (1982); John W. Meyer, *The Changing Cultural Content of World Society*, in *STATE/CULTURE: STATE FORMATION AFTER THE CULTURAL TURN* (George Steinmetz ed., 1999).

68. Consider, for example, that the first ministry was established in 1971; there were 52 ministries in 1989 and 109 by 1996. John W. Meyer, David John Frank, Ann Hironaka, Evan Schofer & Nancy Brandon Tuma, *The Structuring of a World Environmental Regime, 1870-1990*, 51 *INT'L ORG.* 623, 638 n.52 (1997).

69. *Id.*

70. In 1900, fewer than 40 national parks existed worldwide, mainly located in Britain and its former colonies. By 1907, national parks existed on every continent in the world, and by 1990, 7000 national parks existed worldwide. Frank et al., *The Nation-State*, *supra* note 49, at 97.

71. *Id.* at 97-99.

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1763

and economic development are very poor predictors of the presence of these organizational forms.⁷² Conversely, integration in the world polity is a strong predictor: “More sociocultural ties to world society means greater likelihood of national implementation for every kind of environmental protection on which we have data.”⁷³ These empirical findings help explain variation across different states (e.g., isolated states are less likely to undertake such environmental pursuits); the findings also strain any functionalist or bottom-up account of state organizational commitments to environmental protection.⁷⁴ Finally, substantial evidence suggests that states now embrace as a constitutive purpose environmental protection (“actorhood”).⁷⁵ The evidence also demonstrates that these developments followed the institutionalization of “national environmental protection” in world society (indicated by the expansion of the intergovernmental bureaucracy dedicated to national environmental protection, proliferation of multilateral treaty regimes on the matter, and the explosion of professional and nongovernmental organizations promoting environmentalism).⁷⁶ In short, global norms have emerged prescribing national environmental protection, states increasingly embrace this norm, and states increasingly enact similar organizational structures to implement this norm (irrespective of whether these structures respond to or translate into concrete changes on the ground).

Education is another example. Substantial evidence demonstrates that states have embraced public education as a core purpose of the state—that is, states are educators. Indeed, the right of citizens to an education and the state obligation to provide it are now accepted in most countries. Moreover, states implement this obligation in similar ways. In various educational matters, states exhibit remarkable structural isomorphism (that is, states pursue remarkably similar educational policies). States follow standardized models in establishing educational ministries, credentialing teachers, organizing school cycles (e.g., annually and by age brackets), and designing schools and classrooms. These structural commitments are often loosely coupled with functional demands and domestically defined imperatives. That is, states have adopted these standardized forms instead of selecting from a menu of options that might better meet local needs or reflect domestic society and culture. Despite diverse social, political, and material conditions, states also accept mass, compulsory public education as a central purpose. Similar to the environmental domain, a study of state commitments to mass public education

72. *Id.* at 105-06.

73. *Id.* at 106.

74. To be clear, these particular findings do not indicate whether states are making good faith commitments to environmental protection or whether the practices will fulfill the stated goals.

75. David John Frank, *Science, Nature, and the Globalization of the Environment, 1870-1990*, 76 *SOC. FORCES* 409 (1997).

76. Frank et al., *The Nation-State*, *supra* note 49, at 97-101.

from 1870 to 1980 shows that “[t]he rate of state entry into the world of mass education is affected little by such properties of a national society as urbanization, racial or religious composition The rate of entry is strongly affected by [a state’s] structural location in the world society.”⁷⁷

Most striking is the evidence demonstrating isomorphism in national curricula. First, despite diverse social, political, and material conditions across states, the percentage of countries offering the same subjects (e.g., mathematics, language, particular subfields of natural sciences, particular subfields of social sciences, aesthetics, physical education) has increased significantly.⁷⁸ Second, even the emphasis given to these subjects (measured by allocation of instructional time) is increasingly similar among states, with standard deviations (the variation around the mean) narrowing considerably over time.⁷⁹ In other words, more states are teaching the very same subjects for the same amount of time, and the degree of variation among states doing otherwise is shrinking. Third, this “increasingly similar world curriculum” occupies most of the instructional time.⁸⁰ Fourth, changes in national curricula follow worldwide convergent shifts. For example, a declining emphasis on vocational courses or a shift in emphasis from history to general social science occurs across states within the same intervals of time.⁸¹ Transformations in curricular content follow world, not national, time, and changes in the curriculum clearly outpace local change. These developments indicate considerable decoupling with national functional demands. “Children who will become agricultural laborers study fractions; villagers in remote regions learn about chemical reactions; members of marginalized groups who will never see a ballot box study their national constitutions. Deeming such practices rationally functional requires a breathtaking leap of faith.”⁸² In short, states are educators and they fulfill this role through remarkably similar organizational forms even if these forms do not serve well the unique educational needs of the state.

The empirical evidence discussed in this Part demonstrates substantial crossnational isomorphism despite enormous differences in national resources, culture, and history. As we discussed more fully in the Introduction, conventional theories of the state cannot easily explain the depth and breadth of these isomorphic developments because the resultant organizational forms are often ineffective (or even dysfunctional). What accounts for isomorphism if the standardized objectives and forms are not functional? On our view, this

77. Meyer et al., *supra* note 48, at 146.

78. Aaron Benavot, Yun-Kyung Cha, David Kamens, John W. Meyer & Suk-Ying Wong, *Knowledge for the Masses: World Models and National Curricula, 1920-1986*, 56 AM. SOC. REV. 85, 90-91 (1991).

79. *Id.* at 91-93.

80. *Id.* at 92.

81. *Id.* at 91; *see also* Frank et al., *supra* note 44.

82. Meyer et al., *supra* note 39, at 149-50 (internal citation omitted).

observed isomorphism itself constitutes sufficient evidence to take seriously the proposition that states are enactors of global scripts, and that “states” themselves are enactments of a world cultural order. Global scripts define, legitimate, and shape the structures and policies of nation states. “Worldwide models define and legitimate agendas for local action, shaping the structures and policies of nation-states and other national and local actors in virtually all of the domains of rationalized social life”⁸³ There is a considerable worldwide consensus on the legitimate purposes of the state and the acceptable means of pursuing these objectives. Global cultural models predict crossnational isomorphism irrespective of local circumstances.⁸⁴ Because these models have developed universal authority and legitimacy, states follow these global scripts as members of world society.⁸⁵

We do not mean to suggest that evidence of isomorphism, considered in isolation, discredits realist explanations. For example, realists might argue that homogenization results from simple cost-benefit driven imitation of successful organizations and practices. Indeed, this explanation has much to recommend it, and we acknowledge that it accounts for some of the mimicry we identify. Although it is beyond the scope of this Article to evaluate the adequacy of this account systematically, the evidence offered in this Part suggests that it is incomplete—a claim that subsequent study must substantiate. For example, realists would not predict that decoupling would accompany isomorphism. That is, realists would not expect increasing isomorphism over time as states learn that global models often fail on the ground.⁸⁶ Our approach, on the other hand, predicts increasing homogenization irrespective of the functional benefits generated by the global scripts.⁸⁷

II. WORLD POLITY AND NATIONAL SECURITY

In this Part, we illustrate the utility of our model through an analysis of several national security practices including the internal composition of

83. *Id.* at 145.

84. *See, e.g.,* Frank et al., *Environmentalism*, *supra* note 49; Meyer et al, *supra* note 39.

85. *See, e.g.,* Meyer & Rowan, *supra* note 24.

86. Another approach might emphasize the rationality of mimicry as a signal to domestic and international audiences—irrespective of the whether the global script produces results on the ground. *See, e.g.,* Goldsmith & Posner, *Moral and Legal Rhetoric*, *supra* note 5. Although the predictions of this approach track our own in many respects, two points of disagreement bear mentioning. First, this approach does not adequately account for isomorphism and decoupling. That is, the point about decoupling and learning in the text applies to this approach as well—although in a slightly modified form: Assuming that states learn, the credibility of the mimicry signal would substantially degrade over time in an environment characterized by decoupling. Second, this approach would predict that mimicry (and, hence, isomorphism) would vary depending on the presence, power, and influence of relevant audiences. Our approach, on the other hand, predicts isomorphism irrespective of whether there is political pressure to conform.

