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Book section

Original citation:
Wilson, Peter (2009) The English School's approach to international law. In: Navari, Cornelia, (ed.) Theorising International Society: English School Methods. Palgrave Macmillan, New York, USA, pp. 167-188.

The English School's Approach to International Law

(For C. Navari (ed.), *Theorising International Society: English School Methods*, New York: Palgrave, forthcoming 2009)

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One of the defining features of the English school is the emphasis it places on normative rules, and in particular the rules of international law. Yet the position of the English school on international law has nowhere been properly set out. The first purpose of this chapter is to provide a fairly detailed account of the English school's position on international law. I do this with reference to those members of the 'classic' English school who have been most concerned to explore the nature of international law and its place in international society: C. A. W. Manning; Hedley Bull; and Alan James. I then look at the criticisms that are typically made of the school's approach and set out the main lines of reply, including those of certain 'modern' members, namely Terry Nardin and Robert Jackson, who have sought to strengthen the methodological foundations of the approach. I then identify some of the limitations of the school's approach which its modern adherents will need to address if its relevance is to be sustained in the twenty-first century. I conclude with some reflections on method.

There are few, if any, better introductions to the role of international law in international relations than that provided by the English school. The accounts provided by Manning, Bull, and James are systematic and precise. They are also highly accessible. They presuppose no more than a basic knowledge of international law—its sources, scope, and some of the controversies surrounding it. They similarly presuppose only a basic knowledge of modern international affairs and international theory. They eschew all unnecessary jargon. Admittedly, the idiosyncratic style of Manning is not to everyone's taste. But while the mode of expression

may be unfamiliar, no specialist knowledge is needed to decipher it, only patience and a reasonably alert intelligence.

International Law, Society and Order

The general stance of the school may be described as follows. International law is a real body of law, no less binding than domestic law, and therefore no less deserving of the name 'law'. Although the main bases of international order are to be found elsewhere, international law is certainly not without efficacy in this regard. Importantly, international law provides a normative framework, an essential ingredient for the successful operation of any large and complex social arrangement. By providing a reasonably clear guide as to what is the done thing, and what is not, in any given set of circumstances, of what can be expected and what not, and what will be tolerated and what will likely be met with a disapproving, perhaps vociferous, response, law helps to reduce the degree of unpredictability in international affairs. For members of the English school, international law 'stands at the very centre of the international society's normative framework'.[1] It supports 'a structure of expectations without which the intercourse of states would surely suffer an early collapse'.[2]

While lacking a central legislature to make new and modify existing law, international society nonetheless has its own mechanisms for changing the law and keeping it up-to-date. As a result, international law is not immune or unsympathetic to the call of justice. The slowness with which many changes in the law take place is not so much a defect of international legal mechanisms as a reflection of the society in which they operate.

Unlike the situation pertaining in most domestic legal systems, international law should not be conceived as a means of social control, much less as an instrument of social reform (although there is a strong tendency to view it in such a manner[3]). Rather it should be seen as

a body of rules, deemed by those to whom it applies as binding, the purpose of which is to facilitate regular, continuous, and generally orderly international relationships.

As a legal system, it is *sui generis*. To evaluate the significance and efficacy of international law in terms of a domestic legal standard makes no more sense than to evaluate the merits and utility of one activity—say golf—in terms of another—say long-distance running. As competitive sports as well as recreational activities both golf and long-distance running have things in common. But success in these activities, as well as being relative to the personal aims of the participant, depends on a strongly contrasting set of skills and mental and physical disciplines. To judge one in terms of the skills and disciplines needed to perform the other is absurd, or certainly not helpful. Likewise, it is absurd, or certainly not helpful, to judge international law in terms of the sources, mechanisms, and objectives of law emanating from a very different, domestic, social milieu.

A Sociological Approach

It may be inferred from this that the approach of the English school to international law is sociological. Members of the school have been at pains to point out that law always reflects the society from which it emanates. Any given system of law can only be properly comprehended and evaluated by examining the social milieu that gives rise to it. Sense can thus only be made of international law by making sense of international society. Importantly, the significance and efficacy of international law can only be ascertained by examining the nature, institutional structure, values (if any), and goals (if any) of international society. It was this essentially relativistic conviction that led Manning, in particular, to stress that International Relations should be not be conceived as part of Political Science, History or Law but as a distinct academic discipline: one which drew on these and other cognate disciplines, but which discarded their domestic, 'state-bound', legal, ethical and sociological presuppositions.[4]

The Defining Features of International Society

First and foremost, the school emphasises the absence of common government in international society. For Manning, '[m]unicipal law exists, and is what it is, because, domestically, there does exist social control. International law exists and is what it distinctively is because, internationally, there does not. Municipal law is the handmaiden of government, international law of diplomacy'.[5]According to James, '...the cardinal characteristic which distinguishes the international society from others is the lack of government, the absence of central authority and the concomitant dispersal of authority'.[6] Internationally there exists no central legislature to make new and amend existing legal rules. There is no central agency charged with enforcement of the rules. There is no central court or judicial body empowered to adjudicate disputes over the rules—or at least not one before which a state can haul another state against its will. In terms of H. L. A. Hart's conception of law as a union of primary (prescriptive) rules and secondary (institutional empowering) rules, in international society there are no universally agreed upon 'rules of recognition', 'rules of change', and 'rules of adjudication'.[7]

In Bull's view, international law differs from municipal law 'in one central respect: whereas law within the modern state is backed up by the authority of government, including its power to use or threaten force, international law is without this kind of prop'.[8] As a consequence, and in sharp contrast to municipal law, the efficacy of international law does to a large extent depend on self help, including on occasions the threat and use of force. It is for this reason, Bull continues, that there is an intimate connection in international society between the efficacy of law and the functioning of the balance of power. 'It is only if power, and the will to use it, are distributed in international society in such a way that states can uphold at least certain rights when they are infringed, that respect for rules of international law can be maintained'.[9]

One consequence of the absence of central government is that the utility of international law as an instrument of social change is severely limited. In domestic society, law is frequently used as a tool of social policy. Changes are made to the law with the explicit intention of expediting changes in behaviour. The employment of this tool is often successful due to fear on

the part of potential miscreants of punishment. But the main factor is the greater respect for the law *qua* law that domestic society enjoys *vis á vis* international society.[10] So while certain social changes necessitate the creation of new rules of international law or the amendment of existing ones (for example changes spurred by technological innovation in areas such as sea use, and the use of air and outer space), and while other desired changes can be assisted by changes in the law (for example in the field of human rights), the law itself is powerless to bring about changes in behaviour unless such changes are already desired by all the relevant actors.[11]

