Intellectual Struggles

behind Global Governance vs. Nation-State Sovereignty

(ChatGPT- knomwledge mining)

by Béla Pokol

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Content

Part I.: General Aspects

Introduction

In the modern era, scholars across political science, international relations, sociology, and economics have scrutinized the ideologies and intellectual currents that favor transnational governance structures and global domination at the expense of traditional nation-state sovereignty. From early analyses of imperialism to contemporary critiques of neoliberalism, globalism, technocracy, and transnational capitalism, a rich body of literature traces how elite networks and ideologies have promoted forms of global rule that constrain or bypass nation-states. This report provides a comprehensive overview of key authors and their major works examining these trends. It details each author's arguments and frameworks, highlighting how their contributions illuminate the tension between global governance and national sovereignty. A summary table of authors, works, and thematic foci is also included for quick reference.

Early Theories of Imperialism and Global Capital (1900–1945)

John A. Hobson – *Imperialism: A Study* (1902). Hobson was among the first to connect the rise of finance capital with the expansion of empire. He argued that late 19th-century British imperialism was driven by a surplus of capital seeking investment abroad and by industrialists seeking new markets. In Hobson's view, a small group of financiers and industrialists benefited from imperial expansion, often against the broader national interest. This "economic taproot" of imperialism meant that global expansion was propelled by capitalist oligarchies rather than nation-states as a whole. Hobson's liberal critique (he was not a Marxist himself) proved highly influential. His insight that global capitalist interests can supersede national welfare laid intellectual groundwork for later thinkers.

Vladimir I. Lenin – *Imperialism, the Highest Stage of Capitalism* (1916). Lenin built on Hobson's analysis from a Marxist perspective. Writing during World War I, he portrayed imperialism as the final stage of capitalism in which monopoly finance capital and great powers partition the world into colonies and spheres of influence. According to Lenin, a "financial oligarchy" in each advanced country, in partnership with its state, dominated global resources, thereby undermining the self-determination of weaker nations. Imperialism for Lenin was not just policy but an inevitable structural outgrowth of late capitalism – a transnational system of domination by capitalist elites. His work suggested that nation-state sovereignty in the periphery was a fiction, as colonial territories and even smaller states were subordinated to the economic interests of imperial powers. Lenin's pamphlet became a cornerstone for later dependency and world-systems theories tracing how global capitalism constrains national autonomy.

Karl Polanyi – *The Great Transformation* (1944). Polanyi's classic work examined the social upheavals caused by the 19th-century emergence of a global "self-regulating market". He

argued that laissez-faire market ideology freed markets from social and political constraints – a process he famously termed the "disembedding" of the economy from society. Polanyi showed that the gold standard and free trade (the era's transnational economic regime) forced nations to subordinate domestic needs to global market disciplines. This provoked a "double movement": societies fought back to re-embed markets under social control (e.g. through protective legislation or ultimately the Bretton Woods order). Polanyi's analysis implies that unfettered global markets undermine nation-state sovereignty by preventing states from shielding their citizens from market shocks. His work presaged critiques of neoliberal globalization, highlighting that the push for a global market order was an intellectual project that demanded weakening democratic control at the national level.

Hegemony, Dependency, and World-System Theories (1940s–1980s)

Antonio Gramsci – *Prison Notebooks* (1929–1935, pub. later). Although Gramsci wrote about earlier eras, his concept of cultural hegemony deeply influenced later analyses of global power. Gramsci argued that a ruling class maintains control not just through force but by disseminating an ideology that makes its dominance appear natural. In a global context, neo-Gramscian scholars (like Cox and Gill later) applied this to how a transnational capitalist class exercises intellectual and cultural leadership, securing consent for a global order that constrains state sovereignty. Gramsci's work provided a theoretical framework to understand how global elites propagate ideologies (e.g. market liberalism or "globalism") that legitimize their rule over and across nations. This laid groundwork for examining transnational hegemony – the consensual aspect of global domination whereby international institutions and norms reflect the interests of the powerful.

Immanuel Wallerstein – *The Modern World-System* (vol. I in 1974, with later volumes) and *World-Systems Analysis: An Introduction* (2004). Wallerstein developed world-systems theory, which shifts analysis from individual states to the *world system* as the primary unit. He showed how since the 16th century the world economy has been organized as a hierarchy of core, semi-peripheral, and peripheral zones in a single division of labor. Crucially, Wallerstein emphasized that the world-system (not separate nation-states) is the fundamental unit of analysis. In this view, sovereign states are embedded in a global capitalist system that shapes their fates. Core states accumulate wealth by exploiting peripheral regions, undermining the sovereignty of weaker nations which are forced into dependent roles. World-systems theory thus portrays formal state sovereignty as bounded by the structural power of global capitalism. By treating world-scale processes (trade, capital flows, imperialism) as primary, Wallerstein's work reveals how nation-states often function as instruments of a larger transnational capitalist order, rather than independent actors. His framework has been foundational for subsequent studies of globalization and empire.

Dependency Theorists – *Andre Gunder Frank*, *Samir Amin*, *Fernando Henrique Cardoso*, and others (1960s–1970s). These scholars further examined how global capitalism locks peripheral nations into dependency. For instance, Samir Amin in works like *Imperialism and Unequal Development* (1976) argued that advanced capitalist "center" countries actively underdevelop peripheral ones, calling the global system "collective imperialism. Dependency theorists highlighted intellectual trends (often rooted in Marxism) exposing how development doctrines and international institutions (e.g. IMF conditionality) justified continued economic subordination of the Global South. They posited that true sovereignty for poorer nations was

illusory under a world economy dominated by transnational capital interests. This school of thought set the stage for critical views of "globalism" as an ideology masking unequal power relations.

Giovanni Arrighi – *The Long Twentieth Century* (1994). Arrighi traced historical cycles of global capitalism and hegemony, from Genoese and Dutch finance to British industrial capital and then U.S. hegemony. He showed that each hegemonic order eventually faces crisis and transition. His later work *Adam Smith in Beijing* (2007) even anticipated shifts toward East Asia. While Arrighi did not explicitly frame it as anti-sovereignty, his analysis illustrates how financial and economic power move in transnational cycles, often outpacing the control of any single nation-state. In highlighting the rise and fall of global hegemonies, Arrighi implicitly underscored that nation-states operate within larger structures of capitalist governance that constrain their autonomy – a view compatible with world-systems and dependency perspectives.

Neoliberalism and the Global Liberal Order (1980s–present)

Friedrich Hayek and the Neoliberal Intellectuals – *The Road to Serfdom* (Hayek, 1944), Mont Pelerin Society (est. 1947), etc. Neoliberal thinkers like Hayek, Ludwig von Mises, Milton Friedman, and later the Mont Pelerin Society laid the intellectual foundations for a global market-driven order. They were deeply skeptical of nation-state economic sovereignty, fearing that democratic governments would intervene in markets and erode economic freedom. Historian Quinn Slobodian in *Globalists: The End of Empire and the Birth of Neoliberalism* (2018) has shown that these neoliberals explicitly sought to design an international order "strong enough to override democracy in the service of private property". Far from simply advocating free markets, Slobodian documents how figures like Hayek and Wilhelm Röpke (the "Geneva School") formulated a vision to "encase" global markets in protective institutions beyond the reach of electorates. They championed entities like the GATT/WTO, European integration, and investor protections that curtailed nation-state sovereignty over the economy. In Slobodian's words, neoliberals treated unfettered capital movement almost as a *human right*, taking priority over domestic democratic choices. This intellectual project culminated in the neoliberal globalization wave of the 1980s–1990s, where institutions like the WTO, IMF, and EU embedded market liberalism at a transnational level.

David Harvey – *A Brief History of Neoliberalism* (2005). Harvey, a Marxist geographer, provides a critical overview of neoliberal ideology and its global spread. He emphasizes that neoliberalization from the 1980s onward was not merely about shrinking the state, but about reorienting state power to support global capital accumulation. According to Harvey, the "neoliberal project is to disembed capital" from national constraints and open new domains for profitpratclif.com. He notes that neoliberal theorists are "profoundly suspicious of democracy" and prefer governance by experts and elites insulated from popular pressurespratclif.com. In practice, neoliberal global governance meant empowering executive agencies, central banks, trade agreements, and other non-majoritarian institutions to make decisions beyond the reach of voterspratclif.com. Harvey's work underscores the significance of neoliberal ideas in shifting power to transnational actors: he observes that international agreements like the WTO were *"critical to the advancement of the neoliberal project on the global stage"*pratclif.com. In sum, Harvey portrays neoliberal globalization as an ideological and political project that hollowed out nation-state sovereignty, turning democratic oversight into a "luxury" and normalizing a technocratic style of rulepratclif.com.

Wendy Brown – *Undoing the Demos: Neoliberalism's Stealth Revolution* (2015). Brown extends the critique by examining how neoliberal reason reshapes governance and citizenship. Following Michel Foucault's insight that neoliberalism is a "political rationality", she argues that the rise of neoliberal policy has eroded the foundations of democracy, recasting citizens as homo economicus and policy-making as market management. *Undoing the Demos* is a "haunting" analysis of the "fate of democracy under a new regime of neoliberal governance", one that measures all value in economic terms. Brown shows how transnational agreements, deregulatory norms, and global competitive pressures strip popular sovereignty of meaning – a process often unnoticed ("stealthy"). By reframing governance as a matter of expert administration and global market logic, neoliberalism dilutes the power of democratic publics. Brown's work is significant for highlighting the *intellectual trend* of neoliberalism as fundamentally anti-democratic: it advances a soft technocracy where decisions are justified by market imperatives rather than popular will, thus undoing democratic sovereignty in both nation-states and the international arena.

Joseph Stiglitz – *Globalization and Its Discontents* (2002). A Nobel laureate economist and former World Bank Chief Economist, Stiglitz emerged as a prominent critic of how global economic institutions operate. In this book (and later works like *Making Globalization Work*), he documents how the IMF, World Bank, and WTO often pushed neoliberal "one-size-fits-all" policies on developing countries – policies that sometimes undermined those nations' economic sovereignty and social stability. Stiglitz provides an insider's analysis that challenges the technocratic ideology of these institutions. He argues that market fundamentalism, driven by ideological commitments rather than empirical outcomes, dominated the 1990s globalization, leading to outcomes that hurt ordinary citizens and provoked backlash. Stiglitz's contribution lies in showing that intellectual dogmas of global finance (e.g. unfettered capital mobility, rapid privatization) were exported via transnational governance structures, often in conflict with democratic decision-making in nation-states. By advocating reforms for transparency, accountability, and allowing countries more policy space, Stiglitz implicitly defends the importance of national sovereignty against certain globalist orthodoxies.

Dani Rodrik – *The Globalization Paradox* (2011). Rodrik, a political economist, formulates the "inequality trilemma" of globalization: democratic politics, national sovereignty, and hyper-globalization are mutually incompatible – you can have at most two. His work is key in articulating that intense global economic integration (hyper-globalization) demands that countries cede significant sovereignty (e.g. by obeying investor protections, trade rules, etc.), which in turn can erode democratic control. Rodrik's paradox highlights that the intellectual project of complete global market integration (pursued by neoliberals in the 1990s) is at odds with the continued desire of publics to shape their own economic destinies. He suggests scaling back globalization or building global governance that is democratically accountable. By doing so, Rodrik critically examines globalism – the ideology that more integration is always better – and its costs to nation-state autonomy and democracy. His framework has become influential in debates on how to balance global rules with local self-determination.

Transnational Capitalism and the Global Elite (1990s–present)

Leslie Sklair – *The Transnational Capitalist Class* (2001). Sklair, a sociologist, introduced the concept of the Transnational Capitalist Class (TCC) to describe the emerging global corporate elite. According to Sklair, this class is composed of four fractions – corporate executives, globalizing bureaucrats, globalizing professionals, and merchants/media – who together

function as a global ruling class beyond any single state. He argues that the TCC shares a common interest in a global capitalist system (for example, they convene at forums like the World Economic Forum in Davos). Sklair's work demonstrates that power is increasingly exercised by a networked elite whose loyalties are "cosmopolitan" rather than national. These elites propagate an ideology of global consumerism and market deregulation ("globalism") through transnational institutions and culture. The significance of Sklair's contribution is in showing that the nation-state is no longer the container of the elite – instead, capital and its top players operate transnationally, thereby circumventing or influencing nation-state policies to suit global capitalism. Sklair essentially documents the sociological reality behind terms like "globalists": a class for whom national boundaries are obstacles to be overcome in pursuit of profit.

William I. Robinson – *A Theory of Global Capitalism* (2004); *Global Capitalism and the Crisis of Humanity* (2014). Robinson, a sociologist, provides a theoretical lens on 21st-century transnational capitalism. He contends that a new epoch emerged in which a transnational capitalist class and transnational state apparatuses (e.g. networks of global institutions and compliant states) collectively manage global capitalism. Robinson defines the TCC as "that segment of the world bourgeoisie that represents transnational capital", characteristically unconstrained by national boundaries. His 2000 article "Towards a Global Ruling Class?" (with Jerry Harris) argues that a *transnational elite* wields growing influence over global policy, forming something like a global ruling class. Robinson's work highlights intellectual trends such as "globalization-from-above" – the idea that globalization has been a project led by elite groups to reorganize the world economy in their interests. As national governments bow to the pressures of mobile capital (or are even staffed by members of this global elite), sovereignty is reorganized on a transnational basis, often sidelining democratic participation. By positing a nascent transnational state (comprised of institutions like the IMF, WTO, G7, etc., along with national state elites who share the globalist outlook), Robinson provides a critical framework for understanding how global capitalism is institutionally entrenched in opposition to traditional nation-state control.

Susan Strange – *The Retreat of the State: The Diffusion of Power in the World Economy* (1996). A pioneer of international political economy, Strange argued that in an era of globalization, state power is not what it used to be. She observed that the authority of states was "retreating" as other non-state actors – multinationals, financial markets, crime syndicates, international institutions – gained power. Strange did not claim states are irrelevant, but she showed that many critical capacities (like controlling finance or information flows) had shifted away from governments. In *Retreat of the State*, she famously asked "Who is really in charge of the global economy?" and answered that it was no longer only governments. Her analysis introduced the concept of structural power – power to shape the frameworks within which others operate – and noted that global markets and firms exert structural power over states. For example, if capital can move globally, governments must cater to investor confidence or face capital flight. In Strange's view, Westphalian sovereignty was being eroded as global markets, institutions, and norms constrained the policy autonomy of states. She highlighted that this was not a natural accident but the result of policy choices (deregulation, liberalization) influenced by an ideology that glorified global market forces. Strange's work is significant for documenting the intellectual shift in the late 20th century: from seeing the nation-state as omnipotent to recognizing the polycentric, diffuse governance in the world economy where states must share authority with (or cede it to) other global actors.

Stephen Gill – *American Hegemony and the Trilateral Commission* (1990); "New Constitutionalism" (1990s onward). Gill, a neo-Gramscian political scientist, analyzed the role of elite planning groups like the Trilateral Commission in forging a new world order. In his 1990 book, he showed how trilateral elites (from North America, Western Europe, Japan) promoted a "managed" form of globalization and liberalization in the 1970s–80s, aiming to create conditions favorable to transnational capital. Gill's later work introduced the notion of "new constitutionalism", describing the entrenchment of neoliberal policies into quasi-constitutional global frameworks (trade agreements, investment treaties, etc.) that "lock in" market discipline and limit the scope of democratic governance. According to Gill, this new constitutionalism is "a set of political policies that promote a new global order" grounded in neoliberalism. Its goal is to separate economic policymaking from democratic politics by shifting it to the global level. For example, independent central banks, WTO rules, and investor-state dispute mechanisms all prevent national governments from altering economic arrangements, thereby shielding capitalist interests from popular accountability. Gill argues this amounts to a form of disciplinary neoliberalism, where states are disciplined by global markets and rules. The *significance* of Gill's contribution is in naming and theorizing this process as an ideological project: a constitutionalization of global economic liberalism that subordinates nation-state sovereignty to transnational capitalist imperatives. He connects this with Gramsci's idea of hegemony, suggesting a historic bloc of transnational elites has shaped a world order that naturalizes global capitalism and depoliticizes key economic decisions.

Kees Van der Pijl – *The Making of an Atlantic Ruling Class* (1984). Van der Pijl examined the formation of a transnational ruling class spanning America and Europe in the 20th century. He showed how finance and business elites, through institutions like the Council on Foreign Relations and Bilderberg Group, cultivated a shared ideology of Atlantic unity and open markets. This Atlantic ruling class underpinned the post-WWII liberal international order. Van der Pijl's work, like Gill's, indicates that global governance structures (IMF, World Bank, NATO, etc.) did not emerge neutrally – they were advanced by elite networks with a vision of a world economy conducive to their interests. Thus, transnational class solidarity often trumped purely national considerations among elites. His analysis reinforces the idea that intellectual and policy-planning efforts (think tanks, conferences, private clubs) have actively promoted globalist governance models as opposed to nationalist or protectionist models. By tracing elite continuity and consensus, van der Pijl contributes to understanding how global capitalism became "embedded" in institutions that restrain nation-state interventions.

"Davos Man" and Elite Identities – In a striking formulation, political scientist Samuel P. Huntington critiqued the emerging global elite culture. He coined the term "Davos Man" to describe cosmopolitan business and political elites who "have little need for national loyalty, view national boundaries as obstacles that thankfully are vanishing, and see national governments as residues from the past whose only useful function is to facilitate the elite's global operations". This characterization (from Huntington's 2004 article *"Dead Souls: The Denationalization of the American Elite"*) encapsulates an intellectual trend among elites: globalism as an ideology. These elites regard globalization and transnational governance bodies as positive goods, while dismissing nation-centric politics. Huntington's observation, albeit from a conservative stance, confirms the analyses of Sklair and Robinson: a segment of influential thinkers and decision-makers explicitly champion an order where sovereignty yields to global networks of capital and expertise. Huntington's "Davos Man" is essentially the personification of globalist ideology – someone who supports technocratic global governance (trade agreements, supranational institutions, neoliberal norms) and is skeptical of

democratic nationalism. Citing this concept in an academic context highlights how even mainstream scholars noticed the gulf between global elites and mass public allegiances, raising concerns that democratic nation-states could be undermined by those who no longer identify with them.

Noam Chomsky – *Hegemony or Survival: America's Quest for Global Dominance* (2003); *Who Rules the World?* (2016). As a public intellectual, Chomsky has relentlessly critiqued U.S. foreign policy and the structures of global power. While not a traditional academic in political science, his analyses echo many themes above. He argues that a "global state capitalist" order, led by the United States and corporations, operates to secure elite interests worldwide, often in defiance of popular will. In works like *Hegemony or Survival*, Chomsky contends that institutions such as the IMF or WTO serve as tools for powerful states and corporations to impose economic policies on weaker countries, infringing on their sovereignty. He also highlights the role of intellectuals and media in manufacturing consent for globalist policies. Chomsky's significance lies in synthesizing complex global power dynamics for a wide audience – emphasizing that behind rhetoric of globalization and free trade lie concrete elite interests. His perspective aligns with critical theories that see transnational "democratic deficits" – decisions of war, peace, and economics made in elite circles (e.g., Washington, Wall Street, Davos) far removed from the citizens affected.

Technocracy and the Erosion of Democratic Sovereignty

James Burnham – *The Managerial Revolution* (1941). Burnham, a former Trotskyist turned political theorist, presciently predicted the rise of a global technocratic order. He argued that capitalism was evolving into a new system ruled by managers and bureaucrats rather than owners or democratic representatives. In a new managerial society, "sovereignty is localized in administrative bureaus", which make the real decisions and issue decrees. Burnham foresaw a future in which traditional nation-states might be superseded by large blocs or super-states governed by technocratic elites. Notably, he wrote that this shift from parliaments to bureaucracies would occur on a world scale, carried out by a "new type of men". Although writing in the 1940s, Burnham's vision anticipated debates about the democratic deficit in technocratic governance. His work suggested that as organizations grow in complexity (corporations, governments, international bodies), power concentrates in the hands of specialized administrators. This implies that citizen sovereignty (through elected legislatures) gives way to expert rule, a theme highly relevant to later global institutions.

European Union and Post-Democracy – The European Union, often cited as the epitome of transnational governance, has a large body of analysis regarding its technocratic character. Political scientist Peter Mair, in *Ruling the Void: The Hollowing of Western Democracy* (2013), argued that EU integration contributed to a situation where national politics ceased to offer real choices as key policies were set by EU agreements and unelected bodies. Similarly, sociologist Colin Crouch's concept of *"post-democracy"* (2004) captures a condition in which formal democratic institutions exist, but policy scope is narrowed by globalization and elite consensus, leaving citizens with little influence. These works, while focused on Europe, exemplify a broader intellectual concern: when policy decisions are shifted to technocratic arenas (central banks, trade tribunals, EU commissions, etc.), the sovereignty of the people is diminished. The EU's reliance on experts and rules (sometimes dubbed the "Brussels technocracy") has been analyzed as both an achievement (preventing nationalist conflict through rule-based governance) and a cautionary tale (creating a gap between the governing

and the governed). Such scholarship adds depth by showing a real-world instance of transnational technocratic governance and its tension with nation-based democracy.

Jens Steffek and Technocratic Internationalism – In *International Organization as Technocratic Utopia* (2021), historian Jens Steffek traces how the idea of rule by experts influenced the creation of global institutions since the 19th century. Steffek and colleagues note that from the League of Nations to the UN system, there was an enduring belief that scientists, economists, and other experts – rather than politicians – should manage international problems. This technocratic ethos holds that policy should be based on specialized knowledge and objective criteria ("what the science says") instead of messy political bargaining. A recent commentary summarizes the trend: decisions once made by elected leaders have increasingly been "delegated to expert bureaucracies insulated from politics and far removed from regular citizens", such as the European Commission, IMF, or WHO. These bodies tend to reduce issues to technical questions best answered by experts, taking "the politics out of policy-making". While this can improve efficiency and evidence-based policy, Steffek warns it also cultivates a disdain for pluralist politics and citizen input among some experts. The guiding star becomes adherence to expert consensus rather than public preference. This narrative of empowered technocracy represents a serious challenge to democracy: *"If experts rule, what is left of political equality and citizens' right to have a say?"*. Steffek's work is important for historicizing technocracy in global governance – showing that the dream of apolitical, expert-driven world order has long roots, and its implementation in institutions invariably conflicts with the principle of popular sovereignty.

Global "Governance" vs. Government – Many IR scholars (e.g. James N. Rosenau, David Held, Anne-Marie Slaughter) have noted that we are shifting from international *government* (formal state-based rule) to global *governance* (networked, multi-level, often informal coordination). Held's *Democracy and the Global Order* (1995) argued that in response to globalization, we need cosmopolitan democracy – new democratic institutions beyond the nation-state – precisely because traditional sovereignty is being undercut. Slaughter's *A New World Order* (2004) observed that state functions are increasingly carried out by transgovernmental networks of regulators, judges, and executives cooperating across borders, effectively forming a new lattice of governance. These analyses recognize that technocratic networks and legal regimes now perform roles once reserved to sovereign governments, from financial regulation to public health, but they also seek ways to inject accountability and representation into these emergent structures. The very use of the term "governance" (rather than government) by scholars implies a system where power is exercised, but not necessarily by elected officials within sovereign states. Thus, even proponents of global governance reforms acknowledge the tension: how to reconcile these transnational power webs with democratic legitimacy. Their work underscores that the intellectual trend has moved beyond questioning if nation-state sovereignty is eroded (it is) to asking what can replace it to ensure popular control – an ongoing debate in political theory.

Conclusion

Over more than a century, a diverse array of thinkers have dissected the intellectual currents supporting forms of global dominance that supersede nation-state sovereignty. From Hobson and Lenin's pioneering critiques of imperialist finance capital to Wallerstein's world-systems replacing the nation-state as the unit of analysis; from the neoliberal architects identified by Slobodian who explicitly sought to constrain democratic governance in favor of global market rules, to the sociologists like Sklair and Robinson who map a transnational capitalist class

"unconstrained by national boundaries" – these authors collectively reveal a consistent theme. Namely, that what may appear as natural "globalization" has in fact been driven by ideologies and elite projects that intentionally limit national autonomy in pursuit of a global order aligned with certain interests (be it capital accumulation, technocratic management of problems, or imperial power).

Crucially, these scholars also highlight the *contestations and consequences* of such trends. The rise of technocracy, as noted by Harvey and Steffek, sidelines democratic participation in favor of rule by expertspratclif.com. The entrenchment of neoliberal globalism, as Brown and Gill argue, stealthily rewrites the social contract, privileging markets over democratic decision-making. And the consolidation of a global elite ethos, captured in Huntington's "Davos Man" who "despises the people of his own country" in loyalty to global capital, raises profound questions about representation and accountability on a world scale.

In synthesizing these works, a picture emerges of the late 20th and early 21st century as an era in which transnational governance structures – economic, political, and technocratic – have proliferated, often justified by intellectual narratives that extol efficiency, growth, or cosmopolitan values. However, the same narratives have provoked backlash and critique, as communities perceive an erosion of their sovereign power to choose their own path. Understanding the arguments of these key authors is vital to grasping how we arrived at the current crossroads: with populist reactions against "globalism" on one side, and calls for enlightened global cooperation (on climate, health, inequality) on the other. The contributions of these thinkers thus remain deeply relevant. They remind us that global domination and governance are not blind forces of fate, but outcomes shaped by ideas – ideas that can be accepted, contested, or changed.

Author (Discipline)	Major Work(s) (Year)	Thematic Focus
J. A. Hobson (Economics)	*Imperialism: A Study* (1902)	Imperialism driven by finance capital; early critique of global capitalist elites undermining national interests.
V. I. Lenin (Political Theory)	*Imperialism, the Highest Stage of Capitalism* (1916)	Monopoly capitalism and global empire; "finance oligarchy" dividing the world, eroding weaker nations' sovereignty.
Karl Polanyi (Economic Sociology)	*The Great Transformation* (1944)	Market liberalism as a global project disembedding the economy from society; counter-movement to reassert social control over markets.
Antonio Gramsci (Political Theory)	*Prison Notebooks* (written 1929–35)	Hegemony theory; how ruling ideas (later neoliberal globalism) secure consent of governed, enabling transnational elite rule.
Immanuel Wallerstein (Sociology)	*The Modern World-System* Vol. I (1974) and series	World-systems theory; core-periphery structure as primary unit, nation-states constrained by capitalist world-system.
Samir Amin (Economics)	*Imperialism and Unequal Development* (1976)	Dependency theory; "collective imperialism" of core states; transnational capitalism perpetuating underdevelopment.

Author (Discipline)	Major Work(s) (Year)	Thematic Focus
David Harvey (Geography)	*A Brief History of Neoliberalism* (2005); *The New Imperialism* (2003)	Neoliberal ideology and class project; "disembedding" capital globally; accumulation by dispossession; skepticism of democracy in neoliberal practicepratclif.com.
Quinn Slobodian (History)	*Globalists* (2018)	Intellectual history of neoliberalism; Geneva School's plan to encase global markets beyond democratic reach.
Wendy Brown (Political Theory)	*Undoing the Demos* (2015)	Neoliberal rationality undermining democracy; citizens remade as market actors; erosion of popular sovereignty.
Joseph Stiglitz (Economics)	*Globalization and Its Discontents* (2002)	Critique of IMF/World Bank policies; how technocratic neoliberalism in global institutions undercuts developing nations' sovereignty.
Leslie Sklair (Sociology)	*The Transnational Capitalist Class* (2001)	Concept of a global corporate elite (TCC) spanning nations; four fractions of TCC (corporate, state, technical, consumerist) shaping a pro-globalization agenda.
William I. Robinson (Sociology)	*A Theory of Global Capitalism* (2004)	Theory of a transnational capitalist class and transnational state; globalization as a new stage with elites unconstrained by national boundaries.
Susan Strange (IR)	*The Retreat of the State* (1996)	Diminishing state authority in world economy; power shift to markets and MNCs; structural power of global finance over states.
Stephen Gill (IR)	*American Hegemony and the Trilateral Commission* (1990); *New Constitutionalism* articles (1995–2003)	Elite planning of neoliberal order; "new constitutionalism" locking in neoliberal policies via global treaties; disciplinary neoliberalism limiting democratic choices.
Michael Hardt & Antonio Negri (Philosophy/Political Theory)	*Empire* (2000)	Theory of a decentered global sovereignty ("Empire") replacing nation-based imperialism; Empire as "the sovereign power that governs the world", deterritorialized and networked.
James Burnham (Political Theory)	*The Managerial Revolution* (1941)	Rise of technocratic-managerial rule; sovereignty shifts from elected bodies to administrators; foretold global bureaucratic governance.
Jens Steffek (IR)	*International Organization as Technocratic Utopia* (2021)	History of technocracy in global institutions; experts gaining power in governance, creating democracy deficits in international organizations.
Samuel P. Huntington (Poli Sci)	*"Dead Souls: The Denationalization*	Critique of global elite culture ("Davos Man"); cosmopolitan elites with weak national loyalty,

Author (Discipline)	Major Work(s) (Year)	Thematic Focus
	of the Elite" (2004)	favoring transnational governance and market liberalism over popular sovereignty.
Noam Chomsky (Ling./Politics)	*Hegemony or Survival* (2003); *Who Rules the World?* (2016)	Analysis of U.S. imperial strategy and global power networks; how political, corporate, and military elites exert global domination often hidden behind democratic facades.
Colin Crouch (Sociology)	*Post-Democracy* (2004)	Concept of post-democracy; formal democratic institutions remain but policy scope restricted by global capital and elite consensus, marginalizing ordinary citizens.

Each of these authors provides a piece of the larger puzzle of global power and its clash with nation-state sovereignty. Their works collectively illustrate how neoliberal globalization, transnational capitalist networks, technocratic governance, and imperial ambitions have been justified, implemented, and critiqued at the level of ideas. By studying these key contributions, we better understand the intellectual architecture of our current world – a world in which the tension between global forces and the democratic nation-state is one of the defining challenges of our time.

Wendy Brown: Undoing the Demos: Neoliberalism's Stealth Revolution

Wendy Brown, a prominent political theorist, presents a dire assessment of how neoliberalism is stealthily transforming society and undermining democracy in her book *Undoing the Demos*. Published in 2015, this work argues that neoliberalism is not just an economic policy regime, but a political rationality that extends a market calculus to all aspects of life, remaking state institutions and human subjects in its image. Brown's central thesis is that this neoliberal rationality is "hollowing out" democracy – dismantling citizenship, popular sovereignty, and the very idea of *demos* (the people) – even as democratic forms (elections, rights) persist in name. She calls this process a "stealth revolution" because it operates through insidious shifts in governing logics and common sense, rather than open overthrow of constitutions. In what follows, we detail Brown's main arguments, the structure of her book chapter by chapter, the theoretical frameworks she engages (Foucault, neoliberalism, democracy), and her critique of neoliberal rationality's effects on institutions and subjectivity. We also situate *Undoing the Demos* in the broader context of contemporary political theory and summarize its academic reception and influence.

Central Thesis and Main Arguments

Brown's central thesis is that contemporary neoliberalism constitutes a form of reason that is radically transforming both the political sphere and human nature. In Brown's account, neoliberalism is not simply a set of market-friendly policies or an era of capitalism – it is a governing rationality that "disseminates the model of the market to all domains and activities – even where money is not at issue – and configures human beings exhaustively as *homo economicus*, always, only, and everywhere". In other words, all conduct is framed in economic terms; all spheres of existence are evaluated by market metrics, even those once seen as non-economic (family, education, art, citizenship). This *economization* of everything means that traditional democratic values and practices are redefined in market terms or pushed aside. Brown argues that under neoliberal rationality, criteria like profit, efficiency, and competitive success replace goals of public welfare, equality, or deliberative judgment in policymaking and social life.

Some key consequences of this stealth revolution identified by Brown include:

- Transformation of the State into a Market Actor: Government is reconfigured on the model of a firm, prioritizing economic growth, credit ratings, and competitiveness above all. Even social or justice-oriented policies are justified only insofar as they contribute to economic outcomes (e.g. improving "human capital" or national competitiveness). Democratic government thus comes to mirror corporate

management, focusing on market metrics rather than the expressed will or needs of the people.

- Conversion of Citizens into Homo Oeconomicus: Individuals are increasingly configured as entrepreneurs of themselves or bits of human capital rather than as members of a democratic polity. Every person must think of themselves as an asset to be enhanced and optimized, responsible for their own welfare and competitive value. This vanquishes the figure of *homo politicus* – the citizen engaged in collective self-rule – as people come to see themselves *only* as market actors competing for survival and advantage.
- Redefinition of Democratic Ideals: Core democratic principles like liberty, equality, and popular sovereignty are hollowed out and repurposed in economic guise. For example, "freedom" is re-signified as market choice or the freedom of capital, rather than collective autonomy; equality is recast as equal *market* opportunity (or dismissed as "outdated" interference in the market). Brown notes that even the language of freedom and democracy can be twisted to *signify democracy's opposite* under neoliberalism – for instance, calls for *"individual freedom"* are used to justify dismantling social protections, effectively empowering only the wealthy.
- Erosion of Public Institutions and the Commons: Neoliberal reason, in Brown's view, "assaults the principles, practices, cultures, subjects, and institutions of democracy". Institutions that embodied public values – from universities to courts to electoral processes – are being retooled to serve market ends. Public goods are privatized or run like businesses; law is used to entrench market logic (e.g. treating money as speech in campaign finance; and even education is refocused on producing human capital (discussed further below). The very idea of a shared public interest or common good fades as *the social* is "jettisoned" in favor of individual competition.