87. *See infra* Part III.A (summarizing the empirical predictions of our approach).

national militaries, arms procurement and production strategies, use of force, and conduct during armed conflict. National security promises to be a particularly illuminating issue area because it is in regard to such matters that “hard-boiled calculations of state interests” are most likely to trump institutional orthodoxy.⁸⁸ That is, this domain of state practice is (1) the least likely to exhibit nonfunctional (or dysfunctional) organizational features, and (2) the most likely to resist the influence of exogenously defined institutional constraints (particularly when these constraints do not clearly align with security needs). Indeed, conventional wisdom assumes that the content and direction of governmental practice in this area will be dictated by security needs. Accordingly, realist approaches seem best suited to explain state behavior in the national security domain, just as constructivist explanations seem least persuasive in such matters.

Through an analysis of several puzzling national security practices, we hope to demonstrate ways in which our model can supplement, qualify, or even discredit this conventional wisdom. First, we contend that global cultural and associational processes significantly influence national security practices. We show the manner in which global cultural principles outside the realm of security (notions of modernity, status, progress, and civilized behavior, for example) influence state security practices. Second, we contend that the substantive content of “national security” is itself substantially shaped by global models. That is, we widen our analysis to include the ways in which the world polity constructs and legitimates particular national security threats and concerns. This brief survey of existing research is not intended to prove or disprove the validity of any particular approach—that is, we do not offer evidence that could arbitrate between our approach and other schools of thought. We intend only to point to a body of existing research providing nontrivial evidence that our approach could provide more satisfying explanations for a host of security practices. Our analysis in this Part is, as a result, more exploratory and illustrative than systematic.

A. *National Security Practices*

1. *National militaries.*

Global cultural processes have significantly influenced the internal composition of national militaries. Militaries today, across a wide array of countries, share remarkably similar organizational features. As one global polity scholar explains,

[e]ven the state defense apparatus, the component of the state that realism would expect to be most constrained by [functional] task demands imposed by

88. Meyer et al., *supra* note 39, at 161.

a self-help world, exhibits this kind of isomorphism . . . [V]irtually all states have defense ministries even when they face no external threat. Further, virtually all states have tripartite military structures, with an army, air force, and navy—even landlocked states.⁸⁹

Alexander Wendt and Michael Barnett also discuss the effects of what they term “global military culture.”⁹⁰ The existence of this “global culture” is inferred from high levels of organizational isomorphism despite several available alternative functional designs. Wendt and Barnett demonstrate a remarkable degree of convergence around a uniform model of military organization. For example, states have adopted the model of professionalism emblematic of the “modern” military: “full-time officers and [noncommissioned officers] who see themselves as military men first, a centralized command structure, high levels of internal differentiation, and promotion based on technical expertise and merit.”⁹¹

Wendt and Barnett also suggest that both material and cultural variables—including links between elites in Western states and elites (civilian and military) in postcolonial countries—contribute to this organizational isomorphism. And, as they point out, British, French, and U.S. military programs continue to train tens of thousands of Third World military personnel.⁹² These training programs and the ongoing contacts they provide suggest the presence and reinforce the diffusion of globally legitimated models of military organization, identification, and attitude.⁹³

89. Finnemore, *supra* note 50, at 336-37.

90. Alexander Wendt & Michael Barnett, *Dependent State Formation and Third World Militarization*, 19 REV. INT’L STUD. 321, 336-41 (1993).

91. *Id.* at 337. Alternatives include a military with a decentralized structure; part-time, militia armies; little internal differentiation; promotion based on ties to political authority; and officers who consider themselves by general social status (e.g., aristocrats, nobles) first and as military men second. *Id.* at 337-38.

92. *Id.* at 338-39. From 1950 to 1985, the United States trained over half a million foreign personnel from over 100 countries through its International Military Education Training (IMET) program. WILLIAM S. COHEN, SEC’Y OF DEFENSE, ANNUAL DEFENSE REPORT TO THE PRESIDENT AND CONGRESS app. M-2 (2001); JOHN A. COPE, JR., INST. FOR NAT’L STRATEGIC STUD., MCNAIR PAPER No. 44: INTERNATIONAL MILITARY EDUCATION AND TRAINING: AN ASSESSMENT (1995), available at www.ndu.edu/inss/macnair/mcnair44/m44cont.html; U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 356 (1996).

93. MILES WOLPIN, MILITARISM AND SOCIAL REVOLUTION IN THE THIRD WORLD 27-42 (1981); Björn Hagelin, *Military Dependency: Thailand and the Philippines*, 25 J. PEACE RES. 431, 441 (1988) (“IMET is, in a way, an indoctrination program. . . . When successful, IMET strengthens and broadens the common basis for defining enemies and threats as well as evaluating relevant responses.”); *id.* at 445 (“The training of foreign troops as well as police forces will be . . . an important means of keeping the security perceptions in the foreign country ‘aligned’ with American interpretations.”); Wendt & Barnett, *supra* note 90, at 338.

2. *Arms procurement and production.*

Substantial evidence suggests that national arms procurement strategies are also often shaped by global cultural models. In a leading study, sociologists Dana Eyre and Mark Suchman demonstrate that the procurement of advanced weaponry by developing countries cannot be adequately explained by direct security interests or functional demands.⁹⁴ Instead, “belief in militaries and modern weaponry as distinguishing emblems of the modern nation-state” also significantly influence procurement strategies; this institutionalized perspective helps explain developing countries’ practices such as purchasing a functionally insufficient—though a showcase—number of supersonic aircraft.⁹⁵ Eyre and Suchman use regression analyses to control for competing causal explanations including economic resources and military threats. One of their most significant findings is that the procurement of advanced weaponry by developing countries varies with how connected the state is to the world polity.⁹⁶ Their results support the hypothesis that the world polity shapes domestic beliefs and preferences related to arms development.

Eyre and Suchman also suggest that transnational military relationships help spread these cultural models. They identify dense networks of military professionals across national boundaries (e.g., military liaisons; foreign officers in U.S. military schools) and the emergence of a professional international defense literature as mechanisms through which such connections are made and cultural understandings are spread.⁹⁷

Other studies demonstrate that a related practice—indigenous arms production—is also driven by cultural (symbolic), not just material, motivations, and that these symbols are substantially organized on the global level. For many developing countries, “on strictly military grounds there should be no reason to prefer domestically produced weaponry over imports, assuming comparable performance characteristics.”⁹⁸ And, on strictly

94. Dana P. Eyre & Mark C. Suchman, *Status, Norms, and the Proliferation of Conventional Weapons: An Institutional Theory Approach*, in *THE CULTURE OF NATIONAL SECURITY: NORMS AND IDENTITY IN WORLD POLITICS* 79 (Peter J. Katzenstein ed., 1996) [hereinafter *THE CULTURE OF NATIONAL SECURITY*].

95. Eyre & Suchman, *supra* note 94, at 92-93.

96. The authors measure connectedness by standard indicators such as memberships in multilateral governmental associations and numbers of diplomatic representatives abroad. Eyre & Suchman, *supra* note 94, at 102-03.

97. *Id.* at 111-12.

98. David Kinsella & Jugdep S. Chima, *Symbols of Statehood: Military Industrialization and Public Discourse in India*, 27 *REV. INT’L STUDIES*, 353, 355-56 (2001); David Kinsella, *Forces Driving Military Industrialization in the Third World: Interests and Passions* (1996) (unpublished manuscript), available at <http://web.pdx.edu/~kinsella/papers/isa96.pdf> (describing military drawbacks of indigenous arms production for developing countries). For example, a state’s decision to manufacture its own conventional weapons systems may sacrifice performance and reliability of those systems. *Id.* at 5.

economic grounds, the overall benefits to indigenous production are unclear.⁹⁹ Indeed, according to a study using regression analyses, economic and military variables do not sufficiently explain when states initiate or maintain indigenous arms production.¹⁰⁰ Adding symbolism as an explanatory variable, however, could provide a more adequate explanation.