The English school acknowledges, however, that the setting of general standards in law can have a long-run effect on behaviour. James puts the point as follows: a set of exact rights and duties 'will almost certainly represent a pre-existing intent or willingness on the part of all subject to them to act in the way they indicate.' Their translation into law is therefore not likely to have much of an independent effect on behaviour. However, legal obligations that are only loosely defined may by virtue of that fact be accepted despite a lack of a strong commitment to their observance. Since they do not have to pin themselves down in detail, the signatories may reasonably assume that if they need to act in a way contrary to their commitment, they will not have too much difficulty in finding a reasonably plausible legal justification. 'However, once a principle enjoys the dignity of law states may come to feel, to a greater extent than before, that they should try to live up to it.' Moreover, 'the inducement to do so will … be stronger in that the principle is now established as a criterion, albeit a rather ambiguous one, in the light of which those bound by it can be judged.' Additional critical opportunities will have been created. As a result states may cautiously amend their behaviour in line with the obligation 'for they dislike being charged with breaches of the law'.[12] Giving a social aspiration a footing in law can thus help bring about the realisation of that aspiration over time. In this way law can have a modest independent impact on international behaviour. In James's view the abolition of the slave trade, the outlawing of the use of force as an instrument of national policy, and the delegitimisation of colonialism all had their legal roots in the establishment of an initially vague legal principle.

The potential independent impact of law has recently been analysed by Yasuaki Onuma. A prominent Japanese international lawyer, he categorises some treaties as 'aspirational' in that they embody global aspirations shared by the overwhelming majority of members of international society. Examples include the 1966 UN human rights conventions and the 1990 UN Framework Convention on Climate Change. In entering such treaties, states communicate to their peers in the most solemn way possible their intention to work towards certain common goals. These treaties are not necessarily observed from the outset in a strict manner. It is widely known, for example, that there is a gap between major human rights treaties and reality.[13] Yet framing such agreements in law gives them a dignity, legitimacy and authority that no member of the international club can openly deny. 'As such they *induce convergence, if not strict observance*, of the behaviour of diverse members of international society over a period of time'.[14] The trend for this kind of 'aspirational' law-making since 1945 is sufficiently strong for Dorothy Jones to talk of a 'declaratory tradition' in modern international law, a key feature of which is to create a body of rules and intentions more akin to moral philosophy than positive law.[15]

A further consequence of the absence of government is the familiar reflection on the security imperative. In domestic society individuals look to government and its agencies to provide a large amount of their physical, and in many cases their economic security. States are not so lucky. While they may belong to universal or regional associations whose declared job it is to ensure the collective security of its members, states know that when it comes to security they ultimately have to look after them themselves. This explains why, when a conflict arises between 'an urgent national demand and fidelity to the law' it is usually the latter that gives way.[16] Largely if not exclusively because of the anarchical setting in which they find themselves, states are highly self-regarding in their behaviour. They invariably put the satisfaction of important national interests before observance of the law on the relatively rare occasions when they starkly conflict. It also explains why, although there is a huge amount of important international law in the field of security, states have not been greatly assured by those legal

instruments whereby the parties bind themselves never to attack or threaten to attack their fellows, or commit themselves to immediately come to the assistance of the victim of such an attack. It is due to this understanding of states' self-interpretation of their security predicament that members of the English school share E. H. Carr's dim view of Article 16 of the League of Nations Covenant and the Kellogg-Briand Pact.[17]

The second defining feature concerns the importance of normative rules in society, and the role of the most important of those rules—law—in shaping behaviour. According to the English school, normative rules are essential for the efficient and orderly conduct of any complex social activity. Such rules provide a social grouping with a 'body of understandings about proper behaviour'.[18] They provide social actors with a fair amount of confidence as to what, normally, will be done and what will not be done, and the mode of its doing. In brief, normative rules provide a behavioural framework. As Alan James puts it, these rules are 'the *sine qua non* for the existence of coherent group activity or an effectively-functioning society'.[19]

Normative rules can be of several kinds: rules of prudence, of etiquette, moral or ethical rules. However, by far the most important kind of normative rules, in international as in domestic society, are legal rules. According to James:

> The fundamental explanation for this is to be found in the different obligatory force of legal and non-legal rules. For, in the public sphere, non-legal rules carry a somewhat uncertain sense of obligation. Those to whom they apply are expected rather than obliged to observe them. A standard has been erected to which it is intended that behaviour should conform, but society and its members customarily feel that they have no ground for trying to insist upon it. Observance is the done rather than the demanded thing. Law, on the other hand, is inseparably associated with the idea of strict obligation.[20]

Part of its obligatory nature is that the law generally aims for precision. Its object is to leave those bound by it in little doubt as to what it expects of them. There are exceptions, but 'generally the main function of law is to create an exact as well as a binding relationship'.[21]

Of course, the extent to which this function is achieved varies from law to law and from system to system. There is precise law and vague law, with not all vague law is bad law. In Manning's view certainty as to what the law requires is the exception rather than the rule, even in the most orderly and legally fastidious societies:

> What litigants get even from the highest court in the land, is at best a decision which is constitutionally and legally incumbent upon them to accept as presumably correct. It is *formally* binding upon them. But lawyers, even so, are at liberty to probe in published articles the reasoning upon which the decision rested. So, when it is said, in belittlement of international law, that all too often, when appealed to, its trumpet gives forth an uncertain sound, the fitting comment is that this is inevitable and only to be expected, since international law is like any other kind of law.[22]

No sooner have they established the importance of international law, however, than they set about dispelling the sanguine belief that it has an independent causal effect on behaviour. In their view, international law does not so much determine state behaviour as provide a framework within which and with reference to which states make their decisions. 'The typical question asked by a state is not, what does the law require me to do? but, does the law permit me to do this? or, how can I lawfully achieve this goal? Likewise it will ask whether it has any ground for complaint in particular circumstances, or whether another state's complaint is well grounded'.[23] In Manning's view, it is in the main only indirectly that the decisions of states are influenced by legal considerations, the main factor at work here being 'the importance attached by *others* to the law's correct observance' (on which more below). [24]

Bull similarly contends that while the rules of international law are widely observed, it would be wrong to conclude that the principal explanation for this is respect for the law itself. 'International law', he says, 'is a social reality to the extent that there is a very substantial degree of conformity to its rules; but it does not follow from this that international law is a powerful agent or motive force in world politics'.[25] States sometimes obey international law through habit or inertia: 'they are, as it were, programmed to operate within the framework of established principles'.[26] In more rational mode, they sometimes view actions sanctioned by international law as being 'valuable, mandatory or obligatory' regardless of any legal undertakings they may have acquired (what Bull calls the 'international law of community'). Observance may result from coercion or a threat of coercion from a superior force (the 'international law of power'). Observance may also result from the interest a state perceives in reciprocal action: many agreements are upheld by a strong sense of mutual interest (the 'international law of reciprocity'). The argument that states obey international law only when it coincides with their interests, or that they do so only for ulterior motives, does not however dispose of the question of the law's legal force. 'The importance of international law', Bull concludes, 'does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in the fact that they so often judge it in their interests to conform to it'.[27] While it would be incorrect to assume that international behaviour is determined by the law, it is a salient fact that states often consider observance of the law to be in their interest. Furthermore, they are almost invariably concerned to act in a manner not inconsistent with the law, or at least to act in a manner not inconsistent with a plausible reading of it. They are reluctant to acquire a reputation as law-breakers.