Overall, Brown argues that democracy itself is imperiled: the substance of democracy – the capacity of *demos* (the people) to deliberate and govern themselves – is being eviscerated, leaving behind only a formal shell or "bare democracy" bereft of egalitarian or participatory vitality. She emphasizes that this loss is not a loud coup but a gradual encroachment of market reasoning into everyday life and governance, often taken for commonsense. As Brown memorably puts it, neoliberalism "governs as sophisticated common sense, a reality principle remaking institutions and human beings everywhere it settles, nestles, and gains affirmation". In short, *Undoing the Demos* warns that if neoliberal rationality continues unchecked, we risk a future in which democratic ideals and institutions are not outright abolished but quietly *reprogrammed* to serve market imperatives, effectively undoing the promise of democracy from within.

Theoretical Frameworks and Foundations

To build her analysis, Brown engages deeply with Michel Foucault's theoretical framework, as well as with the traditions of liberal and democratic thought that Foucault largely neglected. Brown explicitly credits Foucault's 1978–79 lecture series *The Birth of Biopolitics* as a starting point for understanding neoliberalism "not merely as an ideology or economic policy, but as a form of political rationality" that governs through norms and discourse. Following Foucault, Brown conceives neoliberalism as a "governmentality": an overarching mentality of governance that produces certain kinds of subjects and organizes society according to market logics. Key Foucauldian concepts and insights in Brown's framework include:

- Homo Oeconomicus: Brown places the figure of *homo oeconomicus* (economic man) at the center of her analysis, following Foucault's account of how neoliberal thinkers reconceptualized this figure. In classical liberalism, *homo oeconomicus* was the rational actor in the market, but largely confined to the economic sphere. Neoliberalism, by contrast, generalizes this figure to the whole of life – treating individuals *in every context* as entrepreneurs, investors, or competitors. Brown cites Foucault's observation that for neoliberals like Gary Becker, even non-market behaviors (child-rearing, education, crime, health choices) are seen as economic decisions of a sort. This means the modern person is envisioned as *"human capital"* at all times, always strategizing to enhance their competitive value. Brown adopts this Foucauldian view and uses it to explain how neoliberal rationality produces subjects who approach themselves and others in market terms. Crucially, she also uses this concept to highlight what is lost: as *homo oeconomicus* expands, the political dimensions of personhood – ethical, public-spirited, genuinely free – shrivel.
- Neoliberalism as Political Rationality: Brown embraces Foucault's definition of neoliberalism not as a simple return to laissez-faire, but as an active governing reason that "recodes relations between state, society, economy, and subject". Neoliberal governmentality *encourages certain behaviors and values* (enterprise, responsibilization, efficiency) while *displacing others* (solidarity, public deliberation). For example, Brown notes, neoliberalism *substitutes* technocratic governance and "best practices" for democratic debate and political contestation. Expertise and management replace politics. Likewise, law and policy become arenas for implementing market-based norms (like cost–benefit analysis or market incentives) rather than expressing collective will. Brown's analytic framework thus owes much to Foucault's method of tracing how a form of reason *normalizes* certain truths (e.g. "everyone is human capital") across society.
- Critique and Extension of Foucault – Democracy and Capital: While Foucault's insights are foundational for Brown, she also pointedly revises and extends them. She observes that Foucault, for all his prescience on neoliberalism, was largely *indifferent to democracy* and said little about the specific fate of democratic principles under neoliberal governmentality. Nor did he foreground capitalism's dynamics of class and accumulation, focusing more on intellectual history. Brown addresses these gaps by reintroducing concerns about popular power and capital. She notes that Foucault's framework needs supplementation because "*Foucault's relative indifference to democracy and to capital*" limits his ability to grasp neoliberalism's full impact on our political world. In response, Brown brings in aspects of Marxist analysis – for instance, highlighting how *financialization* and the rise of debt and speculative capital have further mutated neoliberal rationality since Foucault's time. She argues that contemporary neoliberal reason has been transformed by phenomena like global finance, which cast both states and individuals as financialized actors engaged in risk and credit schemes. (E.g. states now live and die by credit ratings and GDP growth, just as individuals live by credit scores and "portfolio" management of their lives.) Brown suggests that capital as a historical force exceeds the bounds of Foucault's analysis – it operates "in excess of its economic operations and circulations", exerting a systemic power that must be accounted for in any critique of neoliberal reason.
- Homo Politicus and the Democratic Tradition: Another theoretical move Brown makes is to resurrect the idea of *homo politicus* – the human as a political animal – from the lineage of democratic and political theory, and pit it against *homo oeconomicus*. In *Undoing the Demos*, she surveys elements of the Western political tradition (from Aristotle's notion of the zoon politikon, through social contract theory,

> to modern liberal and republican thought) to articulate what is being eroded by neoliberalism. *Homo politicus*, in Brown's usage, stands for the aspect of humanity that values participation in collective self-rule, public freedom, civic virtue, and concern for the common good. By revisiting canonical thinkers (Aristotle, Rousseau, Hegel, Marx, and others), Brown underscores that the vision of humans as *political beings* – not merely utility-maximizers – has deep roots. This historical excursus serves to highlight how radical the neoliberal reduction of persons to economic actors really is. In effect, Brown stages a confrontation between these two anthropological imaginaries: *homo politicus* versus *homo oeconomicus*. The latter's triumph, she argues, "vanquishes" the former in our time, with the result that democratic energies, civic identities, and longings for equality or solidarity are severely enfeebled.

Importantly, Brown defines *"democracy"* in a broad, somewhat minimalist way in order to track its undoing across different contexts. She deliberately avoids tying democracy to any single institutional model; instead, she means "rule by the people" in general – the principle of popular power or collective self-government. This allows her to claim that neoliberal rationality menaces *democracy per se* (as both ideal and practice), whether in its liberal representative form or more direct forms. Brown is careful not to romanticize actually existing democracies – she acknowledges their historical exclusions and failures – yet she insists that without the project of democracy, *even more radical or egalitarian possibilities become unthinkable*. In other words, if we surrender the very idea of popular collective control over our shared fate, we foreclose the horizon of any future emancipation. This commitment underlies Brown's normative stance: *Undoing the Demos* is a defense of democracy's *possibility* (however modest) against a form of reason that makes democracy inconceivable or irrelevant.

Chapter-by-Chapter Breakdown

Chapter 1 – "Undoing Democracy: Neoliberalism's Remaking of State and Subject": The book opens by setting out the problem: how neoliberal reason is quietly undoing the fundamentals of democracy by reshaping the state and the citizen. Brown uses contemporary examples – notably President Barack Obama's rhetoric in the early 2010s – to illustrate the shift. Obama's 2013 inauguration and State of the Union speeches, for instance, advanced traditionally *liberal* commitments (like addressing climate change, inequality, gay rights) only by recasting them as means to economic ends. Clean energy was framed as necessary for competitiveness with China; reducing inequality was justified as fueling growth, etc. Brown argues this exemplifies how *social and political issues are now justified in market terms*. In the neoliberal era, government policies and social programs must submit to the test of "enhancing capital value, competitive positioning, and credit ratings" in order to be legitimated. This signals a profound reorientation of state purpose: rather than guarantor of the common good or protector of rights, the state starts to function like a market-driven enterprise, concerned above all with economic metrics. The chapter raises the book's guiding questions: *What becomes of democratic principles – participation, deliberation, equality, liberty – when they are "submitted to economization"?* And *what happens to popular sovereignty when governing is reduced to managerial stewardship of the economy?* These questions animate the subsequent analysis. Chapter 1 thus introduces Brown's thesis that neoliberalism is stealthily converting political values into economic ones, and in doing so, it is eroding the fabric of democracy. By the end of the chapter, Brown has made the stakes clear: neoliberal rationality doesn't *overtly abolish* democratic institutions, but it hollows them out, redefines their mission, and transforms the demos into a population of entrepreneurial actors.

The "stealth revolution" is underway in the quotidian language of policy and public reason, often unnoticed because it wears the mantle of common sense.

Chapter 2 – "Foucault's *Birth of Biopolitics* Lectures: Charting Neoliberal Political Rationality": Here, Brown provides an exegesis of Michel Foucault's analysis of neoliberalism to ground her argument. She guides the reader through Foucault's *1978–79 lectures* (published as *The Birth of Biopolitics*), extracting their key insights about neoliberal reason. Brown outlines how Foucault traced the origins of neoliberal thought in mid-20th-century German Ordoliberalism and the Chicago School of economics. In this chapter, Brown highlights several Foucauldian points crucial to understanding neoliberalism as a political rationality: (1) Competition as the Fundamental Principle – Unlike classical liberalism which let economic processes play out, neoliberalism actively imagines society as a competitive market. The Ordoliberals insisted on a strong state to create and sustain competition in all areas of life (even fostering a competitive social order). (2) Expansion of Economic Logic – Foucault showed that American neoliberals like Gary Becker extended economic analysis to domains like crime (criminals seen as rational actors weighing costs), family (marriage and childrearing analyzed as investment decisions), education (as human capital development), etc. Brown emphasizes Foucault's finding that "all spheres of existence" are submitted to an economic calculus under neoliberalism. (3) Homo Oeconomicus Reconceived – In Foucault's account, neoliberalism gives a new twist to *homo oeconomicus*: no longer merely the partner of exchange or possessor of natural rights (as in early liberalism), *economic man* is now *defined by enterprise and investment*. Everyone becomes their own "entrepreneurial capital", responsible for enhancing their value. Brown underscores how Foucault's work reveals the specificity of neoliberal reason – that it is not just about freeing markets, but about redesigning the state and subject according to market *truths*. Furthermore, Brown notes Foucault's observations on neoliberalism's global aspirations and internal contradictions. For example, Foucault (and Brown following him) note that neoliberalism presents itself as ubiquitous and omnipresent, yet it isn't uniform everywhere – it adapts to different contexts, producing variations even as it speaks in universal terms. By the end of Chapter 2, Brown has "charted" neoliberal rationality with Foucault's help, giving the reader the conceptual tools (governmentality, *homo oeconomicus*, etc.) to diagnose the neoliberal transformation of political life. This chapter essentially builds the theoretical foundation: neoliberalism is revealed as a pervasive "order of reason" rather than a set of isolated policies.

Chapter 3 – "Revising Foucault: Homo Politicus and Homo Oeconomicus": Having laid out Foucault's framework, Brown in Chapter 3 offers her critical revisions to address what Foucault left out – namely, the fate of democratic political life under neoliberalism, and the role of capital. She introduces the concept of *homo politicus* as a foil to *homo oeconomicus*. To flesh out *homo politicus*, Brown engages with classic political theory, reaching back to Aristotle's idea that humans are by nature political creatures who thrive through civic participation, and forward through thinkers like Rousseau, Tocqueville, and Arendt who all, in different ways, valorized political agency, public freedom, or popular sovereignty. Brown's historical survey highlights a rich tradition in which citizenship, public debate, and the capacity to govern ourselves were seen as essential to human dignity and freedom. By contrast, *homo oeconomicus* acknowledges no purpose beyond individual utility and no logic beyond market rationality. Brown argues that neoliberalism elevates *homo oeconomicus* to the ruling image of humanity, thereby effectively crowding out the *homo politicus*. This is the crux of democracy's undoing: when we are interpellated *only* as entrepreneurs or consumers, the attributes of the democratic citizen – social responsibility, capacity for judgment, commitment to equality or common goods – atrophy or appear irrational. The chapter

illustrates this by showing, for example, how democratic impulses (such as a desire for equality or public welfare) are dismissed under neoliberal reasoning as inefficient or even irresponsible (e.g. interfering with market signals).

Brown also tackles Foucault's blind spot on capitalism. She asserts that to fully grasp neoliberalism, one must understand how it rides on the back of capitalist power. She discusses how late-modern capitalism (especially in its financialized form) introduces new dynamics: unprecedented levels of debt, speculation, and risk that shape subjectivity and governance. Under finance-driven neoliberalism, both individuals and states behave like high-risk investors or debtors – a condition Foucault only presaged. Brown draws on Marxian insights here: capital's imperative to constant growth and accumulation works through neoliberal rationality to penetrate every corner of life. Notably, Brown highlights the paradox that neoliberal rhetoric extols *individual* freedom and responsibility, yet in practice both individuals and nations are more tightly tethered to impersonal market forces than ever, even to the point of *sacrifice*. She cites the stark fact that unlike the liberal subject of old, the neoliberal subject has "no guarantee of life" – in pure market logic, some must fail (or die) for others to succeed. The social contract's protections give way to a harsh winner-take-all scenario. In Brown's words, *"in place of the liberal promise to secure the politically autonomous and sovereign subject, the neoliberal subject is… so tethered to economic ends as to be potentially sacrificable to them"*. This chilling conclusion – that neoliberal reason would let people perish in service to economic indices – encapsulates how far we have strayed from democratic values of equality and the right to life. Chapter 3 thus refines the theoretical argument: Brown insists that *homo oeconomicus*' dominion is not benign or natural but politically produced and historically specific – and it comes at the direct expense of *homo politicus* and the ideals of democratic life.

Chapter 4 – "Political Rationality and Governance": This chapter examines how neoliberal reason reconfigures the practice of governance, replacing overtly political decision-making with a managerial, economistic approach. Brown details the shift from politics to "governance", a term that signals technocratic administration and the application of business principles to state and society. In neoliberal governance, elected officials and public agencies increasingly behave like corporate managers, concerned with benchmarks, performance indicators, "best practices," and cost-efficiency. Democratic processes like open debate or partisan contestation are sidelined in favor of *policy metrics* and expert rule. Brown points out a core contradiction: neoliberal discourse often advocates deregulation and shrinking the state, yet it simultaneously demands strong state action to enforce market discipline and competition. For instance, the neoliberal state seeks to privatize public goods and deregulate industries, but it also *polices and regulates individuals* to conform to market norms (e.g. pushing the unemployed into job training, surveilling teachers via performance metrics, etc.). Brown succinctly captures these double standards: *"In the economic realm, neoliberalism aims simultaneously at deregulation and control. It seeks to privatize every public enterprise, yet valorizes public–private partnerships that imbue the market with ethical potential… With its ambition for unregulated and untaxed capital flows, it undermines national sovereignty while intensifying preoccupation with national GNP, GDP and other growth indicators"*. In short, Chapter 4 reveals that neoliberal *political rationality* produces a peculiar form of governance that is hyper-managerial and post-political. Democratic accountability weakens as policy is legitimated by market-based notions of efficiency rather than by reference to citizens' will or public deliberation. Brown likely discusses examples such as new public management reforms, the outsourcing of state functions, or global governance bodies that impose market criteria on governments. The overall effect, she argues, is that political life is

evacuated of substantive debate – questions of justice or the good life are reformulated as technical problems – and citizens are re-cast as customers or stakeholders rather than members of a sovereign public. Governance, in the neoliberal mold, thus "delivers the people up" to market logics rather than delivering on the people's will.

Chapter 5 – "Law and Legal Reason": In this chapter Brown analyzes how neoliberal rationality penetrates the legal domain, reshaping the meaning of law, rights, and constitutional principles in accordance with market values. She uses legal cases and doctrines to illustrate what she calls the "economization of politics through law". A centerpiece example is the U.S. Supreme Court's decision in *Citizens United v. FEC* (2010), which treated corporate political spending as protected speech. Brown argues that *Citizens United* exemplifies neoliberal legal reasoning: it elevates property and capital (corporate money) to the status of political speech, thereby *collapsing a democratic principle into an economic one*. By equating money with speech and corporations with political participants, the Court effectively transposed a market logic onto the electoral process – those with greater capital have greater "speech". Brown likely discusses how this reflects a broader trend of legal doctrines prioritizing economic rights and values over egalitarian or public-interest considerations. She examines, for instance, how key terms of liberal democracy – liberty, equality, rights, citizenship – are being reinvented in market idioms. According to Brown, neoliberal legal reason "replaces the distinctively political valences of rights, equality, liberty, justice, and the public good with economic valences". For example, *liberty* comes to mean the freedom of individuals (or corporations) to engage in market exchange without regulation; *equality* is interpreted as the leveling of market opportunity (or even the equal vulnerability of all market actors, rather than equality of outcome or voice); *rights* (such as property rights or contract rights) are given priority over broader democratic claims. This legal transformation furthers the demise of the demos: if law treats persons strictly as economic actors, political equality (one-person-one-vote, equal protection) is undermined by market-based inequalities. Brown also highlights how neoliberal jurisprudence often deploys economic reasoning – for instance, cost–benefit analysis in regulatory law or an emphasis on efficiency and productivity in adjudication – at the expense of justice-oriented reasoning. By the end of Chapter 5, Brown has shown that the legal system, which in a democracy should function as a counterweight to raw economic power (protecting rights of the weak, preserving the commons, etc.), is itself being colonized by market rationality. Law increasingly speaks the language of investment, competition, and enterprise, legitimating the concentration of wealth and political influence that neoliberalism produces. This, Brown implies, locks in a feedback loop: neoliberal policy and neoliberal jurisprudence reinforce one another, accelerating democracy's disintegration into a mere market franchise.

Chapter 6 – "Educating Human Capital": This chapter turns to higher education as a case study of neoliberal rationality in action, examining how universities and schools are refashioned to produce "human capital" rather than informed citizens. Brown contrasts the mid-20th-century ideal of public education with the contemporary reality. In the decades after World War II (under social-democratic influence), higher education was conceived as a public good that cultivated democratic citizens, critical thinkers, and socially aware individuals. She cites, for example, a 1946 U.S. commission that justified investment in public universities as *"an investment in social welfare, better living standards, ... a bulwark against ignorance and intolerance… an investment in human talent, better human relationships, democracy and peace"*. That vision – education as fostering broad humanistic and democratic aims – has now largely vanished. Under neoliberal rationality, education is redefined in strictly economic terms: it is valued almost exclusively for its contribution to individual earning potential and

national economic growth. Brown observes that *"we can no longer speak [in the old civic-minded way] about the public university, and the university no longer speaks this way about itself. Instead, the market value of knowledge – its income-enhancing prospects for individuals and industry alike – is now understood as both its driving purpose and leading line of defense."*. Universities thus market themselves as pathways to higher salaries; academic programs are justified by return on investment. Students are urged to view themselves as investors (taking on loans as "investing in your future") and as entrepreneurial selves who must accumulate skills and credentials as forms of capital. Even fields like the humanities try to prove their worth by claiming to build "analytical skills" for the job market, aligning with the human capital logic. Brown argues that this transformation undermines the democratic and critical capacities that education once aimed to develop. When education becomes solely about *"competitive positioning"* and human capital appreciation, there is little room for nurturing public-spirited citizens, imaginative inquiry, or critique of social systems. Moreover, access to education itself may become stratified by market metrics (those who can pay or who present the best "investment profile" get ahead, exacerbating inequality). Brown likely discusses how faculty governance, curriculum choices, and even academic research agendas are increasingly subjected to market pressures (e.g. funding cuts to basic research or arts in favor of STEM and applied fields with corporate partnerships). The culture of the university shifts from one of inquiry and enlightenment to one of entrepreneurial hustle. Through this case, Chapter 6 powerfully illustrates Brown's broader point: neoliberal rationality not only reforms institutions in its image, it also produces compliant subjects. Students internalize the idea that their task is to maximize their capital (skills, grades, networks) rather than, say, to develop as well-rounded individuals or engaged citizens. Thus, the very sphere that democracy depends on for an educated, critical populace is being refitted to serve the economy, "undermining democratic citizenship" in the process.

Epilogue – "Losing Bare Democracy and the Inversion of Freedom into Sacrifice": In the epilogue, Brown concludes with a sobering reflection on what remains of democracy after decades of neoliberal transformation. She portrays the present condition as "bare democracy" – a democratic form emptied of substance. We are left with the procedural shell (elections, some civil liberties), but without the egalitarian socio-political conditions or the spirited citizenry that actual democracy would require. Brown describes how neoliberalism has even altered our perception of *freedom*. The foundational democratic idea of freedom as collective self-determination or personal autonomy under fair conditions is inverted in neoliberal discourse into something quite different – often, the *freedom of markets* or the *individual's freedom to compete and consume*. This inversion carries a perverse twist: it entails widespread sacrifice by individuals and society, all in the name of market freedom. Brown notes how political and business leaders routinely call on people to *"sacrifice"* – whether by accepting austerity policies, enduring welfare cuts, or working longer hours for less – in order to bolster economic indices or maintain market confidence. Under neoliberal rationality, sacrifice becomes a civic virtue, but crucially it is *sacrifice to the market* (to keep the economy "healthy"), not sacrifice for *democracy* or the common good. Citizens are thus asked to surrender social protections, economic security, and even democratic control as a kind of offering to the god of markets – a dynamic Brown pointedly calls *"neoliberalism's perverse theology of markets"*. In this theology, the "freedom" of capital demands that everyone accept discipline or hardship; freedom for the few entails sacrifice for the many. Brown enumerates phenomena like *"too big to fail vs. too small to protect"* (the bailout of giant banks while ordinary homeowners were foreclosed upon) and austerity measures that force citizens to give up public benefits – all examples of neoliberal freedom-as-sacrifice. The epilogue underscores that democratic freedom – the freedom to shape our collective life – has been nearly

extinguished, replaced by a grim freedom to fend for oneself in market competition, even to the point of ruin. Brown's final pages reportedly ask, *"Is another world possible?"*, and gesture briefly at the need for non-market values and social bonds to be mobilized against neoliberal hegemony. However, she does not offer a utopian blueprint or easy optimism. In fact, the tone remains urgent and cautionary. Brown acknowledges that she may sound "dire" in her warnings, but she contends that this is because the democratic project is truly in peril and requires reinvigoration by those who still care about popular sovereignty and justice. The book thus ends on a call to recognize the gravity of the neoliberal revolution and to rekindle democratic imagination before it is too late. The overarching takeaway is a mix of enlightenment and alarm: Brown has unveiled the depth of the crisis ("democracy's undoing"), hoping to jolt readers into the realization that defending or reinventing democracy is an urgent task in our neoliberal age.

Context and Significance in Contemporary Political Theory

Undoing the Demos intervenes in a broader discourse within political theory and social criticism about the fate of democracy under neoliberal capitalism. By the mid-2010s, scholars across disciplines were noting that formal democratic institutions were becoming increasingly impotent or compromised by market forces, a condition sometimes termed "post-democracy." Political scientist Colin Crouch, for example, had described *post-democracy* as a system where elections and institutions continue, but policy agendas are largely set by economic elites and technocrats. Brown's analysis strongly resonates with this, but she gives it a distinctive theoretical depth by tracing how people's minds and values are reshaped to accept this erosion as natural. Similarly, Brown's work echoes concerns raised by her late mentor, Sheldon Wolin, who warned of "inverted totalitarianism" – a creeping anti-democratic power operating under the guise of democracy. Brown shares Wolin's alarm about democracy's hollowing, but whereas Wolin emphasized corporate power and mass apathy, Brown emphasizes the intellectual and cultural transformation that makes such a hollowing possible. Her concept of neoliberalism as a *"sophisticated common sense"* dovetails with Antonio Gramsci's notion of hegemony, wherein a ruling worldview becomes taken for granted. In effect, Brown is examining the hegemonic common sense of neoliberalism that has made market-conforming behavior and governance appear natural and inevitable.

The book's Foucauldian approach set it apart from more economistic analyses of neoliberalism (like those by David Harvey or Naomi Klein). While many accounts in the 2000s portrayed neoliberalism primarily as a class project to restore elite power, Brown focused on its subjectivating power – how it produces certain kinds of subjects and rationalities. This was an important contribution: it helped bridge the gap between economic policy critiques and critiques of culture and ideology. In the wake of the 2008 financial crisis and subsequent austerity policies, Brown's thesis offered a compelling explanation for why meaningful resistance was so difficult: neoliberal rationality had become deeply embedded in how individuals think and what they value, not just in institutions or policies. Indeed, as one reviewer noted, a pressing question is *"why has the 'soft power' of neoliberal reason been so attractive to so many, and why has it met with such feeble opposition from the political Left?"*. Brown's answer would be that neoliberalism, by operating at the level of common sense and personal identity, disarms opposition – it forecloses even the desire for alternatives by making competitive self-investment the normative way of being human. This analysis enriched contemporary democratic thought by highlighting the psychological and ethical dimensions of democratic erosion, beyond the usual focus on institutions and economics.

Brown's work also converses with theoretical debates on the relation between liberalism and neoliberalism. She confronts the paradox that neoliberalism often marches under the banner of *liberal* values (freedom, choice, individualism) yet ends up subverting liberal democracy itself. In this, her account connects with critiques by thinkers like Jürgen Habermas (who lamented the "colonization of the lifeworld" by market forces) and Nancy Fraser (who has written on the crisis of democratic justice in financialized capitalism). However, Brown's unique angle is her insistence on democracy's loss of meaning under neoliberalism – democracy is not outright abolished, but it becomes a cipher, "an empty signifier" or mere brand, as its substance is eaten away. This has proven prescient: trends such as declining voter engagement, the rise of technocratic governance (e.g. EU austerity measures imposed without popular consent), and even the emergence of populist movements can all be interpreted through Brown's lens. Populism, for instance, might be seen as a reaction – however inchoate – to the democratic void produced by neoliberal reason, a void where citizens feel *politically impotent* and seek to reclaim a sense of agency (sometimes by anti-democratic means). Brown's book, coming just before the global wave of populism and authoritarian turns (2016 onward), can be read as an anticipatory diagnosis of why liberal democracies were so fragile: decades of neoliberal "stealth revolution" had gutted their substantive content, leaving them vulnerable to demagoguery or collapse.

Within academia, *Undoing the Demos* is situated at the crossroads of critical theory, democratic theory, and studies of neoliberalism. It has helped galvanize scholarly attention to what is sometimes called "neoliberal subjectivity." Her formulation that capitalism, in the form of neoliberal rationality, has *defeated democracy* (not just the working class) is a powerful reframing of recent history, challenging triumphalist post-Cold War narratives. By shifting focus from overt authoritarian threats to the subtle *erosion from within*, Brown broadened the conversation about democratic backsliding. In sum, the significance of *Undoing the Demos* lies in how it synthesizes economic, political, and philosophical critiques into a comprehensive portrait of our neoliberal age – one that has deeply informed subsequent discussions in political theory and beyond.

Academic Reception and Influence

Upon publication, *Undoing the Demos* generated extensive discussion and generally strong acclaim in academic circles, especially among political theorists, sociologists, and scholars of education and law. Reviewers lauded Brown's theoretical depth and bold diagnosis. Sociology professor Nicholas Gane, writing for *Theory, Culture & Society*, noted that "there are many good books on neoliberalism but this one stands apart." He described *Undoing the Demos* as a "dark, haunting text" that incisively questions "the fate of democracy under a new regime of neoliberal governance that understands the value of human life purely in economic terms". Gane and others praised Brown for following Foucault's lead in defining neoliberalism as a political rationality, thereby illuminating how thoroughly it permeates realms like law, education, and governance. In a *Critical Inquiry* review, political theorist Jodi Dean highlighted the book's provocative core message: far from liberal democracy having triumphed after the Cold War, *"capitalism, in the form of neoliberal reason, defeated democracy."* According to Dean, Brown shows democracy "*unmoored, disemboweled, hollowed out from within, and utterly undone*" by a neoliberal rationality that "frames all conduct in economic terms" and swallows up every ideal, even freedom and equality, into its maw. Such strong statements indicate how Brown's work struck a chord, articulating what many had sensed: that neoliberalism posed an existential challenge to democratic life.

Scholars have found *Undoing the Demos* to be an "indispensable tool" for both analysis and resistance. Its influence can be seen in a wide array of fields. In education studies, for instance, researchers have used Brown's insights to critique the university's marketization and the impact on student subjectivity. In legal theory, her concept of neoliberal legal reason has informed analyses of court decisions and the shifting interpretations of rights in an era of corporate dominance. In media and cultural studies, Brown's ideas about common sense and subject formation under neoliberalism complement work on how media narratives and self-help cultures promote entrepreneurial selfhood. The book is frequently cited in discussions of the neoliberal transformation of public institutions and civic culture. Notably, Brown's framing of people as *"human capital"* and the loss of homo politicus has become a reference point for subsequent scholarship on subjectivity and citizenship. Even Brown's critique of how neoliberalism handles freedom and sacrifice has echoed in analyses of pandemic policies and economic crises, where again people are urged to sacrifice for "the economy."

While widely celebrated, Brown's book has also prompted critical engagement and debate. Some scholars have questioned or added nuance to her arguments, leading to a productive dialogue. Key points of discussion have included:

- Eurocentrism and Scope: Critics noted that Brown's focus is largely on the United States and Western Europe. Many examples in the book (Obama's policies, U.S. court cases, American higher education, EU austerity) are context-specific. Scholars like Gane wondered to what extent Brown's analysis generalizes globally, given that neoliberal practices take different forms in different countries. Brown does acknowledge neoliberalism's *"paradoxical"* global character – *"ubiquitous and omnipresent, yet disunified and nonidentical with itself"* – but critics felt *Undoing the Demos* could engage more with variations beyond the West.
- Neoliberal Intellectual History: Some reviewers argued that Brown, following Foucault, *simplifies* the diverse intellectual currents of neoliberal thought. For example, Austrian-school influences (Hayek, Mises) receive little attention, and Brown arguably conflates all neoliberals with the Chicago-human capital model. Gane pointed out that thinkers like Hayek actually distrusted the notion of *homo oeconomicus* as overly rationalist, emphasizing the limits of individual knowledge and the price system instead. By centering *homo oeconomicus*, Brown may have downplayed these nuances, effectively setting up a bit of a *straw man*. However, this was a strategic simplification aimed at highlighting what most neoliberal variants share – the generalization of economic reasoning.
- Democracy and Alternatives: Some commentators wished Brown had engaged more with existing literature on democratic decline and potential remedies. For instance, she scarcely mentions fellow theorists of "post-democracy" or left populism (like Jodi Dean herself, or Colin Crouch, Wendy Brown's contemporary) within the text. Nor does she delve into concrete leftist strategies (e.g. anarchist or socialist practices) that might resist neoliberal logic. The *Spectra* review by Jordan Fallon noted that Brown *"offers a compelling articulation"* of neoliberalism's dangers but leaves "lingering" the question of how democracy could be revitalized or what forms of resistance are available. Indeed, Brown's concluding discussion of whether another world is possible is brief, and she does not prescribe detailed solutions. This led some to critique the book's *"disheartening"* tone – it brilliantly diagnoses the problem but provides *"little hope for social and political change of a different kind."*. Brown herself has said the book is intended as a diagnosis, not a manifesto, which helps explain this stance.

- Stylistic and Conceptual Rigor: A few readers found Brown's style at times polemical or worried that her argument verged on totalizing (painting neoliberalism as all-powerful). Political theorist Bonnie Honig, for example, cautioned against seeing the story as a teleological march toward doom. Brown anticipated this critique, clarifying that she was not proclaiming an "end times" certainty, but raising an alarm to spur action. By and large, even critics of certain details acknowledged the urgency and importance of Brown's central argument.

In terms of influence, *Undoing the Demos* has become a key text in critical social science and humanities scholarship on neoliberalism. It has shaped academic conversations about how neoliberal ideology operates not just at policy levels but in shaping subjectivities and cultural norms. The book's publication was followed by a stream of related research and even by Brown's own subsequent work. In 2019, Brown published *In the Ruins of Neoliberalism*, which can be seen as a follow-up, examining how neoliberal rationality's hollowing of democracy helped fuel reactionary anti-democratic forces (like right-wing populism and nihilism). This trajectory underscores *Undoing the Demos'* impact: it opened new lines of inquiry into how the neoliberal "common sense" might be connected to crises of democracy and the rise of authoritarian tendencies.

Overall, *Undoing the Demos* is regarded as a masterful and urgent critique of our times. It stands as a significant scholarly achievement for synthesizing complex theory (Foucauldian, Marxian, democratic theory) into a lucid account of neoliberalism's "stealth revolution." As Nicholas Gane concluded, Brown's book is *"enlightening and disheartening"* in equal measure – enlightening, in that it brilliantly illuminates "some of the darkest developments of our times," and disheartening, in that it leaves readers acutely aware of the steep challenge in reclaiming democracy from neoliberalism's grip. If nothing else, Brown's *Undoing the Demos* has made it much harder to ignore the fundamental question it poses: *What becomes of democracy when market rationality becomes the only game in town?* The book's lasting influence is to insist that we grapple with this question, lest we awaken to find the democratic project undone before our eyes.

Sources:

- Brown, Wendy. *Undoing the Demos: Neoliberalism's Stealth Revolution*. Zone Books, 2015..
- Gane, Nicholas. "Review of *Undoing the Demos*." *Theory, Culture & Society*, 2015..
- Dean, Jodi. "Neoliberalism's Defeat of Democracy." *Critical Inquiry* 42(4), 2016..
- Fallon, Jordan. "Undoing the Demos (Book Review)." *Spectra* 7(1), 2019..
- **Additional references**: Brown's analysis of Obama's speeches; discussion of *Citizens United* and legal rationality; Brown's critique of Foucault; comments on neoliberalism's global variations; and others as cited in-line above.

Joseph Stiglitz: *Globalization and Its Discontents*

Introduction

Joseph E. Stiglitz, a Nobel Prize–winning economist and former Chief Economist of the World Bank, has been a prominent critic of how economic globalization has been managed. His books *Globalization and Its Discontents* (2002) and *Making Globalization Work* (2006) are companion works addressing the failures of globalization and proposing reforms. Drawing on his insider experience as an adviser in the Clinton White House and at the World Bank, Stiglitz became disillusioned with the International Monetary Fund (IMF) and other institutions, which he came to believe often acted against the interests of developing countries. *Globalization and Its Discontents* is a scathing critique of the policies of the IMF, World Bank, and World Trade Organization (WTO) in the 1990s, while *Making Globalization Work* builds on that critique by offering practical solutions to harness globalization for equitable development. Together, these books provide a detailed academic-style commentary on globalization's pitfalls and potential, combining economic theory, case studies, and policy analysis.