For example, some evidence suggests that the independent, modern state is symbolically associated with the capacity to produce advanced weapons, and that this association in turn influences state practices.¹⁰¹ Indeed, the global cultural significance of indigenous production of advanced weaponry is now well documented. One recent study documents that the prestige of acquiring and, ultimately, producing sophisticated weaponry is an express part of popular and elite discourse in developing countries.¹⁰² Also, Scott Sagan's study of the nuclear weapons program in France—including France's decision to join the nuclear club, the nature of the French nuclear military strategy, and the government's reluctance to stop nuclear testing in the mid-1990s—shows the influence of global culture.¹⁰³ Sagan's work suggests that global scripts for "major power" status were more determinative of France's decisions than genuine security considerations.

These studies of arms procurement and indigenous production suggest the influence of world cultural scripts. The evidence suggests that states emulate models institutionalized at the global level. Moreover, it is concerns for status and legitimacy that generate similar practices across countries in that states embark on these costly projects that are loosely coupled (or, in some instances, decoupled) with actual material imperatives or military needs.

3. *Use of force—assassinations.*

Substantial evidence also suggests that the world polity influences state practices involving the use of force. One of the most-studied norms in this domain, the prohibition on assassinating foreign leaders, provides potentially significant insights into origins and effects of global models of legitimate state conduct. Remarkably, during the eighteenth and nineteenth centuries, states almost universally abided by the prohibition.¹⁰⁴ A study of over 100 bilateral extradition treaties in 1935 found assassination almost uniformly included as an

99. Kinsella & Chima, *supra* note 98, at 356.

100. Kinsella, *supra* note 98, at 11-12.

101. See generally Kinsella & Chima, *supra* note 98 (arguing that symbolic motivations are a prominent force behind the military industrialization process in India).

102. *Id.*

103. Scott D. Sagan, *Why Do States Build Nuclear Weapons: Three Models in Search of a Bomb*, INT'L SECURITY, Winter 1996/97, at 54, 76-80.

104. WARD THOMAS, THE ETHICS OF DESTRUCTION: NORMS AND FORCE IN INTERNATIONAL RELATIONS 57-67 (2001); Martin L. van Creveld, *The Persian Gulf Crisis of 1990-91 and the Future of Morally Constrained War*, 22 PARAMETERS 21, 31 (1992).

extraditable offense, suggesting structural convergence in state practice.¹⁰⁵ The Rome Statute of the International Criminal Court prohibits assassination,¹⁰⁶ as do modern military manuals of the United States and foreign countries.¹⁰⁷

In earlier centuries, a contrary principle predominated. Assassination was an accepted part of official statecraft. Italian city-states regularly hired private assassins and “addressed it with [a] bureaucratic matter-of-factness”;¹⁰⁸ Vatican officials vocally supported killing Protestant heads of state;¹⁰⁹ Spain’s Phillip II sponsored plots to kill Protestant leaders including Holland’s William of Orange and Queen Elizabeth I of England;¹¹⁰ and Queen Elizabeth employed assassins in Ireland.¹¹¹

Political scientist Ward Thomas attributes much of the norm’s modern strength and durability to “the structure of the international system”; in particular, “by limiting legitimate modes of violence between states to war or large-scale intervention, the prohibition on assassination reinforces the position of great powers.”¹¹² Yet, as a historical matter, the norm’s origins and fluctuations cannot be explained simply by changes in material structure.

Thomas identifies two features of the global system that allowed for the institutionalization of the modern rule—one largely material and the other largely cognitive. The material development was the advent of the mass army, which was both a cause and an effect of the organizational form of the modern state.¹¹³ An effective norm against assassination served the interests of modern states, especially the most powerful ones, by helping to ensure that the use of force would be conducted in terms most favorable to them. The cognitive development, which also accompanied the rise of the modern state, was “the fiction that wars are waged by states, not men.”¹¹⁴ The conception of the

105. The survey of 42 U.S. bilateral extradition treaties uniformly found assassination under the definition of murder; and in 62 non-U.S. bilateral treaties assassination was almost universally an extraditable offense. Harvard Res. in Int’l Law, *Draft Convention on Extradition, with Comment*, 29 AM. J. INT’L L. 15, app. II(A), at 243-44 (Supp. 1935); *id.* app. II(B), at 258-60.

106. Rome Statute of the International Criminal Court, July 17, 1998, art. 8, § 2(b)(xi), U.N. Doc. A/CONF.183/9 (1998), 37 I.L.M. 999, 1007 (defining “[k]illing or wounding treacherously individuals belonging to the hostile nation or army” as a “war crime”).

107. See Michael N. Schmitt, *State-Sponsored Assassination in International and Domestic Law*, 17 YALE J. INT’L L. 609, 631-32 (1992).

108. THOMAS, *supra* note 104, at 54.

109. *Id.* at 56 (quoting FRANKLIN L. FORD, *POLITICAL MURDER: FROM TYRANNICIDE TO TERRORISM* (1985)).

110. During the 1570s and 1580s, Queen Elizabeth was the target of at least 20 assassination plots by foreign powers. *Id.* at 55 (citation omitted).

111. *Id.*

112. *Id.* at 51.

113. *Id.* at 62 (citing Charles Tilly, *Reflections on the History of European State-Making*, in *THE FORMATION OF NATIONAL STATES IN WESTERN EUROPE* (Charles Tilly ed., 1975)).

114. See *id.*; van Creveld, *supra* note 104, at 31.

modern state “as an abstract organization caused an increasingly sharp line to be drawn between the rulers’ private persons and their public functions. The latter represented legitimate targets; the former were supposed to remain inviolate.”¹¹⁵ This conception of the state worked synergistically with powerful states’ reliance on mass armies: “[C]lashes between large masses of men—rather than intrigue—was the proper way for conflicts to be settled.”¹¹⁶

General adherence to the assassination prohibition during the seventeenth and eighteenth centuries helped institutionalize the norm as a rule for defining legitimate state conduct. Reflecting this understanding, the Lieber Code of 1863 stated, “Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.”¹¹⁷

The highly institutionalized prohibition on assassination shaped elite decisionmaking even within powerful states. For example, when Philip IV was approached with a plan to assassinate Sweden’s Gustav Adolph, he rejected the idea as

unworthy of a great and just king For, it being left to God to punish His enemies, and there remaining to us appropriate and legitimate means to resist and humiliate them according to what prudence and just intention will advise, God will favor [such means], and conscience and reputation will continue to be protected.¹¹⁸

In 1938, when Lt. General McFarlane, the British attaché to Berlin, proposed assassinating Hitler,¹¹⁹ the British government rejected the plan as “unsportsmanlike.”¹²⁰ In the June 1944 memorandum that prompted the eventual plan to assassinate Hitler, the authors concluded their proposal by stating, “We are not, repeat not, mad nor is this a joke.”¹²¹ According to Thomas,

[d]espite the desperate situation faced by Britain in the early years of the war, it was not until June 1944 that the British Special Operations Executive (SOE) undertook “a deliberate and continuous effort to try and liquidate Hitler.”

115. See THOMAS, *supra* note 104, at 63; van Creveld, *supra* note 104, at 32.

116. THOMAS, *supra* note 104, at 63.

117. Instructions for the Government of Armies of the United States in the Field (Lieber Code), Apr. 24, 1863, art. 148. In the 1907 Hague Regulations, governments codified the customary prohibition on assassination in the form of treacherous killing. See Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, Oct. 18, 1907, art. 23(b).

118. FORD, *supra* note 109, at 187-88 (citation omitted).

119. *Plan to Kill Hitler Was “Unsporting,”* TIMES (London), Aug. 5, 1969, at 5.

120. THOMAS, *supra* note 104, at 60; *Plan to Kill Hitler Was “Unsporting,”* *supra* note 119.

121. Mark Seaman, *Introduction* to OPERATION FOXLEY: THE BRITISH PLAN TO KILL HITLER 1, 13 (1998) (citation omitted).

Even then, there remained “a grave divergence of views” on the matter within the government and the SOE, and the plan was never implemented.¹²²

In short, the global norm against assassination shaped national policy frameworks and either precluded or slowed recourse to specific measures that would have optimized national needs, even when vital security interests were at stake.