This latter point is central to Manning's interpretation of why international law meets with such widespread compliance. On the one hand, by providing a set of agreed symbols for the conduct of international relations, law in a sense simplifies international life. 'It is here,' he suggests, 'in the partial prefabricating of the hundred and one decisions that make up the daily round for the normal middle-of-the-road sovereign member of international society, that

international law performs its most characteristic service'.[28] On the other hand, much of international life proceeds on the generally well-founded assumption that 'what is bindingly provided for will duly be performed ....And this despite the absence of a court around the corner before which a state defaulting on a promise may be hauled'.[29] States comply with many of their legal obligations because it is convenient or beneficial for them to do so. But they also frequently comply with the law even when the benefit derived from so doing is uncertain. The reason for this, Manning argues, is peer-pressure, real or perceived. According to Manning, 'like the individual, the state conducts itself in the presence of a cloud of witnesses, comprising a diversity of what to the social psychologist are known as reference groups. And, as often as not, if it be wondered why a state has done this or that, and no more obvious explanation avails, the answer is that, in doing this or that, it was meeting the expectations of some politically or diplomatically consequential reference group'.[30] For Manning, regard for legal obligations is to a large extent a function of the expectations of the relevant reference group. The judgement of the relevant reference group was, in Manning's opinion, a potent sanction for the efficacy of any given legal rule. (It is worth noting, however, that in the 1960s and 1970s Manning believed that the reactions to breaches of the law of the relevant reference group were losing their fierceness and authenticity, and consequently their terrors. And, 'the less your indignation, the less my self-restraint'.[31])

A third defining feature of the English school's sociology of international law is the emphasis it gives to the lack of solidarity in international society. For members of the English school, unlike realists, lack of solidarity is more a cause of anarchy than an effect. The legal implications of this lack of solidarity are profound. It has largely undermined attempts to outlaw war and transform international society into a Kelsenian 'coercive order' in which acts of war are conceived as either breaches of law or measures of law enforcement.[32] In Bull's view, agreement on this conception is unlikely to be forthcoming. 'The typical case is that in which states are not agreed as to which side in a conflict, if either, possesses a just cause. There may be deep disagreement among states as to which side represents the community and which the

law breakers, or there may be general concurrence in treating war as purely political in nature'.[33] Part of Bull's fondness for the positive international lawyers of the nineteenth century derived from their firm appreciation of the lack of solidarity in international life and their consequent view that the law did not distinguish between just and unjust causes of war.[34]

A second consequence of the lack of international solidarity is that changes in the law can only be made on the basis of consent. States do not trust their fellow members of international society to make law for them since they cannot guarantee they will be of the same mind, of the same ideological and political disposition. In practice this has two important consequences. On the one hand, it means that international law is not easily altered. There are well established procedures in domestic society for altering the law even if such alterations are favoured by some but by no means all. In international society such procedures, to the extent that they exist, are invariably clumsy and inefficient. This makes international law more protective than municipal law of the 'vested interest of the few'.[35] On the other hand, it means that in frustration, or as a means of ideological warfare, states sometimes seek to press a majority view (or what they assume to be a majority view) on the rest of international society. They thus seek to replace consent with consensus, and assume the mantle of speaking for the conscience of mankind. This approach led Manning to conclude that the principal site of this kind of activity, the United Nations, had become (in contrast to the far more honourable and honest League) little more than an arena for the conduct of political warfare.[36] In Bull's view, the tendency on the part of certain states to assume a consensus, and to act as if they represented that consensus when no consensus actually existed, was a major threat to international order. 'The result … is not that the rules deriving from the assumption of consensus are upheld, but simply that the traditional rules which assume a lack of consensus are undermined'.[37]

Criticisms

Four types of criticism are typically levelled at the classic English school's reading of the relationship between international law and international society. The first is that the school

simply restates the core propositions of nineteenth and early twentieth century legal positivism. The notion that society and law are inextricably intertwined, that the character of a legal system is always a reflection of the character of the society that gives rise to it, and that the anarchical character of international society accounts for the paramount importance of consent and self-help in international law—none of this is very original. The second criticism is that the school conceives international law in a limited and in certain respects unrealistic way. In confining its understanding of law to 'a body of rules which binds states and other agents in world politics ... and is considered to have the status of law',[38] it fails to recognise the indeterminacy of much law and the extent to which cultural, political, ethical and other factors intervene in international legal processes. The third criticism is that the school's approach is inherently conservative, perhaps even morally complacent. The sociology it posits for understanding international law is one that rests on certain static features of international life such as absence of central government and lack of cultural, social and political solidarity. It consequently endorses laws that are limited in ambition, laws that aim to keep things more or less as they are (because that is the limit of what the society it reflects can tolerate). But a sociology which emphasised change—globalisation, cultural homogenisation, growing demand for the realisation universal human rights—would supply very different criteria for judging legal vitality. The moral complacency resides in the reluctance on the part of members of the school to step outside the world of states and make ethical judgments based on more 'critical' and independent values. The lack of willingness to criticise the law, according to this view, reflects general satisfaction with the law, which in turn reflects satisfaction with the values of the chief architects of the law: the great powers.[39] The fourth criticism is that the school's propositions are very general in nature, and little effort is made to empirically verify them. While members of the English school have consistently stressed the centrality of international law to international society they have done little to establish causality; i.e. identify precisely the mechanisms by which and the extent to which law produces certain behaviours.

There is no doubt that nineteenth and early twentieth century legal positivism had a profound influence on the thinking of English School legal commentators, as recent scholarship has affirmed.[40] One of Manning's first published articles was a reappraisal of John Austin's jurisprudence.[41] Bull was influenced by Oppenheim and conceived much of his work in IR in terms of retrieving the lessons and wisdom of nineteenth century political and legal thought, which was based on a firm appreciation of the limits of cooperation, particularly collective decision-making and collective action, in a culturally plural world.[42] James was influenced by Manning, and while his 'Sociology of International Law' course, taught at the LSE in the 1960s and 1970s contains few references to the big names of positivist international law of the nineteenth century, it is full of references to those lawyers who assumed their mantle in the early-mid twentieth century—Brierly, Schwarzenberger, Fitzmaurice, Jennings, Stone.