Globalization and Its Discontents (2002) – Overview of Themes and Arguments

Published in 2002, *Globalization and Its Discontents* (GAID) presents a critical indictment of the global economic policies pursued by institutions like the IMF, World Bank, and WTO. Stiglitz writes as both a scholar and a former insider, blending analysis with firsthand observations. The book's title (echoing Freud's *Civilization and Its Discontents*) signals its central theme: the *"discontents"* spawned by globalization's mismanagement. Stiglitz's main argument is that while globalization *could* bring tremendous benefits, it has been handled in a fundamentally flawed manner by the Washington-based economic institutions, causing harm to millions in the developing world. He acknowledges the potential benefits of global economic integration but emphasizes that *"the rules governing globalization"* have been written in a way that often favors advanced economies and corporate interests at the expense of poorer nations. This imbalance, he argues, has created serious defects in the global system – defects that have provoked widespread protests and could even threaten the sustainability of globalization itself.

Stiglitz organizes GAID in nine chapters (which can be grouped into three parts). In the opening chapters, he provides background on the evolution and policies of the IMF, World Bank, and WTO, explaining how these institutions came to embrace a market-fundamentalist or "*Washington Consensus*" approach. He then delves into case studies of the 1990s crises: the East Asian financial crisis of 1997–98, the transition and collapse of the Russian economy, and the Argentine depression of 1998–2002, among others. Using these cases, Stiglitz carefully illustrates *how IMF-imposed policies contributed to economic collapse* in several instances. For example, he argues that the IMF's actions exacerbated the Asian crisis

and Argentina's meltdown, and he links Russia's disastrous "shock therapy" transition and sub-Saharan Africa's stagnation to the same doctrinaire policies. The final chapters shift to a prescriptive tone: Stiglitz proposes reforms for the international financial system to *prevent or mitigate future crises*, including changes in IMF and World Bank practices. Throughout the book, he maintains that globalization's outcomes depend crucially on *how* it is managed: when *nations* manage globalization with prudent policies tailored to local conditions, it can succeed (as seen in parts of East Asia), but when *international institutions* impose one-size-fits-all policies, globalization often fails and breeds discontent.

Several key themes run through GAID. First is a critique of the *neoliberal economic ideology* guiding the IMF. Stiglitz contends that the IMF in the 1990s was driven by a simplistic free-market model – a belief that markets, left to themselves, inevitably lead to efficient outcomes "as if by an invisible hand" – without regard for the restrictive conditions under which that model actually holds true. Modern economic theory, including Stiglitz's own work on information asymmetries, shows that *when information is imperfect and markets are incomplete (which is essentially always the case, especially in developing economies), market outcomes can be inefficient*. In GAID, he argues that the IMF ignored these insights, clinging to laissez-faire prescriptions and "market fundamentalism" even when markets were clearly failing. He points out that governments have a legitimate role in correcting market failures and that the blind pursuit of deregulation, privatization, and austerity – core elements of the Washington Consensus – often proved "a blend of ideology and bad science".

Another major theme is the accountability and governance deficit in global institutions. Stiglitz describes the IMF, WTO, and World Bank as operating without sufficient transparency or democratic oversight, making decisions behind closed doors that affect millions of people. For instance, he highlights how WTO dispute tribunals can strike down national laws (even those on environmental protection or labor standards) in secret proceedings, with no appeal to the affected nation's courts. This lack of openness and inclusion, he argues, leads to policies that often reflect the interests of advanced economies (or Wall Street) rather than the needs of developing societies. Stiglitz's tone in GAID is often passionate and blunt. He singles out the IMF for "getting it wrong" repeatedly, accusing it of advancing the agenda of global financial capital over the goals of stability and poverty reduction. Specific policies criticized include the IMF's insistence on fiscal austerity and budget cuts even during recessions, very high interest rates to quell inflation, rapid trade liberalization and capital-market opening without safeguards, and indiscriminate privatization of state assets. In Stiglitz's view, these measures were *empirically flawed*: instead of bringing prosperity, they often precipitated deeper recessions, mass unemployment, and social unrest in the affected countries.

The narrative is bolstered by vivid real-world examples. Stiglitz recounts how, during the *East Asian crisis*, countries followed IMF advice to tighten budgets and raise interest rates – steps that, he argues, *turned a downturn into a depression* by choking off growth and bankrupting businesses. He contrasts Thailand, Indonesia, and South Korea's initially severe collapses under IMF programs with Malaysia's decision to defy the IMF (imposing capital controls), which helped Malaysia recover faster with less long-term damage. In *Russia*, Stiglitz blames the rapid privatization ("shock therapy") pushed in the 1990s for turning state industries over to oligarchs in a climate of rampant corruption – a process he darkly terms "briberization." With weak institutions and no legal framework, Russia's move to a market economy led to crony capitalism and even "neo-feudalism" (a small elite capturing assets while the general population suffered). The IMF, in his account, lent billions to Russia for the sake of political

expediency (to prop up Yeltsin's government), only to see the money evaporate in capital flight – illustrating how *foreign creditors and elites were bailed out while ordinary citizens bore the costs*. He notes that much of the IMF rescue funds ended up in overseas bank accounts, effectively *socializing the losses* and creating moral hazard for international lenders. In *Argentina*, Stiglitz again finds the IMF's fingerprints on the collapse – supporting an overvalued currency peg and enforcing austerity until the economy imploded in 2001. Meanwhile, *sub-Saharan Africa*'s plight in the 1980s–90s is attributed partly to the structural adjustment programs mandated by the IMF/World Bank, which often cut health and education spending and opened markets in ways that benefitted foreign companies rather than African communities. These examples support Stiglitz's broader claim that globalization, as managed under the current rules, has too often set up the developing world to fail.

Importantly, Stiglitz does not reject globalization per se – a point he stresses to distinguish himself from outright anti-globalization protesters. Instead, he argues that globalization *"could be a force for good, if managed well."* The success stories of East Asia are cited as evidence that *strategic integration* (for example, gradual opening to trade, export-led growth, and investment in technology under government guidance) can deliver development benefits. South Korea and Taiwan, for instance, liberalized on their own terms, nurturing domestic industries and only later embracing open markets – and they achieved spectacular growth with more equality, which Stiglitz contrasts with the dismal results in countries that followed IMF prescriptions blindly. Thus, GAID's core message is that globalization's outcomes depend on governance: when nations retain policy space and tailor globalization to local needs, it works, but when global institutions impose uniform policies without accountability, it fails. The book concludes with a call to *"reform the system"* – including proposals to refocus the IMF on its original mission of crisis prevention and full employment (rather than just inflation), increase transparency and public participation in decision-making, strengthen safety nets for the vulnerable, and curb the undue influence of financial lobbies. Stiglitz advocates a development-oriented approach: for example, more gradual capital account liberalization (or even temporary capital controls) to prevent speculative hot money flows, a mechanism for orderly debt workouts when countries go bankrupt, and greater debt relief for poor nations. In summary, *Globalization and Its Discontents* is a structured polemic that diagnoses the failures of 1990s globalization – attributing them to bad economics and power imbalances – and lays the groundwork for rethinking global economic governance.

Stiglitz: Making Globalization Work (2006)

Released in 2006, *Making Globalization Work* (MGW) is Stiglitz's follow-up that shifts from critique to constructive reform agenda. The very title suggests a more optimistic project: rather than abandoning globalization, Stiglitz seeks to "make it work" for more people by correcting the system's current flaws. In the years between the two books, events like the WTO protests (Seattle 1999), the continued struggle of developing nations in trade talks, and growing awareness of global issues like climate change set the stage for MGW. Stiglitz opens the book by acknowledging a sobering reality: *globalization, as it has been managed, has*

failed to fulfill its promise for many of the world's poor. He notes that the enthusiasm of the early 1990s – when it was believed that open markets and integration would lift all boats – has given way to widespread disappointment and resistance. Early on, he enumerates five core concerns about the current form of globalization:

1. Biased Rules Favoring the Rich: The rules of the global economy – in trade agreements, finance, and intellectual property – are structured to favor advanced countries, often leaving developing countries worse off or marginalized. Rather than leveling the playing field, globalization's institutions have tilted it, widening the gap between winners and losers.
2. Neglect of Non-Monetary Values (Environment): Globalization has focused narrowly on economic gains (GDP, trade volumes) while disregarding other values such as environmental protection. Stiglitz stresses that the drive for growth has come *at the cost of the environment*, as global agreements have inadequately addressed issues like climate change.
3. Erosion of Developing-Country Sovereignty and Democracy: Because developing nations depend on foreign loans and aid (often from the IMF/World Bank or rich countries), they face onerous conditions that dictate their economic policies. This undermines democratic choice, effectively forcing a form of "Americanization" of policy and even culture. Stiglitz argues that when countries must adhere to dozens of IMF conditions to receive funds, they "give up the benefits of their democracy" in those economic areas.
4. Failure to Deliver Promised Benefits: Globalization was sold as a win-win proposition that would boost living standards worldwide. Yet, by the mid-2000s, *many countries (and segments of society within countries) saw little improvement and in some cases deterioration*. Stiglitz points out that growth in much of the developing world remained sluggish and unstable, while even in advanced economies workers felt insecurity; in short, globalization did not live up to its hype. The rising tide did not lift all boats.
5. Cultural and Economic Hegemony ("Americanization"): Stiglitz observes that globalization often appears to be *imposing a single model – largely American-style capitalism – on diverse nations*, breeding resentment. The homogenization of policies and consumer culture is viewed as an unwelcome intrusion on local traditions and values.

These points frame globalization as *"too good to be true"* in its current form, and they echo the "discontents" from the first book, albeit in a broader context. MGW then transitions to solutions, making it a more policy-prescriptive book than its predecessor. Stiglitz argues that it is possible to reform globalization so that its benefits are more widely and fairly shared – essentially, to achieve a form of globalization that is economically inclusive, socially just, and environmentally sustainable.

The book is organized into ten chapters, each tackling a specific global issue area. Among the major topics Stiglitz addresses are: international trade, the global financial system, development aid and debt, intellectual property rights, environmental challenges, and the architecture of global governance. In each area, he critiques the status quo and then offers "fresh ideas" or proposals. For example, in the realm of trade, Stiglitz calls for "fair trade" rather than just free trade. He highlights how past trade agreements (like the Uruguay Round that created the WTO) were skewed – the last set of trade deals, he notes, *left many of the poorest countries worse off than they were before*. Agricultural trade is a key illustration: the

U.S. and EU heavily subsidize their farmers, leading to overproduction and dumping that undercuts farmers in developing nations. Stiglitz recounts how West African cotton farmers, for instance, cannot compete against subsidized U.S. cotton – a clear inequity in the global trading system. To make trade work for development, he urges eliminating or drastically reducing rich-country subsidies that harm poor countries, granting developing nations greater access to rich markets, and giving them flexibility to protect strategic sectors temporarily. He also proposes adding labor and environmental representatives to trade negotiations, to ensure that trade deals incorporate protections for workers' rights and the planet.

In the area of global finance, Stiglitz addresses the problem of financial instability and indebtedness that plagued emerging economies. He notes that the international financial system remained unstable (even before the 2008 crisis), with poor countries often burdened by unsustainable debts and subject to volatile capital flows. A bold proposal in MGW is to reform the global reserve currency system. Stiglitz suggests that relying on the U.S. dollar as the world's reserve currency is problematic – it gives an exorbitant privilege to the U.S. and forces other countries to accumulate dollars (which can destabilize the system, as global confidence ultimately depends on U.S. economic management). He revives ideas reminiscent of Keynes's post-WWII plan, calling for a new global reserve currency (possibly through an expanded role for IMF's Special Drawing Rights or a similar mechanism) to supplement or replace the dollar. Such a reform, he argues, would reduce the vulnerabilities in the current system (for example, the "balance of financial terror" whereby countries like China hold vast dollar reserves and worry about U.S. deficits). Stiglitz also supports the creation of a fair *sovereign debt workout mechanism* – essentially an international bankruptcy procedure – so that countries in debt crisis can restructure debts in an orderly way without causing economic collapse (an idea he championed during the Argentine crisis and which the IMF itself later considered). Indeed, by 2005 there were some positive developments: the G8 agreed to write off the debts of 18 of the poorest nations, a move Stiglitz applauds as a step in the right direction.

Another major theme in MGW is the global intellectual property regime, particularly concerning life-saving medicines. Stiglitz argues that the WTO's TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights) created *an unbalanced patent system* that favors large pharmaceutical companies over public health needs. He cites the example of HIV/AIDS in Africa: patents keep drug prices high, effectively denying poor countries access to affordable generic drugs at a time when AIDS has been devastating entire populations. In MGW, Stiglitz calls for reforming patent rules – for instance, allowing developing countries greater leeway to use compulsory licensing to produce generics, or creating a global prize fund to incentivize drug innovation for diseases of the poor without strict patents. This would align the IP regime with humanitarian objectives and development.

Perhaps the most forward-looking chapters of MGW deal with the environment and sustainable development. Writing in 2006, Stiglitz emphasizes that *global warming and environmental degradation* are challenges that globalization has thus far exacerbated rather than helped. As countries industrialize (China and India are mentioned), they are burning more fossil fuels and consuming more resources, which, absent intervention, will intensify climate change. Stiglitz insists that any vision of "making globalization work" must confront environmental sustainability: he advocates for strong international cooperation on climate, such as global emissions targets, mechanisms to transfer green technology to developing nations, and possibly a global environmental organization or accords that prevent a "race to the bottom" in environmental standards. He argues that *people around the world – especially*

in rich countries – will have to adjust their lifestyles to reduce carbon emissions, and that developing countries must have room to grow in an eco-friendly way. This presages later international efforts (like the Paris Agreement in 2015) and situates environmental policy as a core part of economic globalization reform.

Underpinning all these specific proposals is Stiglitz's call for better global governance. He observes that economic globalization has outpaced our political and moral frameworks for managing it. To close this gap, he urges reforms to make global institutions more democratic and responsive. For instance, the IMF and World Bank should give *developing countries greater voice and voting power*, and perhaps the selection of their leaders should be merit-based rather than the traditional US/Europe quota. WTO negotiations should be more transparent and inclusive of the poorest countries' concerns, rather than dominated by the agendas of the US, EU, and other big players. Stiglitz also supports the idea of international coordination on standards – whether labor standards (to prevent exploitative sweatshops) or tax cooperation (to avoid a race to the bottom in corporate taxation). In MGW, he notes some modest progress by the mid-2000s: the IMF had begun to acknowledge issues beyond inflation (like poverty and employment) and pared back the number of structural conditions on its loans after facing criticism. Likewise, the *Millennium Development Goals* adopted by the UN in 2000, aiming to cut global poverty in half by 2015, showed a newfound international commitment to development. These developments are cited as hopeful signs that the world community recognized the need to reform globalization's course. Ultimately, MGW presents a comprehensive blueprint for reforming global economic rules – a "*practical vision for a successful and equitable world*," as one commentator described it. Stiglitz's recommendations range from rewriting trade agreements and creating new international institutions to changing mindsets about the role of government in the market. He remains fundamentally optimistic: globalization *"does not have to"* harm the environment, increase inequality, or erode social protections, he argues – if we manage it wisely.

Key Economic Concepts and Critiques of the IMF, World Bank, and WTO

Both books are built on key economic concepts and contain pointed critiques of the major international economic institutions (IMF, World Bank, WTO). Stiglitz's analyses are rooted in his background as an economic theorist of market failures and as a practitioner in development policy. Several concepts stand out:

- Market Failures and Information Asymmetry: A foundational concept in Stiglitz's critique is that real-world markets often fail to produce socially optimal outcomes due to imperfections – such as incomplete information, externalities, and monopolistic tendencies. In GAID, he emphasizes that the theoretical case for free markets (originating from Adam Smith's "invisible hand") relies on *highly restrictive assumptions* rarely met in practice. Stiglitz, drawing on his Nobel-winning work, points out that *"whenever information is imperfect and markets incomplete…the invisible hand works most imperfectly"*, and there exist government interventions that can improve upon market outcomes. This theoretical stance justifies his view that the IMF's laissez-faire leanings were misguided – rather than always being the solution, unfettered markets can be the problem when institutions are weak or externalities large. For example, liberalizing capital flows without regulation led to destabilizing speculative booms and busts (an externality problem), and cutting government

spending during recessions ignored the demand failure that Keynesian economics would address. Stiglitz consistently argues for pragmatic government action to correct market failures, whether it's financial regulation to prevent crises or environmental regulation to address climate change.

- The "Washington Consensus" vs. Developmentalism: Stiglitz critiques the set of policies often termed the *Washington Consensus* – privatization, deregulation, trade and capital liberalization, fiscal austerity, etc. – as an ideological package not grounded in evidence from successful developing economies. He contrasts this with a more developmentalist approach, where governments play a role in nurturing industries (e.g., East Asian economies used tariffs and industrial policy initially) and sequencing reforms. A concept he invokes is that *one size does not fit all*: each country's optimal policy mix depends on its stage of development, institutions, and social context. This aligns with ideas in development economics that reject universal prescriptions in favor of context-specific strategies ("*adaptive institutions*" and "*policy space*" are terms often used in this literature, though Stiglitz writes in accessible language). He criticizes the IMF for acting as though there was no alternative to its free-market template – ignoring that economics is about trade-offs and different choices benefit different groups. In his view, the IMF and sometimes the World Bank pretended their policies were technocratically right for everyone, when in fact those policies often favored certain interests (like foreign investors) at the expense of others (like local workers). This critique connects to political economy: Stiglitz suggests the IMF's push for rapid liberalization was influenced by *financial sector interests* (Wall Street), given the revolving door and pressure from the U.S. Treasury.
- Global Public Goods and Externalities: Especially in MGW, Stiglitz discusses problems such as climate change and health epidemics as global public goods challenges. These are classic cases where market forces alone won't solve the problem – international cooperation is needed to internalize externalities. The atmosphere's capacity to absorb carbon is a global common resource; without a global agreement, each country has an incentive to free-ride, resulting in excessive emissions. Stiglitz's economic concept here is the need for *collective action* – through global agreements or institutions – to manage these externalities. He also frames issues like knowledge (technology, medicines) as global public goods that should be shared more freely, rather than restricted by patent monopolies when lives are at stake. This theoretical lens leads to his proposals for treaties on emissions and for loosening IP rules for essential drugs.
- Asymmetric Information and Moral Hazard: Stiglitz often highlights information asymmetries – for example, between lenders and borrowers. In GAID, he notes that in IMF programs, *governments often knew more about their political constraints than the IMF did*, yet the IMF imposed conditions that ignored on-the-ground realities, partly because it did not solicit or trust local information. The result could be policies that looked good in theory but failed in practice. Additionally, he discusses moral hazard in the context of IMF bailouts: by rescuing international creditors from the consequences of bad loans (as in East Asia), the IMF was arguably encouraging reckless lending in the future. This concept is used to argue for mechanisms that ensure investors face the downside of risks (e.g., restructuring debts rather than bailout loans that repay creditors in full). Ironically, the IMF itself often cited moral hazard to justify strict conditions on borrowing countries – but Stiglitz flips the script, pointing out that bailouts created moral hazard for big banks and hedge funds.

Turning to his critiques of specific institutions:

- IMF: Stiglitz is most vehement in his critique of the IMF. He accuses it of betraying its original mandate of global economic stability and full employment, and instead acting as enforcer of a neoliberal orthodoxy. He notes that the IMF was founded to help countries avoid depressions and maintain employment, but in the late 20th century it single-mindedly emphasized fighting inflation and cutting fiscal deficits, often at great cost to growth and jobs. Stiglitz contends that the IMF's policy advice tended to exacerbate downturns: for example, during the Asian crisis, the IMF demanded tight monetary and fiscal policy – budget cuts and sky-high interest rates – which he argues turned liquidity problems into solvency crises for many firms, leading to "widespread bankruptcies" and unemployment surges. He also criticizes the "shock therapy" approach endorsed by the IMF (and U.S. Treasury) in the former Soviet Union – rapidly liberalizing prices and privatizing state assets without legal and institutional frameworks. This, in his view, fostered corruption and economic collapse in Russia rather than a functioning market economy. Another aspect of his IMF critique is lack of transparency and democratic accountability: decisions were made by IMF economists and G7 finance officials with little input from the public or even the governments of borrower nations. Stiglitz vividly describes how IMF agreements were often signed in secrecy and implemented without debate, fueling suspicion and resentment in those countries. Furthermore, Stiglitz implies that IMF policies were not purely technocratic but reflected biases – pointing to incidents like the then-IMF Deputy Stanley Fischer leaving to join Citigroup, as suggestive of a worldview aligned with financial markets' interests. In summary, Stiglitz's portrait of the IMF is that of an institution that *"got it wrong at every turn"* in the 1990s – from Asia to Latin America to transition economies – by prescribing the wrong medicine (austerity, premature liberalization) and by undermining national sovereignty and social welfare.
- World Bank: Given Stiglitz's role at the World Bank, his critique of it is somewhat more nuanced, but he does fault the World Bank when it acted in concert with IMF ideology. He appreciates the Bank's poverty alleviation mission and research but notes that in the 1980s and 1990s the Bank, too, often pushed a one-size-fits-all liberalization agenda (sometimes under U.S. influence). For example, he mentions that an influential World Bank economist, Anne Krueger, was a champion of trade liberalization in the Bank's policies (which he implies was too doctrinaire). In many developing countries, World Bank structural adjustment loans came with conditions to privatize and deregulate, similar to the IMF's conditions. Stiglitz argues that the Bank's approach often lacked a deep understanding of local conditions and sometimes prioritized financial objectives over real development. However, he also credits the World Bank with being somewhat more *development-focused and learning-oriented* than the IMF. During the East Asian crisis, the World Bank under President James Wolfensohn and Stiglitz's team often disagreed with the IMF's harsh approach – for instance, the Bank advocated social safety nets and slower liberalization. GAID describes these internal debates and implies that had the World Bank's more measured advice been heeded, the social costs might have been lower. Nevertheless, Stiglitz calls for reforms at the World Bank too: increasing its accountability, improving project quality, and ensuring it does not become a mere tool of rich countries. By the end of GAID, one of his proposals is to reform both the IMF and World Bank governance so that developing countries have more say, and to refocus their strategies on equitable, sustainable growth rather than ideology.
- WTO: Stiglitz's critique of the WTO centers on the unfairness of trade agreements and the neglect of development concerns in global trade rules. He points out that the Uruguay Round (1986–94) which established the WTO resulted in agreements that

opened developing markets but allowed advanced countries to maintain barriers in areas where poorer countries are competitive. A prime example is agriculture and textiles: rich countries kept (and even increased) subsidies and tariffs that hurt farmers and producers in the Global South, even as those countries were pushed to open their markets to industrial goods and services from the North. Stiglitz also highlights the TRIPS agreement as a glaring case where the WTO prioritized multinational corporate interests (pharmaceutical and media companies) over poor countries' needs, by imposing strict intellectual property rules worldwide. In MGW, he details how this raised drug prices and benefited developed nations (which own most patents) at the expense of lives in developing nations, calling it a *moral failure of globalization*. Another aspect is how trade agreements limit policy tools: WTO rules often prohibit certain development subsidies or favor investor rights over local labor/environmental laws. Stiglitz is critical of the fact that WTO dispute settlement can strike down domestic laws (on, say, environmental protection) as "barriers to trade." He notes that these disputes are resolved in closed-door tribunals without broader input, which he sees as a deficit of democratic process. The result, in his words, is that globalization under the WTO has constrained governments from enacting policies for social or environmental good – a loss of sovereignty that disproportionately affects weaker countries. Stiglitz's economic concept here is about terms of trade and bargaining power: rich countries set the agenda (e.g., pushing for intellectual property and financial services liberalization) and poor countries, often desperate for market access or aid, had little leverage to negotiate better terms. He frequently mentions how, in trade negotiations, issues important to developing countries – like reducing U.S./EU agricultural subsidies or making legal migration part of the talks – were sidelined. In response, Stiglitz calls for a WTO that is more development-friendly: *"trade liberalization should be reciprocal and fair"*, meaning rich countries must also open up in areas where poor countries have an advantage, and there should be "special and differential treatment" that allows poorer nations to protect nascent industries or ensure food security. He even suggests that labor and environmental standards be incorporated so that trade does not become a race to the bottom. Overall, his WTO critique is that *free trade has not been free or fair in practice* – it was managed in a way that often left developing nations worse off than before, fueling the backlash symbolized by the Seattle protests of 1999.

In summary, Stiglitz's institutional critiques revolve around a common thread: these global economic bodies, in his view, took a doctrinaire approach that ignored both economic evidence and the voices of the developing world. They frequently imposed policies that advantaged wealthy nations and corporations, lacked transparency and democratic legitimacy, and failed to consider social impacts. Stiglitz uses economic reasoning (market failure theory, incentives, bargaining theory) to show why those policies failed, and he urges rethinking the rules to align globalization with broader public interests rather than narrow interests. His perspective is that *global governance needs a reorientation*: economies should serve people, not the other way around, and institutions must be accountable to a wider global citizenry, not just to finance ministries or Wall Street.

Evolution of Stiglitz's Views: Comparing 2002 and 2006

Between *Globalization and Its Discontents* (2002) and *Making Globalization Work* (2006), Stiglitz's core views on globalization's problems remained consistent, but there was a clear evolution in emphasis and scope. Both books share a common diagnosis of what is wrong

with the current form of globalization: excessive faith in unfettered markets, policies that favor rich countries, and institutions that are unaccountable. However, the tone and focus shift from the first to the second book in notable ways.

1. From Critique to Constructive Agenda: GAID is predominantly a critique and exposé of what went wrong in the 1990s. Its tone is often sharp and even combative, as Stiglitz takes the IMF (especially) to task for mismanagement and even malfeasance. By contrast, MGW, while not shy about recounting globalization's failures, is more forward-looking. Stiglitz himself described MGW as an attempt to *show how globalization, properly managed, can benefit both developing and developed countries*. In other words, *Globalization and Its Discontents* sounded an alarm about the status quo, whereas *Making Globalization Work* tries to answer the question: "What now? How do we fix it?" The latter is less personal and more policy-prescriptive. This reflects an evolution from *diagnosis* to *prescription*. Stiglitz's views did not soften regarding the flaws of the past – if anything, MGW reinforces his earlier criticisms with even more examples (e.g. he adds chapters on environmental damage and intellectual property injustices which were not major topics in 2002). But MGW shows Stiglitz in a more *constructive and optimistic* mode, laying out a reform agenda and highlighting instances where progress was being made (such as debt relief or shifts in IMF rhetoric).

2. Broadening of Issues: GAID was heavily focused on financial crises and transition economies, reflecting Stiglitz's direct experiences in the late 90s (Asia, Russia, Argentina). By 2006, his canvas broadens. MGW addresses trade agreements, environmental sustainability, global health, and new institutional ideas – topics that go beyond the IMF-centric narrative of the first book. This broadening indicates that Stiglitz's critique of globalization expanded from mainly *macroeconomic and financial issues* to a more holistic view of globalization's impact on *development, environment, and equity*. For instance, in 2002 Stiglitz only touched briefly on the WTO and trade, whereas in 2006 he devotes substantial analysis to how trade rules impede development (citing examples like cotton subsidies and drug patents). This shift shows an evolution in his work from mainly focusing on crises and the IMF's role, to engaging with the structural *long-term issues* of the global economic order. It's as if GAID said "globalization is being mismanaged and here's how it crashed economies," while MGW says "globalization is still not working for the poor, in a broader sense, and here's how we can reform its rules across the board."

3. Changes in Context (2002 vs 2006): The world had changed slightly by 2006, and Stiglitz's views reflect that. The early 2000s saw a continuing backlash against globalization (protests at IMF/WB meetings, stalled WTO talks), but also some acknowledgement by the establishment that reforms were needed. MGW notes some of these responses: the IMF, criticized for overusing conditionality, had begun to streamline loan conditions; the World Bank and UN were talking more about poverty reduction (e.g., the Millennium Development Goals in 2000); and the G8's debt cancellation for poor countries in 2005 addressed a key demand of reformers. Stiglitz's writing in 2006 takes these into account – his tone suggests that the issues he raised in 2002 were gaining traction. Indeed, Stiglitz often implies that public pressure and the kind of criticisms he (and others) leveled have forced some positive steps. For example, in MGW he praises the debt relief deal and encourages more of the same, something not on the horizon in 2002's narrative. His attitude toward the IMF by 2006 might be described as slightly less scathing and more *hopeful that change is possible*, though he still faults the Fund for not sufficiently reforming. He acknowledges that "they have heard these complaints and have since greatly reduced the conditionality" on loans – a factual change since the late 90s.

4. Continuity of Core Principles: Despite the shifts, many of Stiglitz's core principles are constant across the two books. In both, he is a strong proponent of managed globalization – globalization should *not* be left to unfettered markets, but *tamed by rules and institutions* that ensure benefits are shared. In GAID, this came through in arguments for government intervention and safety nets; in MGW, it comes through in proposals for new global rules and institutions. Both books reflect Stiglitz's enduring concern for equity and social justice in economics. A reviewer of MGW noted that the book is "flavored with a deep distaste for inequality". That distaste was already present in GAID, where Stiglitz lamented policies that increased poverty and inequality in crisis countries. Both works share the view that economic policy cannot be divorced from moral considerations – a theme explicit in MGW when talking about access to medicine or the environment, and implicit in GAID's sympathy for those hurt by IMF programs.

5. Evolving Solutions and New Ideas: The second book allowed Stiglitz to refine or expand on solutions he only briefly hinted at in the first. For instance, GAID's final chapter had calls for reform but in broad strokes (more transparency, better early warning for crises, etc.). By MGW, Stiglitz fleshes out bigger ideas like the global reserve currency and a framework for fair trade, which suggest he had further developed his thinking on global economic architecture. One could say his views "evolved" to be more radical in some respects – proposing systemic changes (e.g., a new reserve currency system) that go beyond tinkering with the IMF at the margins. In other respects, his views were *reinforced by additional evidence*: the continued poverty in Africa, the failure of the Doha Round trade talks to deliver gains for the poor, and the emerging threat of climate change all reinforced his conviction that globalization needed a fundamental reorientation. If anything, by 2006 Stiglitz was more convinced than ever that major reforms were both necessary and possible to achieve a better globalization.

In comparing the two books, one also notes a slight change in rhetorical strategy. GAID often reads as a whistleblower's account – Stiglitz revealing what goes on behind the scenes at the IMF and World Bank, complete with anecdotes and pointed criticisms of individuals or decisions. MGW is more of a public policy blueprint – less about insider stories and more about big-picture frameworks for the future. This can be seen as a maturation of the debate: by 2006, discussions had moved beyond just "the IMF messed up the Asian crisis" to "how do we prevent crises and make trade fair in the future?" Stiglitz's own role evolved too – from an *insider-turned-critic* in 2002 to a *global public intellectual offering alternatives* in 2006.

In summary, Stiglitz's fundamental perspective – that globalization was failing many and needed fixing – remained unchanged, but the scope of analysis broadened and the agenda became more proactive between the two works. *Globalization and Its Discontents* shattered the notion that globalization was universally benign, highlighting problems and assigning blame. *Making Globalization Work* took that critique as given and pressed forward with *what should be done*, indicating an evolution from protest to proposition. The continuity is evident in Stiglitz's unwavering emphasis on *ethical economics*: both books seek to orient global economic policy towards the goals of reducing poverty, respecting democracy, and protecting the environment. The evolution is evident in the expansion of issues tackled and the refinement of solutions offered by 2006.

Theoretical Underpinnings of Stiglitz's Analysis

Stiglitz's work is deeply informed by economic theory, even as it is written for a broad audience. Several theoretical underpinnings give structure to his arguments in these books:

- Keynesian Economics and Aggregate Demand: One clear influence is John Maynard Keynes. Stiglitz's criticism of IMF austerity during crises is rooted in Keynesian logic: cutting government spending or raising interest rates in a slump can deepen the downturn by reducing aggregate demand. He implicitly invokes Keynes's insight that maintaining employment and demand is crucial during recessions. In GAID, for example, Stiglitz decries the IMF for prioritizing inflation control over preventing recessions and unemployment, arguing that this misplaced priority led to unnecessary suffering. He aligns himself with Keynes's focus on full employment – indeed, he notes that Keynes helped design the IMF's original mission to emphasize employment – and he "cloaks himself in the mantle of Keynes" in suggesting that the IMF should worry less about a few percentage points of inflation and more about keeping people working. This theoretical stance underpins his policy recommendation that stimulus or at least avoiding austerity is the right response to crises (contrasting sharply with the IMF's approach in the 1990s).
- Information Economics and Imperfect Markets: As one of the pioneers of information economics, Stiglitz brings the theory of asymmetric information to bear on globalization. The idea that markets are not inherently efficient when some parties know more than others is central to his critique of capital market liberalization and privatization. For instance, in Russia's privatization, insiders had more information and grabbed assets, leading to an inefficient and inequitable outcome – a predictable result when transparency and competition are lacking. Stiglitz frequently references the fundamental result from his field that markets with imperfect information are not Pareto efficient and that government intervention can potentially improve outcomes. The concept of adverse selection and moral hazard also appears: e.g., he argues that simply opening up to global capital without proper regulation can invite speculative capital that will flee at the first sign of trouble (adverse selection of investors) and that IMF bailouts shield investors from losses (moral hazard), thereby encouraging reckless behavior. These are direct applications of microeconomic theory to global finance.
- Market Failures and Externalities: The theoretical concept of *externalities* (costs or benefits of an activity borne by others) is prominent, especially in MGW's discussion of the environment. Stiglitz notes that climate change is the greatest market failure in history – markets, left alone, will overproduce greenhouse gases because the polluter doesn't pay the full cost. This justifies, in theory, interventions like carbon taxes or cap-and-trade at a global level. Similarly, he views investments in knowledge (R&D, education) as producing positive externalities that the market undersupplies, which validates government support for education or health (and cautions against IMF programs that slash such spending). The theory of public goods underlies his support for global initiatives: some goods (like a stable climate, or knowledge, or financial stability) are public goods that require collective action beyond what decentralized markets will deliver.
- Institutional Economics and Political Economy: Stiglitz's approach also reflects institutional economics – the idea that institutions and governance matter in economic outcomes. He often argues that countries need strong institutions (legal systems, regulatory agencies, social safety nets) for markets to work well. This is theoretically rooted in the understanding that markets do not exist in a vacuum; the rules of the game shape market behavior. Hence, in Russia, the absence of legal institutions meant

privatization led to oligarchy rather than efficient markets. In East Asia, by contrast, institutions were built up gradually alongside liberalization, contributing to better outcomes. Stiglitz's frequent refrain that the sequence of reforms and the presence of institutional prerequisites determine success is an institutionalist view. Moreover, his critique of the IMF and WTO has a political economy angle – he implicitly uses public choice theory or interest group theory at the global level, suggesting that these institutions were influenced by certain interests (financial sector, rich countries' governments) and thus did not act as neutral benevolent technocrats. This is not a formal theory he spells out, but it underlies his narrative that, for example, Wall Street's interests dovetailed with IMF advice, or that U.S. domestic politics (like election timing or farm lobby pressures) shaped international economic agreements.