Beyond these cases, the idea of assassinating foreign leaders has remained politically unmentionable,¹²³ despite its potential to serve powerful state interests.¹²⁴ In 1997, George Stephanopoulos noted, “Of all the words you just can’t say in the modern White House . . . none is more taboo than ‘assassination.’”¹²⁵ A strong argument exists that the post-September 11 U.S. administration’s policy of killing suspected terrorist leaders does not run afoul of the law against assassination. Yet the policy has encountered resistance from the military establishment.¹²⁶ A Pentagon adviser who worked for Secretary Rumsfeld divulged, “I’ve heard this—‘It’s not American’—from the military leadership.”¹²⁷ A critical statement by a recently retired colonel and a member of high-level planning staffs at the Pentagon reflects the tension between the new policy and conceptions of legitimate conduct:

[T]he civilians running the Pentagon are no longer trying to avoid the gray area It is not unlawful, but ethics is about what we ought to do in our position as the most powerful country in human history. Strategic deception plans, global assassinations done by the military—all will define who we are and what we want to become as a nation.¹²⁸

The important point is this: Irrespective of its potential strategic value, states no longer recognize assassination as a culturally viable option.

122. THOMAS, *supra* note 104, at 60 (citation omitted).

123. Schmitt, *supra* note 107, at 611 (“Surely few would argue that state-sponsored assassination is, or should be, legal.”).

124. One might posit that assassination is ineffective because of leadership replacement and unpredictable outcomes (such as martyrdom). However, state actors in past centuries and contemporary nonstate actors (e.g., national liberation groups) have considered assassination an effective tool. Our theory would expect both actors—states in the past and contemporary nonstate actors—not to have incorporated the norm as modern states have. Furthermore, many commentators contend that in many circumstances assassinating a foreign leader would maximize a state’s short- and long-term interests. See, e.g., Hans J. Morgenthau, *The Twilight of International Morality*, 58 ETHICS 79 (1948); Ralph Peters, *A Revolution in Military Ethics?*, 26 PARAMETERS 102, 106 (1996).

125. George Stephanopoulos, *Why We Should Kill Saddam*, NEWSWEEK, Dec. 1, 1997, at 34.

126. Seymour M. Hersh, *Manhunt*, NEW YORKER, Dec. 23, 2002, at 66 (quotation marks omitted).

127. *Id.* at 73 (quotation marks omitted).

128. *Id.* at 83.

4. *Conduct during armed conflict—chemical weapons.*

Global culture also influences the means and methods of warfare employed by states. The character of the prohibitory regime on the first-use of chemical weapons (CWs) suggests that world cultural principles influence the methods and means of warfare. In this domain, state practice evidences remarkable isomorphism in the use and development of CWs. After World War I, almost all states refrained from using CWs (remarkably including throughout World War II), and militaries across a range of countries deprioritized CW research and stockpiling.¹²⁹ Conventional realist accounts might explain some of these practices. However, a full account of the almost complete isomorphism requires looking to the effects of world models—e.g., the notion that “civilized” states should not initiate CW use—and modern militaries’ cognitive frameworks.

In his book, *The Chemical Weapons Taboo*, political scientist Richard Price notes that “[i]t is a point of utmost analytical importance that the authors of the most systemic analyses of World War II are unable to dismiss the role of the stigma against using chemical weapons.”¹³⁰ Price attributes the rise and maintenance of the stigma to experiences with CWs during World War I, special aversions to chemical injuries, and, perhaps most importantly, a global discourse propelled by governmental treaty negotiations.¹³¹ This discourse traded on shared beliefs about what it meant to be a “civilized” state and the appropriate use of science. The U.S. representative and Chair of the 1921 Washington Conference on the Limitation of Armament¹³² invoked an influential report’s statement that “chemical warfare should be abolished among nations, as abhorrent to civilization. It is a cruel, unfair and improper use of science. It is fraught with the gravest danger to noncombatants and demoralizes the better instincts of humanity.”¹³³

Even competing accounts of the norm’s source suggest the importance of global processes. Jeffrey Legro, for example, acknowledges international aspects of the normative prohibition even though he emphasizes cultural systems within national militaries as a source for CW restraint.¹³⁴ The features of internal military culture that he identifies include adherence to codes of honor, resistance to civilian involvement in military matters, and attachments to

129. RICHARD M. PRICE, *THE CHEMICAL WEAPONS TABOO* 94, 128-32 (1997).

130. *Id.* at 110.

131. *Id.* at 83. Price describes his work as a discursive analysis.

132. Richard Price & Nina Tannenwald, *Norms and Deterrence: The Nuclear and Chemical Weapons Taboos*, in *THE CULTURE OF NATIONAL SECURITY*, *supra* note 94, at 123 (“[T]he U.S. was the dominant force behind interwar efforts to proscribe CW, even though it was recognized that the country would be giving up a material advantage with such a prohibition.”).

133. PRICE, *supra* note 129, at 82 (quoting U.S. Dept. of State, Conference on the Limitations of Armament (1922)).

134. LEGRO, *supra* note 8, at 146-49.

habitual or traditional war fighting strategies.¹³⁵ Notably, these characteristics exist across a range of national militaries. One should, indeed, expect that the spread of “global military culture”¹³⁶ would help sustain the internal military disposition against CW use. Additionally, Legro does not explore why a commitment to honor would involve resistance to CW use; we posit that global models of legitimate behavior help explain such phenomena across different militaries.

A realist framework has difficulty explaining the character of the norm. First, states have almost uniformly refrained from CW use despite widely varying regional, national, and international (short- and long-term) security environments. Second, a prominent realist explanation for restraint—the threat of retaliation—is refuted by state practice. There are numerous armed conflicts in which CW states do not use CWs against non-CW states and conflicts in which non-CW states attacked CW states.¹³⁷ Consider also Legro’s analysis of British experience in World War II which concludes: “Realism would anticipate that Britain would have opted for use when chemical warfare was to its advantage and for restraint when it was relatively vulnerable. This, however, is almost the exact opposite of what occurred.”¹³⁸

Third, internal governmental documents reveal cases in which powerful states were reluctant to use CWs even when doing so provided a clear military advantage.¹³⁹ For instance, internal memoranda show that Churchill’s military chiefs raised ethical claims in rejecting the first-use of CWs to defend Britain against a German invasion.¹⁴⁰ Aware of how entrenched the CW taboo had become, in a July 6, 1944 memo to his service chiefs, Churchill demanded that

135. *Id.* at 150-52.

136. *See supra* text accompanying note 90.

137. Price & Tannenwald, *supra* note 132, at 114; *see also* PRICE, *supra* note 129, at 4-5.

138. JEFFREY W. LEGRO, COOPERATION UNDER FIRE: ANGLO-GERMAN RESTRAINT DURING WORLD WAR II 153 (1995). *But cf.* PRICE, *supra* note 129, at 203 n.110 (disputing whether British authorized first-use on either occasion); Adam Roberts, *Land Warfare: From Hague to Nuremberg*, in THE LAWS OF WAR: CONSTRAINTS ON WARFARE IN THE WESTERN WORLD 116, 129 (Michael Howard, George J. Andreopoulos & Mark R. Shulman eds., 1994).

139. Price’s archival research also shows that the legal prohibition on CWs affected states’ decisions in allocating resources during the preparation for war. PRICE, *supra* note 129, at 109, 129.

140. PRICE, *supra* note 129, at 121-24. For example, when Britain considered first-use in 1940, Major-General Henderson stated that the initiation of chemical warfare would throw away the incalculable moral strength we derive from keeping our pledged word for a tactical surprise Our corresponding loss would be greater not only abroad but in our own country too, as such a departure from our principles and traditions would have the most deplorable effects not only on our own people but even on the fighting services. Some of us would begin to wonder whether it really mattered which side won.