Of equal importance, however, is the intellectual context in which Manning, Bull and James wrote. Manning was reacting against those writers of the League period—his LSE professorial predecessor, Philip Noel-Baker, chief among them—who believed that peace could be achieved by outlawing certain types of war and replicating internationally those institutions and practices successful in producing civil order domestically.[43] Bull was reacting partly against these ideas (his first book *Control of the Arms Race* was a direct response to Noel-Baker's *The Arms Race* on which he worked for a period as Noel-Baker's research assistant), and partly against their latest manifestation in the 'policy science' approach of Myers S. McDougal and the New Haven School and the World Order Models Project of Richard Falk and Saul Mendlovitz. Against these moves Manning, Bull and James did not see themselves as offering something new, but rather as re-stating to a new audience, the nature of international society, the limits of its corrigibility, and the values it helped to preserve.

The second criticism comes in more or less radical forms, from the revisionist stance of Rosalyn Higgins to the instrumentalism of the New Haven school and the radical rejectionism of Martti Koskenniemi and Critical Legal Studies.[44] According to Higgins, international law is best

conceived not as a body of rules but as a 'continuing process of authoritative decisions'.[45] Law involves far more than the impartial application of pre-existing rules. 'International law is the entire decision-making process ... not just the reference to the trend of past decisions'.[46] Those charged with making decisions on the basis of international law do not simply find the relevant rule and then apply it. Rather they make choices, not between fully justified and groundless legal claims, but between claims possessing varying degrees of legal merit. The process will always involve considerations—cultural, humanitarian, and political—other than the purely legal. Higgins concludes that policy considerations are an integral part of the international legal process.[47] Whether they are aware of the fact or not 'authoritative decision makers' habitually rely on policy preferences and assumptions in arriving at decisions on the law. No amount of legal training will enable them to keep law 'neutral'. Law and politics are inextricably linked. Higgins makes the further claim that international law is a normative system 'harnessed to the achievement of common values'.[48] This opens the door to a fully New Haven school conception of law as an instrumental tool for the realisation of these common values.

Bull's response to this view was typically robust and commonsensical. He conceded that the process of legal decision-making, nationally as well as internationally, involved extraneous factors such as the social, moral and political outlook of judges. Decision-making could never be a pure process of the non-contentious identification and application of existing legal rules. But without reference to a body of rules, the idea of law, Bull claimed, was unintelligible. The notion of legal decision-making as a distinct social process, distinguishable from other social processes, could only be sustained by reference to a pre-existing and agreed body of legal rules. The conception of international law as a body of binding rules was, therefore, paramount. The existence of extraneous factors in legal decision-making did not do away with the concept of legal reasoning. The implication of merging the legal, political and other social domains on the ground of providing a more realistic account of how law is actually made was that lawyers would cease to have anything distinctive to offer. The idea that international law was not a body of rules but a process of authoritative decision undermined

International Law as a branch of study separate from Sociology, International Relations, and Political Science. Ultimately, the logic of conceiving law in this way, and of determining its content with reference to its stated or postulated social purpose, was the reduction of choice between rival legal claims 'to the choice between one authority's moral and legal values and those of another'.[49] The English school is concerned with identifying actually existing norms of state behaviour. Laws, particularly hard (precise, widely accepted and observed) laws, signal the most substantial norms. Too much attention to legal process can lead to a confused situation in which the actual identity of the norm is lost. Bundling everything pertaining to or impinging on international law into a basket called 'international law' merely serves to compound the problem.

The assertion that the school's approach is conservative and perhaps even complacent, our third criticism, has been effectively dealt with in landmark works of the modern English school by Nardin and Jackson. In subtly different ways both theorists draw on the insights of Michael Oakeshott on the character of different types of human association, to provide a robust, political theoretical, defence of the value of international society as a particular kind of human association. For Nardin it is a practical association. This is conceived as a relationship between individuals or groups who pursue different and possibly incompatible purposes. The basis of their association is commonly accepted restrictions on how they each may pursue their separate purposes. In terms of this conception, international law is understood as a body of common rules, by and large rooted in the customary practices of states, which enables states to coexist while pursuing diverse purposes. Practical associations embrace a conception of law and morality which is process- or constraint-orientated: their purpose is to foster mutual constraint, mutual accommodation and the toleration of diversity. Purposive associations, by way of contrast, consist of relationships between individuals or groups who cooperate for the purpose of securing certain shared beliefs, values or interests. The basis of this association is the existence of shared goals and the adoption of cooperative practices for their achievement. In terms of this conception, international law is a body of rules understood instrumentally. Their

value is judged according to the relative efficacy with which they foster the desired ends. Purposive conceptions thus embrace a conception of law that is end-orientated.[50]

For Jackson international society is a *societas*. It consists of 'human relations characterized by the coexistence of independent selves who conduct themselves by freely observing common standards of conduct' ('morality as the art of mutual accommodation' in Oakeshott's terms). International law according to this notion consists primarily of a body of practices: usages and customs devised over time by statespeople in order to define and facilitate their relationships and avoid unnecessary collision. By way of contrast a *univeritas* consists of 'human relations characterized by collective enterprise between mutually dependent partners, or collaborators, in the pursuit of a conjoint purpose' (the 'morality of the common good' in Oakeshott's terms). International law according to this conception consists primarily of a series of declared goals and ideals towards which statespeople strive in their foreign policies, and a series of measures to facilitate their achievement. Rather than embedded practices regulating current conduct it consists of declarations of intent regarding conduct in the future.[51]

One of the reasons for making these distinctions between different types of human association, and setting out their characteristics so carefully (and in the case of Nardin in fine detail), is to demonstrate that one type of association (purposive or *universitas*) is not in principle superior to the other (practical or *societas*)—though the prejudice of the modern state has wrought this assumption. Much depends on the character of the associates in question, and the commonality or divergence in values, goals and interests. In true conservative fashion (and very much in the spirit of Oakeshott) Nardin and Jackson demonstrate with subtlety and precision that given the diverse character of states, a practical association or *societas* is a superior form of human arrangement than a purposive association or *universitas*. Furthermore, there are great dangers in attempting to force international society into a purposive mould. With regard to international law this is summed up in Jackson's critique of the declaratory tradition. He notes that many politicians sign broad declarations of the UN and other international

organisations 'in full awareness that they are not obliged to achieve or even pursue the ideals they affirm'. Such affirmations are easy to make and their value as standards of conduct are low. Many of these declarations and resolutions cannot be realised or enforced. This has the corrosive effect of discrediting the UN and other organisations when the undertakings given are not fulfilled or even seriously pursued. In this way such declarations provoke cynicism on the part of many who expect international actors to live up to their ideals. 'Is there any more efficient way of morally discrediting oneself,' Jackson concludes, 'than by declaring an intention to do something that is deemed to be urgently required …and then failing to do it?' Making declarations and proclaiming praiseworthy goals is an undemanding activity. Unless matched by binding obligations the result is merely the cheapening and politicisation of ideals. 'Rather than reinforcing and deepening the traditional moral basis of society …the declaratory approach may have the opposite effect of undermining it by stretching it and diluting it'.[52]

The contribution of Nardin and Jackson, at root, is to have constructed a more robust moral defence of international society than that hitherto provided by the English school. Bull's defence was that international society provided (or was capable of providing) a greater degree of order for its members (and indeed humankind as a whole) than its alternatives, and that these alternatives were in any event of doubtful viability. Nardin and Jackson persuasively add the liberty of states to pursue their diverse purposes to the moral good facilitated by international society. They further establish that there may be reasons to prefer a practically based association of states even when the achievement of a more purposive alternative is practicable. They thereby scotch the claim that the English school is guilty of moral complacency.