- Development Economics – Multiple Equilibria and Infant Industry: Stiglitz's views on development reflect theoretical ideas from the development literature. For instance, he acknowledges the concept of *multiple equilibria* – a country can be stuck in a poor equilibrium unless it coordinates investments and policies to move to a better one (justifying some government-led development strategies). He also supports the classic infant industry argument: developing countries might need temporary protection for nascent industries until they become competitive. This goes against the standard free trade model which assumes no role for protection, instead aligning with theories from Friedrich List to modern endogenous growth models that emphasize learning and increasing returns in new industries. The success of East Asian economies, which did not follow textbook free trade early on, serves as an empirical foundation for this theoretical stance.
- Equity and Social Welfare Economics: Stiglitz often appeals to the idea that *maximizing GDP is not the same as maximizing social welfare*, especially if gains are unevenly distributed. This is in line with welfare economics which considers distribution and not just efficiency. For example, even if a policy increases aggregate income, if it makes the poor poorer and the rich richer, Stiglitz views that outcome negatively. He integrates this normative stance with economics by pointing out, for instance, that growth under IMF programs often came with increased inequality and poverty – outcomes he deems unacceptable, highlighting the importance of equity in welfare assessments. This reflects Amartya Sen's influence (whom Stiglitz admires) on considering capabilities and distribution in development, beyond just income.

In both books, while Stiglitz doesn't present new mathematical models, he uses established economic theories to challenge simplistic neoliberal models. He invokes evidence and theory to argue that government intervention can often enhance efficiency and equity, especially in developing economies – a counter to the then-prevailing notion that free markets always know best. He also employs theory to propose new international arrangements: for example, the idea of a global reserve currency has theoretical roots in the concept of an optimal currency area and the Triffin dilemma (where a national currency used as a global reserve eventually faces conflict between domestic and international objectives). Stiglitz resurrects Keynesian plans and adapts them to contemporary issues, showing the influence of historical economic thought on his work.

Finally, an underlying theoretical belief in Stiglitz's writing is pluralism in economic models. He explicitly rejects the view that there is a single template for economic success. Citing examples like Sweden's social welfare capitalism versus U.S.-style capitalism, he argues that there are multiple ways to organize an economy successfully. This aligns with theoretical notions that different institutional arrangements (varieties of capitalism) can all be viable, and

that choice among them is a societal decision reflecting values (equality, security, etc.). Thus, he advocates letting democratic processes decide on trade-offs rather than imposing one "market fundamentalist" model globally. In sum, Stiglitz's theoretical underpinnings draw from Keynesian macroeconomics, information economics, welfare economics, and development theory – all employed to critique the orthodoxies of the 1990s and to underpin his vision of a more regulated and equitable globalization.

Real-World Examples and Case Studies Used by Stiglitz

Stiglitz's arguments are richly illustrated with real-world examples and case studies, which serve both as evidence for his critiques and as demonstrations of alternative approaches. Below are some key examples he uses across the two books, along with their significance:

- East Asian Financial Crisis (1997–98): This is a centerpiece in GAID. Stiglitz describes how countries like Thailand, Indonesia, and South Korea were hit by a sudden reversal of capital flows, plunging them into crisis. The IMF stepped in with rescue packages conditioned on fiscal contraction, tight monetary policy (very high interest rates), and rapid financial liberalization. Stiglitz argues these measures *intensified* the crisis: high interest rates, for example, drastically increased bankruptcy rates by making it impossible for businesses to service debt, leading to a credit crunch and mass layoffs. He contrasts the IMF's approach with what basic economic sense might dictate – when an economy faces a downturn, austerity can be counterproductive. The example of South Korea is telling: Stiglitz notes that Korea initially followed the IMF script and suffered a sharp downturn, but then (under pressure from a new president) eased fiscal policy and recovered. Meanwhile, Malaysia famously defied the IMF by imposing capital controls to stem the outflow of hot money, and it avoided the worst of the crisis without the IMF's "assistance." Stiglitz uses Malaysia as a successful counter-example, showing that unorthodox measures (like temporary capital controls) could stabilize an economy faster and with less social cost than IMF orthodoxy. The East Asian crisis example supports Stiglitz's view that capital market liberalization without proper safeguards is dangerous, and that IMF prescriptions were pro-cyclical (making recessions worse). It also demonstrates the moral hazard issue: after the crisis, IMF bailouts effectively compensated Western banks that had lent recklessly, while Asian taxpayers were left footing the bill (via public debt and IMF-imposed bank bailouts). This inequity in outcomes fueled local resentment – a clear "discontent" of globalization. Stiglitz emphasizes how in East Asia, the crisis was not due to government profligacy or big public deficits (in fact, countries like Korea and Thailand had balanced budgets and high savings rates) but due to financial market failures and panic – something the IMF failed to grasp in time.
- Russian Transition (1990s): Stiglitz devotes attention to Russia's move from communism to capitalism, which he considers a case study in misguided policy. The so-called "shock therapy" approach, strongly backed by the IMF and U.S. advisers, involved suddenly freeing prices, privatizing state assets en masse, and tightening monetary policy to combat inflation. The result was hyperinflation in the early 90s, a collapse of output by more than 40%, and the emergence of oligarchs who acquired former state enterprises at throwaway prices through corrupt deals. Stiglitz vividly recounts how privatization without proper institutional frameworks led to asset stripping and "crony capitalism". He uses this example to argue that *sequencing and institutions matter*: Russia needed legal structures (contract enforcement, competition

policy, corporate governance) and social safety nets before or alongside privatization. Instead, it was like "releasing the sharks into a swimming pool of small fish." By the late 90s, Russia defaulted on its debt (1998) and the ruble collapsed, an outcome Stiglitz attributes to bad advice and the failure to restructure Russia's unsustainable policies earlier (the IMF kept lending to support the ruble peg until it spectacularly broke). Stiglitz also reveals a political angle: he suggests the IMF kept supporting Russia in the mid-90s not because the economics made sense, but because of pressure to keep President Yeltsin in power (Western political interests trumping sound economics). This real-world story reinforces Stiglitz's argument that ideology ("market fundamentalism") and politics led to poor outcomes, and that a more gradual, institution-focused approach (as taken by China, which Stiglitz often holds up as a contrast) would have been better. It also highlights the human cost: many Russians fell into poverty during this transition, life expectancy dropped, and faith in the market economy was severely undermined – a social disaster that feeds into globalization's discontents.

- Argentina and Latin America: Argentina in the late 1990s provides another cautionary tale. Argentina had been the poster-child of IMF policies in the early 90s – it privatized extensively and pegged its currency (the peso) to the U.S. dollar one-to-one in a currency board arrangement to stop hyperinflation. For a while, it seemed successful, but by the late 90s Argentina was in recession and the rigid currency peg made it uncompetitive (especially after Brazil devalued in 1999). The IMF, however, encouraged Argentina to stick with the peg and imposed austerity in hopes of restoring confidence. Stiglitz points out that this backfired: austerity deepened the recession, debt mounted, and eventually Argentina defaulted in 2001 and broke the peg, plunging the middle class into poverty as the banking system froze. In GAID, Stiglitz argues that Argentina illustrates the failure of inflexible policies – the currency regime was untenable and should have been abandoned earlier, and the IMF's refusal to consider alternatives (like an orderly debt restructuring or a looser monetary policy) made the crash worse. He also notes how the fallout – a lost decade of sorts for a once-rich country – fueled a wave of anti-IMF sentiment across Latin America. Indeed, by the mid-2000s, several Latin American countries (like Brazil and Argentina under new leadership) were shunning IMF advice and even prepaying IMF loans to rid themselves of IMF oversight. Stiglitz often references this political shift as evidence that countries were rejecting the Washington Consensus model because of lived experience. Argentina's dramatic default and recovery (it rebounded after 2002 once it devalued and stopped following IMF orthodoxy) serve as an example Stiglitz uses to claim that *ending an IMF program and taking alternative policies can lead to a quicker turnaround*. (Argentina's post-2002 recovery was rapid, aided by high commodity prices, but Stiglitz emphasizes the policy independence aspect.)
- Sub-Saharan Africa: While no single African country's story dominates Stiglitz's narrative, he frequently alludes to the disappointment of Africa's economic performance under decades of IMF/World Bank programs. Many African countries underwent Structural Adjustment Programs (SAPs) in the 1980s and 1990s – loans conditional on liberalization, privatization, and cutting government expenditures. Stiglitz points out that, for many of these countries, growth did not materialize and poverty deepened. For example, he might cite Zambia or Ghana: they privatized mines and utilities, balanced budgets, but saw little improvement for the populace. A telling statistic often referenced in debates (and likely touched on by Stiglitz) is that Africa's income per capita in the late 90s was lower than in the late 70s – essentially two lost decades in many places. Stiglitz uses Africa to underscore that the promises of

globalization were not being met: despite integration efforts, open markets, and receiving foreign aid, these countries did not thrive, suggesting flaws in the approach and global economic system. He also notes, for instance, how Western trade barriers (like EU agricultural subsidies or U.S. cotton subsidies) hurt African farmers, and how high debt burdens syphoned away resources (hence his support for debt relief). An example is the case of Malawi: following donor advice, it privatized grain reserves and cut subsidies, only to face famine when drought hit – an anecdote that highlights the perils of applying simplistic free-market policies to vulnerable economies. Stiglitz often argues for *"fair trade"* using African agriculture as an example: if the West truly believed in free trade's benefits, it wouldn't handicap African farmers with subsidies and tariffs.

- Anti-Globalization Protests (Seattle 1999 and beyond): Stiglitz references the protests against the WTO in Seattle (1999) as a turning point – "the first major protest…came as a surprise to many". He interprets Seattle as the moment when the public realized that globalization wasn't benefiting everyone and that something was fundamentally wrong with the rules. In MGW, he actually opens with that event to frame the narrative that *globalization's issues were now evident to ordinary citizens*. The protesters – a coalition of labor unions, environmentalists, and developing country advocates – mirror the concerns Stiglitz enumerates: job insecurity in the North (factory workers seeing jobs move to China), farmers in the South hurt by imports, environmentalists worried trade deals undermine regulations, etc. By invoking these protests, Stiglitz gives voice to real-world dissent and shows that his critique is aligned with a broader movement. He often says globalization *"succeeded in unifying people from around the world – against globalization"*, underlining the irony that supposed gains from globalization had instead sparked a global backlash. These real incidents bolster his claim that unless globalization is reformed, it will face increasing political resistance (as indeed happened with stalled trade talks and rising populism in later years).
- Success Stories – East Asia and China: Stiglitz doesn't only cite failures; he also discusses success cases to illustrate how doing things differently can yield better outcomes. One prominent example is China's gradual reform path. China did not follow IMF prescriptions – it liberalized its economy slowly, kept its financial sector controlled, did not privatize state enterprises overnight, and managed to achieve one of the fastest reductions in poverty in history. Stiglitz highlights that China ignored much of the Washington Consensus (for instance, maintaining state ownership in banking for a long time, and not fully opening its capital account) and reaped tremendous growth. Similarly, other East Asian economies (like South Korea, Taiwan, and earlier Japan) liberalized trade only after first growing infant industries behind tariff walls, and they used active industrial policies. These examples support Stiglitz's argument that there is an alternative model of globalization – one where countries integrate into the world economy on their own terms and pacing, with government playing a guiding role. He notes that these countries managed globalization rather than adopting a pure free-market approach, and they achieved not just high growth but also significant social development (education, health). By comparing these stories to, say, Latin America or Russia, Stiglitz illustrates how different strategies led to very different human outcomes.
- Global Initiatives – Debt Relief and MDGs: Stiglitz also uses examples of positive policy changes to show that reforms are feasible. The Heavily Indebted Poor Countries (HIPC) debt relief and the 2005 G8 debt cancellation for 18 countries is cited as a real-world policy that came from recognizing the failure of past approaches (simply

collecting debt payments that drained poor countries' budgets). Stiglitz was an advocate for forgiving unsustainable debts, and when it happened, he points to it as a victory for a more humane economic policy. Another is the Millennium Development Goals (MDGs) set in 2000, where the world pledged to tackle poverty, disease, etc. Stiglitz mentions that global leaders agreeing to cut poverty by half by 2015 showed a new commitment – though he would also critique that actual aid and trade policies were still lagging behind those aspirations. These examples in MGW serve to encourage readers (and policymakers) that the global community can come together to make globalization more just, provided there is political will.

- Environmental Case – Montreal Protocol vs. Kyoto: While not extensively detailed in the text, Stiglitz alludes to global efforts on environmental issues. For example, the Montreal Protocol (1987) on ozone-depleting chemicals is a success story of global cooperation – countries agreed to ban CFCs and the ozone layer is recovering. In contrast, efforts to combat climate change (Kyoto Protocol 1997, and negotiations up to 2005) were more contentious, with the U.S. refusing to ratify Kyoto. Stiglitz might use this contrast to illustrate that global treaties can work when fair and collectively supported, but falter when powerful nations opt out or when economic interests (like the oil lobby) intervene. He advocates for treating climate change with the same urgency and cooperation, and suggests that sustainable development is possible if countries like the U.S. would take leadership rather than seeing environmental protection as a threat to growth. The global warming example underscores a major point: without new rules (like carbon pricing or caps), globalization will drive environmental destruction, but with the right frameworks, growth can be green.

In employing these examples, Stiglitz's style is to connect human stories with economic analysis. He often mentions the human costs: unemployment lines in Jakarta, Russians selling off military equipment to survive the 90s, Argentine middle-class families scavenging in trash after the crash – these bring to life the abstract talk of GDP and policies. Conversely, he shares success narratives of families lifted out of poverty in China or children going to school in Uganda thanks to debt relief, showing the tangible benefits of good policies. This interplay of case studies not only bolsters his credibility (as someone who has seen these events up close) but also serves to make an academic argument morally compelling.

Policy Recommendations and Implications for Global Governance, Development, Inequality, and Sustainability

Across *Globalization and Its Discontents* and *Making Globalization Work*, Stiglitz proposes a broad array of policy recommendations aimed at reforming global economic governance to achieve more equitable development, reduce inequality, and ensure environmental sustainability. These recommendations have significant implications:

- Reforming Global Governance: Stiglitz calls for reforming the IMF, World Bank, and WTO to make them more democratic, transparent, and responsive to the needs of developing countries. For the IMF, he suggests changing its governance (e.g., adjusting voting rights that currently give disproportionate power to the U.S. and Europe) and its mandate. He believes the IMF should re-focus on preventing crises and supporting full employment, rather than acting as a short-term debt enforcer for international creditors. He also advocates greater transparency – for instance, publishing minutes of Board meetings, and allowing independent evaluations of IMF

programs. At one point, Stiglitz even floated the idea of a "bankruptcy court" for sovereign debt under IMF auspices, to fairly adjudicate debt restructuring. For the World Bank, Stiglitz recommends focusing on poverty reduction and tailoring advice to country circumstances rather than ideology. He wants the Bank to listen more to the people in borrowing countries (civil society) and to coordinate better with agencies like the UN that have social mandates. At the WTO, Stiglitz proposes an agenda of "development round" trade negotiations – essentially rewriting trade rules in areas like agriculture and intellectual property to favor poorer nations. One concrete suggestion is to end the convention of selecting the heads of these organizations by nationality (e.g., European for IMF, American for World Bank) and instead have an open, merit-based process – this would enhance legitimacy and likely bring in leadership from developing countries over time. The implication of these governance reforms is a more inclusive global economic order, where decisions are not dominated solely by G7 countries and where the priorities (inflation vs. employment, corporate profits vs. poverty reduction) are balanced in a way that reflects the interests of the majority of the world's population. Stiglitz argues that if global governance becomes more fair and representative, policies will naturally shift to be more pro-development and stability-oriented.

- Development Strategies and Policy Space: A crucial recommendation Stiglitz makes is to grant developing countries the "policy space" to pursue strategies that work for them. This means the IMF and World Bank should refrain from imposing uniform liberalization and allow countries to sequence and pace reforms. He encourages policies like: moderate protection for fledgling industries (infant industry protection), use of counter-cyclical macroeconomic policies (spending in bad times, saving in good times – rather than pro-cyclical austerity), and maintaining social expenditures (education, health) even under fiscal constraints. Stiglitz also supports *innovative development policies*: for example, government intervention to promote technology transfer, development banks to finance infrastructure and SMEs, and land reforms or microcredit programs to empower the poor. These ideas often run counter to the policies of the 1980s/90s where states were told to "get out of the way." The implication here is that countries will be better able to raise incomes and reduce poverty if they are free from onerous external dictates and can adopt *heterodox* policies suited to their conditions (much as East Asia did). For global rules, this means reworking trade and investment treaties that currently restrict such policies. Stiglitz's recommendations would allow, say, an African country to support its farmers or a Latin American country to require foreign investors to reinvest profits locally, without being penalized under WTO or bilateral agreements.
- Inequality and Social Protection: To address global inequality (both between and within countries), Stiglitz advocates several measures. Internationally, he supports significantly increasing foreign aid flows, especially grants for education, health, and infrastructure in least developed countries – essentially investing in global equity. He notes that the promises of aid (like the UN target of 0.7% of GNP) have seldom been met by rich countries, and he pushes for donors to follow through. Another mechanism he suggests is using Special Drawing Rights (SDRs) – an IMF reserve asset – to provide financing for development. For instance, the IMF could issue SDRs and allocate them in ways that benefit poorer countries (he proposed something like a "development SDR" that could be used to fund projects or global public goods). Domestically, Stiglitz's recommendations to governments include strengthening social safety nets (unemployment insurance, food support) and investing in human capital to ensure the gains from growth are widely shared. He is a proponent of "pro-poor

growth" policies. On labor, Stiglitz often argues that globalization should not erode labor standards; he even suggests international labor standards agreements to prevent exploitative conditions. By making labor and environmental concerns part of trade agreements, as he suggests, the benefits of globalization would be distributed more fairly (e.g., workers get better conditions, communities get environmental protection). The implication for inequality is significant: if Stiglitz's policy vision were implemented, we would expect reduced gaps as the rules would actively promote uplift of the bottom (through debt relief, fair trade terms, etc.) and temper the winner-takes-all dynamic of uncontrolled markets. It also implies a more balanced globalization where workers and small farmers have more security and bargaining power relative to global capital.

- Global Trade Reforms: Stiglitz's recommendations for trade are geared toward a more balanced system. Key among them: eliminate or sharply reduce rich-country agricultural subsidies and allow poor countries to maintain some tariffs for development purposes. He suggests something called "*special and differential treatment*" in the WTO – effectively, that developing nations, because of their status, should have greater flexibility and more time to implement obligations, and in some cases be exempt until they reach a certain level of development. For example, least developed countries should have open access to rich markets (duty-free, quota-free) without reciprocal demands. Another recommendation is to reform intellectual property rules: allow compulsory licensing of medicines (as per the Doha Declaration on TRIPS and Public Health in 2001), and consider shorter patent periods or patent pools for vital technologies. Stiglitz even raises the idea of prize funds to incentivize innovation in critical areas instead of patents, to decouple rewards from monopoly pricing. On services and investment, he cautions against agreements that force premature opening of banking or other sectors which could destabilize economies. Instead, he supports the right of countries to regulate foreign investment to ensure stability (e.g., capital controls in certain situations). The implications for development are direct: such trade reforms would potentially allow developing countries to diversify and industrialize more successfully (since they wouldn't be swamped by subsidized imports and could nurture their industries), and they would free up resources (if they don't have to pay as much for patented drugs, for instance, they can invest more elsewhere). For global governance, implementing these would require a shift in negotiation dynamics – wealthy nations would have to concede some advantages (like farm subsidies, stronger IP) in favor of a more equitable system. Stiglitz believes this not only is fair but will lead to a more *stable global economy*, as desperately poor countries won't remain pockets of despair (which can breed conflict or migration pressures).
- Financial Architecture and Crisis Prevention: Stiglitz strongly recommends creating systems to *prevent and manage financial crises better*. One of his headline proposals is establishing a sort of global financial regulatory framework – this includes allowing *capital controls* under certain conditions (and having the IMF endorse them when needed, rather than forbid them), regulating speculative short-term capital flows (perhaps via financial transaction taxes or other tools), and encouraging countries to borrow in their own currency or to hedge risks better (to avoid currency mismatches that sunk Asia and Latin America). He also proposes an international bankruptcy mechanism – a legal process for sovereign debt similar to corporate bankruptcy, where an impartial body could oversee debt standstills and restructuring so that countries can emerge from under crushing debt with a sustainable path (this idea was in fact floated by the IMF's Anne Krueger as the "Sovereign Debt Restructuring Mechanism" but

faced opposition). Stiglitz's push for a new global reserve currency (perhaps an expanded SDR) is meant to reduce reliance on the U.S. dollar and thereby lessen global imbalances and volatility. If, for example, a supranational reserve asset were used, countries wouldn't need to hoard trillions in U.S. dollars (which they do currently as self-insurance, contributing to global imbalances). The implication for global governance here is possibly the creation of new institutions or strengthening of the IMF's role in certain positive ways (repurposed as a global lender of last resort and crisis manager, rather than austerity enforcer). It could also mean more stability – fewer crises like Asia 1997 or global 2008 – if speculative excesses are curbed and if countries can default in an orderly way when necessary rather than suffer endless austerity. Politically, however, these ideas face resistance from powerful financial interests and from those benefiting from the dollar's dominance. Stiglitz acknowledges the challenges but argues that moving incrementally (e.g., using SDRs more) can begin the transition.

- Environmental Sustainability: Recognizing that economic growth has to be ecologically sustainable, Stiglitz urges integrating environmental considerations into globalization policies. He recommends international agreements to curb climate change – for instance, setting a price on carbon either through a global carbon tax or a well-designed cap-and-trade system, with fairness in mind (developed countries, having contributed most to the stock of emissions, should bear more of the cost and assist developing countries in adopting green tech). He also proposes eliminating subsidies on fossil fuels worldwide and instead possibly subsidizing renewable energy deployment. Stiglitz sometimes floated the idea of a "Global Environmental Organization" akin to the WTO, which would have the power to enforce environmental standards so that countries (and companies) can't gain competitive advantage by polluting. In trade, he backs allowing countries to penalize goods that are produced in especially polluting ways (this ties into discussions on carbon tariffs on imports from countries without emissions controls, to prevent carbon leakage). These recommendations imply a significant shift toward global cooperation on the environment: climate change and biodiversity loss would be addressed not on a purely voluntary ad-hoc basis, but through structured agreements with accountability, possibly including sanctions for non-compliance (just as there are sanctions for violating trade rules). If implemented, this would make globalization contribute to *sustainability* rather than undermine it, by ensuring that trade and investment do not come at the cost of the planet. It also would encourage a new industry dynamic, where clean technology spreads faster – likely via financing mechanisms for poor countries (Stiglitz suggests increased green funding, technology sharing agreements, etc.).
- Ethical Framework and Human Development: Underlying Stiglitz's recommendations is the idea that economic policy should be guided by ethical considerations and human needs. He advocates policies to reduce corruption (like more transparency in global deals, curbs on banking secrecy that enables illicit capital flight), and to incorporate voices of civil society (NGOs, labor unions, environmental groups) in global deliberations. For example, he supports the extractive industries transparency initiative (to ensure mining companies and governments disclose payments, to reduce corruption and ensure people benefit from natural resources). He also calls for respecting cultural and social choices – globalization shouldn't force homogenization. Policies like protecting cultural industries or public services from trade deals are recommended to allow countries to preserve social choices (e.g., a country might want to keep certain services public or support local film industries – Stiglitz believes trade rules should not prohibit that).

The implications of fully enacting Stiglitz's policy vision would be profound: We would likely see a *more multi-polar governance structure* (with emerging economies having greater say), a *more stable financial system with fewer extreme crises*, trade growth that is more beneficial to the poorest (and likely slower growth in very unequal gains at the top), and integration of social and environmental goals at the core of international economic law. Inequality between nations could narrow if poorer countries can climb the value chain thanks to fairer trade and technology access. Within nations, the global framework would be more supportive of labor and social protections, potentially slowing the rise of inequality seen in many countries. Also, a rebalancing might occur: countries could regain some autonomy to experiment with policies (monetary, fiscal, industrial) that suit their context, departing from the strictures of the one-size-fits-all model.

However, Stiglitz also acknowledges that these reforms require political will and overcoming vested interests. For instance, making the IMF and World Bank more accountable might reduce the unchecked influence of creditor nations; fair trade rules would face pushback from agribusiness and Big Pharma in rich countries. Despite these hurdles, his work implies that the long-term legitimacy and success of globalization depend on these changes. Otherwise, the discontents will grow – something he warns about in GAID: if globalization continues to be perceived as unjust, it could *"threaten to end globalization and all its benefits"*, as happened in an earlier era with the collapse of 19th-century liberal globalization around World War I.

In conclusion, Stiglitz's policy recommendations form a comprehensive program for *"making globalization work for everyone."* They aim to align global economic rules with broader human values – fostering a system where global governance serves the many not the few, development is inclusive and self-determined, inequality is tempered by solidarity and fairness, and sustainability is treated as non-negotiable for the planet's future. While ambitious, these proposals have influenced international debates (for example, calls for IMF reform and the idea of a global financial transaction tax echo Stiglitz's themes) and remain highly relevant in discussions on how to achieve a more just globalization.

Critical Evaluation of Each Work's Strengths and Weaknesses

Globalization and Its Discontents (2002) – Strengths: Stiglitz's *Globalization and Its Discontents* was widely lauded for its insider's insight and its courageous critique of powerful institutions. One of the book's greatest strengths is its clarity and accessibility in explaining complex economic events. Stiglitz demystified the Asian financial crisis and other economic debacles in terms that general readers could grasp, all the while providing enough detail and data to engage specialists. Reviewers noted that Stiglitz "has written an important book" that *"should be read by anyone interested in economic development [and] public policy in an era of globalization."*. The blend of memoir and analysis – his personal anecdotes from World Bank meetings, interactions with IMF officials, etc. – gave the narrative a human dimension and credibility. It was *as much a story* (of Stiglitz going to Washington and being disillusioned by what he saw) as it was an economic analysis. This storytelling aspect made the book engaging and gave readers a peek into the secretive world of international financial decision-making.

Substantively, GAID's strengths include its compelling critique of policy failures. Stiglitz marshals logical arguments and empirical evidence to show how IMF policies often produced results opposite to those intended – a point that resonated strongly at a time when many were

questioning globalization. His argument that pro-globalization policies *"have the potential of doing a lot of good, if undertaken properly,"* but were botched by bad implementation, struck a nuanced middle ground between anti-globalization protesters and free-market defenders. Even those who disagreed with Stiglitz's conclusions conceded that he raised important questions. The Peterson Institute's John Williamson (father of the term "Washington Consensus") remarked that Stiglitz's critique of the IMF *"demands serious consideration"*. By coming from a Nobel laureate and former top official, the criticism could not be easily dismissed – as *The Guardian* observed, when a Nobel prize-winning insider accuses the IMF of mismanaging globalization in the interests of Wall Street, *"it is harder to dismiss"* than when coming from street protestors. Indeed, the book significantly changed the debate on globalization. It gave intellectual heft to the grievances of developing nations and lent legitimacy to calls for reform in global economic governance. A measure of its impact is that even officials in Washington had to respond: the IMF's chief economist publicly rebuked Stiglitz (we'll discuss that as a reaction, but the very fact of the rebuttal indicates the book hit a nerve).

GAID also excels in highlighting the moral dimension of economic policy. Stiglitz's evident empathy for the poor and unemployed gives the book a moral urgency that is often lacking in economic texts. He reminds readers that behind IMF programs are real lives – a strength that made the book influential beyond academic circles. It's not purely an abstract critique; it vividly describes how policies affected farmers, workers, and children in the countries subject to them, thus building a persuasive ethical case against "business as usual." This helped galvanize civil society and perhaps even influenced policymakers in some countries to resist harmful policies.

Globalization and Its Discontents – Weaknesses: While influential, the book is not without its criticisms. A common critique is that Stiglitz's tone is combative and his portrayal of opponents one-sided. As one reviewer put it, the *"tone is overly hostile and aggressive,"* and Stiglitz *"misses no opportunity to insult the IMF staff."*. Throughout GAID, Stiglitz sometimes attributes motives or incompetence to IMF economists in a manner that critics found unfair and self-serving. For instance, he famously labeled some IMF staff as "third-rate" and accused the institution of "bad economics" and hypocrisy. This led to pushback that Stiglitz was engaging in personal attacks rather than sticking to policy arguments. Kenneth Rogoff, then IMF chief economist, responded with an "Open Letter" in which he scathingly accused Stiglitz of arrogance and of slandering dedicated IMF employees. Rogoff's retort highlighted that Stiglitz rarely admits any error on his own part and tends to place blame entirely on others. This suggests that GAID might have benefitted from a more balanced acknowledgment that some crises had multiple causes (including domestic policy mistakes) and that not all IMF staff were ideologues. The lack of evenhandedness is a valid critique: Stiglitz comes across as having an axe to grind (perhaps due to his ouster from the World Bank and clashes with the U.S. Treasury), which may lead readers to question the objectivity of some accounts.

Another weakness cited by reviewers is that Stiglitz at times presents simplistic or unproven counterfactuals – he asserts that if his advice had been followed, crises would have been avoided or mitigated, yet the evidence for this is not always solid. Critics pointed out that he provides few references or detailed models to back some claims (one reviewer noted the book is *"long on innuendo and short on footnotes"*). For example, Stiglitz argues that higher fiscal deficits and expansionary monetary policy would have cured the East Asian crisis quickly – but critics like Rogoff countered that such policies could have led to hyperinflation or

complete investor flight, calling this prescription *"at best highly controversial, at worst, snake oil."*. In essence, skeptics felt Stiglitz sometimes oversimplified complex trade-offs. He downplays the risks of the policies he favors (like expansionary responses to a currency crisis) and he doesn't thoroughly address why institutions like the IMF feared those alternatives. There is a sense that he sets up straw men – portraying the IMF as believing markets are perfect (which IMF economists would dispute) – and then knocks them down, rather than engaging with more nuanced versions of their arguments. This led to the criticism that GAID *"caricatures the views of [its] opponents"*, implying that free-market proponents think unfettered free trade will help everyone, whereas in reality they argue it helps most, not all, and acknowledge some downsides. So, the intellectual rigor of addressing counterarguments is somewhat lacking in places.

Additionally, some commentators felt Stiglitz gave short shrift to the failures of governments in crisis countries. As Bruce Ramsey wrote in *The Seattle Times*, Stiglitz *"highlights the flaws of markets, but he is not equally tough on the deficiencies of government policies or the failures of foreign aid."*. For instance, while he blames the IMF for the Asian crisis, others note that crony capitalism and weak banking supervision in those countries also contributed; while he blames the Russian privatization debacle on the West's shock therapy, others point to corruption in Yeltsin's administration as a major factor. GAID tends to blame external forces heavily and might be seen as letting developing country elites off the hook too easily. This one-sided allocation of blame could be viewed as a weakness, as it doesn't fully reckon with internal governance problems that also plague development.

Stylistically, though the passionate tone is a strength for some, others saw it as a weakness in an academic sense. The confrontational style might alienate readers who expect more measured analysis; it arguably undermined the effectiveness of his message among some policymakers who felt attacked. One academic reviewer suggested the book *"would have been more effective had Stiglitz chosen a more temperate style."*.

Finally, GAID was criticized for *what it omitted*. It largely ignores the role of private sector actors (banks, hedge funds) in causing crises – Stiglitz focuses on the IMF's failures but doesn't deeply analyze, for example, the speculative bubbles and moral hazards that led to the crises in the first place, beyond blaming the IMF for encouraging capital account liberalization. Some say this narrow focus on the IMF overlooks other lessons (like how to regulate global finance) which are crucial. However, given the book's purpose, this was a deliberate choice to focus on international institutions.

Making Globalization Work (2006) – Strengths: *Making Globalization Work* was praised for expanding the conversation to solutions and doing so in a largely practical and imaginative way. One reviewer called it *"an imaginative and, above all, practical vision for a successful and equitable world."*. The strength of MGW lies in its breadth of vision – Stiglitz tackles trade, finance, climate, and more, offering concrete proposals in each area. This gave readers and policymakers a buffet of ideas to debate, moving the discourse beyond simply what's wrong to *what could be done better*. His proposals, such as adding labor and environmental considerations to trade deals, or creating a new reserve currency, were bold and thought-provoking. Even if one disagreed, the book succeeded in stimulating discussion on reforming globalization rather than abandoning it.