Id. at 121 (quoting Memo of June 16, 1940, PRO file WO/193/732). In situations in which Britain’s survival was not at stake, Legro’s descriptive assessment accords more closely with Price and Tannenwald’s. For example, Legro states that the “chemical warfare regime of the

a cold-blooded calculation [be] made as to how it would pay us to use poison gas I don't see why we should always have all the disadvantages of being the gentleman I want the matter studied in cold blood by sensible people and not by that particular set of psalm-singing uniformed defeatists which one runs across now here now there.¹⁴¹

Nevertheless, the joint planning staff maintained that Britain should not initiate use.¹⁴² In a responding memo, Churchill capitulated: "I am not at all convinced by this negative report. But clearly I cannot make head against the parsons and the warriors at the same time."¹⁴³ These internal memoranda indicate that adherence to the prohibition reflected normative and cognitive considerations, not simply strategic self-interest. It should also be noted that this type of evidence, by documenting the influence of orthodoxy and normativity, can arbitrate between competing explanations.

The U.S. government also chose not to employ CWs, but instead to expend American lives and resources in the war against Japan. Major American newspapers advocated using CWs against Japan and justified such action by dehumanizing the Japanese people.¹⁴⁴ Still, the majority of Americans, even when informed of the tradeoff in American lives, rejected CW use.¹⁴⁵ So did the government. Specifically, in the summer of 1945, the government decided not to use CWs against Japanese forces located in the caves and tunnels of the Pacific Islands.¹⁴⁶ The government made this decision despite having determined that no significant threat of retaliation existed and that CWs were

interwar period acted as a constraint on policy and behavior. The Foreign Office considered the Protocol a binding commitment. When this was challenged in the mid-1920s by proposals to use gas on the Indian North-West Frontier, the Foreign Office was adamantly opposed." LEGRO, *supra* note 138, at 156; *see also* EDWARD M. SPIERS, *CHEMICAL WARFARE 47-49* (1986) (documenting Indian North-West Frontier episode).

141. PRICE, *supra* note 129, at 123 (quotation marks omitted) (quoting Churchill letter to Ismay (July 6, 1944), in PRO file PREM 3/89). Churchill was obviously fighting against ethical concerns. "It is absurd to consider morality," the memo proclaimed, "when everybody used it in the last war without a word of complaint from the moralists or the Church." *Id.* He assured the service chiefs that he would not use CWs, even if in the country's strategic interest to do so, unless "it was life or death for us," or it would "shorten the war by a year." *Id.*

142. Legro argues that the strategic rationales offered in the joint planning staff report appear strained and pretextual. *See* LEGRO, *supra* note 138, at 164-67.

143. Churchill Minute to Ismay (for the COS) (July 29, 1944), PREM 3/89, *quoted in* LEGRO, *supra* note 138, at 166.

144. PRICE, *supra* note 129, at 125; G.F. Eliot, *Should We Gas the Japs?*, POPULAR SCI. MONTHLY, Aug. 1945; *We Should Gas Japan*, N.Y. DAILY NEWS, Nov. 20, 1943; Editorial, *You Can Cook 'Em Better with Gas*, CHI. TRIB., Mar. 11, 1945.

145. After heavy American losses in the battle for Iwo Jima, support for using gas against Japan rose to 40% from 23% beforehand. Support was gauged on the premise that CW use would save American lives. Yet, a solid majority would still not support CW use. John Ellis van Courtland Moon, *Project Sphinx: The Question of the Use of Gas in the Planned Invasion of Japan*, 12 J. STRATEGIC STUD. 303, 303 (1989).

146. By that time, the end of the war in Europe removed the fear of Germany following suit.

highly useful, if not “the most promising of all weapons[,] for overcoming cave defenses.”¹⁴⁷

More generally, states have adhered to the prohibition despite strong ethical reasons to prefer the weapons. While prohibiting CWs, governments have permitted and widely used weapons of equal, if not worse, devastation (e.g., fuel air explosives in the 1990s; incendiary weapons and firebombing in World War II).¹⁴⁸ Also, the norm proscribes both lethal and nonlethal CWs. Yet, using nonlethal CWs (i.e., temporarily incapacitating enemy forces) may sometimes be considered more humane than using legal, lethal means.¹⁴⁹

The fact that states have almost universally acceded to the norm—despite situations in which CWs serve vital interests and situations in which ethical factors favor use—suggests the authoritative influence of the taboo. It has arguably become an unconditional feature of the modern state to forbear use of specific types of weapons.

5. *Conduct during armed conflict—the wounded and sick.*

World cultural principles have influenced protections afforded noncombatants during armed conflict. Consider the promulgation and maintenance of rules protecting the wounded and sick—the subject of the first Geneva Convention of 1864. The standard narrative of the Convention’s origins attributes monumental significance to the vision and efforts of Henri Dunant acting essentially as a norm entrepreneur in persuading states to formally establish these new humanitarian rules. To be sure, Dunant and the association he founded, the International Committee of the Red Cross (ICRC), were significant actors, but not because they were unorthodox or ingenious. Rather, “[t]he establishment of the [ICRC] to look after [wounded] soldiers . . . reflected a growing humanitarianism in European society.”¹⁵⁰ As a sociological matter, “the role played by a few morally committed individuals

147. Memorandum from Brigadier General Alden H. Waitt, Chemical Warfare Service, to Director, New Developments Division, War Department Special Staff (July 9, 1945) (regarding the Final Summary Report on Sphinx Project), *quoted in* Moon, *supra* note 145, at 313; *see also* Memorandum from Major General William N. Porter, Chief of the Chemical Warfare Service, to Lieutenant-General Joseph McNarney (Dec. 17, 1943), Operations Division, 385, TS, Case 1, *quoted in* Moon, *supra* note 145, at 302 (“We have an overwhelming advantage in the use of gas. Properly used gas could shorten the war in the Pacific and prevent loss of many American lives.”); PRICE, *supra* note 129, at 126.

148. PRICE, *supra* note 129, at 110.

149. *Id.* at 126; Price & Tannenwald, *supra* note 132, at 129.

150. Terry Nardin, *The Moral Basis of the Law of War*, 37 J. INT’L AFFAIRS 295, 305 (1984); *cf.* GEOFFREY BEST, HUMANITY IN WARFARE 148-49 (1980).

May 2003] *INSTITUTIONAL THEORY OF SOVEREIGNTY* 1777

and the organization they built, the ICRC, [was] in promulgating and transmitting these world-cultural models.”¹⁵¹

The principles embodied in the 1864 Convention have become a standardized code for modern states. Almost every government has now ratified the 1949 Geneva Convention on the Wounded and Sick (currently 190 state parties). The relevant principles are also reflected in national military manuals across diverse countries. And independent, national relief societies currently exist in 178 states.¹⁵²

This global model became institutionalized through cultural processes at the international level. First, the debate at the 1863 Geneva conference is properly understood as a cultural dispute over normative principles for organizing the modern nation state. “It was a cultural conflict to determine world-cultural rules”—a contest between “a cultural model of Christian charity and humanitarian duty”¹⁵³ and a cultural model of “rational values of effectiveness and efficiency and the legitimate security-providing functions of the state.”¹⁵⁴ The former ultimately won over dissenters who argued that the convention unacceptably subordinated “state sovereignty, military effectiveness, and the state’s supreme authority in warring.”¹⁵⁵ Second, ascendance of the new model required a cognitive reorientation of the relationship between individuals and the state. Despite their different theoretical orientations, Martha Finnemore and Hans Morgenthau have both noted that the commitment to protecting the wounded and the sick was made possible by a conceptual reconfiguration: “Modern” wars were understood to be between states, not entire populations; correspondingly legitimate targets in “modern” warfare included members of armed forces participating in the hostilities, not members of the armed forces who were no longer willing or able to fight.¹⁵⁶ Third, efforts to universalize the principles had to overcome crossnational cultural divisions. The ICRC’s principles were originally understood to be “Christian” norms.¹⁵⁷ Thus, ambiguity arose as to whether the Convention applied in wars that occurred outside the Christian West.¹⁵⁸

151. Martha Finnemore, *Rules of War and Wars of Rules: The International Red Cross and the Restraint of State Violence*, in *CONSTRUCTING WORLD CULTURE*, *supra* note 44, at 149, 151.

152. <http://www.ifrc.org> (last visited May 26, 2003).