The fourth criticism concerning the generality of the English school's propositions, the failure to empirically verify them, and the failure to identify relationships of cause and effect amounts to a serious misunderstanding of the nature of its approach. The generality of its propositions is a reflection of the fact that, certainly in its classical mode, the English school has

been concerned not with this or that state, or this or that group of states, but with the society of states as a whole. It has sought, to borrow a phrase from Manning, to take a bird's-eye view, and arrive at a general understanding of the role law internationally. Such an understanding is not one that can be empirically proven or disproven. Empirical evidence is always important, but all important is the way it is marshalled. There is no way, they contend, of marshalling evidence neutrally. All evidence is to a greater or lesser extent theory-driven. The important point is to be self-aware and self-critical of one's theories, as well as one's evidence. In the light of this, members of the English school have been encouraged by the fact that their understanding of the role of law internationally seems to account for certain key facts better than rival understandings: while state behaviour is never determined by law alone, states nonetheless take law very seriously; while they never act contrary to their perceived interest, they frequently deem law, or legal propriety, to be a factor in the calculation of interest; and while they sometimes breach the law, they rarely do so brazenly—they always attempt to offer a legally plausible defence of their actions. Nicholas Wheeler's recent study of the Kosovo bombing campaign is a good example of English school analysis in which interests, ideas of propriety, and law are seen as constantly circling one another.[53]

New Directions?

The sociology of international law of the English school is fine as far as it goes. States are still the most important category of actor in international relations. States are still by far the most important subjects of international law. The lack of solidarity on so many questions of international import—concerning *inter alia* environmental protection, controlling the spread of weapons of mass destruction, the promotion of democracy, the limits of legitimate non-state violence, humanitarian intervention, compensation for past colonial wrongs, the obligations of rich nations towards the poor—makes the creation of new law a slow, cumbersome, and often fractious process. There is still little agreement on the need for and feasibility of central enforcement mechanisms. International law, for good or for ill, remains a convenient

behavioural framework rather than an instrument for social control, or vehicle for the promotion of the world common good.

But the approach of the school does have a number of limitations. Three of them are salient.

1. Role of Power

One of the strengths of the English school is that it does not shy away from recognising the indispensable connection between power and law. As Carr reminded his predominantly utopian readership nearly seventy years ago, that the relationship between power and law is real and strong in all legal systems, even the most advanced and democratic.[54] But it is particularly strong in the international system. This relationship gave rise to despair, contempt, or cynicism on the part of many observers. But Carr and various English school thinkers that followed him, Butterfield and Bull most notably, were able to show that such reactions were inappropriate. The relationship between law and power at the international level was generally a healthy one in that it facilitated the performance of certain important functions. One of these was the maintenance of a balance of power. For Bull, Butterfield and others the balance of power was the master institution of international society. Its effective operation was indispensable to the achievement of a stable international order. By building trust, facilitating diplomatic communication, stabilising expectations, and solidifying without mummifying alliances, law had the important role of facilitating the balance of power; thus making possible an international system in which one voice, one moral viewpoint, one political system did not predominate. Law and the balance of power functioned to preserve the individual liberty of states and prevent the imposition of social, cultural and political uniformity that would result from any one state acquiring global dominance.

If law helps to facilitate the balance of power, its content at any one time necessarily reflects the area and extent of consensus achieved by the major powers. A legal system that

attempts to go significantly beyond this area of consensus, such as that created by the League in 1920, is not only doomed to failure but threatens to bring the whole legal and moral order into disrepute. The chief defence of the intimate link between law and power internationally is that it takes the moral and emotional heat out of international disputes and rivalries, prevents campaigns of moral righteousness, and suppresses the latent domination of any one moral and political viewpoint. Far from being an anarchic principle, generating instability and mistrust, as many felt following the disaster of 1914, the balance of power encourages states to take a long-term view of their interests, to moderate their behaviour, and limit their ambitions. The law's job is to buttress these constraining forces without restricting the diplomatic and strategic flexibility required for effective balancing.

This is merely a sketch of what in English school writing is a complex, and often implicit, understanding of the relationship between power and law in international society.[55] I have provided it to show that the English school has an answer to Marxists and Critical Theorists who view international law as an expression of the will of the international ruling class, an ideological device for legitimising inequality and Western economic and military dominance. It also has an answer to radical liberal critics who view international law as too conservative and lacking in ambition, allied too closely to current reality. That answer is that legal rules have an important function to perform in preserving the balance of power, and it is reckless and erroneous thinking of the first order to propose legal reforms which would effectively unhinge law from the balance of power. The effects of such a move would be disorder and threats to the liberty of states, big or small, on a global scale.

This being said, the English school's stance on power and international law is not without its shortcomings, and in addressing them modern English school theorists are beginning to take the approach in some new and interesting directions.

Challenge of Unipolarity

Firstly, while not the only factors accounting for the wide observance of international law, members of the English school stress the importance of enforcement, or fear of enforcement, according to the principle of self-help, and social pressure in the form of the expectations of 'relevant reference groups'. The implications of this position, however, have not been fully explored. The decentralised nature of the international legal system provides states with a good deal of discretion on whether and how to respond to suspected breaches of the law. Decision-makers inevitably take into consideration a variety of factors. Legal considerations no doubt feature. But political and economic factors are invariably paramount. The implication of this is that those states with the most political clout and the greatest economic resources at their disposal will be in the best position to effectively respond to suspected breaches, and to deter or fend off the negative responses of others to suspected breaches of their own. This puts a solitary superpower such as the US in a uniquely strong and privileged position. Not only are its own legally dubious acts unlikely to be met with an effective negative response, but it enjoys an unusual amount of discretion on the laws it chooses to uphold and thus further sanctify, and those it chooses to overlook and thus, very possibly, weaken. The long-term implications of this for the shape of the international legal order are profound. To remain effective any legal system has to be seen by the vast majority of those it applies to as impartial. If large segments of the law are seen as providing special protection for particular groups at the expense of the community, the law itself, and its normative validity, is thrown into disrepute. The unipolar position of the US presents a special challenge to the benign conception of the links between power and law promulgated by the English school. The challenge is complicated not only by the absence of effective balancers, but the sceptical even contemptuous attitude towards international law exhibited by influential sections of American society.