The writing in MGW is accessible yet backed by logical arguments, making it suitable for both lay readers and experts – a dual appeal noted by *InTheNews*: Stiglitz's *"open, honest*

style of writing and appeal to experts and non-experts alike…will guarantee this book's enduring success.". The tone, while still passionate, is less personal and more policy-oriented, which many saw as appropriate. Stiglitz's optimism is another strong point; at a time when some were pessimistic about globalization's future, he provides hope that *"another world is possible"* (to borrow an activist slogan) by detailing how it could be done. This optimistic underpinning, combined with his moral urgency (e.g., a persistent concern for the world's poor and for justice, as noted by reviewers), gave the book a positive energy. MGW also benefits from Stiglitz's ability to synthesize complex global issues and connect them. He draws links between, say, global trade policies and poverty, or between intellectual property rules and health outcomes, providing a holistic perspective on globalization. This systems-thinking approach is a strength because it reflects the interconnected reality of the global economy. Additionally, by 2006 Stiglitz had the benefit of responding to some critics: he is a bit more careful in MGW to not just condemn but to propose (for instance, after criticizing IMF conditionality, he acknowledges it has been reduced and then suggests further changes, which feels more balanced).

Making Globalization Work – Weaknesses: Despite the broad praise, MGW faced its own set of critiques. Some readers felt the book tried to cover too much ground, resulting in less depth on each issue. With ten chapters spanning trade, debt, aid, environment, etc., the analysis in each can seem somewhat cursory to experts in those fields. For example, climate specialists might find his environment chapter lacks nuance on policy design, or trade experts might say he glosses over some complexities of WTO negotiations. In attempting a comprehensive reform agenda, Stiglitz occasionally comes across as overly idealistic or unrealistic. Critics argued that some of his proposals, while nice in theory, had little chance of being implemented given political realities. Bill Jamieson in *The Scotsman* wrote, *"What the world needs is not another book on the failures of ill-defined globalisation. What we need is hope*, implying that MGW still focused a lot on problems and that some recommendations were too abstract to offer real hope. (This comment might be a bit ironic since Stiglitz thought he was providing hope through ideas, but perhaps to some the ideas felt impractical.)

Another critique is that Stiglitz is "hardly evenhanded" in MGW either. Bruce Ramsey's review noted that Stiglitz *"brushes aside rich-country bellyaches, such as the U.S. trade deficit with China"* and doesn't fully acknowledge the concerns of developed countries' citizens who also feel discontented. For instance, while he talks about factory workers in the U.S. losing jobs to globalization, he tends to attribute that to mismanaged globalization (China's supposed currency manipulation or lack of safety nets in the U.S.), rather than acknowledging any benefits those workers get from cheaper imports. Some readers in rich countries might feel their legitimate worries (like job security or unfair competition) were not deeply engaged with – Stiglitz has a clear normative stance favouring the developing world's perspective, and he "makes a case" rather than presenting multiple sides. This rhetorical style can weaken the book's appeal to an audience that doesn't already share his orientation.

Additionally, some analysts argued that Stiglitz's practical suggestions risk being overshadowed by his attacks on free-market "purists." The *New York Times* review by Stephen Kotkin commented that *"attacking the idea of free-for-all markets in a superfluous debate with conservative purists only overshadows [Stiglitz's] practical suggestions"*, like the idea of including labor and environmental ministers in trade talks. In other words, the book sometimes spends time refuting what Stiglitz sees as neoliberal dogma (perhaps as a holdover from GAID's polemical style), which might not be necessary in 2006 when many readers are already convinced markets need governing. Those pages could have been used to further

elaborate the how-to of his proposals. Because of this, some felt MGW did not fully meet the high standard hoped for – one academic reviewer (Lance Taylor) suggested it *"does not meet the standards we wish for it"* and delved into Stiglitz's background to explain his biases. Moreover, MGW inherits a bit of the "Stiglitz knows best" vibe that his critics highlight. He is very confident in each domain, whether it's trade or climate, perhaps too confident for some tastes. For example, proposing a global reserve currency is a huge change; Stiglitz presents it as a sensible solution, but doesn't deeply wrestle with the potential downsides or transition problems (other economists would worry about who manages that currency, will it really be insulated from politics, etc.). This can make some proposals feel under-argued. The book might leave technical readers wanting more rigor or evidence for why his plan would work where others haven't.

Finally, a general weakness in both books, but especially in MGW, is that political feasibility is not addressed in depth. Stiglitz outlines what should be done but less about *how to overcome the obstacles* to get there. For instance, he doesn't detail how to persuade the U.S. and Europe to give up power at the IMF or cut their farm subsidies beyond moral exhortation. To some, this might seem naïve – as if identifying the right policies is enough, without grappling with interest-group politics and geopolitical rivalry that actually dictate policy choices.

Despite these critiques, MGW was generally well-received as a valuable contribution. Its weaknesses largely lie in what one expects from it: as an academic treatise it may fall short due to broad-brush treatment and advocacy tone, but as a public intellectual's call to action it succeeds in spurring discussion. Indeed, both books cemented Stiglitz's role as a leading voice for rethinking globalization.

Overall Contribution: The strengths of Stiglitz's works clearly outweigh their weaknesses in terms of influence. *Globalization and Its Discontents* provided a rallying point and an analytical backbone for critics of the 1990s economic order, and *Making Globalization Work* advanced the conversation by sketching a reform agenda. They are, in effect, complementary: GAID diagnosed the illness; MGW prescribed the cure. Together, they have been praised for giving *"voice to the arguments of Third World nations"* in a way that Western audiences and policymakers could no longer ignore. However, the very qualities that made them galvanizing – the strong point of view, moral fervor, and dismissal of opposing arguments – also drew criticism for partiality and arrogance.

From an academic perspective, some economists argue that Stiglitz underestimates the difficulty of some policy choices – for example, that sometimes there truly are no good options in a crisis (every course of action has a cost) and the IMF may have been not as idiotic as portrayed. They might also say he underplays instances where globalization *did* help (for instance, countries like India that benefited from service exports, or Eastern Europe's integration into the EU bringing growth). That said, his works were not intended as neutral academic journal articles; they were more manifesto and critique.

In conclusion, Joseph Stiglitz's *Globalization and Its Discontents* and *Making Globalization Work* are seminal works in the globalization debate, rich with insight and provocation. GAID's strength lies in its searing critique and lucid exposition of how globalization was mishandled, though it is weakened by its combative tone and occasional one-sidedness. MGW's strength is in offering hope and a blueprint for change – a broad, humane vision for making the global economy fair – though its sweeping scope and advocacy stance left it open

to charges of idealism and lack of balance. Both books together have significantly influenced discourse on global economic policy, pushing issues of inequality, institutional reform, and sustainability to the forefront. They succeed as works of engaged scholarship – marrying economic analysis with a passion for social justice – and their enduring relevance is a testament to their strengths, even as their shortcomings remind us that in complex global issues, no single author will have the last word.

Sources:

- Stiglitz, Joseph E. *Globalization and Its Discontents.* W.W. Norton & Co., 2002. (analysis and summary in text)
- Stiglitz, Joseph E. *Making Globalization Work.* W.W. Norton & Co., 2006. (analysis and summary in text)
- Williamson, John. "Review of *Globalization and Its Discontents*." *PIIE*, June 2002.
- Edwards, Sebastian. "Review of *Globalization and Its Discontents*." *Journal of Development Economics*, 2002.
- Rogoff, Kenneth. "An Open Letter to Joseph Stiglitz." *IMF (Web)*, 2 July 2002.
- Denny, Charlotte. "The contented malcontent." *The Guardian*, 5 July 2002.
- Ramsey, Bruce. "*Making Globalization Work*: Nobel winner's fresh views on globalization." *Seattle Times*, 13 Oct 2006.
- Carnegie Council. "Making Globalization Work" (event introduction), 5 Oct 2006.
- Center for Global Development (Event summary). "Making Globalization Work," Sep 2006.
- Wikipedia entries on *Globalization and Its Discontents* and *Making Globalization Wor*

Dani Rodrik:The Globalization Paradox

Comprehensive Summary

Rodrik's *The Globalization Paradox* (2011) is organized into 12 chapters (plus Introduction and Afterword) that trace the historical evolution of globalization, critique the "hyper-globalization" agenda, and propose a more balanced model. Broadly:

1. Chapter 1 – *Of Markets and States: Globalization in History's Mirror*. Rodrik reviews key historical episodes (from the late-19th-century Gold Standard to the post-World War II Bretton Woods system and the late-1990s crises). He shows that even eras of open trade required strong domestic institutions. For example, he recounts the 1997 Asian financial crisis and the collapse of the Gold Standard to illustrate how free capital flows can destabilize economies without state safeguardseprints.lse.ac.uk. Throughout he emphasizes that markets must be embedded in governance: "open markets succeed only when embedded within social, legal and political institutions" that spread the gains widely.
2. Chapter 2 – *The Rise and Fall of the First Great Globalization*. This chapter examines the 19th-century wave of globalization (high trade and capital flows under the Gold Standard) and its collapse during World War I. Rodrik highlights how the Washington Consensus policies and later the managed postwar order attempted (and sometimes failed) to reconcile national sovereignty with integrationeprints.lse.ac.uk.
3. Chapter 3 – *Why Doesn't Everyone Get the Case for Free Trade?*. Rodrik analyzes standard free-trade arguments. He notes that while comparative advantage can raise living standards, the unintended side effects – higher unemployment or inequality in some sectors – often generate political backlash. He argues there are "many paths to development," and that democracies should be free to pursue their chosen policies without outside coercion, even if this means deviating from textbook free-trade prescriptions.
4. Chapter 4 – *Bretton Woods, GATT, and the WTO: Trade in a Politicized World*. This chapter traces the creation of the postwar trade regime (Bretton Woods and GATT/WTO) and how political interests shaped trade rules. Rodrik documents how powerful nations have resisted full liberalization when it conflicts with domestic demands. He observes that the "most open" economies (like the Nordic countries) often maintain large governments and social insurance to cushion adjustment, implicitly critiquing the idea that openness alone guarantees prosperity.
5. Chapter 5 – *Financial Globalization Follies*. Rodrik shifts to capital flows, arguing that unfettered financial integration can be particularly destabilizing. He reviews the experiences of emerging markets (e.g. the 1997–98 Asian crisis) to show that liberalized capital accounts can provoke crises if regulatory institutions are weak. Building on this, Chapter 6 – *The Foxes and Hedgehogs of Finance* contrasts the

"foxes" (countries with diverse policies and controls, like pre-crisis China) with "hedgehogs" (those that believed in a single rule-book). Rodrik warns that treating capital markets as self-regulating has led to crises: he stresses that if everyone in government believes "markets are efficient…self-regulation works best," then obvious risks are ignoredeprints.lse.ac.uk.

6. Chapter 7 – *Poor Countries in a Rich World*. Here Rodrik looks at developing economies. He notes that those that opened partially (such as China and India) often fared better than those that accepted full liberalization. As one reviewer summarizes, "India and China…have prospered, he argues, by not being dependent on international finance … by being selective in which part of the deal they took up," pursuing strong state guidance and goalseprints.lse.ac.uk. By contrast, Latin American countries that embraced indiscriminate openness "have fallen victim to the downsides of globalization".
7. Chapter 8 – *Trade Fundamentalism in the Tropics*. Continuing with developing countries, Rodrik critiques Washington Consensus–style trade policies in the tropics. He argues that slavish adherence to liberalization (what he calls "trade fundamentalism") often undermines growth rather than helping it, because local institutions and context matter.
8. Chapter 9 – *The Political Trilemma of the World Economy*. This is the book's intellectual core. Rodrik revisits his famous "trilemma": that hyper-globalization, national sovereignty, and democratic politics cannot all be achieved simultaneously. He sums it up crisply: "we cannot simultaneously pursue democracy, national determination and economic globalization"eprints.lse.ac.uk. In practice, he argues, countries must sacrifice one of the three goals. For example, *to preserve democracy and sovereignty*, a country may have to accept only a modest degree of global integration.
9. Chapter 10 – *Is Global Governance Feasible? Is It Desirable?*. Here Rodrik explores whether international rules can solve the trilemma. He is skeptical of fully supranational governance: he notes that, so far, the nation-state remains "the main locus of legitimate governance," since democratic deliberation happens domestically. As he puts it elsewhere, the "imbalance between the national scope of government and the global nature of markets" is the "soft underbelly of globalization". This chapter weighs the practical limits of organizations like the WTO or IMF to reconcile global pressures with national democracy.
10. Chapter 11 – *Designing Capitalism 3.0*. In this forward-looking chapter, Rodrik sketches what he calls "Capitalism 3.0," a new model that would restore democratic control. He argues for principles (outlined in the book and in a related Project Syndicate article) such as national flexibility in regulation, smaller international agreements, and the right of countries to self-insure against globalization shocks. (Rodrik even put forth "seven commonsense principles" for global governance, essentially calling for rules that countries democratically design to suit their needs.)
11. Chapter 12 – *A Sane Globalization*. Rodrik concludes by advocating a middle path: globalization should be *sane*, not maximal. He emphasizes that the "ultimate paradox" is that "globalization works best when it is not pushed too far," and that the global economic order must be built around democratic states rather than undermining them. The book ends with an exhortation that international economic arrangements be grounded in national democracy, so that gains are broadly shared and burdens managed.

(An Afterword offers a final reflection in the form of a "bedtime story for grown-ups," underscoring the need for democratic institutions in economic policy.)

Key Arguments and the Political Trilemma

Rodrik's central thesis is that hyper-globalization cannot co-exist with both full national sovereignty and democratic self-rule. This is often called *Rodrik's trilemma*: "we cannot simultaneously pursue democracy, national determination and economic globalization"eprints.lse.ac.uk. In practice, one corner must give. If a country wants deep integration (capital, trade, finance), it must cede either democratic policy flexibility or sovereignty (for instance, to supranational bodies). Or if it prizes democracy and sovereignty, it must limit global integration.

Rodrik also challenges the neoliberal mantra of unfettered markets. He argues that markets need institutions: open economies thrive only when backed by strong social, legal and political frameworks. As one reviewer notes, Rodrik points out that the richest countries "tend to be those most open," but *within* those countries governments are large and active – the economies have "the biggest governments, the most extensive and effective regulation, and the widest social safety nets". In other words, social protections and regulations are not a drag on globalization but its support.

Another key argument is that development has many paths. Rodrik insists that democratic societies should be free to choose their mix of policies. He condemns the "empirical casualness" of arguments that every country must follow the same free-market recipe. For example, he repeatedly emphasizes that some emerging economies (e.g. China and India) succeeded by *selectively* opening up while retaining active industrial policyeprints. He contrasts this with cases where countries blindly liberalized and then suffered crises.

Rodrik also coins the term "hyper-globalization agenda" to describe the idea that globalization is always beneficial. He warns that this agenda is simplistic. As he and reviewers suggest, the gains to further globalization may be small while the costs can loom large. One commentator summarizes Rodrik's view with a series of "what if" questions: what if most globalization's benefits have already been reaped, so that "any gains from additional globalization will be outweighed by the additional costs" of job losses and social disruption? Rodrik's answer is that, indeed, unchecked globalization will breed discontent unless counterbalanced by governance.

Other important points: Rodrik maintains that international institutions (WTO, IMF, World Bank, EU, etc.) often impose uniform rules that ignore local conditions, thereby constraining sovereignty. He critiques such one-size-fits-all policies (the old "Washington Consensus") as blind to country differenceseprints.lse.ac.uk. Instead, he calls for "smart globalization" – a globalization tailored by national democracies, not a top-down global regime. He repeatedly stresses that democracies have the right to protect "their own social arrangements" even if this means restricting market forceseprints.lse.ac.uk.

In summary, Rodrik's key arguments are:

- The Trilemma: No country can simultaneously have hyper-globalization, full democratic control, and absolute national sovereigntyeprints.lse.ac.uk.

- Embedded Liberalism: Markets require non-market institutions (regulation, welfare, collective bargaining) to function, especially in democracies.
- Diversity of Models: Different countries can and should adopt different paths (e.g. industrial policy, capital controls) suited to their needseprints.lse.ac.uk.
- Limits of Global Governance: Global rules must be shallow enough to allow national policy space; otherwise, politics will snap back.

Theoretical Underpinnings and Frameworks

Rodrik writes as an international political economist and development economist, drawing on history, institutional economics, and trade theory. He implicitly uses the concept of "embedded liberalism", the idea (from John Ruggie) that the global market system must be embedded within national welfare systems. In this view, states intervene (trade barriers, capital controls, social spending) to make markets politically palatable. Rodrik builds on that: he quotes Adam Smith's insight that the "division of labor" (market size) is limited by the scope of governance, noting that "markets cannot work properly and be politically sustained" without strong institutions.

On the technical side, Rodrik draws on standard economic logic such as the Stolper–Samuelson theorem (trade-offs between capital and labor) and open-economy macroeconomics (the trilemma of fixed exchange rates, capital mobility, and independent monetary policy) as analogies. However, he goes beyond pure economics by emphasizing political constraints: policies are made by voters and politicians, not a benevolent social planner. For instance, he challenges the assumption that the gains from trade automatically outweigh the losses; he cites studies (e.g. on U.S. GDP gains from free trade being near zero) to critique the "free lunch" narrative.

Overall, Rodrik's framework can be seen as pragmatic institutionalism: he combines economic analysis with political feasibility. He repeatedly stresses that if markets are left to themselves, they will exceed the bounds of what citizens will accept, so political decision-making (democratic deliberation) must set the limit. In policy terms, he is skeptical of *collective action at the global level* (given weak enforcement) and more optimistic about *policy coordination among sovereign democracies*. His proposed "seven principles" for globalization (outlined in his book and op-eds) largely stem from this institutional perspective, calling for democratic control, subsidiarity, and policy diversity.

Examples and Case Studies

Rodrik peppers the book with historical and contemporary examples to illustrate his points:

- Asia vs. Latin America: A major case study contrasts East Asia (China, India, East Asian "tigers") with Latin American countries. Rodrik notes that many Asian economies grew rapidly despite capital controls and selective openness: they "lent money to rich nations in preference to borrowing, and pursued mixed strategies with strong state intervention"eprints.lse.ac.uk. In contrast, he argues that Latin American countries, which followed more orthodox liberalization without strong institutions, often suffered crises (e.g. Mexico 1994, Argentina 2001). This example supports his claim that selective globalization can be more successful than rapid full integration.

- Advanced Economies and Social Models: He frequently cites examples of rich democracies with large welfare states, such as Sweden or Denmark. As one reviewer notes, the most open economies are those with "the biggest governments [and] the widest social safety nets". This observation undercuts the notion that social spending is incompatible with competitiveness. He uses this to argue that social insurance is actually necessary to maintain political support for open markets.
- Financial Crises: Rodrik analyzes the 1997–98 Asian financial crisis and the 2007–08 global financial crisis to show the perils of capital-market integration. He discusses how Thailand's and Korea's fixed-rate regimes collapsed under speculative attacks, underscoring his broader point that *fixed exchange rates, free capital movement, and independent policy* are mutually inconsistent (an analogy to the "impossible trinity" in macroeconomics). These case studies back up his call for capital account regulations (e.g. Chilean *encaje* or Malaysian capital controls) in the appropriate context.
- Political Outcomes: He also refers to political events. For instance, he notes the rise of populist parties in Europe as evidence that people resist globalization shocks. In passing (e.g. in speeches or later writings) he connects his trilemma to the Eurozone crisis: the tension between EU governance and national democracy, though these aren't detailed in the book.
- Hypotheticals Turned Real: The Washington Post review highlights one of Rodrik's thought experiments: "What if the countries to have benefited most from free-market globalization are not those that have embraced it wholeheartedly, but those that have adopted parts of it selectively?". He then argues this is what history shows. By framing his arguments as answers to "what if" questions that readers intuitively ask, Rodrik makes the theory concrete.

In summary, the book's empirical content is illustrative rather than econometric. Rodrik mixes broad cross-country patterns with historical anecdotes (gold standard collapse, interwar nationalism, etc.) and contemporary policy debates. This narrative style allows readers to see how the abstract trilemma plays out in real-world settings.

Reception and Influence

Rodrik's *Globalization Paradox* has been widely discussed in academic, media, and policy forums. Academic reviews tend to commend its clarity and breadth. For example, economist Rosa Lastra (in the *International Journal of Constitutional Law*) calls it "a significant contribution to the literature on globalization, drawing on historical, political, philosophical, and economic considerations". An LSE politics blog praises Rodrik's "eloquent challenge to the reigning wisdom on globalization," and notes the book makes a "balanced" case for a more careful globalization guided by democracyeprints.lse.ac.uk. Foreign Affairs reviewer Richard Cooper describes it as "cogent [and] well-written," noting that Rodrik "takes aim" at globalization orthodoxy and emphasizes that social distress can accompany market opening.

Among policymakers and economists, Rodrik's ideas have spurred lively debate. He presented the book at a Peterson Institute event in 2011, where his idea of the "soft underbelly" of globalization (the clash of world markets with nation-state democracy) was a focal point. The book has been cited in discussions of trade policy: for instance, commentators on the Brexit debate have applied Rodrik's trilemma to explain the tensions between EU integration and UK sovereignty. In journalism and think-tanks, Rodrik's notions (especially the trilemma and the need for "smart" vs. "maximal" globalization) are frequently referenced in analyses of trade conflicts and financial regulation after the 2008 crisis.

Rodrik himself has become a go-to expert on globalization's limits. He has written follow-up pieces (e.g. in *Project Syndicate* and academic journals) linking his framework to the rise of populism and calls for reforming global rules. Nobel laureates like Joseph Stiglitz have cited Rodrik's work when arguing against the old laissez-faire consensus. His arguments have also influenced policy discussions: some governments now openly debate the balance between openness and policy space, in part under the influence of Rodrikian themes.

Overall, *The Globalization Paradox* is regarded as a serious and influential intervention. It has been assigned in many international economics and political economy courses. Even critics of Rodrik often acknowledge the value of his questions: for example, Global Affairs notes that he is "offended by the empirical casualness" of free-trade arguments, a point many take seriously when re-examining globalization's effects.

Critiques and Counterarguments

Critics of Rodrik have focused on his views about trade gains and the feasibility of his prescriptions. A prominent critique comes from Gary Hufbauer (PIIE), who argues Rodrik *understates* the benefits of globalization. Hufbauer points out that Rodrik cites one study claiming world free trade would add only ~0.1% to U.S. GDP per year – a figure Hufbauer calls "trivial" and "ridiculous". He contends that many models show much larger gains (e.g. 5–10% of GDP). Hufbauer also challenges Rodrik's notion that globalization inflicts widespread "pain" on workers. In his view, productivity shocks from technology, not trade with China, better explain U.S. wage stagnation. In short, critics like Hufbauer claim Rodrik is too pessimistic about globalization's aggregate gains and too quick to blame it for social problems.

Other economists point to political feasibility issues. Richard Cooper (Foreign Affairs) notes that Rodrik does not fully address how democracies actually make trade policy choices. Cooper observes that Rodrik "does not apply the same scrutiny" to the workings of democracy as he does to globalization theory. In particular, he questions whether the "preferences of outsiders" that Rodrik allows democracies to reject are ever set independently of powerful domestic interests. In effect, some suggest Rodrik underestimates how trade agreements are themselves political bargains, not just impositions on democracies.

There have also been ideological criticisms. Free-market advocates worry that Rodrik's framework could justify protectionism under the guise of democracy. They caution that giving each government wide discretion might lead to infinite rent-seeking or beggar-thy-neighbor policies. Rodrik replies that democracies should still respect certain core rules, but this balance remains contested. Likewise, some left-wing critics argue Rodrik doesn't go far enough in reforming global capitalism, feeling his case for "sane globalization" is still too market-friendly.

In sum, major critiques include:

- Size of Gains: Rodrik's claim of small future benefits from trade and capital liberalization is disputed.
- Political Simplification: Some argue he idealizes democracy's voice and ignores elite capture or global power imbalances.

- Practicality: Skeptics question whether any new global rules could realistically enforce fairness in globalization without new supranational institutions (which Rodrik himself doubts).

These debates underscore that Rodrik's work functions partly as provocation. As one commentator quipped, Rodrik's engaging style "sold books" by stirring red-ink disagreements. Even critics generally agree the topic is important, even if they propose different trade-offs.

Contemporary Relevance and Influence

Rodrik's *The Globalization Paradox* remains highly relevant. In the decade since its publication, globalization has faced renewed scrutiny: populist movements in the U.S., UK, and Europe have questioned free trade; the Eurozone crisis highlighted the trilemma (EU governance vs national democracy); and debates on climate change and pandemics have shown the tension between global problems and national responses. In all these issues, analysts often invoke Rodrik's trilemma: one can see the Brexit vote or trade wars as examples of a nation opting for democracy and sovereignty over deeper globalization.

Scholars and policymakers continue to draw on Rodrik's ideas. For instance, proposals for "deglobalization" or strategic industrial policy often cite his work to justify leaving some tariffs or controls. International bodies (WTO reformers, IMF committees) reference the need for greater policy space for member states as advocated by Rodrik. In academic research, the "trilemma" is now a standard framework in political economy papers on globalization, used to interpret everything from multinational agreements to digital taxation.

Moreover, Rodrik's insistence on fairness has influenced discourse on trade. His point that people accept globalization only if it is "fair and broadly beneficial" resonates with current emphasis on inclusive trade (e.g. labor standards in trade deals, or discussions of a New Bretton Woods with social clauses). In Project Syndicate and global forums, Rodrik often stresses that "global economic arrangements" must reflect national democratic choices. This view underpins many modern critiques of unregulated markets and informs calls for a "human-centered globalization" where governments retain the right to regulate.

In short, Rodrik's book has had a lasting impact on debates about globalization, trade policy, and economic governance. Its arguments – that markets need institutions, that one-size-fits-all solutions fail, and that national democracy must play a leading role – continue to shape how economists and policy-makers think about the balance between global integration and domestic priorities.

Sources: Authoritative reviews and analyses of *The Globalization Paradox*, among others, were used to compile this overview. Each citation refers to material discussing Rodrik's book in academic or policy forums.

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Samuel Huntington: Dead Souls: The Denationalization of the American Elite

In his 2004 essay "Dead Souls," Samuel P. Huntington argues that a widening gulf is opening between the American elite and the general public along lines of national identity. Huntington contends that a small (≈4%) transnational elite – corporate executives, high-technology entrepreneurs, academics, government officials and financiers – has become *cosmopolitan* and de-coupled from traditional American loyalties, while the broad public remains fiercely patriotic. He writes that debates over national identity "have profound implications" because *"different perceptions – especially between the citizenry and the more cosmopolitan elites – of what constitutes national identity generate different national interests and policy priorities."*. In short, Huntington's central thesis is that the key divide in early-21st-century America is not isolationist vs. internationalist, but nationalist vs. cosmopolitan. Ordinary Americans (the "Thank God for America" public) retain traditional language, culture and national loyalty, whereas elites are increasingly "denationalized," defining themselves as *multinational* and seeing national borders as relics of the past.

Huntington uses the metaphor of Walter Scott's "Lay of the Last Minstrel" to label these elites "dead souls" – people who no longer say of any land, "This is my own, my native land." He answers Scott's rhetorical question by asserting that *"the number of dead souls is small but growing among America's business, professional, intellectual and academic elites."*. These individuals possess "titles, power and pelf," yet their *ties with the American nation are decreasing*. Unlike the deeply patriotic majority of Americans, these elites, when returning from "a foreign strand," feel little commitment to their "native land." Huntington emphasizes that *"a major gap is growing in America between the dead or dying souls among its elites and its 'Thank God for America' public."*. He notes that the patriotic unity after September 11, 2001 only temporarily masked this trend, and predicts that the forces of globalization will continue to erode elite patriotism in the absence of repeated national traumas.

Historical and Political Context

"Dead Souls" was written in the post–Cold War, early 2000s context of unipolar American power and accelerating globalization. After the Soviet collapse (1991) and during the Clinton administration, the U.S. projected military and economic leadership worldwide, while international trade, travel, communications and institutions expanded rapidly. This era saw the rise of the "global city" economy, rapid growth of multinational corporations, and an ethos of liberal internationalism. In Huntington's view, these trends reshaped the American elite: their economic interests and social networks became transnational. At the same time, mainstream Americans remained more rooted in traditional national symbols and boundaries. Huntington explicitly ties his analysis to globalization when he writes, *"Globalization involves a huge expansion in the international interactions among individuals, corporations, governments, [and] NGOs… and the multiplication of international organizations, regimes and*

agreements". He implies that this process *"will make it likely that the denationalizing of elites will continue."*

The essay also appeared in the wake of 9/11 and the "War on Terror." Huntington notes that patriotic fervor briefly united elites and masses after 9/11, but saw it as fleeting: *"the patriotic rallying after September 11 temporarily obscured [the gap between elites and public]."*. The piece was published simultaneously with his book *Who Are We?: The Challenges to America's National Identity* (2004), in which Huntington argues that American identity historically derived from an "Anglo-Protestant" cultural core. Both works reflect early-2000s anxieties: debates over immigration (the "Hispanic challenge") and multiculturalism, and worries that globalization was producing a cosmopolitan ruling class at odds with a nationalist populace. In sum, *"Dead Souls"* is set against the backdrop of end-of-history globalization and the cultural anxieties that followed, re-examining the old debate of globalism versus nationalism in purely national-identity terms. Huntington frames his essay by noting that *"debates over national identity are a pervasive characteristic of our time"*.

Main Arguments and Elite Cosmopolitanism

Huntington's analysis distinguishes sharply between the *concerns of the general public* and those of the *elite class*. He writes that the public's primary worries lie in "societal security" – the sustainability of America's language, culture, religion, and national identity – in addition to physical security. By contrast, many elites prioritize participating in the global economy, supporting international trade and migration, strengthening international institutions and promoting universal or minority rights. In other words, *the masses worry about preserving a national way of life, whereas elites worry about expanding a global liberal order*. Huntington crystallizes this: *"The central distinction between the public and elites is not isolationism versus internationalism, but nationalism versus cosmopolitanism."*.

He describes the elite as an emerging "transnationalist" elite – often dubbed the "Davos Man," "gold-collar" or "cosmocrat" in the literature – whose worldview is essentially borderless. Citing the Global Business Policy Council, he notes that this new global class (estimated ~20 million people, 40% of them American in 2000) *"comprises fewer than 4 percent of the American people,"* yet wields outsized influence. Crucially, Huntington writes that these transnational elites *"have little need for national loyalty, [and] view national boundaries as obstacles that thankfully are vanishing,"* and *"see national governments as residues from the past whose only useful function is to facilitate the elite's global operations."*. This famous line (frequently cited in discussions of "Davos Man") captures his claim that the elite's identity is global first and national only peripherally. As Huntington explains, involvement in international networks has become a prerequisite for elite status: those whose loyalties are "purely national" are unlikely to rise to the top of business, academia, media or high finance. He notes sociologist Manuel Castells's aphorism: *"Elites are cosmopolitan, people are local."*

Huntington marshals evidence that this transnationalism correlates with income and education. He cites polls showing that higher-income Americans are more likely to say they would leave the country for a higher income, and quotes Robert Reich that America's wealthiest are effectively "seceding from the rest of the nation." Likewise, journalists Micklethwait and Wooldridge have found that the global elite tend to study abroad, work globally and share loyalties across borders, forming *"a world within a world"* cut off from

national society. In short, Huntington argues that *the more globally connected one is, the less tied one feels to the nation-state*. These arguments are intended to explain why elites might *consciously and unconsciously* downplay nationalism and expect to operate above it.

Relation to *Who Are We?*: National Identity and the Elite

"Dead Souls" dovetails with Huntington's larger thesis in *Who Are We?* (2004). Both works were published in early 2004 and share concerns about the erosion of a core American identity. In *Who Are We?*, Huntington defends an "Anglo-Protestant" cultural foundation – the English language, civic ideology, and Protestant moral ethos – as the enduring core of American national identity. He laments that "nonracial…multiracial" Americanism depends on assimilation into this legacy. "Dead Souls" can be seen as complementing this by focusing specifically on the leadership class's role: even if a cultural core exists, the elite's detachment undermines it.

Indeed, the HNN reviewer James Pinkerton notes that the title "Dead Souls" was also used in *Who Are We?* (as a small concluding section) and that it seems *"to contradict"* some of Huntington's immigration arguments. Pinkerton quotes Huntington's observation that *"the public has remained consistently patriotic…even as [the elite] reject expressions of patriotism and explicitly define themselves as multinational."*. This underscores that Huntington saw the elite–public split as a separate issue from immigration. While *Who Are We?* worries about immigrants assimilating into America's Anglo-Protestant ethos, "Dead Souls" points out that *even elites born American* were abandoning national sentiments. Huntington's broader corpus thus connects: he is warning in both works that without a committed national culture – and with a leadership class indifferent to it – America's national identity could fray. The "Dead Souls" essay can even be viewed as an epilogue to *Who Are We?*, emphasizing that if elites lose the "mystic chords of memory," the nation's civic bonds will weaken regardless of immigration policy. In sum, "Dead Souls" extends the book's challenges by highlighting elite cosmopolitanism as a force working against the civic patriotism Huntington champions.

Critiques and Reactions

Reactions to "Dead Souls" were mixed and often overshadowed by controversy over Huntington's immigration chapters. One early reviewer (James Pinkerton in the *Los Angeles Times*/*History News Network*) noted that Huntington's claim – a *"disturbing gap"* growing between elites and masses – was deeply counterintuitive to some readers. Pinkerton quotes Huntington's description of elites as *"denationalized"* and finds it telling that the CIA might "no longer count on" corporations that see themselves as global. Pinkerton uses this to question Huntington's focus, asking rhetorically: If elites are already so global-minded, *"we're supposed to wring our hands instead about Mexican immigrants?"*. The upshot of this critique is that Huntington seems inconsistent: on the one hand elites spurn patriotism, yet on the other he blames immigrants for cultural change. This line of critique suggests that at least some commentators felt Huntington's complaints should target the elite, not foreigners.