153. Finnemore, *supra* note 151, at 164.

154. *Id.*

155. *Id.*

156. Morgenthau, *supra* note 124, at 83. This sharply contrasts with Grotius’s description of prevailing normative sentiments in his time: “The right to inflict injury extends even over captives, and without limitation of time The right to inflict injury extends even over those who wish to surrender, but whose surrender is not accepted.” HUGO GROTIUS, II, *THE RIGHTS OF WAR AND PEACE* 649 (Francis W. Kelsey trans., 1925).

157. Finnemore, *supra* note 151, at 315 n.26.

158. *Id.* at 160-61; François Bugnion, *The Red Cross and Red Crescent Emblems*, 272 *INT’L REV.* 408 (1989).

This tension was eventually resolved in favor of universalizing the humanitarian principles across all major religions. Fourth, soon after the Convention's entry into force, several state parties applied the Convention unilaterally in wars against nonstate parties.¹⁵⁹ Such practice indicates that the Convention did not simply establish reciprocal or mutually beneficial relations, but, instead, established parameters of legitimate behavior in armed conflict.

B. *National Security Interests and Beliefs*

Global models also implicate the formation of those interests and identities that directly define national security. The above discussion concerned global cultural and associational processes that influence particular security practices. In this section, we discuss how these processes also construct background preferences and beliefs. That is, what states come to define as important and legitimate security purposes are, in significant part, the product of normative models articulated through these global processes.

States exhibit remarkable isomorphism in identifying objectives for, and threats to, their national security. Consider John Meyer's description of transformations in globally shared understandings of legitimate state purposes and prerogatives:

It has seemed obvious that even successful warlike behaviour is no longer an indicator of evolutionary success. . . . Heroic nationalism, once a standard of culture for the nation-state, no longer seems heroic. The rooting of national sovereignty in roots of racial distinctiveness and superiority looks very unattractive. The rooting of it in special religious claims also no longer fits perceptions of propriety. And special historical claims to special national missions against the neighbourhood and world leave a very bad taste.¹⁶⁰

Such conventions result in large part from socially defined aspirations of state and national identity. Transgressing these boundaries ultimately became not only illegitimate, but also unthinkable. While such boundaries obviously constrain the range of acceptable behaviors, they also construct what it means to be a "modern" or "civilized" state, and thus a legitimate actor in international affairs.

Another convention in this regard is the acceptance of sovereign equality. From a realist perspective, it is difficult to understand why powerful states would accept this nonhierarchical structure, especially as it limits their ability to intervene in, and override opposition from, far less powerful states. The contemporary understanding of sovereign equality is, of course, linked to the

159. Finnemore, *supra* note 151, at 159-60. In the first war between two state parties (the Franco-Prussian war), each state used its compliance and the other side's noncompliance as propaganda to influence public opinion. *Id.* at 160.

160. John W. Meyer, Globalization, National Culture, and the Future of the World Polity, Lecture at Chinese University of Hong Kong (Nov. 28, 2001), *available at* <http://www.cuhk.edu.hk/puo/weilun/Meyer/Prof%20Meyer.htm>.

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1779

struggle against colonialism. Although subjugation of foreign peoples might still serve powerful states' security interests, such objectives are per se no longer appropriate for legitimate actors in the international community. Empire is simply not an acceptable principle for organizing a modern state's interests or identity.

While the above examples may still emphasize the quality of constraint, global models clearly have productive dimensions. Organizational fields legitimate some agendas for action and delegitimize others. Consider the institutionalized understanding of sovereignty with respect to national territory. The modern state's security has come to be defined in terms of its rights and control over particular territory.¹⁶¹ This relationship is generally accepted as natural and necessary to the survival of the state and its people. Yet, some states would have probably been better off had they relinquished claims over particular territories—e.g., the former Yugoslavia over Croatia and Bosnia, Israel over the West Bank, Sri Lanka over the Jaffna Peninsula.¹⁶² And, territorial conflicts between states—e.g., India and Pakistan over the Kashmir—often ignite dangerous passions, produce exceptional political obstinacy, and impose enormous costs. The cognitive connection between state sovereignty and strongly held territorial claims also gives states a security agenda. “The fact that sovereignty practices have historically been oriented toward producing distinct territorial spaces, in other words, affects states' conceptualization of what they must ‘secure’ to function in that identity, a process that may help account for the ‘hardening’ of territorial boundaries over the centuries.”¹⁶³

Finally, consider two related developments that have generated agendas for action: (1) expanded grounds for humanitarian intervention¹⁶⁴ and (2) the conceptualization of massive human rights violations as a threat to international peace and security.¹⁶⁵ First, recent patterns of military intervention exhibit a

161. Our discussion with respect to the issue of territory borrows heavily from Alexander Wendt, *Anarchy Is What States Make of It*, 46 INT'L ORG. 391, 414 (1992).

162. Conversely, the institutionalization of the state as the legitimate form of political organization in the world shapes the beliefs and practices of national liberation groups. Cf. Finnemore, *supra* note 151, at 332 (“It means that self-determination requires having a state. If you are not a state, you are nobody in world politics, and national liberation groups understand this. This creates an all-or-nothing dynamic in many conflicts that might be more easily resolved if other organizational forms were available.”).

163. Wendt, *supra* note 161, at 414 (citing Anthony Smith, *States and Homelands: The Social and Geopolitical Implications of National Territory*, 10 MILLENNIUM 187 (1981)). These dynamics help explain current anxieties over forces that evade territorial control such as multinational corporations, immigration, and the internet.

164. Martha Finnemore, *Constructing Norms of Humanitarian Intervention*, in THE CULTURE OF NATIONAL SECURITY, *supra* note 94, at 153.

165. See Ryan Goodman, *Norms and National Security: The WTO as a Catalyst for Inquiry*, 2 CHI. J. INT'L L. 101 (2002). In instrumental terms, both developments also have a constraining effect: Rogue states that severely violate their citizens' human rights and

shift in system-wide norms: National militaries have been employed not for territorial or strategic purposes, but for humanitarian ends. In earlier periods, governments engaged in similar interventionism. But those initiatives were undertaken to rescue conationals or members of coethnic groups. Powerful states have clearly undergone a transformation in “the normative understandings about *which* human beings merit military protection.”¹⁶⁶ Martha Finnemore suggests that this shift entails not a change of identity, but a change in *identification*.¹⁶⁷ States may now militarily intervene to rescue “unfamiliar” individuals in foreign lands; bona fide efforts in this regard constitute a legitimate interest of state power; and building multilateral coalitions for these purposes is politically possible despite its having been almost unimaginable only a few decades ago.

Second, as one of us has discussed elsewhere,¹⁶⁸ states have come to conceive of gross human rights violations in other countries as a threat to their own security. A few aspects of this relationship bear emphasis here. First, the connection between human rights and security is in part ontological: Post-Nuremberg, the most egregious violations (e.g., genocide and crimes against humanity) are considered an offense, and cause injury, to the international community.¹⁶⁹ In intergovernmental fora and international bodies of experts (e.g., the International Law Commission), these particular violations have been classified as a threat to peace and security.¹⁷⁰ Second, a state policy to commit widespread and severe human rights abuses against members of its own population—especially against national or ethnic minorities—is now viewed as a precursor to, or indicative of, aggression and hostility toward other nations.¹⁷¹ The analysis offered here helps clarify why such state deviance might be perceived as an external threat. Such an aberration suggests the state has not adequately incorporated global models in defining its purpose and in exercising its capacity for violence.

III. IMPLICATIONS: RECONCEIVING THE RELATIONSHIP BETWEEN STATES AND THE INTERNATIONAL ORDER

As described at the outset, this Article offers a sociological model of state sovereignty. We suggest that the state should be understood as a highly institutionalized organizational form that is embedded in a global cultural order. In many important respects, states are enactors and enactments of

“failed states” that are no longer able to provide for their populations risk the gamut of economic, political, and military sanctions.

166. Finnemore, *supra* note 151, at 155 (emphasis added).

167. *Id.* at 159.

168. See Goodman, *supra* note 165.

169. *Id.* at 112-14.

170. *Id.*

171. *Id.* at 106-09.