Challenge of Judicial Independence

Secondly, the English school has had little to say on the role of power in international courts and tribunals. One reason for this is that the heyday of the English school in the 1960s and 1970s coincided with the height of the Cold War and the emergence of other fissures in the

international body politic. At this time there was little opportunity for international juridical innovation, and little of it took place. Since the end of the Cold War, however, the opportunity and the will to give law more 'teeth' by creating new courts and tribunals has arisen, and while the pace of innovation—as a good English scholar might predict—has been slow, considerable successes have been chalked up e.g. the dispute settlement procedure of the WTO, the Hague, Arusha, and Sierra Leone war crimes tribunals, and the International Criminal Court (ICC). But there is a sense in which such courts and tribunals are beholden to states not only for their success, but the continued existence. States are the paymasters, rich and powerful ones in particular. Yet it is states, or in the case of the ICC and the war crimes tribunals, the leaders or high ranking officials of states, that these courts and tribunals are mandated to put in the dock. The dilemma is clear enough. If they are too tough, or perhaps too consistent, judges and prosecutors risk undermining support (political, moral, and financial) for the very processes they are trying to implement and strengthen. There is therefore a systemic incentive for courts and judges to tread more delicately in the international legal field than they usually do in the domestic—for fear of antagonising their paymasters.

On the other hand it may be true, as one leading practitioner and legal authority has recently argued, that a judicial change in climate may be taking place.[56] States seem to be more prepared to impose strong structures upon themselves, and not run away, in the form of withdrawal of support, when the going gets tough. This possibility notwithstanding, it cannot be denied that courts and tribunals are a part of and are sometimes influenced by wider power-political processes. Although they have ignored it in the past, the nature of this relationship will require greater scrutiny in the future from those working within the English school tradition.[57]

2. Norm Change

There is a large and growing literature on the nature of norms and the dynamics of norm change in international relations. Given the sociological nature of its approach it is surprising that members of the classic English school gave scant attention to this issue. The role of

NGOs, pressure groups, political parties, cross-national political groupings, and epistemic communities in changing or modifying the values of states was nowhere seriously explored. Certain contemporary English school members, notably Andrew Hurrell, have begun to make amends for this neglect.

While noting the importance of such non-state actors in norm development, Hurrell has highlighted the fact that most of the traffic in normative ideas is one way: from the West to the rest. Most NGOs are Western in origin and they pursue a predominantly Western liberal or humanitarian agenda.[58] One consequence of this may be the further narrowing of societal and cultural diversity and a reshaping of the world in the image of the West. Many will view this as largely for the benefit of the West. The point here is that there may be dangers in the headlong rush to a more solidarist world legal order the desirability of which global civil society theorists and activists assume almost without question. True, the pluralist conception of international law can no longer do service unassisted. With the domestic sources of international upheaval and conflict so widely understood and recognised, it would be palpably retrograde to seek confine the chief norms of international society to the relations between states, and bar them from having any purchase on what goes on within them. But the central purpose of the pluralist conception, the maintenance of peaceful coexistence between highly diverse political actors, is one that retains great relevance. A rush to solidarism that ignores the slow pace of the growth of a sense of international community may serve to undermine the very principles it seeks to uphold. A large gap could open up between theory and reality, between obligation and practice. The resulting cynicism and accusations of hypocrisy could have a withering effect on genuine attempts to uphold common international standards, as has been the sad experience in such bodies as UNESCO and the UN Commission on Human Rights.[59]

Connected with this issue of norm change, members of the classic English school were perhaps too willing to dismiss liberal interpretations by the UN Security Council of its obligation to promote international peace and security as a wilful interpretation of the Charter, for narrow

political purposes, and a corruption of the international legal process. Their sociology now seems based on too rigid a separation between domestic and international factors. Declaring apartheid in South Africa or white supremacy in Rhodesia as a threat to international peace and security does not appear today to be stretching the law as far as it did then. Again, the wide recognition of the domestic sources of upheaval and conflict instability is an important factor. In certain extreme cases of human rights abuses and systematic persecution of minority groups (e.g. in Iraq, Somalia, Bosnia, Kosovo) members of the Security Council have been able to go beyond the usual foot-shuffling and tepid condemnation. Moral concern has been inseparable from fears of the likely consequences for international stability of the continuation of such untrammelled brutality. In the light of this agreement and recognition of the interconnections between domestic brutality and international security, the cautious expansion by the Security Council of its remit is arguably not as damaging to the fabric of international order as Bull and Manning considered it to be in the 1970s.[60]

3. Domestic and Transnational Reference Groups

A realist might conclude that a superpower enjoying the unrivalled military and economic strength of the US is in a position to flout international law with impunity. It can use its strength and influence to minimise the impact of any measures other members of international society might deploy in response. The mere existence of its vastly superior strength and influence is sufficient to ensure that the response of many will be muted. It is interesting to observe, however, that even superpowers, when doing something controversial, invariably offer a legal defence, as well as a political or moral defence, of their actions. Even when they emphasise, as they sometimes do, the high moral causes for which they act, they never claim that such high causes justify their violation of the law.[61] Even in extreme cases where an act is manifestly in conflict with the law, states big and small still offer some sort of legal justification.[62] As members of the English school point out this alone demonstrates the importance states attach to the observance of law. It is an established social fact that states big and small do not like to gain a reputation as law-breakers

Yet there is another set of reasons, unexamined by the English school, why even exceptional states, such as the US, cannot violate international law with impunity. In liberal democratic states especially, opposition parties, NGOs, and the media take a keen interest in legally dubious acts of their governments. While a powerful country such as the US may have the luxury of ignoring the negative responses and countermeasures of other states, its liberal government cannot afford to ignore the likely responses of interested and potentially troublesome domestic actors. These likely responses constitute a big factor in the deliberations of policy-makers. To overlook them would amount to a massive and foolish political gamble. In addition, many liberal democratic countries have judicial review systems which enable the legality and constitutionality of the policies and acts of government to be scrutinised and tested in the courts.[63] This is especially the case in countries where treaties, once ratified, become part of domestic law.

It is of course true that some major Powers (e.g. China) operate with extremely limited domestic restraints due to lack of effective opposition parties, an independent media, active and critical NGOs, and an independent judiciary. For these states it is the likely international reaction, not domestic, they will be most worried about when contemplating an act of doubtful legality. Most liberal democratic states will be worried by both the national and international reaction to any such act. It is a significant fact, however, that a Power such as the US is more likely to be worried and constrained by the likely reaction of certain important domestic actors than that of other states.

The cloud of witnesses in the presence of which states conduct themselves now embraces domestic as well as international actors. Many of these actors, from Amnesty and Oxfam to Greenpeace and Jubilee 2000 are now importantly transnational in their organisation and scope. This is perhaps the most striking shortcoming of the classic English school's sociology of international law: the failure to take into account the role of domestic and

transnational actors. The 'consequential reference groups' whose expectations and responses states have to take firm note, are no longer—if they ever were—comprised exclusively of states. Compliance with the law can only be fully understood by examining the network of domestic, transnational and international restraints that prevail in any given case.