More substantively, critics have argued that Huntington overstates or belatedly notices well-known trends. A *Prospect* magazine review observes that *"Huntington correctly identifies the*

American elite as cosmopolitan, but overstates the novelty of this development.". It notes that American elites have been largely internationalist and uninterested in ethnic nationalism for decades (citing pre-war intellectuals like John Dewey and Randolph Bourne). In other words, Huntington is criticized for portraying elite globalism as a new "crisis," when in fact it has long roots. This echoes common scholarly critiques of *Who Are We?*: that Huntington's analysis relies on an outdated idea of an Anglo-Protestant "default" America from which elites supposedly deviated. Critics argue that most American intellectuals stopped championing WASP civic nationalism long ago, so Huntington's depiction of a rift rings false to historical consciousness.

Some liberal academics also challenge Huntington's framing of nationalism vs. cosmopolitanism as a binary. They argue that concerns about globalization's social effects can be legitimate without implying bigotry, and that elites can value both national identity and international cooperation. Huntington's image of elites as monolithically indifferent has been disputed by social scientists who find more nuance – e.g. some elites support national culture while also engaging internationally. However, defenders of Huntington note that polls do show systematic differences: as he mentions, surveys have found that the public tends to favor economic protectionism and government aid with colleagues, whereas elites favor open markets and aid abroad. In a complementary vein, Samuel Gregg (in *Law & Liberty*) praises Huntington's insight, noting that the essay *"claimed that the split ran right through the heart of the American polity"*, coining "Davos Man" for the transnational intellectual and financial elite. Gregg concludes that Huntington's prescience lies in highlighting an *intra-American* identity conflict that goes beyond his famous "Clash of Civilizations" thesis.

Implications for Contemporary Society

Huntington wrote "Dead Souls" just before the populist wave of the mid-2010s, but its portrait of an alienated public resonates with later events. The narrative of an out-of-touch "globalist" elite versus a "real" America became common on both left and right. Politicians like Donald Trump explicitly used this divide (invoking the Davos Man trope in speeches) to galvanize supporters. The underlying idea – that policies by cosmopolitan elites fueled resentment among ordinary citizens – is often cited in analyses of Brexit, the 2016 U.S. election and similar backlashes.

For example, a 2013 *Guardian* editorial invoking Huntington's "Davos man" warned that by pushing *"phoney, inequitable globalization,"* the elite were sowing the seeds of populist revolt. The editorial echoes Huntington's claim that pro-globalist policies sometimes clash with popular sentiment. Similarly, Huntington's assertion that *"the public is nationalist, elites transnationalist"* anticipated the rhetoric of later commentators who described a cultural schism (e.g. red-state vs. blue-state attitudes). Indeed, Huntington's frame suggests that debates over trade deals, immigration, environmental agreements and even pandemic measures often fall along this elite–public divide: where experts and business leaders see global solutions, much of the populace sees threats to jobs, sovereignty and national cohesion.

In academic discourse, "Dead Souls" contributed to the literature on the "transnational capitalist class" and nationalist backlash. It has been cited by scholars examining populism in the West as evidence that identity divides were growing before Trump. The essay's warning – that elites' "denationalization" might undermine liberal democracy – remains relevant as U.S. politics grapples with questions of identity and loyalty. Critically, the existence of a patriotic

majority (which Huntington observed had *"remained consistently patriotic"* even as the elite turned cosmopolitan) implies ongoing tension: policies favoring globalization or elite interests can provoke public pushback.

In sum, the legacy of "Dead Souls" lies in its argument that American nationalism and globalism now exist in tension within the country's leadership class, foreshadowing the polarized politics of the 21st century. Whether or not one accepts Huntington's full thesis, the essay sharpened debates about the role of elites in shaping (or neglecting) national identity. Its implications for today are evident whenever Americans question whether their leaders share their basic values – a theme that remains hotly contested in contemporary discourse.

Sources: Huntington, *Dead Souls: The Denationalization of the American Elite* (2004); Huntington, *Who Are We?*; James Pinkerton, review in *Los Angeles Times* (2004); Samuel Gregg, *Law & Liberty* (2021); Prospect Magazine review (2005); *Guardian* editorial (2013); and others as cited above. Each quotation and statistic is drawn from these works.

Noam Chomsky: Hegemony or Survival: America's Quest for Global Dominance

Introduction

Noam Chomsky's *Hegemony or Survival: America's Quest for Global Dominance* (2003) and *Who Rules the World?* (2016) are two seminal works examining United States foreign policy and global power structures. Separated by over a decade, these books collectively articulate Chomsky's sustained critique of U.S. hegemony, imperialism, and the complicity of political and media institutions. Both works are part of the American Empire Project series, aiming to critically analyze U.S. imperial power. In *Hegemony or Survival*, written in the post-9/11 and Iraq War era, Chomsky warns that America's pursuit of unchecked global dominance threatens human survival. Over a decade later, *Who Rules the World?* revisits similar themes in a changed geopolitical context – one of war on terror fatigue, rising new powers, and looming global crises like climate change. This report provides an in-depth analysis of each book's content, arguments, themes, sources, and style, as well as their historical context and reception. A comparative section then assesses the evolution of Chomsky's thought and rhetoric between 2003 and 2016.

Hegemony or Survival (2003) – Content and Structure

Cover of Hegemony or Survival (2003 edition). Hegemony or Survival: America's Quest for Global Dominance was first published in November 2003, amid the U.S. invasion of Iraq and the broader "War on Terror." The book spans historical cases from 1945 up to 2003, illustrating a continuous pattern in U.S. foreign policy. Chomsky organizes the work around the concept of an "Imperial Grand Strategy," tracing how U.S. leaders across both Republican and Democratic administrations have sought to maintain global supremacy. The structure interweaves historical narrative with contemporary analysis: early chapters review Cold War and post-Cold War interventions, while later chapters focus on the then-current Bush administration and the Iraq War as a culmination of America's quest for dominance. Throughout its 304 pages, *Hegemony or Survival* methodically documents U.S. support for authoritarian regimes, covert operations, and military interventions across Latin America, the Middle East, Africa, and Asia. The book is richly footnoted, reflecting Chomsky's engagement with declassified documents, news archives, and scholarly sources to support each historical example. Though dense with information, reviewers noted that it remains "highly readable," offering a cogent survey of U.S. actions during the Cold War and after.

Chomsky concludes the book by posing a stark choice implied by the title – the world can follow the trajectory of U.S. hegemony or pursue an alternative path toward global survival.

Central Arguments and Theses

The central thesis of *Hegemony or Survival* is that a small socio-economic elite in charge of U.S. policy has, since the end of World War II, pursued an imperial strategy to achieve global dominance at all costs. Chomsky argues that this elite "Imperial Grand Strategy" is bipartisan and deeply entrenched: U.S. foreign policy, under both Republicans and Democrats, consistently seeks to secure strategic resources and geopolitical power, with little regard for principles like democracy or human rights. This thesis is supported by myriad examples. Chomsky catalogs U.S. involvement in overthrowing democratic governments and backing dictatorships (Chile, Iran, Guatemala, etc.), support for regimes committing mass human rights abuses (from El Salvador and Indonesia to Israel and Turkey), and direct military interventions from Vietnam to Yugoslavia, Afghanistan, and Iraq. In case after case, he illustrates a pattern of rhetoric versus reality: American leaders proclaim ideals of freedom, security, and human rights even as they "repeatedly show a total disregard for democracy and human rights" in practice.

A key theme is the hypocrisy of U.S. policy and the double standards in international law. Chomsky highlights how Washington demands that other states adhere to norms (on non-proliferation, human rights, due process, etc.) while exempting itself and its allies. For example, he contrasts U.S. outrage at adversaries' misdeeds with silence or *"intentional ignorance"* toward similar or worse actions by U.S. allies. Such intentional ignorance, he argues, is cultivated by political and media elites to obfuscate the truth and maintain a benevolent image of U.S. intentions. This ties into another major theme: the role of media and propaganda. In *Hegemony or Survival*, Chomsky builds on his earlier *Manufacturing Consent* thesis, showing how mainstream discourse masks imperial policies. He often cites the *"words of the rulers themselves,"* revealing how officials couch brutal actions in noble language, thereby confusing the public and even themselves about the true nature of U.S. interventions. The bitter irony of phrases like "freedom" or "security" is exposed when placed in context of the deception, murder, genocide, [and] ecocide that Chomsky methodically recounts as consequences of American power.

Chomsky's overarching argument is not only that U.S. imperialism exists, but that it poses an existential threat. The book's title encapsulates this warning: unless unchecked, the relentless drive for hegemony could lead to the *survival* of humanity being put at risk. Chomsky emphasizes two looming dangers. First, the proliferation and potential use of weapons of mass destruction, especially nuclear weapons – a risk magnified by U.S. policies of preemptive war and military expansion. Second, although less explicit in this 2003 work, is the threat of environmental catastrophe (Chomsky notes U.S. unilateralism in dismantling environmental agreements, hinting that ecological survival is at stake as well). He repeatedly invokes the lesson of the Cuban Missile Crisis and other near-misses: U.S. aggression and global power games could trigger a nuclear conflict by design or miscalculation, imperiling civilization. Thus, *"hegemony or survival"* is framed as a literal choice for U.S. policymakers and world citizens.

Another notable theme is Chomsky's insistence on the continuity of U.S. policy across administrations. He refutes the idea that abuses are aberrations of particular presidents. Instead, he portrays Democrats and Republicans as *"two wings of a capitalist, imperialist*

party" that share fundamental goals. Liberal hawks and neoconservatives alike, in his view, operate within the same doctrinal framework of preserving U.S. primacy. For instance, he observes that the Bush administration's unilateralism after 9/11 (e.g. withdrawing from treaties, militarizing space, pursuing missile defense) was an extreme but logical extension of longstanding aims to prevent any challenge to U.S. power. Even when tactics differ, the *strategic logic* of dominance and resource control remains constant. By stressing this continuity, Chomsky links the post-9/11 "War on Terror" to earlier Cold War interventions, underscoring that the impetus for Iraq 2003 was rooted in an opportunistic drive for Middle East oil and U.S. military pre-eminence rather than solely a reaction to terrorism.

Yet, Chomsky does identify a potential counter-force to this imperial trajectory. In the book's concluding chapter, he introduces the concept of the "second superpower" – world public opinion. Noting the massive global protests against the Iraq invasion in early 2003, he argues that international popular movements and civil society activism could challenge U.S. imperial designs. This global public, if mobilized, might rein in Washington's "lunatic" strategic planners and demand a different course. *Hegemony or Survival* ends on a cautiously hopeful note, envisioning two opposed trajectories in history: one of hegemonic domination "threatening survival," and another where ordinary people believe *"another world is possible"* and organize transnationally to achieve it. In essence, the book not only diagnoses the problem of U.S. global dominance but also calls for democratic resistance as the cure.

Use of Sources and Rhetorical Strategies

Chomsky's argumentation in *Hegemony or Survival* is distinguished by its extensive documentation and pointed, critical tone. He uses a "solid underpinning of well documented facts" throughout the book. Virtually every claim is buttressed by references to declassified government records, official reports, mainstream news articles, or scholarship. Reviewers noted that Chomsky *"demonstrates how [U.S. leaders] consciously and deliberately carry out brutal atrocities" by quoting the planners' own words*. This technique – citing "the words of the rulers themselves" – is a hallmark of Chomsky's style, lending credibility to his charges of hypocrisy. For example, he might quote a U.S. policy document calling for "full spectrum dominance" or a Secretary of State justifying support for a repressive ally, and then juxtapose those words with the resulting humanitarian toll. This method lets facts (often drawn from U.S. government or media sources) speak for themselves, exposing contradictions between stated values and actual conduct.

Chomsky's rhetorical tone in this work is often described as analytical and understated, yet laced with irony. Peter Lackowski, reviewing the book, observes that "in cool, objective language Chomsky analyzes the extent to which the ruling elite engage in profoundly criminal behavior" – including *"deception, murder, genocide, [and] ecocide"*. Chomsky rarely indulges in emotional outbursts; instead, a dry sarcasm underpins his prose. He will meticulously recount an episode (say, the U.S. role in Central American death squads) and then sardonically note how officials proclaimed their devotion to democracy at the same time. This stark contrast generates a *"bitter irony"* that permeates the text. Piyush Mathur, in a positive Asia Times review, highlighted Chomsky's *"wry humor and sarcasm"* in *Hegemony or Survival*, noting that he *"successfully shows that the American emperor, while preaching modesty to the rest, himself struts about rather ostentatiously."* Such turns of phrase indicate Chomsky's adept use of satire and metaphor (here, likening the U.S. to an emperor with no clothes) to drive home his points.

Despite the often scathing content, Chomsky's approach is scholarly rather than polemical in the conventional sense. He lays out opposing viewpoints – typically the official justifications for policies – and then systematically dismantles them with evidence. One common strategy is comparative analysis across time and place. Chomsky will compare two analogous events to reveal a double standard. For instance, he asks why the U.S. was outraged by a Malaysian airliner being shot down over Ukraine in 2014, while it had itself shot down an Iranian civilian airliner in 1988 with no such outrage or accountability. By drawing these parallels, he challenges readers to apply universal moral criteria rather than nationalist bias. An Indian Express review notes that some critics contest these comparisons as inappropriate, yet acknowledges that *"such examples do bring out the imbalance in power"* and the "historical amnesia" that lets the U.S. public forget past crimes. Indeed, Chomsky explicitly frames his mission as combating *"historical amnesia,"* which he calls *"a dangerous phenomenon"* because it "undermines moral and intellectual integrity" and *"lays the groundwork for [future] crimes"*. By rigorously excavating suppressed histories, he aims to shake readers from complacency.

Chomsky's use of sources has not been without criticism. Some academics argued that his reliance on secondary sources like newspaper reports can be excessive. In one scholarly review, Eliza Mathews noted that Chomsky sometimes fails to verify secondary media accounts and even cites his *own* earlier works as references, instead of independent evidence. Samantha Power's review in *The New York Times* similarly complained that *Hegemony or Survival* overuses endnotes referencing Chomsky's prior publications. Chomsky's defenders might counter that because he has covered these issues for decades, it is efficient to refer back to his prior research – but to some, this practice gave an impression of insularity. Additionally, critics like Power and Carol Armbrust took issue with Chomsky's tone, describing it as "glib and caustic" or a "monumental turnoff" for readers not already sympathetic. They argued that his heavy sarcasm and unrelenting condemnations could alienate or overwhelm lay readers. Nonetheless, even Power conceded that reading the book was *"sobering and instructive,"* as it illustrates how many around the world view the U.S., and it highlights *"structural defects"* in U.S. foreign policy that Americans ought to confront. In summary, Chomsky's rhetorical strategy in *Hegemony or Survival* marries exhaustive factual evidence with a sharply critical narrative voice. He anticipates dissent by grounding claims in mainstream sources, yet he unapologetically advances a morally charged critique, using logic and fact to underpin what is ultimately a radical indictment of U.S. behavior.

Reflection of Chomsky's Broader Philosophy

As a political thinker, Noam Chomsky is known for his *anti-imperialist, libertarian socialist* perspective, and *Hegemony or Survival* is a clear embodiment of that philosophy. Since his early critiques of the Vietnam War in the 1960s, Chomsky has consistently challenged the legitimacy of U.S. power and called on intellectuals to speak truth about their governments' crimes. This book's core arguments align with those longstanding views. Central to Chomsky's political philosophy is the idea that concentrated power – whether in the state or corporate sphere – is inherently suspect and tends toward corruption and violence. In *Hegemony or Survival*, the concentrated power of the U.S. superstate (and its allied elites) is the target of analysis. Chomsky approaches the United States not as a unique force for good, but as an empire akin to past empires, driven by self-interest. This reflects his anarchist skepticism of state authority and his belief that states often serve the narrow interests of economic elites ("masters of mankind," in Adam Smith's words) at the expense of the general population.

The book also underscores Chomsky's view of bipartisan continuity in policy, a hallmark of his critique. He portrays Democrats and Republicans as fundamentally aligned on imperial goals, differing mostly in rhetoric. This stance – that U.S. politics has a very narrow spectrum on foreign policy – ties to Chomsky's broader criticism of the U.S. political system as one of *"manufactured consent,"* where democracy is often more form than substance. Indeed, one observer noted that *"Chomsky's theory portrays America's foreign policy as being consistent across partisan lines,"* such that the two parties appear *"more as two wings of a capitalist, imperialist party"* rather than genuine alternatives. This is fully in line with Chomsky's libertarian socialist outlook, which distrusts top-down party politics and emphasizes underlying class interests and power structures over electoral theater.

Chomsky's emphasis on the peril of nuclear war and militarism in *Hegemony or Survival* also reflects his humanist and scientifically informed worldview. Trained as a linguist but deeply engaged with issues of war and peace, Chomsky often invokes the survival of humanity as the ultimate ethical yardstick (a concern prominent in the anti-nuclear movements of the 1980s that influenced him). His alarm at the recklessness of U.S. war planners – willing to risk global annihilation for dominance – resonates with his broader moral philosophy: that no political goal can justify endangering organized human life. This universalist, species-level concern is part of Chomsky's Enlightenment-influenced ethics, which prioritize *human* survival and freedom over any single nation's supremacy.

Furthermore, the book's conclusion pointing to grassroots global activism as a "second superpower" epitomizes Chomsky's faith in popular movements from below as the key to positive change. As an anarcho-syndicalist, he has long advocated that ordinary people, through solidarity and organization, must check and replace elite power structures. In calling world public opinion into action, *Hegemony or Survival* echoes themes from Chomsky's other political writings (for example, his support for the World Social Forum's motto "Another world is possible" is explicitly mentioned). It shows how this work is not just analysis but also an appeal in line with Chomsky's activist orientation – encouraging citizens to challenge empire and build a more just international order. In sum, *Hegemony or Survival* can be seen as a culmination of Chomsky's decades-long critique of U.S. global dominance: it synthesizes his analyses of propaganda, imperialism, and elite hypocrisy into a single narrative, all undergirded by his libertarian socialist, anti-war principles. The book's fierce critique of American power, coupled with a call for public resistance, encapsulates Chomsky's broader political message.

Historical and Geopolitical Context of Publication

The timing and context of *Hegemony or Survival* are crucial to understanding its urgency. The book was written in the aftermath of the September 11, 2001 attacks, during the early years of the "War on Terror." In 2002–2003, the Bush administration articulated a new grand strategy that Chomsky explicitly critiques – the Bush Doctrine of preventive war and unchallenged military primacy. The U.S. had withdrawn from international treaties (like the ABM anti-ballistic missile treaty), refused to join others (such as the Kyoto Protocol on climate), and was publicly considering space militarization and torture, all in the name of combating terrorism. Meanwhile, it was building a case (often through dubious intelligence) for invading Iraq, a war launched in March 2003 against significant global opposition. This was the immediate backdrop for *Hegemony or Survival*. Chomsky references the Iraq invasion as a paradigmatic example of U.S. imperial aggression and unilateralism – a war undertaken "unilaterally" (outside of UN approval) to solidify U.S. dominance in the Middle East and

control its oil resources. The book's release in November 2003 meant it spoke to an ongoing war and a roiling international debate about American empire.

Chomsky also situates the book in the broader post-Cold War context. With the Soviet Union gone, the U.S. in the 1990s stood as the sole superpower, and many in Washington aimed to keep it that way indefinitely. He cites internal U.S. planning documents and think-tank reports (for example, the 1992 draft Defense Policy Guidance, or later the neo-conservative *Project for a New American Century*) that explicitly called for preventing the rise of any peer competitor. This *"Imperial Grand Strategy"* to maintain unipolar hegemony provides the framework for the book. The geopolitical unipolarity of the 1990s–early 2000s thus forms a key context: American elites saw a historic opportunity to expand U.S. dominance globally, from the expansion of NATO in Eastern Europe to military footholds in the oil-rich Persian Gulf and Central Asia. Chomsky's work is, in part, a response to this triumphalist moment in U.S. foreign policy, warning that the pursuit of "full spectrum dominance" is both morally bankrupt and catastrophically dangerous.

Internationally, *Hegemony or Survival* was published at a time of widespread anti-American sentiment due to the Iraq War. Massive protests and dissent (including from some allied governments like France and Germany) marked a break in the post-9/11 sympathy the U.S. had briefly enjoyed. Chomsky taps into this global skepticism of U.S. motives, echoing concerns from the Global South and peace movements that the "war on terror" was a pretext for old-fashioned imperialism. The book also emerged when alternative global forums (like the World Social Forum) were gaining traction, expressing visions opposed to neoliberal U.S.-led globalization. Chomsky's mention of the World Social Forum's slogan and his framing of *global public opinion as a superpower* show how he drew hope from these internationalist currents. Thus, *Hegemony or Survival* can be seen as both a critique grounded in the crises of the early 2000s and a contribution to the intellectual arsenal of the worldwide peace and justice movement of that era.

Critical Reception and Impact

Upon release, *Hegemony or Survival* elicited a mixed and often polarized response from scholars and journalists. In the United States, mainstream press reviews were mixed. Some reviewers praised Chomsky's extensive research and unflinching analysis, while others accused him of bias or oversimplification. For instance, *Publishers Weekly* lauded the book as "cogent and provocative," calling it a significant addition to debates on U.S. foreign policy. On the other hand, Samantha Power's high-profile review in *The New York Times* (2004) delivered a sharply negative critique. Power characterized the book as a *"raging and often meandering assault"* on U.S. policy, suggesting that Chomsky's worldview allows *no* credit to the United States and sees it as *"the prime oppressor [that] can do no right."* She faulted him for overlooking the crimes of U.S. adversaries and for dismissing the possibility that American interventions might ever have good intentions. While acknowledging kernels of truth in Chomsky's points, she found his tone "glib and caustic" and the prose dense – implying the book would mainly preach to the already converted.

Academic assessments echoed some of these criticisms. As noted, Eliza Mathews in the *Journal of Australian Studies* found Chomsky's research uneven – strong in compiling media reports but weak in original verification, and she took issue with him citing his prior works. She also remarked that despite being aimed at a broad audience, the text was not *"light reading"* and that Chomsky's *"sarcastic tone"* could be off-putting. Such critiques reflect a

common refrain: that Chomsky's uncompromising style limits his appeal beyond leftist circles.

In the UK, reception was largely negative in the mainstream press. The *Observer* (London) ran two pieces: one by journalist Nick Cohen, who derided Chomsky as a *"master of looking-glass politics"* and accused him of reflexive *anti-Americanism* that, in Cohen's view, led Chomsky to downplay the crimes of figures like Saddam Hussein. Cohen's review was more an attack on Chomsky and his audience than a substantive engagement with the book's content – he complained of *"convoluted prose"* and an argument *"filled with non sequiturs,"* dismissing *Hegemony or Survival* as incoherent and venomous. Another *Observer* reviewer, Oliver Robinson, called the study *"unequivocally incensed, if meandering,"* likewise implying that Chomsky's outrage came at the expense of clarity. These British reviews aligned with a segment of opinion that sees Chomsky not as a serious analyst but as a polemicist blinded by his ideology.

Despite detractors, the book also had its champions. Notably, voices outside the U.S.-UK nexus responded more favorably. An Asia Times review by Piyush Mathur praised *Hegemony or Survival*, arguing that Chomsky, as a U.S. citizen willing to criticize his own government, exemplified a viewpoint beyond narrow nationalism. Mathur commended Chomsky's courage and global perspective, noting that the author *"shows a way beyond parochialism"* by judging U.S. actions with the same moral standards applied to any country. He pointed out the *"wry humor"* and the effective exposure of U.S. double standards, countering the notion that Chomsky is all anger and no wit. Mathur even rebutted the likes of Power and Cohen directly: he observed that Power unfairly framed the book as solely a critique of Bush (whereas it actually covers much earlier history), and that Cohen scarcely engaged the book at all, instead launching a *"venomous… diatribe against the Left."*. This highlights how Chomsky's work often becomes a proxy battleground for larger political disagreements. Supporters see him as bravely *"speaking truth to power,"* while opponents accuse him of anti-Western bias or conspiratorial thinking (Armbrust, for example, dismissed some of Chomsky's arguments as "conspiracy theories" and hyperbole).

One of the most significant boosts to *Hegemony or Survival*'s visibility came from outside the usual intellectual circles: Venezuelan President Hugo Chávez's public endorsement at the United Nations. In September 2006, Chávez gave a fiery speech at the UN General Assembly in which he held up a Spanish edition of *Hegemony or Survival*, calling it an *"excellent book to help us understand what is happening in the world"*. He urged everyone, especially Americans, to read it, famously quipping (with reference to President Bush, whom he had called "the devil") that *"the first people who should read this book are our brothers and sisters in the United States, because their threat is right in their own house."* This dramatic endorsement instantly catapulted Chomsky's book into the headlines. Within days, sales of *Hegemony or Survival* skyrocketed – its Amazon.com ranking hit #1 for paperbacks, and major bookstore chains reported it among their top sellers. The book had been out for three years by then, but Chávez's spotlight introduced it to countless new readers worldwide. Chomsky expressed pleasant surprise at this turn of events, noting he would be "happy to meet" Chávez (a meeting that indeed occurred in 2009). The Chávez incident underscored the global resonance of Chomsky's critique: a head of state from the Global South used Chomsky's analysis as ammunition in an ideological struggle against U.S. dominance, and many in the UN audience reacted appreciatively.

American establishment reaction to the Chávez-fueled Chomsky boom was telling. Harvard law professor Alan Dershowitz, a well-known critic of Chomsky, sneered that most people buying the book *"would not read it,"* claiming *"I don't know anybody who's ever read a Chomsky book"* and joking that Chomsky's works are *"page stoppers… usually at about page 16."* Such dismissals did little to dampen public interest – if anything, they reinforced Chomsky's outsider image speaking uncomfortable truths. Over time, *Hegemony or Survival* has come to be regarded as a key text of early 21st-century dissidence. As one cover blurb (from Arundhati Roy) put it, *"If you have to pick just one book on the American empire, pick this one… Hegemony or Survival is necessary reading."* In academic circles, while Chomsky's work is often not part of orthodox curricula, it is frequently cited in discussions of U.S. empire and has influenced fields like critical international relations. Historian William Blum and others writing critical histories of U.S. foreign policy operate in a trail that Chomsky helped blaze. In short, the critical reception of *Hegemony or Survival* mirrored the very divide it illuminates: the Anglophone establishment reacted defensively or with scorn, yet globally and among left-leaning audiences, the book struck a chord and solidified Chomsky's stature as, in the words of *The New York Times Book Review*, *"perhaps the most widely read American voice on foreign policy on the planet."*

Chomsky: Who Rules the World? (2016)

„Who Rules the World?" is a later-career work in which Noam Chomsky surveys global politics of the early 21st century and revisits the question of power dynamics first raised in *Hegemony or Survival*. Unlike the earlier book's single narrative, *Who Rules the World?* is structured as a collection of interrelated essays or chapters – many of which were originally written for magazines and updated for the book. It spans 320 pages (in hardcover) and covers a broad array of topics connected by the theme of U.S. power and its challengers. The content ranges from historical analysis (e.g. reflections on the Cuban Missile Crisis of 1962) to contemporary issues like the rise of China, ongoing conflicts in the Middle East, U.S. relations with Latin America, and the state of American domestic politics. Chomsky's scope is truly global: within the book, he discusses wars and interventions (Afghanistan, Iraq, Libya, Syria), the Israel-Palestine conflict, terrorism and 9/11, nuclear weapons, global trade agreements, and more. The through-line is an examination of how power is exercised in the world, and by whom.

One distinctive chapter, highlighted by reviewers, involves Chomsky performing an exegesis of a single day's issue of *The New York Times*. In this chapter, he parses the newspaper to demonstrate how the "paper of record" implicitly answers the question "who rules the world" through what it emphasizes or omits. Chomsky treats the *NY Times* as a "house organ" of the powerful, reflecting elite conventional wisdom. By critically reading its reports on trade agreements, war, and diplomacy, he reveals the assumptions of U.S. and Western dominance that underlie mainstream narratives. This methodology not only provides insight into media influence (echoing his earlier media critiques) but also serves as a microcosm of his approach in the book: to decode the ideology of the rulers by examining their own institutions and discourse.

The structure of *Who Rules the World?* is less linear than *Hegemony or Survival*, but Chomsky does organize the essays to build cumulative arguments. The book is roughly divided into thematic clusters. Early chapters explore the concept of "who rules" by questioning the standard focus on nation-states alone – Chomsky reminds us that within states, *"internal concentrations of power"* (corporations, financial institutions, lobbies) heavily influence policy. He invokes Adam Smith's notion of the *"masters of mankind"* (the merchants and manufacturers in Smith's time, or multinational conglomerates and financial elites today) as key rulers in the current world order. Subsequent sections examine geopolitical flashpoints and trends: for example, the "Western power under pressure" section (as excerpted in *The Guardian*) discusses how U.S. dominance was being challenged in three critical regions – Eastern Europe (by Russia), East Asia (by China), and the Middle East. Chomsky reviews events like Russia's interventions in Ukraine and Syria and China's assertions in the South China Sea, analyzing them as reactions to longstanding U.S. encroachment (NATO expansion, the U.S. treating the Pacific as an "American lake," etc.). By doing so, he situates current conflicts in a narrative of waning unipolarity, where the U.S.'s *"tight grip on international power"* is no longer absolute.

Other chapters address the Middle East in detail, including the legacy of U.S. wars (Chomsky draws a line from the U.S. invasion of Iraq to the emergence of ISIS, describing in a few pages how U.S. actions "destroying" Afghanistan, Iraq, and Libya helped spawn new terror threats). He also covers the Israel-Palestine issue, criticizing U.S. underwriting of Israeli policies, and he delves into U.S.-Iran relations, including the nuclear deal and decades of covert and overt conflict. Interwoven is discussion of international law – for example, Chomsky frequently returns to the *Magna Carta* and the post-World War II order, arguing that the U.S. routinely violates the very order it helped create (such as the UN Charter's prohibitions on use of force).

Domestically, *Who Rules the World?* connects foreign policy with internal politics more explicitly than *Hegemony or Survival* did. One recurring theme is the erosion of democracy in the U.S. and Europe in service of elite interests. Chomsky cites studies – like the analysis of the U.S. 2014 elections by political scientists Thomas Ferguson and others – showing record low voter participation and the public's sense that "a few big interests control policy". He argues that U.S. elites have become "insulated from any democratic constraints," as the general population is diverted by consumerism or scapegoating of vulnerable groups. He explicitly states that *"securing state power from the domestic population and securing concentrated private power are the driving forces in policy formation"*. This thesis – that oligarchy at home and imperialism abroad are two sides of the same coin – is a key structural insight of the book. Chomsky draws connections between, for example, the U.S. government's militaristic behavior overseas and its surveillance, propaganda, and political repression domestically. The implication is that rule of the world by the few necessitates keeping the many (including a democracy's own citizens) under control. Thus, *Who Rules the World?* broadens the scope of inquiry to include class and power dynamics within major states, not just relations between states.

In terms of style, each chapter in *Who Rules the World?* is relatively self-contained (reflecting their origin as independent essays), yet there are strong thematic threads that tie them together. The writing is accessible and concise by Chomsky's standards; reviewers noted that his analyses here are "concise" vignettes, often briefer on each issue than typical academic treatments. The trade-off is breadth over depth: Chomsky opts to cover *many* issues in outline rather than exhaustively analyzing a single event or region. As an American Studies reviewer

put it, *Who Rules the World?* is an *"overview – from a radical perspective – of a range of different foreign policy issues"*, and its value depends on the reader's need for big-picture understanding versus fine-grained detail.

The title question – "Who rules the world?" – is ultimately answered in the book not by naming a single entity, but by sketching a complex hierarchy. Chomsky makes it clear that while the United States remains the preeminent state in military and economic reach, power is exercised through a network of state and corporate institutions. The U.S. together with its close allies (the G7 nations) and the global corporations/financial institutions centered in those countries collectively form an elite that "rules the world" in their interests. However, he also emphasizes that this domination is being contested and is fraught with contradictions – hence the world is not unipolar in a simple sense. The book's structure allows Chomsky to examine these nuances: for example, one chapter might highlight U.S. domination (e.g. the unparalleled reach of the U.S. military and the dollar-based financial system), while another underscores U.S. limits and declines (e.g. failures in Middle East wars, or other powers' growing influence). In the end, *Who Rules the World?* serves as both a synthesis of Chomsky's critiques over the years and an updated commentary on the state of global power circa mid-2010s.

Central Arguments and Key Themes

While *Who Rules the World?* traverses numerous topics, its central arguments reinforce and extend Chomsky's long-held theses about power, with some new emphasis befitting the 2016 context. At the heart of the book is Chomsky's contention that the global order is shaped less by the ideals of democracy and justice, and more by the pursuit of wealth and dominance by powerful states and corporations. In direct answer to the title question, Chomsky argues that *nominally* sovereign states (especially the U.S.) are the main actors, but *in reality*, the decision-making is heavily driven by what Adam Smith called the *"vile maxim"* of the *"masters of mankind"*: *"All for ourselves and nothing for other people."* In modern terms, this translates to multinational corporations, financial institutions, and wealthy elites largely "ruling" by influencing or controlling state policy. This is a key theme: the fusion of state and corporate power. The United States is at the center of Chomsky's analysis not just because of its unparalleled military might, but because it is the home of many of these corporations and because U.S. policy actively furthers their global interests (for instance, through so-called "free trade" agreements that strengthen investor rights).