May 2003] *INSTITUTIONAL THEORY OF SOVEREIGNTY* 1781

models that are substantially organized and legitimated through global culture. This “world polity” model has several implications for analyzing the relationship between states, sovereignty, and the international legal order. A complete examination of those implications is beyond the scope of this short Article. Indeed, we intend to take up that task in future work.¹⁷² Our objective here is to begin the conversation by proposing a number of important, albeit tentative, observations. Specifically, we identify some of the ways in which our approach implicates (1) descriptive claims about the relationship between formally sovereign states and world cultural principles, (2) descriptive claims about state compliance with international legal norms and obligations, and (3) descriptive and normative claims about the relationship between sovereignty and international legal order.

A. *State Behavior, Global Scripts, and the World Polity*

As discussed in the Introduction, the model we propose is broadly constructivist in character. That is, we advance the view that state structure, identity, and preferences are substantially constructed by cultural forces. Nevertheless, as we set out above, our approach contrasts with conventional constructivist models in two respects: (1) we emphasize *top-down processes*, and (2) we identify *orthodoxy* as the causal mechanism that drives the emergence and diffusion of global scripts (rather than habituation and persuasion). We should emphasize at the outset that our approach avoids two common pitfalls in constructivist research. First, our approach is falsifiable in that it generates a range of concrete empirical predictions that allow for the adjudication between our approach and competing explanations. Second, our approach avoids the circularity problem endemic to some constructivist research. Indeed, constructivist research often fails to distinguish adequately between explanatory and outcome variables. As discussed more fully in Part I, the “new institutionalism” we embrace distinguishes between “organizations” and “institutions”—the concept of “organization” refers to the formal apparatus (and its purposes) whereas the concept of “institution” refers to all regulative and cognitive features of the organizational environment such as rules or shared beliefs. Of course, many “institutions” can also be understood as “organizations” depending on the object of the study. For example, in a study of the organizational features of hospitals, the state (including perhaps most prominently, regulatory agencies) are part of the institutional environment within which hospitals operate. But, in a study of the organizational features of state regulatory agencies, it is the agencies themselves that are analyzed as “organizations” (and “institutions” in this study would include the salient

172. We have offered preliminary observations on how we think global human rights cultures might be built. Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUR. J. INT’L L. 171 (2003).

features of the wider cultural environment in which the agencies are embedded). The important point is that our approach avoids circularity problems by clearly differentiating, as an analytic matter, explanatory (institutions) and outcome variables (organizations).

Our model suggests several empirical hypotheses regarding the relationship between states and world cultural norms. As we outlined in Part I, the influence of world cultural processes is inferred from high levels of structural isomorphism across states, and widespread “decoupling” of structure and form. That these empirical predictions are central to the project is plain, but these claims alone cannot arbitrate between our model and other approaches.¹⁷³ We maintain that substantial isomorphism and decoupling constitute sufficient evidence to entertain seriously the claim that culture influences state behavior (and that this culture is substantially organized on a global level). A more satisfactory assessment of our approach will, however, require rigorous empirical testing of specific predictions that would tend to discredit alternative explanations.

Pitched in abstract terms, our theory rests on three related propositions: (1) distinctive properties of the state are constructed by cultural processes; (2) these cultural processes are substantially organized at the global level; and (3) this “world polity” both reinforces the legitimacy of global cultural principles and accelerates the diffusion of global scripts. These propositions, in turn, generate several more specific empirical predictions about state behavior (and the organizational characteristics of states). Although it is beyond the scope of this Article to test the accuracy of these predictions, we submit that our approach generates a range of hypotheses that are sufficiently concrete that future empirical work might support or falsify the theory.

First, our model predicts that the rate of diffusion of global culture will vary in specific ways. For instance, the model suggests that diffusion of global models will accelerate as global cultural principles are institutionalized. David John Frank, Ann Hironaka, and Evan Schofer demonstrate that the rate of diffusion of global scripts for environmental protection increase as the principle of national-level environmental protection is institutionalized in world society (the latter is evidenced by the expansion of the intergovernmental bureaucracy dedicated to national environmental protection, proliferation of multilateral treaty regimes on the matter, and the explosion of international professional and nongovernmental organizations promoting environmentalism).¹⁷⁴ The converse of this prediction is important as well. That is, our model would predict lower levels of isomorphism and more tightly coupled structures in weakly institutionalized issue areas. In their study of patterns of militarization, Dana Eyre and Mark Suchman predict that “inventory levels of

173. These findings do, however, tend to discredit some approaches (such as bottom-up constructivist approaches).

174. Frank et al., *The Nation-State*, *supra* note 49, at 97-101.

May 2003]

INSTITUTIONAL THEORY OF SOVEREIGNTY

1783

noninstitutionalized weaponry (i.e., that with low symbolic significance, such as propeller aircraft or armored personnel carriers) will be influenced primarily by processes described by national security arguments"; whereas "inventory levels of highly institutionalized weaponry (i.e., that with high symbolic significance, such as supersonic aircraft) will be influenced primarily by processes described by institutional arguments."¹⁷⁵

Second, our model predicts specific patterns of crossnational variation. For example, the model suggests that variation in the enactment of global scripts will be a function of variation in the level of connection of a nation state to world culture. States that are more tightly integrated into world society are more likely to follow global scripts.

Third, our approach predicts specific patterns of change. For instance, patterns of change in national practices will track "world time"—that is, global developments more accurately predict specific national practices than the highly contextualized national developments. David Strang, for example, uses event history analysis to demonstrate that progress toward decolonization followed a global clock without substantial variation along national social, economic, or political context.¹⁷⁶

Fourth, our approach predicts specific patterns of national resistance to global models. Because the legitimate actorhood of states emanates from global cultural processes, we would suspect that states will resist the application (or incorporation) of global principles in predictable ways. Specifically, we predict that assertions of sovereignty, over time, will be highly institutionalized (consider the fully articulated regime governing the practice of treaty reservations), and that the legitimated modes of asserting national prerogatives will themselves reflect world cultural principles. For example, states might resist the application of certain humanitarian norms by suggesting a conflict between these rights and some other globally legitimated state purpose (such as the maintenance of public order or national security).

B. *Compliance with International Norms and Obligations*

The world polity model also generates predictive insights regarding state compliance with international legal norms and obligations. To supplement our discussion of theoretical paradigms in the Introduction, we emphasize two features of the model here. First, the model has strong explanatory power because it emphasizes the productive as well as constraining effects of culture. Second, an important feature of our approach is the integration of material structure and cultural variables. In that respect, the approach qualifies

175. Eyre & Suchman, *supra* note 94, at 99-100.

176. See, e.g., David Strang, *From Dependency to Sovereignty: An Event History Analysis of Decolonization 1870-1987*, 55 AM. SOC. REV. 846 (1990).

predictive claims made by conventional constructivist models, and it suggests limitations of realist accounts.

Consider a few examples in which our model would predict different outcomes than other approaches. First, our model predicts that deliberate norm management can potentially alter the commitments or behavior of actors. (A realist would consider such effects marginal at best.) The model can apply, for example, to the U.S. government's attempt to influence particular behaviors of other states (e.g., the notion of an "Axis of Evil") and national liberation groups (e.g., the Palestinian Liberation Organization). Delineating illegitimate forms of state violence can shape the behavior of other states, protostates, and candidate states. At the same time, if global culture matters, the "double standards" employed by some powerful states can have negative effects. For example, the United States employs a nuclear first-use doctrine as part of its antiproliferation policy, but nuclear first-use doctrines "create the beliefs that nuclear threats are what great powers do[; as a consequence] they will become desired symbols for states that aspire to that status."¹⁷⁷ Finally, our model tends to discredit projects that, relying on constructivist assumptions, promote the complete isolation of bad actors (e.g., North Korea; Myanmar; Cuba). Our approach suggests that integration in world society promotes the diffusion of globally shared commitments.