Conclusion: Method or Anti-method?

In this chapter I have refrained from using the word 'method'. The reason is that the English school does not have one. Indeed its whole approach is anti-pathetical to method. A method suggests the identification and execution of a series of precise steps in order to achieve a specific goal. It makes sense to talk of the method one might employ to learn a musical instrument or a foreign language, of the method employed by economists to calculate the GDP of a country or its rate of inflation. Method *senso stricto* suggests technique, the mastery of certain technical mental and/or physical moves in order to achieve a practical outcome. In this sense the English school eschews method. 'Approach' is a much more appropriate term, for it suggests a general outlook, the employment of a certain set of concepts, the advancing of a certain set of propositions, and the assumption of a certain style or character of argumentation. The goal is not the acquisition of a skill, or technique, or practical capability. Rather the goal is general understanding or a general appreciation of 'the relation of things'. I remain wedded to the Manningite notion of connoisseurship: that is, refined judgment born of familiarity with and feel for a subject. This, rather than objectivity, or science, is what we should strive for in the pursuit of social understanding.[64] I have found myself using the term 'approach' throughout this chapter because this word captures the nature of the English school's engagement with the phenomenon of international law. What they attempt to arrive at is not technical knowledge, but an appreciation of the nature and character of international law, what we can reasonably expect of it, and how it relates to the wider scheme of international relationships.

This being said, if we conceive the notion of 'method' loosely as, say, ways and means of proceeding in the making of knowledge-claims, several explanatory strategies can be found

at work in English school analysis. In his assertion that international law 'supports a structure of expectations without which the intercourse of states would surely suffer an early collapse', Alan James, for example, puts forward a functional explanation. In his assertion that '[t]he importance of international law does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in the fact that they so often judge it in their interests to conform to it', Hedley Bull puts forward a rational explanation. Manning, by way of contrast, sees observance of law in terms of social dynamics: regard for legal obligations is to a large extent a function of the expectations of the relevant reference group.

This ties-in with the observation that one of the distinctive features of the school is its methodological pluralism.[65] At least two methods may be identified in the English School approach to international law. One is legal positivism, as identified above. This is concerned to identify what the law is. The second is aspirational legalism: the identification of soft law and broad declarations on a variety of moral themes in order to get a handle on where the law is heading. The methodological pluralism of the school is one of its chief assets. Being unencumbered by the need to identify a distinct method, being immune to the pressure—very considerable in some quarters—to adopt a method *senso stricto*, and being generally unselfconscious about methodological issues, has enabled the school to provide a rich account of the relationship between international law and international society. It is an account that is coherent and accessible, but not at the cost of loss of complexity.

Notes

[1] Alan James, 'Law and Order in International Society', in Alan James (ed.), *The Bases of International Order: Essays in Honour of C. A. W. Manning* (London: Oxford University Press, 1973), James, p.68.

[2] James, 'Law and Order', p.68.

[3] In International Studies this conception is most closely associated with Myers S. McDougal and the New Haven School (on which more below) and Richard Falk and the World Order Models Project. See e.g. Falk's monumental study, *The Status of Law in International Society* (Princeton: Princeton University Press, 1970), esp. chs. I-III, X, XV.

[4] See David Long, 'C. A. W. Manning and the Discipline of International Relations', *The Round Table*, 94, 378 (2005) 77-96; Peter Wilson, 'Manning's Quasi-Masterpiece: *The Nature of International Society* Revisited', *The Round Table*, 93, 377 (2004) 755-769.

[5] Manning, C. A. W., 'The Legal Framework in a World of Change', in Brian Porter (ed.), *The Aberystwyth Papers: International Politics, 1919-1969* (London: Oxford University, 1972), p.309.

[6] James, 'Law and Order', p.65.

[7]Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), pp.133-36. Bull overstated this point. While international rules of change, enabling institutions to alter primary rules in light of changing circumstances, do not exist in any substantial sense, even in Bull's day rules of recognition, establishing unambiguously what the rules are, could be found in areas such as the law of treaties, state-succession, and any of the big 'codification' treaties. Today rules of adjudication, empowering a body to lay down authoritatively when a law has been broken, can be found in a number of legal instruments including the European Convention on Human Rights and the Statute of Rome (establishing the International Criminal Court). See Michael Byers, *Custom, Power and the Power of Rules: International Relations and Customary International Law* (Cambridge: Cambridge University Press, 1999), esp. pp.142-6.

[8] Bull, *Anarchical Society*, p. 130.

[9] Bull, *Anarchical Society*, pp.131-32.

[10] James, 'Law and Order', pp.79-80.

[11] R. J. Vincent notes that international law, for Bull, was like Sir Alfred Zimmern's rendering of law for the classical Greek: 'the formulation of the will of the community …an external

manifestation of its continuing life'. Law thus illuminates continuity but does not itself provide it. In terms of its social instrumentality it is 'a cart, not a horse'. See Vincent, 'Order in International Politics', in J. D. B. Miller and R. J. Vincent (eds.), *Order and Violence: Hedley Bull and International Relations* (Oxford: Clarendon Press, 1990), p. 56.

[12] James, 'Law and Order', p.80.

[13] See for example Tony Evans, *The Politics of Human Rights: A Global Perspective* (London: Pluto Press, 2005).

[14] Yasuaki Onuma, 'International Law in and with International Politics: The Functions of International Law and International Society', paper presented to IR-International Law seminar, LSE, May 2003, p.31.

[15] Dorothy V. Jones, 'The Declaratory Tradition in Modern International Law', in T. Nardin and D. Mapel (eds.), *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992), p.42.

[16] James, 'Law and Order', p.77.

[17] E. H. Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations*, 3rd edn., ed. M. Cox (London: Palgrave, 2001), pp.30-31, 160-61. Bull labelled these 'solidarist' legal instruments as 'Grotian' in his seminal 'The Grotian Conception of International Society', in H. Butterfield and M. Wight (eds.), *Diplomatic Investigations: Essays in the Theory of International Politics* (London: George Allen and Unwin, 1966), p.51. This interpretation has recently come under attack. See e.g. Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002), esp. pp. 30-39.

[18] James, 'Law and Order', p.65.

[19] James, 'Law and Order', p.66.

[20] James, 'Law and Order', p.67.

[21] James, 'Law and Order', p.67.

[22] Manning, 'Legal Framework', pp.304-5.

[23] James, ‘Law and Order’, pp.71-2.

[24] Manning, ‘Legal Framework’, p.326.

[25] Bull, *Anarchical Society*, p.139.

[26] Bull, *Anarchical Society*, p.139.

[27] Bull, *Anarchical Society*, p.140.

[28] Manning, ‘Legal Framework’, p.322.

[29] Manning, ‘Legal Framework’, p.322.

[30] Manning, ‘Legal Framework’, pp.322-23.