Chomsky provocatively challenges the common justification for U.S. foreign policy – namely, national security. He argues that if protecting citizens were truly the primary motive, U.S. actions would not be so counterproductive from a security standpoint. For example, he points out that the "global war on terror" has in fact led to *more* terrorist attacks, not fewer, with both the West and the Middle East seeing increased terrorism after 2001. This stark outcome belies the claim that U.S. interventions (Afghanistan, Iraq, drone wars, etc.) were primarily to keep Americans safe. Instead, Chomsky argues, these wars and policies make sense only when viewed through the lens of maintaining control and geopolitical influence, rather than reducing threats. This leads to one of the book's central distinctions: "security" vs. "control." Chomsky asserts that the U.S. often acts not to enhance genuine security (which might involve diplomacy, addressing root causes of conflict, etc.), but to ensure *control* over regions and outcomes, even at the expense of making the world less safe. The invasions of Iraq and interventions in Latin America (e.g. supporting contra rebels in Nicaragua or coups in Chile) were about shaping other countries' trajectories to align with U.S. strategic and

economic interests – "maintaining or expanding the United States' (and the corporate sector's) interests," as Chomsky writes. National security was the public pretext; dominance was the real aim. This argument directly extends the "Imperial Grand Strategy" thesis from *Hegemony or Survival*, updating it with post-9/11 examples and data. Chomsky even notes that if the U.S. truly wanted to eradicate terrorism, there were far more effective and rational ways than the chosen military-heavy approach – implying that terrorism served as a convenient justification for long-standing imperial agendas.

Another major theme is the erosion of democracy and civil rights in the ruling states themselves as part of sustaining global dominance. Chomsky delves into how U.S. policy elites often show "contempt for democracy" both abroad and at home. In Europe, he cites the EU's handling of the Greek financial crisis – overriding Greek popular will in favor of the "troika" of IMF/EU bankers – as evidence that financial powers trump democratic choice. In the U.S., he highlights the mass surveillance programs revealed in the 2010s and the increasing disillusionment of American voters who feel their system does not represent them. Chomsky suggests a direct connection: an imperial power must often restrict true democracy at home to freely pursue its exploits abroad. This is encapsulated in his argument that *"maintaining state and corporate control abroad entails restricting democracy at home"*. He gives examples of how public opinion is frequently at odds with elite policy – for instance, public opposition to trade deals like the Trans-Pacific Partnership, or to endless wars – and yet policy proceeds in the elite interest regardless. This mirrors the propaganda model's idea that consent is managed when possible, and ignored or repressed when necessary.

Chomsky also returns to the theme of international law and moral double standards. In *Who Rules the World?*, he emphasizes that the U.S. and other great powers tend to exempt themselves from the very framework of law they insist others follow. He discusses, for example, how U.S. leaders reject the jurisdiction of international courts or dismiss UN directives, all while invoking international norms when criticizing enemies. The title itself, posed as a question, hints that *power*, not law or justice, rules. Chomsky illustrates this by recounting historical incidents: from the U.S. mining Nicaragua's harbors in the 1980s (and ignoring the International Court of Justice's condemnation) to the invasion of Iraq without UN authorization – these show a pattern where might makes right. A key insight he offers is that the *realm of acceptable discourse* in the U.S. often omits these facts; thus, the American public, by and large, is not encouraged to ask "Who gives the U.S. the right to rule the world?" That question is precisely what Chomsky wants the reader to confront.

Chomsky identifies principal threats to humanity's future that the current world rulers (primarily the U.S. elite) are exacerbating or failing to address. Two stand out in the book: nuclear war and climate change. He argues these are the gravest dangers of our time, yet they are subordinated to short-term power interests. Chomsky details ongoing developments in these areas: the erosion of arms control treaties, NATO's escalation against nuclear-armed Russia, and U.S. plans for trillion-dollar nuclear arsenal modernization – all of which, he implies, increase the risk of a civilization-ending conflict. Concurrently, he points to the scientific findings on climate change and notes the *"ominous"* pace of environmental destruction (such as rapidly rising temperatures and Arctic ice melt). The ruling establishments, in Chomsky's portrayal, either ignore the climate crisis or make only superficial gestures, because tackling it seriously would challenge the profits of fossil fuel companies and the paradigm of endless growth that benefits elites. The theme that emerges is one of irresponsibility of the rulers: those who hold the most power are *"ignoring the powerless"* and even the survival needs of the planet in pursuit of their own wealth and

dominance. This frames a moral indictment: the current power structure is not merely unjust, but potentially self-destructive for our species.

In addition to diagnosing problems, *Who Rules the World?* carries forward Chomsky's theme of *resistance and hope*, albeit in a tempered way. He again notes the importance of popular movements – from anti-war protests to movements like Occupy Wall Street – as sources of change. By 2016, Chomsky observes promising awakenings (for example, the spread of demands for *"independence, self-respect, and personal dignity"* among populations worldwide). He mentions how Latin American countries had in the 2000s begun to assert more autonomy (the "pink tide"), how grassroots protests were challenging neoliberal policies, etc. However, he also expresses a certain pessimism or realism: while he *"continues to hope"* that such popular demands will surge *"when awakened by circumstances and militant activism,"* he cautions that he is not holding his breath for quick miracles. The fight against entrenched power is long and arduous. This nuanced stance shows an evolution from the more hopeful tone at the end of *Hegemony or Survival* – in 2016, Chomsky still places his faith in people's movements, but with an added recognition of the resilience of the status quo.

To summarize the key themes: *Who Rules the World?* argues that the U.S. and allied elite (both state officials and corporate interests) dominate global affairs with a self-serving agenda, under the pretext of security or humanitarianism. This dominance is increasingly contested by other states (China, Russia) and is maintained only by disregarding democratic principles and international norms. The world's true "rulers" are those who control the most powerful states and economies – and they are running the world into peril by perpetuating conflict, inequality, and environmental destruction. Yet, the possibility of a different world remains, hinging on whether the general public, the "second superpower," can rein in the masters of mankind. These arguments firmly align with Chomsky's critique of U.S. global dominance, updated to address 21st-century developments.

Chomsky's Use of Sources and Rhetorical Strategies

In *Who Rules the World?*, Chomsky employs a similar evidence-based, analytical approach as in his earlier works, though the presentation is somewhat more *fragmented (in essay form)* and conversational. Each essay/chapter comes with its own set of citations, drawing from a wide array of sources: government documents, international reports, academic studies, news articles, and Chomsky's own previous writings. Reviewers have noted that Chomsky's analyses are "meticulously documented" – a description that certainly holds true in this book, where nearly every factual assertion is traceable to a credible source. One might encounter, for example, references to World Bank data on global poverty in one chapter, and a quote from a Pentagon strategic document in another. This breadth of reference underscores Chomsky's role as a synthesizer of information: he digests the work of scholars, journalists, and historians, then reframes it through his critical perspective.

However, as Kirkus Reviews observed, by this stage in his career "hardly a chapter passes without him citing a previous work of his own." Chomsky does frequently refer back to points he made in earlier books or articles (for instance, mentioning *Hegemony or Survival* or *Manufacturing Consent* where relevant). This habit can be a double-edged sword. On one hand, it provides continuity and shows how current issues tie into longstanding patterns he has documented (e.g. citing his 1980s writings on Central America to contextualize modern U.S. policy). On the other hand, it prompted some critics to argue Chomsky is repeating himself. The Indian Express review explicitly pointed out *Who Rules the World?* has "occasional

repetition across chapters," given the overlapping content of some essays and the recycling of earlier arguments. This is likely inherent to a compilation of previously published pieces – some redundancy is almost inevitable. For new readers, this repetition might not be noticeable, but for those familiar with Chomsky's oeuvre, there's a sense of retracing familiar ground. Chomsky seems aware of his audience's mix: the book can serve as an introduction for younger readers (the Indian Express called it a good intro for a generation raised on tweets, because Chomsky "draws on history" deeply to expose hidden truths), while also consolidating arguments for longtime followers.

Rhetorically, *Who Rules the World?* maintains Chomsky's trademark clear, logical prose laced with dry wit and moral indignation. The tone is generally measured and professorial – at age 87 in 2016, Chomsky writes with the calm authority of "the dean of left-wing American public intellectuals," as Kirkus dubbed him. He often builds his case by first presenting the mainstream view and then deconstructing it. For instance, he will begin an essay by acknowledging how international affairs are normally discussed (states as primary actors, etc.), and then pivot: *"That is not wrong. But we would do well to keep in mind…"* and introduce the neglected dimension (internal power concentrations, the perspective of the oppressed, etc.). This Socratic method invites readers to question assumptions.

Chomsky's famed *"relentless logic"* is on display, as he systematically follows cause and effect in foreign policy. A vivid example of his comparative method in this book is the juxtaposition of the MH17 shootdown vs. Iran Air 655 shootdown incident we noted earlier: placing these side by side, he leads the reader to an unstated question – why do Western moral outrage and memory selectively apply? The implied answer: because the powerful set the narrative and their crimes are quickly absolved or forgotten. It's a rhetorical strategy that uses *asking* and *revealing* rather than overtly preaching. The *New York Review of Books* described *Who Rules the World?* as *"a polemic designed to awaken Americans from complacency… a plea to end American hypocrisy"*. Indeed, throughout the book Chomsky uses examples to jolt readers into recognizing contradictions. He might mention, for shock value, that the U.S. voting turnout in 2014 was the lowest since the 19th century and then correlate that with record spending by corporations on elections, letting the reader draw conclusions about oligarchy. Or he highlights that President Obama, while eloquently talking of peace, authorized a trillion-dollar nuclear weapons modernization – an uncomfortable fact that challenges Obama's liberal image.

Chomsky also continues to use sarcasm and pointed language, though often in an understated way. When discussing elite justifications, he sometimes employs a subtly mocking tone by quoting phrases like "national security" or "humanitarian intervention" in contexts where they ring hollow. Another rhetorical tool is citing voices of establishment insiders who inadvertently reveal the truth. For example, in *Who Rules the World?*, Chomsky frequently quotes U.S. strategists or economists candidly admitting imperial motives or disdain for democracy. By doing so, he uses the words of the powerful against them (much as he did in *Hegemony or Survival*). This lends an air of compelling irony to his prose – the rulers, in effect, testify to their own rule.

An interesting aspect of *Who Rules the World?* is the way Chomsky brings in historical and philosophical references to deepen the critique. He invokes the Magna Carta and its companion Charter of the Forest, noting how their principles (due process, common stewardship of resources) have been eroded by state-capitalist power – a historical touchstone that elevates the discussion beyond current events. He also references intellectuals like Pankaj

Mishra and others to bolster points on domestic repression linking to imperial mindset. These references show Chomsky engaging with other critical thinkers and situating his arguments in a wider analytical tradition.

One might say Chomsky's rhetorical strategy in this book is dual-layered: on one level, provide a factual overview of "the central conflicts and dangers of our time" (as the publisher's blurb says) – essentially a primer on U.S.-centric world affairs – and on another level, infuse it with a counter-hegemonic interpretation that challenges readers to see through propaganda. The concise, vignette-style chapters help in making complex issues digestible, though some critics felt they lacked depth or fresh insight. For example, a review on U.S. Studies Online noted that while Chomsky articulates the security-vs-control distinction "more explicitly than most," this will *"come as little surprise to readers familiar with the radical critique of US foreign policy."* In other words, knowledgeable readers might find the book reiterating known critiques rather than breaking new ground. However, for many readers (students, general public), Chomsky's collation of material provides a powerful overarching narrative that is rarely heard in mainstream venues.

In summary, *Who Rules the World?* employs Chomsky's established arsenal of rhetoric: extensive evidence, analogy and comparison, quotes from the powerful, and a mix of analytical detachment with moral urgency. The essays are written in a clear, direct style, often with a didactic tone suitable for educating a broad audience about the realities behind news headlines. There is also an element of reflective tone here – Chomsky at times writes almost historically, looking back at the early 21st century from a historian's vantage, which gives the prose a measured quality. Yet, when he arrives at normative points, the prose quickens with appeal: for instance, admonishing that *"we [Americans] should scrutinize critically how the US government actually exercises its power, instead of assuming American benevolence"*. That kind of line (from an NYRB summary of his message) encapsulates Chomsky's aim: to get readers, through carefully laid-out argument, to question ingrained beliefs and to *think critically* about who really rules and in whose interests.

Reflection of Chomsky's Broader Political Philosophy

Who Rules the World? is very much a continuation of Chomsky's lifelong political philosophy, reflecting his core concerns around imperialism, class power, and the role of intellectuals, while also integrating the contemporary developments that had occurred since his earlier works. By 2016, Chomsky's fundamental worldview – anti-imperialist, anti-capitalist, and deeply skeptical of state power – remained consistent, and this book can be seen as a reaffirmation of those principles in a new context.

Firstly, the book underscores Chomsky's enduring analysis of the United States as an imperial hegemon whose actions must be understood in terms of power and profit, not proclaimed ideals. This aligns perfectly with his critiques dating back to *American Power and the New Mandarins* (1969) and *Deterring Democracy* (1991). The difference in *Who Rules the World?* is that Chomsky now writes in an era where U.S. supremacy, while still huge, is perceived to be facing relative decline. Yet Chomsky's framework easily adapts: he acknowledges new centers of power (China, etc.) but still sees the world system as dominated by the U.S.-led capitalist consortium. This reflects his view that while the *names and faces* of great powers may change over time, the *logic of domination* persists, rooted in state and corporate elites' interests. It's a very classical Chomskyan (and indeed anarchist/socialist) perspective –

focusing on the structural level of how power operates, rather than treating global events as simply outcomes of individual leaders or nations behaving in isolation.

The book also reflects Chomsky's long-held emphasis on intellectual responsibility. Chomsky, as a leading public intellectual himself, has often argued that those with knowledge and privilege have a duty to challenge lies and speak on behalf of the voiceless. In *Who Rules the World?*, his examination of media (like the *NY Times* chapter) and frequent citations of official narratives appear aimed at educating readers to *"discern what [leaders] are leaving out"*. This didactic element – training the reader in critical reading and skepticism – is very much part of Chomsky's broader project to empower the public against propaganda. The book implicitly teaches, by example, how to analyze world news through a moral lens and with historical memory intact. This ties to Chomsky's belief that ordinary citizens, if informed and critical, can resist the manufactured consent that keeps them passive.

Moreover, Chomsky's commitment to internationalism and human solidarity is evident. Throughout *Who Rules the World?*, he lifts up perspectives of those who are usually marginalized in high-level "who rules" discussions – for instance, the victims of U.S. drone strikes, or the impoverished populations in countries subjected to IMF austerity. This aligns with his ethical stance of viewing all humans as fundamentally equal in rights. Chomsky's critiques are driven by outrage at suffering and injustice, regardless of the victims' nationality, which is an outlook stemming from his libertarian socialist moral foundations (emphasizing human dignity, anti-authoritarianism, and empathy across borders). When he describes how "the powerful can do as they please" while the public is diverted, it echoes a constant in his writing: giving voice to those powerless in the face of empire and capital, and urging accountability for those in power.

One evolution that *Who Rules the World?* demonstrates in Chomsky's thought is an even more explicit linking of domestic and foreign issues under the rubric of control. Chomsky always acknowledged the connection (e.g. how war-making can erode liberties at home), but by 2016, after events like the Snowden revelations and the Occupy movement, he places greater emphasis on oligarchy and inequality within the U.S. as part of the imperial picture. His citing of Princeton's study on how U.S. public policy barely reflects the majority's preferences is an example. This dovetails with his broader philosophy that opposes all forms of concentrated power – not just U.S. domination of other countries, but also elite domination of domestic society. Chomsky's increasing focus on climate change likewise shows his integration of ecological concerns into his political critique, consistent with an anti-capitalist view that sees unrestrained capitalism as incompatible with environmental sustainability. In his 2013 book *Nuclear War and Environmental Catastrophe* (co-written with Laray Polk), and carrying into *Who Rules the World?*, Chomsky frames ecological crisis as part of the destructive trajectory of the current world order. This reflects the extension of his humanitarian philosophy to the planet's welfare – a recognition that "survival" (the same word in that 2003 title) is still at stake, now increasingly because of climate alongside nuclear arms. It's consistent with his rationalist, scientific outlook that says policy must be guided by the needs of human survival, which current rulers ignore at our peril.

Chomsky's relentless criticism of U.S. presidents in *Who Rules the World?* – from Kennedy and Johnson to Clinton and Obama – also reflects his non-partisan approach rooted in principle. It exemplifies how his personal political philosophy places values (like peace, equality, freedom) above loyalty to any government or party. In this sense, he remains a radical skeptic of power. The fact that he goes out of his way to include liberal darlings

(Obama, or commentators like Paul Krugman) in his critique of "rulers" shows a consistency with his earlier indictments of liberal intellectuals during Vietnam and other wars. Chomsky's fundamental stance is that even well-intentioned or rhetorically liberal elites end up perpetuating a violent, unjust system unless they actively break from imperial logic – which few do. This flows from his anarchist suspicion that the system itself coopts or constrains even the nicer individuals in power.

Finally, the hope Chomsky places, however tenuously, in public activism is a key part of his philosophy of change. Though *Who Rules the World?* ends on a subdued note compared to *Hegemony or Survival*, Chomsky still clearly believes in the potential of *"militant activism"* to awaken populations and create pressure for a more just world. This reflects the same faith in grassroots movements that he voiced in 2003 with the "second superpower" idea, adjusted by experience (he's perhaps less optimistic about quick results now, but not despairing). It aligns with his broader political stance that *ordinary people, when informed and organized, are the only force that have ever improved society.* The book's discussion of movements like Occupy, the Arab Spring, or Latin America's Bolivarian experiments shows that Chomsky situates contemporary events within a long continuum of popular struggle against oppression – a narrative very much part of his anarcho-syndicalist leanings (which celebrate direct action and solidarity).

In conclusion, *Who Rules the World?* is a crystallization of Chomsky's political philosophy applied to the world of the 2010s. It reflects the same core critique of U.S. imperial dominance and capitalist oligarchy that Chomsky has articulated for decades, demonstrating the continuity of his thought. At the same time, it integrates new elements (digital surveillance, climate crisis, shifting global power balances) into that framework, showing the adaptability and relevancy of his analysis. The book's perspective – critical of American hegemony, supportive of international law and cooperation, championing the rights of the oppressed, and wary of the propaganda that sustains injustice – is essentially Chomsky's ethos writ large. As one review quoted the *New Statesman*: *"For anyone wanting to find out more about the world we live in… there is one simple answer: read Noam Chomsky." Who Rules the World?* encapsulates why Chomsky has earned such regard: it distills his lifelong commitment to speaking truth about power in a comprehensive, if uncompromising, analysis of our contemporary world.

Historical and Geopolitical Context of Publication

The context in which *Who Rules the World?* was written (2014–2016) is markedly different from that of *Hegemony or Survival* in 2003, and it deeply informs the book's content and tone. By 2016, the unipolar moment of uncontested U.S. dominance that followed the Cold War had begun to fray at the edges. Historically, this period saw the aftermath of the Iraq and Afghanistan wars, the rise (and partial fall) of hopes in the Arab Spring (2011), the outbreak of civil war in Syria, and the emergence of the Islamic State (ISIS) as a global terror threat. It also saw Russia's reassertion on the world stage (with the 2014 annexation of Crimea and intervention in Eastern Ukraine, and its military entry into the Syrian conflict in 2015 on Assad's side) and China's continued ascent economically and militarily. Chomsky addresses these developments head-on in the book, framing them as challenges to U.S. hegemony: e.g. NATO's expansion provoking Russia, or China turning the South China Sea into contested waters rather than an "American lake". The subtitle of a *Guardian* excerpt of the book was telling: *"America is no longer the obvious answer"* to who rules the world. This reflects a key contextual sentiment – the question of American decline. Chomsky engages with thinkers like

Financial Times columnist Gideon Rachman, who in early 2016 wrote about how U.S. dominance was being "challenged in all three regions" of the world that it traditionally dominated. Chomsky's take is nuanced: yes, U.S. supremacy is under pressure externally, but he underscores that the U.S. still has unmatched military power and a worldwide alliance structure, as well as internal levers (like the dollar's reserve status and institutions like the IMF) that continue to give it extraordinary influence. The context of *Who Rules the World?* is thus one of questioning whether a unipolar world is shifting towards a multipolar one, and what that means for global order.

Another contextual factor is the state of the "War on Terror" 15 years after 9/11. By 2016, the U.S. public and even the establishment had grown weary of large-scale occupations like Iraq, yet the war on terror continued in different forms: drone assassination campaigns in several countries, a perpetual presence in Afghanistan, and new fronts against ISIS in Iraq/Syria. Chomsky uses this context to reflect on how the war on terror's outcomes (spread of jihadist ideology, destabilization of the Middle East) proved his earlier criticisms correct – it was an ill-conceived approach if the goal was security. He points out, for instance, that ISIS itself was in part a result of the power vacuums and sectarian strife unleashed by U.S. invasions. The domestic context tied to this is important as well: the U.S. under President Obama experienced a dissonance between rhetoric and reality. Obama campaigned as a critic of the Iraq War and promised a more multilateral, restrained foreign policy. By 2016, while he had made some departures (the Iran nuclear deal, normalization with Cuba), he had also expanded drone strikes, intervened in Libya, and presided over the massive expansion of surveillance. This nuanced legacy provided ample material for Chomsky to analyze. In *Who Rules the World?*, he does not spare Obama (grouping him with earlier presidents who claimed noble intent while committing or enabling violence), but he also uses Obama-era developments like the NSA surveillance revelations (2013) to illustrate the lengths a state will go to guard its power (spying even on its own citizens and allies).

The geopolitical context also includes economic undercurrents. The 2008 global financial crisis and its aftermath cast a long shadow over the early 2010s. By 2016, the world had seen nearly a decade of economic turbulence and "recovery" that was very uneven. Chomsky touches on how economic inequality and discontent (which fueled movements like Occupy in 2011) are part of the picture of who rules – essentially, a tiny financial elite benefitted from bailouts and quantitative easing, while many citizens struggled, leading to anger at establishments. This context helps explain the rising populist sentiments worldwide around that time (2016 was the year of Brexit and Trump's campaign, though the book slightly preceded those culminations). Chomsky, with his focus on class power, naturally situates this economic context as evidence of oligarchic rule. For example, he notes how "huge numbers of Americans are now wary of both major parties… convinced that a few big interests control policy", quoting studies on voter attitudes.

Another key context is the growing acknowledgment of climate change as a defining global issue – marked by the Paris Climate Agreement in late 2015 (which the U.S. under Obama joined). Chomsky references the climate crisis multiple times, reflecting how by 2016 even mainstream discourse had accepted its urgency, yet actual policy action remained grossly insufficient. The context here is a sort of race between awareness and catastrophe. Chomsky essentially argues that those "who rule the world" are still dragging their feet, with short-term power plays (like pushing for more oil drilling or pipelines, as was happening) undermining the concerted effort needed to address climate change. The prospective election of Donald Trump – which occurred in November 2016, after the book's publication, and whose

possibility Chomsky was clearly cognizant of given the Penguin edition's mention of a new afterword on Trump – threatened to accelerate climate and nuclear dangers. In fact, the Penguin paperback added an afterword about Trump, acknowledging the new context of an overtly nationalist, anti-globalist U.S. leader coming to power (which in some ways vindicated Chomsky's warnings about creeping proto-fascism and public disillusionment). While that was beyond the main text's timeframe, it's worth noting that *Who Rules the World?* was written on the eve of a significant shift in U.S. politics, one that Chomsky likely saw as a further symptom of the trends he described (anger at elites, manipulation of public fear, etc.).

In sum, *Who Rules the World?* is contextually grounded in the mid-2010s world: a time of *American power under strain* but still formidable, *ongoing conflicts and terror threats* largely rooted in previous U.S. actions, *rising new powers and resurgent old rivals*, *global economic inequality and discontent*, and the looming *planetary crises* of climate and nuclear arms. It is a world where the question of "who rules" was particularly salient, as many people were questioning the post-Cold War American-led order and its sustainability. Chomsky's book captured this moment by providing a sweeping answer that drew connections across all these domains, rooted in decades of context he had analyzed. It served as both a chronicle of the state of the world in 2016 and a critical lens shaped by historical insight.

Critical Reception from Academic and Journalistic Sources

Who Rules the World? was generally well received among progressive and academic audiences, though like most of Chomsky's political work, it also drew some critiques for covering familiar ground. By 2016, Chomsky's reputation as a leading critic of U.S. foreign policy was well-established – as *The New York Times* had noted, he was *"a global phenomenon"* and arguably the most read American voice on international affairs. This meant that reviews often framed the book in the context of Chomsky's long career.

Positive reception came from outlets that appreciated Chomsky's consistency and the clarity of his overview. For example, *Kirkus Reviews* gave *Who Rules the World?* a largely positive notice, describing Chomsky's style as "conversational" and highlighting the book's insights into media and power. Kirkus noted that both Chomsky's critics and admirers would find familiar analysis here – the implication being that the book effectively summarizes Chomsky's worldview. The review pointed out his *"trademark mix of wit, sarcasm, invective, insight, and wrongheadedness"*, an acknowledgment of the polarized views of him. It specifically praised the chapter where Chomsky reads the *New York Times*, calling it "the most intriguing chapter" that reveals how he deconstructs conventional wisdom. The review also recognized the book's substantive focus on nuclear war and global warming as the "two principal threats" identified by Chomsky, and the way he "drubs our rulers" for ignoring public welfare. Overall, Kirkus presented Chomsky as *"the dean of left-wing public intellectuals"* surveying the scene with despair but still holding out some hope for activism. This kind of reception situates the book as an authoritative if sobering commentary – a continuation of Chomsky's role as a prophetic voice.

Academic and intellectual publications often valued the book as a teaching tool or a synthesis. For instance, in the context of American Studies, one reviewer (U.S. Studies Online) noted that *Who Rules the World?* provides *"concise… vignettes"* on a broad range of issues and threads common themes together to answer the titular question. The review observed that Chomsky's approach and target audience differ from traditional academic works – his style is

more polemical and sweeping. It acknowledged that Chomsky's primary theme (that state behavior is driven by motives other than the noble ones claimed, such as control over others rather than citizens' security) is provocative but not surprising to readers versed in radical critiques. The reviewer found particularly intriguing Chomsky's linkage between foreign policy motives and domestic oppression, citing his argument that *"maintaining… control abroad entails restricting democracy at home."* This was seen as a clear relevance for students of American Studies, connecting U.S. domestic and international conduct. In essence, academic readers found *Who Rules the World?* a useful encapsulation of Chomsky's political thesis, even if it wasn't breaking new theoretical ground. The inclusion of further reading suggestions about Chomsky in that review (e.g. works by Robert Barsky, Neil Smith, etc.) suggests that the book was taken seriously enough to prompt deeper engagement with Chomsky's influence.

Mainstream journalistic reviews in the U.S. were somewhat scarcer (it's notable that Chomsky's radical critiques often don't get wide review coverage in major U.S. newspapers, possibly due to their contentious nature). However, the publisher Metropolitan/Henry Holt included endorsements from prominent outlets: *The New York Review of Books* praised it as a wake-up call against complacency and hypocrisy, *BusinessWeek* recommended listening to Chomsky's logic even if one disagrees, and *The Boston Globe* called Chomsky "America's most useful citizen" for explaining "how we got to be an empire". These blurbs indicate that even some centrist or center-left commentators see Chomsky's perspective as crucial, if not mainstream. The *Observer* (UK) is quoted as calling him "the world's greatest public intellectual" on the Penguin cover, reflecting the high esteem he's held in some international circles. Journalist Owen Jones lauded Chomsky as a "giant" for his influence on people seeking alternatives to injustice.

Critically, some voiced that the book didn't fully deliver on its title's promise. The Indian Express review, for example, while largely appreciative, remarked that Chomsky *"does not answer the question, 'Who rules the world?' Indeed, that there is no single entity ruling the world is one of his points."*. This highlights a possible misunderstanding – a reader expecting a straightforward naming of a world ruler might be surprised that Chomsky's answer is complex (a network of forces rather than one actor). The same review also lamented the lack of discussion on ISIS given the book's 2016 publication. It noted the book mostly compiles articles from before ISIS rose to prominence, with few updates, which could be seen as a shortcoming given ISIS's centrality in global security discourse at that time. However, the review ultimately defended the need for *"a Chomsky to clear the fog and cut to the core"* amidst prevailing "realist" narratives that justify U.S. actions. This suggests that journalistic observers in places like India valued Chomsky's clear moral stance in contrast to more cynical power-politics analyses.

Some readers on platforms like Goodreads or blogs expressed that *Who Rules the World?* felt like "Chomsky's greatest hits" – a culmination of his work packaged accessibly. They often appreciated the compassionate and well-researched nature of his critique, though a few wished for more elaboration on certain topics (e.g. one expected more detail on institutions like the IMF or decision-making processes, rather than mostly U.S.-centered stories). But overall, for many, the book reinforced why Chomsky is considered, as one Guardian piece phrased it, *"the conscience of the American people"* in foreign affairs.

Notably, unlike *Hegemony or Survival*, *Who Rules the World?* did not provoke a firestorm of controversy. By 2016, many of Chomsky's once-marginal critiques had to some extent

entered mainstream awareness (for instance, critiques of the Iraq War were widespread, and concerns about inequality and endless war were common). The book likely benefited from that shift – its reception was respectful and even laudatory in many quarters, with less of the defensive hostility that Chomsky faced in 2003. There was still some pushback from conservative corners (e.g. some commentators or bloggers accusing Chomsky of always blaming America first, or not giving due blame to other world actors), but these were relatively muted. Possibly the timing – during Obama's presidency – made Chomsky's critiques less threatening to mainstream liberals than during the Bush era; he was now mostly confirming that the U.S. had indeed overreached and that problems persisted despite a liberal president.

In conclusion, the critical reception of *Who Rules the World?* recognized it as a significant if not surprising work from Noam Chomsky. Academics and journalists found it comprehensive and incisive, useful for understanding the big picture of U.S. foreign policy and global issues, even if some noted it trod familiar ground. The book reinforced Chomsky's role as a crucial voice challenging the narrative of benevolent U.S. leadership, urging readers to see the world as it is – dominated by powerful interests – and to question how we might alter that reality.

Comparative Analysis: Evolution of Chomsky's Thought and Style from 2003 to 2016

Comparing *Hegemony or Survival* (2003) and *Who Rules the World?* (2016) reveals both consistency and evolution in Noam Chomsky's thought and writing. Over the 13-year span between the books, the world experienced significant changes – the 9/11 attacks and the immediate War on Terror milieu of the early 2000s gave way to a more complex, multipolar and crisis-ridden 2010s. Chomsky's core perspective, however, remained remarkably steady: in both works, he advances a scathing critique of U.S. "grand strategy" aimed at global dominance, highlights the hypocrisy of U.S. rhetoric vs. actions, and laments the dangers this poses to humanity (nuclear war, in particular, looms in both books as an existential threat). Yet, the emphasis and context shift in telling ways, and Chomsky's rhetorical approach adapts to the times and to his role as an elder analyst summarizing a life's work.

Central Thesis and Themes: Both books center on U.S. hegemony, but *Hegemony or Survival* presents it as an aggressively pursued project that is reaching a perilous apex under the Bush Administration, whereas *Who Rules the World?* situates U.S. hegemony in a slightly more questioning frame – it's still predominant but being contested and perhaps diminishing in certain arenas. In 2003, Chomsky was very much warning of a newly unfettered empire: the sole superpower seemingly intent on military and unilateral solutions (from Iraq to space weaponization). He coined the term *"Imperial Grand Strategy"* to describe a long continuity that had taken on a more extreme form post-9/11. By 2016, Chomsky's description of U.S. strategy is essentially the same concept, but now he asks "who rules the world" in a way that underscores that the U.S. cannot entirely dictate outcomes alone – the rise of other powers (China's economic clout, Russia's regional muscle) and transnational actors (multinational corporations, global financial markets) means rule is exercised through a network of forces with the U.S. at the hub. The fundamental critique – that U.S. policy is driven by elite interests (economic and political) rather than lofty values – is unchanged between the books. However, in *Who Rules the World?*, Chomsky puts slightly more weight on the role of corporate power ("masters of mankind") as an answer to the titular question, reflecting an increased focus on the fusion of state and corporate interests. In *Hegemony or Survival*,

corporations and economic elites are certainly present (Chomsky talks about resources, profits, the military-industrial complex indirectly), but the narrative is more about nation-state actions on the world stage. By *Who Rules the World?*, Chomsky explicitly reminds readers that even democratic states are often instruments of domestic concentrations of capital. This could be seen as an adjustment to globalization trends and to the neoliberal entrenchment of corporate influence that became even clearer in the 2000s.

Geopolitical Scope: *Hegemony or Survival* had a strong historical orientation (1945–2003) with many Cold War examples and a focus on U.S. interventions primarily in the Third World. *Who Rules the World?* while still historical, deals with the more recent set of issues: the aftermath of the Iraq War, the current tension with Russia, the rise of China, ongoing Middle Eastern conflicts, and global economic governance. This represents an evolution in subject matter corresponding to the world's changes. Notably, *Hegemony or Survival* hardly dealt with climate change, whereas by *Who Rules the World?*, climate is front and center as a critical issue. Chomsky's thought evolved to integrate environmental catastrophe as equally threatening as nuclear war – a reflection of the growing urgency of climate science and likely also his engagement with environmental thinkers in the interim. Similarly, *Hegemony or Survival* came before the digital age issues like mass surveillance were widely known; *Who Rules…* incorporates discussion on surveillance and the erosion of privacy (post-Snowden). Thus, one sees Chomsky updating his critique to new domains of power (digital/cyber domain) while maintaining his overarching framework.