Second, our model predicts particular forms of compliance. As a new normative development spreads, we would anticipate formal structural transformations to occur more easily than changes in actual practices. The latter are likely to be more resistant. We would also expect cascade effects at the structural level. When an organizational field becomes highly institutionalized, the likelihood of outsiders and new entrants (e.g., new states; newly democratic states) remaining out for long diminishes considerably. These expectations distinguish our approach from constructivist models that predict bottom-up social change. Third, our model predicts that state attempts to make exceptions or changes to a prevailing norm will be cast in terms of other global cultural models. For example, attempts to change humanitarian law after September 11 will be made through appeals to animating global principles of humanitarianism, such as protecting civilians, or through appeals to legitimated public-order purposes.

Our model also emphasizes the importance of the expressive function of international law. For example, if states seek organizational conformity as our model predicts, we should expect greater levels of (at least superficial) compliance with treaties that make claims to universality. This lesson can apply to the codification of standards for proper state conduct in areas such as weapons proliferation, humanitarian law, and the environment. Also, if an international legal rule provides a signal of what constitutes legitimate conduct, law can (and should) move ahead of behavior to achieve greater levels of

177. See Sagan, *supra* note 103, at 83.

May 2003] *INSTITUTIONAL THEORY OF SOVEREIGNTY* 1785

compliance or self-enforcement. But, law should not move too far ahead, else it sacrifices this effect.¹⁷⁸

These lessons are instructive for regime design. For example, they illuminate the tradeoffs that inhere in deciding whether—or when—a human-rights or humanitarian-law treaty regime should promote (1) stronger and more-precise standards or (2) higher levels of participation. If the ultimate goal is global compliance with robust standards, we suggest initially emphasizing participation, and, when membership reaches high levels, concretizing standards, improving verification, and enhancing enforcement mechanisms. We therefore disagree with international law scholars who suggest that treaty regimes should codify initially high standards and forego broad participation, require state compliance before ratification, or introduce probationary periods in the first years of accession.¹⁷⁹ Instead, universal ratification should be the first goal. Raising standards and achieving enforcement should come later.

C. *Sovereignty and International Legal Order*

Our model calls into question several basic assumptions of current debates about international law and state sovereignty. According to conventional wisdom, there is a structural tension between state sovereignty and a range of practices including compliance with international obligations, participation in multilateral regimes, and acceptance of international legal principles. Major concerns include preserving national control over domestic legal and policy choices, and, in international affairs, avoiding exogenous constraints on sovereign prerogatives, especially in the area of national security. We contend, however, that these concerns are, at best, misspecified and, at worst, misleading (and, as a consequence, amenable to ideological manipulation). Quite plainly, a new vocabulary is needed to resolve these paradoxes and to explain the interests that are actually at stake.

First, the putative tension between international law and state sovereignty must be reexamined. According to the sociological model we advance, the constitutive features of states derive from world-level cultural models, and the nature of sovereignty itself is a global cultural product. State commitments to, and specific designs for, “domestic” policies (e.g., programs for education, science, welfare, suffrage) reflect globally legitimated agendas. As described in Part II, several fundamental features of “national security”—including the practices in pursuit of it, interests that motivate it, and cognitive systems that frame it—are also derived, in significant part, from worldwide institutional environments. Indeed, the very principles of state autonomy and sovereign

178. Cf. CASS SUNSTEIN, *CONFORMITY AND DISSENT* 68 (Univ. of Chi., Public Law Working Paper No. 164, 2002).

179. See, e.g., Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 *YALE L.J.* 1935 (2002).

independence (as well as the domestic and international practices employing these principles) follow global scripts.

These insights reveal a number of paradoxes in the conventional understanding of sovereignty. Consider a few stylized examples. In country X, military elites resist application of an international humanitarian rule on the ground that it intrudes on “sovereignty” and their military authority; yet their conception of sovereignty, their zone of authority, and perhaps the nature of the resistance itself are derived, in significant part, from global cultural and associational processes. Developing country Y drives for greater “independence” by “choosing” to initiate indigenous arms production; yet these motivations and the particular practices selected to express them derive from global scripts. The important point is that several constitutive features of the modern state (including the very notion of being an autonomous actor) are socially constructed at a global level. This perspective directly challenges the normative appeal and conceptual coherence of state resistance to other potentially conflicting global norms on the basis that these norms undermine its “autonomy,” “individuality,” and “self-determination.” As this Article demonstrates, similar conundrums arise in the unlikeliest case, that is, when a state resists on the basis of its “national security.”

Of course this Article raises such questions without offering definitive answers to them. Instead, the world polity perspective that we set forth provides an empirical foundation for future discussion of these puzzles. At issue is the nature of state autonomy and individuality and their relationship to sociality on the international plane. Perhaps a viable conceptual distinction can be postulated between voluntary and involuntary adoption of global models, or perhaps a normative distinction between considered and reflexive adoption of global models would prove more satisfying. Regardless, the conventional understanding of state autonomy and sovereign prerogatives should be displaced by rethinking the social nature of sovereignty and its attendant attributes.

Second, world models of sovereignty differ sharply from the idealized notions of “autonomous states.” Indeed, globally legitimated notions of sovereignty not only empower, but also constrain the “legitimate actorhood” of states. For example, appeals to sovereignty inhibit humanitarian-oriented states from intervening in other countries to stop mass slaughter; limit the capacity of states to constrain dangerous arms races and the proliferation of weapons of mass destruction; and arguably generate inefficiencies in achieving free trade and flexible movement of labor. Following the global script of sovereignty can also hamper the ability to achieve pragmatic concessions over contested territory, and instead can push states toward armed conflict and displays of brinkmanship. Similarly, sovereignty and the integrity of the state can also promote protracted internal armed conflicts. Not only are states less willing to concede for symbolic reasons, national liberation groups are less willing to ask

May 2003] *INSTITUTIONAL THEORY OF SOVEREIGNTY* 1787

or settle for anything less than their own state as a means to international legitimacy and self-determination.

Appeals to sovereignty can also threaten constitutional norms and protections. Consider U.S. foreign-affairs scholars who advocate suspending regular forms of judicial review when cases involve questions of sovereignty. Similarly, in U.S. immigration law, the Supreme Court's plenary power doctrine is grounded in strong notions of sovereignty. On this basis, courts have held that the judiciary may not exercise its regular authority in protecting individual rights.¹⁸⁰

At bottom, our point is that "sovereignty," as a highly institutionalized global norm, complicates and constrains state action. Although the concept of sovereignty assigns to the state supreme political authority within a delimited territory, the scope and content of this "authority" are defined and legitimated by global cultural processes.

Conversely, our model also illuminates surprising ways in which institutional constraints empower states. A basic insight in sociology is that social structure not only constrains, but also empowers actors. In this Article, we suggest world society is no different. As discussed in greater detail in Part I, global culture legitimates purposive states with the formal responsibility for promoting certain globally legitimated goals. In this sense, the institutional constraints of global culture define the organizational field within which states are highly legitimated actors. By following that global script, states are empowered to act. They are also tasked with objectives—both internationally and domestically—for action. In addition, world society provides states with many highly institutionalized opportunities to enhance state power and authority through participation in formal international regimes. As discussed in Part I, these regimes often provide authoritative external support to assist states in pursuing legitimated purposes. For example, international humanitarian-law regimes—through the ICRC and the United Nations—provide assistance to states in their efforts to conform to global models in balancing humanitarian principles and security considerations.

CONCLUSION

What is the relationship between the state, sovereignty, and international legal obligation? Conventional approaches to these concepts (and their relation) fail to account for many important characteristics of the international system. We submit that the seeming intractability of current debates about the relationship between international law and domestic governance stems, in part, from the descriptive inadequacy of prevailing models of the state. In this Article, we propose a sociological model of state sovereignty that fills important gaps in these descriptive accounts. We argue that the constitutive

180. See, e.g., *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

features of states derive from worldwide scripts constructed and propagated through global culture. These scripts define and legitimate purposes of state action and shape the organizational structure of states. Drawing on neoinstitutionalist organizational theory, we demonstrate that institutions of the “world polity” (1) define the organizational form of the modern state, (2) delimit the legitimate purposes of the state, and (3) constitute states as the principal legitimate actors in the world polity. The model illuminates some of the ways in which global culture both constrains and empowers actors and, therefore, recasts debates about the relationship between state sovereignty and international law.