[31] Manning, ‘Legal Framework’, p.323. For further commentary on this aspect of Manning’s thought, and his obsession with the Indian seizure of Goa, see Wilson, ‘Manning’s Quasi-Masterpiece’, pp.2-3.

[32] See Bull, 'Hans Kelsen and International Law', in Richard Tur and William Twining (eds.), *Essays on Kelsen* (Oxford: Clarendon Press, 1986).

[33] Bull, *Anarchical Society*, pp.132-3.

[34] A principal theme of his ‘Grotian Conception’.

[35] Manning, ‘Legal Framework’, p.331.

[36] Manning, ‘Legal Framework’, p.314.

[37] Bull, *Anarchical Society*, p.157.

[38] Bull, *Anarchical Society*, 127.

[39] The literature criticizing the ethical foundations of international society is extensive. The seminal early work is Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979). See also Chris Brown, *International Relations Theory: New Normative Approaches* (Hemel Hempstead: Harvester Wheatsheaf, 1992); Nicholas J. Wheeler, ‘Guardian Angel or Global Gangster: A Review of the Ethical Claims of International Society’, *Political Studies*, 44, 1 (1996); Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Cambridge: Polity, 1998); Tim Dunne, ‘Sociological Investigations: Instrumental, Legitimist and Coercive

Interpretations of International Society', *Millennium*, 30, 1 (2001); Andrew Linklater and Hidemi Suganami, *The English School of International Relations: A Contemporary Reassessment* (Cambridge: Cambridge University Press, 2006), esp. chs. 4 & 7.

[40] See e.g. Terry Nardin, *Law, Morality and the Relations of States* (Princeton: Princeton University Press, 1983), pp.27-9; Joao Marques de Almeida, 'Challenging Realism by Returning to History: The British Committee's Contribution to IR 40 Years On', *International Relations*, 17, 3 (2003), pp.289-94.

[41] C. A. W. Manning, ''Austin To-day: Or "The Province of Jurisprudence" Re-examined', in W. Ivor Jennings (ed.), *Modern Theories of Law* (London: Oxford University Press, 1933).

[42] See e.g. 'Grotian Conception', pp.51-2.

[43] This mode of thinking has received its most complete critique in Hidemi Suganami, *The Domestic Analogy and World Order Proposals* (Cambridge: Cambridge University Press, 1989). See also his 'The "Peace Through Law" Approach: A Critical Examination of its Ideas', in T. Taylor (ed.), *Approaches and Theory in International Relations* (London: Longman, 1978).

[44] See e.g. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2006 [1989]).

[45] Rosalyn Higgins, *Problems and Process: International Law and How We Use it* (Oxford: Clarendon Press, 1994), p.2; Rosalyn Higgins, 'Policy Considerations and the International Judicial Process', *International and Comparative Law Quarterly*, 17 (1968), 58-9.

[46] Higgins, 'Policy Considerations', pp.58-9.

[47] Higgins, *Problems and Process***,** p.5.

[48] Higgins, *Problems and Process*, p.1.

[49] Bull, *Anarchical Society*, p.160. The most systematic critique of the 'policy science' or 'teleological' approach of the New Haven school from an English school perspective is provided by Nardin, *Law, Morality and the Relations of States*, ch.8. See also Byers, *Power of Rules*, pp.207-13.

[50] Nardin, *Law, Morality and the Relations of States*, esp. pp.3-24, 305-24.

[51] Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), pp.61, 97-129.

[52] Jackson, *Global Covenant*, 128-9. See also Nardin, *Law, Morality and the Relations of States*, pp.97-112.

[53] Nicholas J. Wheeler, 'The Kosovo Bombing Campaign', in Cristian Reus-Smit (ed.), *The Politics of International Law* (Cambridge: Cambridge University Press, 2004).

[54] Carr, *Twenty Years' Crisis*, chs. 10 & 11.

[55] See further, Herbert Butterfield, 'The Scientific versus the Moralistic Approach in International Affairs', *International Affairs*, 27, 4 (1951); Butterfield, 'The Balance of Power' and 'The New Diplomacy and the Historical Diplomacy', in Butterfield and Wight, *Diplomatic Investigations*; Butterfield, 'Morality and an International Order', in Porter, *Aberystwyth Papers*; Dunne, *Inventing International Society: A History of the English School* (London: Macmillan, 1998), ch. 4; Ian Hall, 'Sir Herbert Butterfield and International Relations', *Review of International Studies*, 28, 4 (2002); Bull, *Anarchical Society*, chs. 5 & 9; Bull, 'The Great Irresponsibles? The United States, the Soviet Union and World Order', *International Journal*, 35, 3 (1980); Kai Anderson and Andrew Hurrell (eds.), *Hedley Bull on International Society* (London: Macmillan, 2000), Part I and *passim*.

[56] Arthur Watts, 'The Importance of International Law', in M. Byers (ed.), *The Role of Law in International Politics* (Oxford: Oxford University Press, 2000), p.14.

[57] The foundations for a more thorough-going English school analysis of the relationship between power and international law have been laid by Byers, *Power of Rules*, ch.2. See also Christian Reus-Smit, 'Society, Power and Ethics', in Reus-Smit, *Politics of International Law*, pp.272-84; Barry Buzan, *From International to World Society: English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004), pp.167-76; David Armstrong, 'The Nature of Law in an Anarchical Society', in R. Little and J. Williams (eds.), *The Anarchical Society in a Globalized World* (London: Palgrave, 2006),

pp.125-9.

[58] Andrew Hurrell, 'International Law and the Changing Constitution of International Society', in M. Byers (ed.), *The Role of Law in International Politics* (Oxford: Oxford University Press, 2000), p.143.

[59] See Tom Farer, 'The United Nations and Human Rights: Less than a Roar, More than a Whimper', in A. Roberts and B. Kingsbury (eds.), *United Nations, Divided World* 2nd edn. (Oxford: Oxford University Press, 1993).

[60] The two English school authors who have done most to take this point forward are John Vincent and Nicholas Wheeler. See R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986); and N. J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

[61] Onuma, 'International Law', p.24.

[62] Watts, 'Importance of International Law', p.7.

[63] Onuma, 'International Law', p.16.

[64] See C. A. W. Manning, *The Nature of International Society* (London: Macmillan, 1975 [1962]), pp.xviii, 194-6; Hidemi Suganami, 'C. A. W. Manning and the Study of International Relations', *Review of International Studies*, 27, 1 (2001), pp.102-3; Wilson, 'Manning's Quasi-Masterpiece', pp.764-66.

[65] See Richard Little, 'Neorealism and the English School: A Methodological, Ontological and Theoretical Reassessment', *European Journal of International Relations*, 1, 1 (1995); Timothy Dunne, 'The Social Construction of International Society', *European Journal of International Relations*, 1, 3 (1995); Barry Buzan, 'The English School: An Underexploited Resource in IR', *Review of International Studies*, 27, 3 (2001).