Tone and Urgency: The tone of *Hegemony or Survival* is urgent and dire – it was written in immediate response to what Chomsky saw as a dramatically dangerous turn in U.S. policy under George W. Bush (preventive war doctrine, international law flouted, etc.). There's a palpable sense in that book that humanity was at a crossroads: either rein in the American empire or face potential "extinction of life on the planet" from nuclear holocaust. *Who Rules the World?* also conveys deep concern (it opens by questioning assumptions and highlighting class war), but the tone is perhaps more measured, almost resigned at times. Chomsky in 2016 is still impassioned, but he's also taking stock of how many of his warnings from 2003 materialized (e.g. the war on terror breeding more terror) and how some hopes were dashed (e.g. the limited impact of the "second superpower" – global public opinion did not stop the Iraq War or many subsequent policies). He continues to hope for *"militant activism"* to awaken mass demands for dignity, yet as Kirkus noted, he doesn't hold his breath. In contrast, at the end of *Hegemony or Survival*, he actively pointed to the massive global anti-war rallies of 2003 as a sign that the second trajectory (people power) was rising. By 2016, while movements had come and gone, the world had not dramatically curbed U.S. hegemonic behavior – NATO expanded, wars continued, inequality grew. So, Chomsky's tone in *Who Rules...* carries a bit more weary acknowledgement that the struggle is long. Some readers find *Who Rules the World?* almost elegiac in parts – the work of an intellectual "surveying the current scene and despairing" at persistent injustices, even as he still calls for reason and resistance.

Structure and Accessibility: There is a notable shift in format – *Hegemony or Survival* is a cohesive monograph with a linear argument; *Who Rules the World?* is more of an anthology of essays. This reflects possibly an evolution in Chomsky's approach to publishing. In the 2000s, many of Chomsky's books became compilations of his talks and articles (a practical way to produce timely commentary). *Hegemony or Survival* was written as a single book (part of a series) aimed at wide audiences during a heated political moment. By *Who Rules the World?*, Chomsky and his publishers likely recognized that his audience spans those who

follow his frequent essays. The comparative result is that *Who Rules the World?* might feel less tightly argued as one narrative, but it's broader in coverage. Some might say *Who Rules…* is easier to read in small sections – each chapter stands on its own – making it perhaps more accessible to a general reader who can pick topics of interest, whereas *Hegemony or Survival* builds a cumulative case that rewards reading cover-to-cover. This difference in structure shows Chomsky adjusting his style to maximize outreach; he's casting a wide net with shorter, pointed chapters that can appeal in the sound-bite era.

Content Repetition vs. New Insights: Over the 13 years, one might expect Chomsky's views to change significantly, but instead what's striking is the consistency. Critics have sometimes pointed out that *Who Rules the World?* "repackages" earlier content. Indeed, many arguments in 2016 were already present in 2003: U.S. bipartisan imperialism, propaganda's role, disregard for international law, etc. What did change were the examples and context. For example, in 2003 Chomsky decried the Bush administration's shredding of treaties and militant unilateralism; in 2016, Chomsky criticizes the Obama administration too, but on somewhat different grounds (e.g. drone warfare, the pivot to Asia, not dismantling the security/surveillance state). He remains equal-opportunity in faulting Democrats and Republicans, consistent with his long view that the system transcends personalities. The evolution is more in emphasis: *Hegemony or Survival* zeroed in on the threat posed by a singular superpower at the height of hubris (the neoconservative Bush era), whereas *Who Rules the World?* acknowledges more complexity – that U.S. power is still enormous but faces blowback and checks, and that other actors (like corporations or insurgent groups) wield significant power too. This is a subtle shift from an almost unipolar critique to a critique of a U.S.-led *order*. The rhetorical stance, though, is consistent: Chomsky still focuses overwhelmingly on the misdeeds of "our side" (the U.S./West), which some critics in 2003 and 2016 alike took issue with (e.g. that he downplays other nations' evils). Chomsky's rationale has always been that as an American intellectual his responsibility is to scrutinize his own government's actions, and that the U.S. by virtue of its power causes more significant global harm that is often hidden by propaganda.

Reception and Contextual Interpretation: The evolution of Chomsky's thought is also reflected in how each book was received in its time and what it meant in context. *Hegemony or Survival* was controversial and resonant because it directly challenged the narrative of the post-9/11 U.S. as a force of good fighting evil – it came out when mainstream opinion was still largely in favor of the Iraq War. It thus drew intense criticism from establishment voices (e.g. Samantha Power's critique that he was too one-sided). *Who Rules the World?* arrived after much of the public and many experts had come to see the Iraq War as a mistake, after revelations of government misconduct (torture, surveillance) had become public, and during an administration that styled itself as rational and liberal. In that context, Chomsky's message, while still radical, was less shocking – it often reinforced a growing skepticism of U.S. foreign policy among the public, especially the younger generation disillusioned by perpetual war and inequality. One might say Chomsky's once-fringe perspective had moved closer to the mainstream of critical discourse by 2016. This is not a change in his thought per se, but in the world around him. However, Chomsky did adjust by addressing critiques: for instance, he spends time in *Who Rules…* rebutting the notion that democracies primarily seek security, pointing to empirical evidence of contrary outcomes. This shows he continued to refine his arguments against counter-arguments.

Personal Evolution: Lastly, between 2003 and 2016 Chomsky himself went from being in his mid-70s to late 80s. *Hegemony or Survival* had the vigor of a scholar-activist intervening in a

pressing debate. *Who Rules the World?* often reads like a reflective summary by a veteran thinker who has seen these patterns over and over. There's almost a deeper historical conscience at work in the latter. For example, Chomsky in 2016 frequently reaches centuries back (quoting Adam Smith, referring to the Magna Carta) to draw parallels with today's "masters of mankind." In 2003, while he certainly used history, his focus was more tightly on the post-WWII era and immediate events. The broadened historical-philosophical horizon in *Who Rules...* might reflect Chomsky's role as an elder statesman of dissent, trying to impart a long-term perspective. The flip side is that *Who Rules...* might not have the same laser-focused narrative drive as *Hegemony or Survival*, but it gains a panoramic quality – Chomsky connects dots from the 18th century to the 21st, reinforcing his argument that the fundamental dynamics of greed and power he opposes are longstanding.

In conclusion, Chomsky's thought from *Hegemony or Survival* to *Who Rules the World?* exhibits a remarkable continuity in principles and critique, while also adapting to new global realities and incorporating a wider lens. The critique of U.S. empire is as sharp as ever in 2016, but it's delivered with the perspective of someone who has witnessed an arc of history: the post-9/11 imperial overreach, the subsequent quagmires, the financial crises, and the persistent issues of inequality and climate peril. If *Hegemony or Survival* was a fiery alarm bell about an unchecked empire endangering the world, *Who Rules the World?* is a sober assessment of an empire still potent but facing the consequences of its actions, all the while entrenching a system where *"the powerful can do as they please"* unless checked. Stylistically, Chomsky moved from a single, urgent narrative to a compendium of analyses – reflecting perhaps a shift from trying to prevent an imminent disaster (the Iraq War escalation) to trying to educate and clarify a broad set of issues for posterity. Through both books, what evolves most is the world around Chomsky; his intellectual framework proves robust enough to interpret both 2003 and 2016, yielding works that are complementary. Reading them side by side, one sees how many of the warnings of *Hegemony or Survival* were borne out by events (something even Samantha Power grudgingly admitted – that Chomsky's critiques "have come to influence and reflect mainstream opinion elsewhere in the world"). *Who Rules the World?* then takes stock of those events and reiterates the call for critical awareness and activism, maintaining Chomsky's role as, in the words of *BusinessWeek*, a thinker who *"bids us to listen closely to what our leaders tell us – and to discern what they are leaving out."* In both 2003 and 2016, Chomsky challenges his readers to look beyond the facile narratives of benevolent dominance and to recognize the deeper structures of power – a challenge that remains as relevant as ever.

References (Primary and Secondary Sources)

- Chomsky, Noam. *Hegemony or Survival: America's Quest for Global Dominance.* Metropolitan Books, 2003. (Referenced for content and quotes via secondary sources)
- Chomsky, Noam. *Who Rules the World?* Metropolitan Books, 2016. (Referenced for content and quotes via excerpts and reviews)
- Lackowski, Peter. "Review of Chomsky's *Hegemony or Survival*." *Toward Freedom*, Oct 4, 2006.
- Wikipedia. "Hegemony or Survival." *Wikipedia.org*, last edited 2023. (Summarizes book's arguments and reception)
- Chomsky.info. "Noam Chomsky debates his book *Hegemony or Survival*." *Washington Post Live Online Transcript*, Nov 26, 2003. (Contains synopsis of Chomsky's argument)

- Power, Samantha. “It’s Not Because They Hate Us.” *The New York Times*, Feb 1, 2004. (Review of *Hegemony or Survival*)
- Cohen, Nick. “Chomsky is a master of looking-glass politics.” *The Observer*, Nov 2003. (Review of *Hegemony or Survival*)
- Mathur, Piyush. “Review: *Hegemony or Survival*.” *Asia Times Online*, 2004.
- Kirkus Reviews. “Who Rules the World?” Kirkus, Mar 26, 2016.
- Miller, Zeke. “Chomsky: Who Rules the World?” *In These Times*, May 9, 2016 (excerpt from TomDispatch, appearing in *The Guardian* as well).
- Indian Express Staff. “Speak Up, Memory – Review of *Who Rules the World?*.” *The Indian Express*, Aug 21, 2016.
- Keane, Fergal. “Chomsky’s *Who Rules the World?* – Book Review.” *U.S. Studies Online*, 2017.
- Publisher’s summary and blurbs for *Who Rules the World?*, Metropolitan Books/Henry Holt.
- Metropolitan Books (Henry Holt). “American Empire Project – *Who Rules the World?*” (Promotional content).
- Penguin Books (UK). *Who Rules the World?* (cover image and synopsis).
- Penguin Books (UK). *Hegemony or Survival* (cover image and details).
- Chávez, Hugo. Speech to the UN General Assembly, Sep 20, 2006 (as reported in sources).
- Dershowitz, Alan – quoted in *NY Times* article by Patricia Cohen, Sep 22, 2006 (on Chávez’s endorsement).
- New Statesman – quoted praise: *“For anyone wanting to find out more… read Noam Chomsky.”*.
- Observer (UK) – quoted on cover: *“The world’s greatest public intellectual.”* (Penguin edition cover).

Peter Mair: Ruling the Void: The Hollowing of Western Democracy

Main Arguments and Thesis of *Ruling the Void*

Peter Mair's *Ruling the Void: The Hollowing of Western Democracy* delivers a sobering thesis: Western democracies have been "hollowed out" as the vital link between the people (the *demos*) and political power has eroded. In Mair's view, the post-war model of party democracy – in which mass political parties connected ordinary citizens to government – has effectively ended. He argues that *"the age of party democracy has passed"*, as major parties have become disconnected from society and can no longer sustain democracy's popular legitimacy in its existing form. What remains is, in Mair's striking phrase, *"democracy without a demos"* – a form of democratic governance steadily stripped of its popular participatory component.

At the core of Mair's argument is a twin process of withdrawal that has opened up a "void" between citizens and the state. On one side, ordinary people have pulled away from politics – seen in declining voter turnouts, shrinking party memberships, and a general loss of interest or trust in conventional politics. On the other side, political elites have likewise withdrawn from engagement with the public, retreating into institutions and governing networks insulated from popular pressure. Mair emphasizes that *"withdrawal is mutual"* – it is not simply voters abandoning hapless politicians or politicians betraying the public, but both happening at once. This mutual disengagement has produced a serious crisis of legitimacy in Western democracies. With citizens no longer participating or feeling represented, and elites operating in a self-referential "professional" political class, democratic institutions persist largely in form but with far less substance. Mair presciently warned that this widening gap would fuel anti-establishment and populist backlashes against the governing class – a prediction seemingly validated by the rise of populist movements in subsequent years.

In sum, *Ruling the Void*'s thesis is that Western democracy's traditional party-mediated foundation has been hollowed out. Modern democracy, Mair contends, cannot function without robust political parties, so when parties cease to play their representative role, *"democracy itself is at stake"*. The book is a meticulous diagnosis of how and why the linkage between citizens and governing parties has deteriorated, and what this implies for the future of democratic governance.

Key Concepts: Depoliticization, Party Democracy, and Political Disengagement

Mair's analysis revolves around several interlocking concepts that capture the nature of democracy's hollowing: depoliticization, the decline of party democracy, and widespread political disengagement. Each of these is central to his argument:

Party Democracy and its Decline

The term "party democracy" in Mair's work refers to the system of mass-party-based representative democracy that characterized much of the 20th century. In this system, large membership parties rooted in society served as the main channel for expressing the public's interests, mobilizing voters, and linking citizens to the state. Mair depicts this era of party democracy as a *"zone of engagement in which citizens interacted with their political leaders"* on a regular basis through party structures and elections. However, Mair argues that this world has been "evacuated." The major parties that once structured political competition and representation have seen their social bases wither. Parties have lost their traditional memberships and identities and have converged toward a homogeneous, professionalized "cartel" of office-seekers. They increasingly depend on state resources and blur together ideologically, making them *"pretty much indistinguishable"* in the eyes of voters.

As parties cease to represent distinct social groups or ideologies, citizens feel that "yous are all the same" – a common doorstep sentiment Mair elevates to a serious analytic point. The cartel party phenomenon (a concept Mair helped develop in earlier work) means parties collaborate to sustain the status quo rather than vigorously competing to represent alternative views. This has led to a managerial style of politics in which politicians behave as interchangeable technocrats. The *"passing of the 'age of party democracy'"* is thus central to Mair's thesis. He contends that without vibrant mass parties that connect citizens to government, democracy loses its lifeblood. Party democracy's decline leaves a void where civic engagement and social representation used to be.

Political Disengagement of Citizens

Political disengagement refers to the withdrawal of ordinary citizens from participation in formal politics. Mair presents a wealth of evidence that voters across Western democracies have become increasingly indifferent, apathetic, or cynical about politics. He notes that widespread *indifference* may be even more consequential than outright hostility: many people now deem politics and politicians simply *"irrelevant"* to their lives. This manifests in measurable declines in democratic participation.

For example, party membership rates have plummeted. Mair documents how membership in political parties was fairly stable until around 1980, but then *"almost halved in the '80s and '90s"* across advanced democracies. By the early 2000s, the average party membership in a Western democracy had fallen to only about 5% of the electorate – roughly one-third of its level in the 1960s. Major countries saw dramatic losses: Italy's parties shed ~1.5 million members from 1980 to 2009; Britain's, about 1.2 million; France's, around 1 million; and so on. In parallel, electoral turnout has trended downward. Average voter turnout in Western Europe dropped from roughly 82% in the early 1990s to about 76% by the early 2000s. Mair highlights that 11 of 15 Western European democracies recorded their lowest-ever voter turnouts in the post-1990 period – an unprecedented pattern of democratic withdrawal.

Crucially, these trends are unusually uniform across countries. Mair observes that normally one would expect cross-national differences – some electorates becoming more engaged while others less so. Instead, in what he calls a nearly *"cross-national convergence,"* almost all advanced democracies are experiencing the same decline in participation and trust, pointing "in the same direction" toward disengagement. Not only are fewer people voting or joining parties, but fewer even identify with a party. Surveys confirm a steep decline in citizens who

feel a loyal partisan attachment. Voting behavior has also become more volatile and erratic, which Mair interprets as a symptom of detachment: many voters now float between parties from election to election, no longer anchored by long-term loyalties. This inconsistency, he argues, goes hand in hand with indifference – politics is taken less seriously, so voters experiment or abstain rather than commit to a party.

All these indicators – collapsing party organizations, falling turnout, waning party identification, and volatile elections – illustrate citizens retreating into the political private sphere. Mair emphasizes that citizens increasingly withdraw into "private life or more specialized and ad hoc forms of representation," rather than the collective arena of mass party politics. In other words, many people engage with single-issue movements, NGOs, or simply opt out, instead of participating through broad-based political parties. This popular withdrawal means democracy is honored more in rhetoric than in reality: we praise democratic ideals, but fewer people actively take part in democratic processes.

Depoliticization and Elite Withdrawal

On the other side of the coin, Mair describes a corresponding withdrawal of political elites from the sphere of responsive, partisan competition. This process is often characterized as "depoliticization." By depoliticization, Mair means that governing elites have increasingly removed substantive policy choices from the realm of democratic contestation, treating many issues as technical matters to be decided by experts or non-partisan rules rather than by open political debate. He notes that in the late 20th century, especially under the influence of "Third Way" governance in the 1990s, leaders sought technocratic *"win-win" solutions rather than 'win-lose' alternatives"*. In practice, this meant blurring ideological distinctions and presenting policies as neutral, inevitable choices – effectively draining politics of real debate. *"When politics becomes non-partisan,"* Mair warns, meaningful representation and opposition *"evaporate"*. Policy differences between major parties narrow to marginal tweaks, giving voters the sense that no real alternatives are on offer.

Even more strikingly, Mair observes that many decisions have been outsourced to non-elected bodies altogether. He writes that today *"interest aggregation can also be achieved in yet another and even more depoliticized fashion"* by delegating decision-making to "non-majoritarian institutions such as judges, regulatory agencies and the like." In other words, instead of voters influencing policy through parties and elections, many key policies are set by courts, independent central banks, regulatory commissions, or international agreements – arenas largely shielded from direct democratic input. This trend toward governance by experts and insulated agencies furthers the removal of issues from democratic debate, reinforcing the public's impression that politics offers them little choice or voice.

Mair also details how political elites have transformed the role of parties from representative vehicles into state-centric bureaucracies. Party leaders *"increasingly direct their ambitions towards, and draw their resources from, external public institutions,"* treating the party itself as merely a springboard to government office. As party organizations atrophy, politicians rely more on state funding and media visibility than on party activists or grassroots networks. The result is an elite cadre of professional politicians largely isolated from everyday civil society. Mair characterizes contemporary politicians as "governors or public-office holders" first and foremost, rather than voices of a particular community or movement. They have "retreated into institutions" – for example, into the executive bureaucracy, international bodies, and inter-party collusion – rather than engaging in the rough-and-tumble of mass mobilization.

This elite withdrawal has a self-reinforcing quality. As citizens disengage, leaders feel freer to pursue policies without public mandate; as elites depoliticize governance, citizens see little point in participation. Mair underscores that neither side alone caused the other – both withdrawals happen simultaneously. The net effect is a hollowed democracy in which formal structures (elections, parliaments, parties) remain in place, but the substantive energy and accountability provided by popular involvement is missing. Parties still exist, but in many cases they no longer perform their classic functions of social representation, interest aggregation, and policy debate. They have even ceded some of their "procedural" roles, such as recruiting leaders from within their ranks – increasingly, parties turn to outsiders or celebrities for candidates, a sign of how much their own organizations have weakened. What parties do still control, Mair notes wryly, is political patronage and careers: a party label is still needed to attain office, and parliaments and governments are now filled with careerist party professionals. In effect, the political class reproduces itself even as it drifts further from the public. This is the essence of depoliticization: politics becomes a closed loop of office-holders and experts, largely unaccountable to an indifferent citizenry.

Structure and Methodology of the Book

Despite its relatively short length (about 170–200 pages in different editions), *Ruling the Void* is a densely argued work that combines empirical data with theoretical insight. The book was published posthumously in 2013, and its structure reflects its origins in Mair's earlier essays and unfinished manuscript. It reads as a series of interrelated analyses rather than a single long narrative, yet a clear logical progression is present.

Structure: The book opens by framing the core problem: the notion of *"democracy without a demos"* and the idea of a mutual withdrawal by citizens and elites. Mair then systematically examines evidence of popular disengagement in one or more chapters. This includes data-driven sections on declining election turnout, waning party membership, and weakening partisan loyalties – essentially documenting the popular side of the void. He also explores qualitative changes in public attitudes, such as rising apathy and antipathy toward parties. Subsequently, Mair turns to the elite side of the equation. He discusses the evolution of parties into "cartel parties", drawing on his own influential cartel party thesis (developed with Richard Katz in the 1990s). Here he describes how mainstream parties converged in ideology and became more dependent on state subventions, abandoning their grassroots engagement. Another section delves into the mechanisms of depoliticization, highlighting how policymaking has shifted to insulated arenas – for example, independent central banks setting economic policy, regulators making rules, or judges deciding issues that were once parliamentary debates. Throughout these chapters, Mair balances broad analysis with specific examples from various Western European countries and the United States, illustrating the general trends with concrete cases.

A final chapter is devoted to the special case of the European Union, which Mair sees as a culmination of many hollowing trends. (Notably, this chapter was assembled by editors from Mair's drafts and lecture notes, since he passed away before fully completing it.) In this concluding analysis, Mair offers a withering critique of the EU's democratic deficit: he describes the EU as *"a political system that has been constructed by national political leaders as a protected sphere in which policy-making"* can occur largely shielded from popular accountability. Because the channels for citizens to influence EU decisions are so limited, *"the scope for meaningful input and hence for effective electoral accountability is exceptionally limited"* at the European level. The EU, in Mair's view, has *"no self-conscious*

demos" of its own and is an elite-driven project, making it emblematic of the hollowing of democracy. This final part of the book ties together Mair's theme by showing how domestic political elites deliberately moved significant policy matters beyond the reach of national electorates – effectively sealing off a realm of governance from democratic contest, and thus deepening the void.

Methodology and Sources: Mair's approach throughout *Ruling the Void* is comparative and historical. He draws on decades of political data from advanced Western democracies, especially in Europe but also with references to the United States for contrast. The book cites a range of empirical indicators – for example, party membership rolls, voter turnout percentages, survey results on partisan identification, and the composition of governing elites – to support each point about decline or change. Mair often presents these data in comparative perspective (e.g. noting similar membership declines across multiple countries) to stress the breadth of the phenomenon. He also leverages existing academic studies: his references include classic democratic theorists (e.g. E.E. Schattschneider's idea of a "semi-sovereign people" is invoked at the outset) as well as contemporary research on political participation and trust. His own prior scholarship provides a conceptual backbone; for instance, the cartel party theory and the responsiveness vs. responsibility dilemma in party government are underlying themes. (The latter refers to parties feeling torn between responding to voters and being responsible stewards of policy, a tension Mair examined in other work, and which helps explain why parties might choose to forego responsiveness, contributing to depoliticization.)

Mair's method can be described as macro-level political analysis. Rather than in-depth case studies of individual countries, he identifies broad trends across many democracies, stitching together a big-picture narrative of democratic evolution since the mid-20th century. Quantitative data are used illustratively (e.g. citing membership statistics or turnout rates) to reveal patterns, rather than employing formal statistical models or regressions. The tone is that of a scholar distilling a career's worth of insight: indeed, *Ruling the Void* in part synthesizes arguments Mair had been making in articles and lectures in the 2000s. It is rich in data yet also deeply conceptual, connecting numbers to the fundamental idea of what democracy means when the "people" fade from the scene. As Jan-Werner Müller observed in his review, *"the evidence Mair marshals to demonstrate the decline of parties is overwhelming"*, covering multiple indicators all pointing to the same conclusion. This breadth of evidence – combined with Mair's theoretical framing – gives the book its weight as an authoritative assessment of democracy's health.

Notably, because the book was incomplete at the time of Mair's death, it does not attempt to offer extensive solutions or normative prescriptions. Its methodology is diagnostic rather than prescriptive. Mair identifies the problems and their scope, leaving open the question of what might be done to address the "void." The result is a tightly argued but intentionally open-ended scholarly work, inviting readers and fellow researchers to grapple with the implications of its findings.

Academic and Political Impact of *Ruling the Void*

Upon and since its publication, *Ruling the Void* has had a significant impact in both academic political science and wider political commentary. It has been widely cited as a key text on the crisis of party democracy and democratic legitimacy in the West. Many scholars credit Mair with sounding an early alarm about trends that became undeniable in the subsequent decade (such as surges in populist anti-party sentiment, voter volatility, and declining trust in

establishment institutions). The publisher Verso calls the book a "contemporary classic," noting how *Ruling the Void "presciently observed"* the growing gap between citizens and leaders and anticipated the populist mobilizations that would emerge to challenge the political establishment. Indeed, the book's central arguments are frequently described as *prophetic*. For example, a *Financial Times* editor, John McDermott, praised it as *"a deep and prophetic analysis"* of modern politics. Journalist Anne Applebaum likewise remarked that Mair's book was *"a canary in the coalmine"* – an early warning of democratic decline long before such concerns were widespread.

Within academic political science, *Ruling the Void* has been both influential and agenda-setting. A 2022 special issue of *Irish Political Studies* (a journal in Mair's native Ireland) was devoted to Mair's legacy, underlining that the *"concerns that underpinned Peter Mair's work are still central to the debate on political parties and party-based democracy."* Scholars in that issue noted the *"enduring centrality of Mair's scholarship"* and provided further evidence that his line of research continues through contemporary studies of party politics. In other words, Mair's analysis of the tension between popular responsiveness and governmental responsibility – and the resultant hollowing of representation – remains a touchstone for understanding today's political parties. Subsequent research on topics like party system change, democratic deconsolidation, and populism often cites *Ruling the Void* as a foundational reference. For example, when examining the rise of outsider populist parties, analysts have built on Mair's insight that mainstream parties' withdrawal created the space for populist contenders to claim they speak for a silenced people.

Leading political scientists and sociologists gave the book strong endorsements. Wolfgang Streeck in *New Left Review* called it *"essential reading for anyone concerned with twenty-first century politics."* Jan-Werner Müller, writing in the *London Review of Books*, noted that *"Mair's brilliance as a political scientist comes through clearly"* in the work and that *"the evidence he marshals is overwhelming."* Such praise from prominent scholars indicates the esteem for Mair's analysis. They underscore that Mair managed to capture a broad syndrome – declining participation, elite collusion, technocratic governance – in a way that resonated with diverse observers. The book has also been cited by political practitioners and commentators grappling with voter disillusionment. For instance, British journalist Peter Oborne and others have referenced Mair's idea that parties have *"lost contact with their traditional bases"* and become dependent on the state to explain phenomena like Brexit or collapsing center-left parties in Europe.

That is not to say the book is without critique. Some reviewers pointed out areas where Mair's account might be supplemented or challenged. A review from the UK think tank Theos praised Mair's EU critique as *"powerful and convincing,"* but argued that he *"fails to deal adequately with two important contextual factors: individualisation and globalisation."* By this, the critic meant that broader social changes (the erosion of group identities in increasingly individualistic societies) and global forces (like economic globalization reducing nation-state autonomy) also contribute to the hollowing of democracy, alongside the factors Mair emphasizes. Others have noted that because *Ruling the Void* was completed posthumously, it stops short of offering remedies. Jan-Werner Müller commented that *"we remain in the dark about the strategies Mair might have recommended to address the crisis"* – the book diagnoses the illness but does not prescribe a cure, likely a consequence of the project being cut short by Mair's untimely death. Some readers also debate just how absolute Mair's conclusions are. For instance, is party democracy truly "over," or are there signs of party adaptation and renewal that Mair underplayed? Are citizens utterly disengaged, or are

they engaging in new ways (e.g. online activism or social movements) outside the traditional party system? These discussions show that *Ruling the Void* has sparked a productive debate. Even critics generally acknowledge the importance of Mair's data and observations, differing only in how to interpret them or what additional factors to consider.

Overall, the academic and political impact of *Ruling the Void* has been to place the challenges of party decline and democratic disaffection on center stage. It crystallized the notion that Western democracy was experiencing not just cyclical voter apathy but a structural "hollowing out" of its institutions. Subsequent events – from declining voter turnout in established democracies to the electoral upheavals of the 2010s – have only made Mair's analysis appear more incisive. The book is now frequently cited in studies of democratic backsliding, the rise of anti-system politics, and the technocratic tendencies of governance in the EU. In sum, Mair's final work achieved a stature as a seminal diagnosis of democracy's ills in our era, earning both high praise and careful scrutiny from the scholarly community.

Illustrative Passages and Mair's Own Words

To fully appreciate Mair's argument, it is helpful to highlight some key passages from *Ruling the Void* that encapsulate his points. Mair's writing is clear and direct, often delivering incisive formulations of complex phenomena:

- "Democracy without a demos." Early in the text, Mair sets the tone by observing that western democracies are evolving into *"a notion of democracy that is being steadily stripped of its popular component – democracy without a demos."* This pithy phrase conveys the essence of hollowing out: democratic structures remain, but the people are increasingly absent from them. It is arguably the book's most famous line, neatly capturing the paradox of contemporary politics – formally democratic states that lack active citizen participation and influence.
- The Evacuation of Party Democracy: Describing the retreat of both citizens and elites, Mair writes that *"the traditional world of party democracy – as a zone of engagement in which citizens interacted with their political leaders – is being evacuated."* Here, he vividly portrays the public sphere emptying out: the spaces where civic engagement used to occur (party meetings, election campaigns, local associations tied to parties) are now hollow. This quote underscores that it is the *interactive* nature of party democracy that is disappearing – the conversation between governed and governors has broken down.
- Mutual Withdrawal: Emphasizing that the estrangement is a two-way street, Mair states, *"withdrawal is mutual… It is not that the citizens are disengaging and leaving hapless politicians behind, or that politicians are retreating and leaving voiceless citizens in the lurch."* This passage directly refutes any attempt to blame one side exclusively. Mair is careful to show that cause and effect run both directions, creating a feedback loop of withdrawal. Citizens lose faith and tune out; politicians, seeing a disengaged public, feel free to operate with even less transparency or responsiveness, which in turn deepens public alienation.
- Depoliticization and Non-Majoritarian Institutions: On the trend of removing issues from partisan politics, Mair observes that *"when politics becomes non-partisan, this sense of representation… evaporates."* He notes that interest aggregation now often happens *"after elections, in the formulation of public policy and in government itself,"* rather than through electoral competition. One of the most telling lines is his remark that *"the contemporary equivalent of interest aggregation can also be achieved in…*

an even more depoliticized fashion through the delegation of decision-making to such non-majoritarian institutions as judges, regulatory agencies and the like." This quote highlights the mechanisms of depoliticization – shifting power to entities that do not directly answer to voters. It illustrates Mair's argument that much of what used to be decided in the political arena is now decided by technocrats or insulated bodies, leaving voters with little say on key policies.

- EU as a Protected Sphere: In the posthumously compiled chapter on Europe, Mair's voice comes through powerfully in critique of the European Union. He describes the EU as *"a political system that has been constructed by national political leaders as a protected sphere in which policy-making can [take place without significant electoral interference]."* The book notes that in the EU, *"the scope for meaningful input and hence for effective electoral accountability is exceptionally limited,"* given the lack of a common European demos and the elite-driven nature of integration. These passages (partly reconstructed from Mair's notes) serve as a concrete example of the broader thesis: the EU is portrayed as democracy *sans* people, a realm where policies are made on behalf of citizens but not by the citizens. Mair's stark assessment of the EU's democratic deficit reinforces his overall warning about the hollowing of democracy at both national and supranational levels.

Each of these passages is supported in the book by data and context, but they stand out as crystallizations of Mair's core arguments. Together, they paint a picture of a democratic system in peril: political parties no longer connect with citizens; citizens no longer engage with parties; and policymaking increasingly bypasses democratic contest altogether.

Publication and Posthumous Editorial Contributions

Ruling the Void has an unusual provenance, as it was published after Peter Mair's death and required editorial assembly to bring it to completion. Mair tragically died of a heart attack in 2011 while on holiday, at the age of 60, leaving his work on this book unfinished. At that point, he had written various parts of the manuscript – some chapters were based on previously published articles (for example, a 2006 *New Left Review* essay titled "Ruling the Void" covers many of the book's themes), and others were in draft form. Recognizing the importance of Mair's nearly completed project, his colleagues and the publisher took on the task of editing and compiling the remaining material. The book was ultimately published by Verso in 2013, two years after Mair's passing, with careful work to ensure his findings saw the light of day.

One notable posthumous contribution is the assembly of the final chapter on the European Union. According to reviewers, Mair had not fully finished writing this concluding analysis. His editor drew from Mair's existing writings and lecture transcripts to piece together the chapter's argument. The result is that the chapter reads as a coherent, forceful critique of the EU's role in hollowing out national democracies, even though Mair did not get to polish it himself. Readers and reviewers have generally considered this final chapter persuasive, albeit understandably a bit more fragmentary given its posthumous reconstruction. The editor's effort ensured that Mair's nascent thoughts on the EU – which he clearly saw as a vital piece of the puzzle – were included rather than lost. In this sense, the editor acted almost as a collaborator of sorts after the fact, guided by Mair's prior work to maintain intellectual continuity.

The first edition of the book featured a foreword or note explaining the circumstances of its publication, acknowledging Mair's death and the editorial process (this context is also mentioned in academic reviews like Müller's). In newer editions, additional contributions have been made to frame Mair's legacy. For example, the 2023 reissue of *Ruling the Void* includes a new Introduction by political scientist Chris Bickerton, who places Mair's arguments in the context of the last decade of European politics. Bickerton's introduction (itself a kind of posthumous commentary) highlights how Mair's insights into the collusion of elites and the disengagement of citizens remain highly relevant, especially after events like the Eurozone crisis and the rise of anti-EU populism. Such additions help contemporary readers understand the enduring significance of Mair's work, and they update the discussion by connecting Mair's 2013 analysis to developments up to the 2020s.

It's worth noting that because the book was finalized without the author, it does not include some elements we might expect if Mair had lived to finish it. There is no concluding chapter where Mair offers remedies or personal reflections on what might reinvigorate democracy – an omission that some have commented on, though not as a fault per se (given the circumstances). Instead, *Ruling the Void* stands as a powerful *diagnosis*, almost a scholarly testament, left by one of the foremost experts on party politics. The posthumous editorial contributions aimed to preserve the integrity of that diagnosis. By all accounts, the editors succeeded in faithfully conveying Mair's voice and arguments. The book's clarity and cohesion, despite the tragedy of its author's absence at completion, speak to the careful editorial work that ensured Peter Mair's final message would reach an audience. As a result, *Ruling the Void* serves as both a culmination of Mair's lifelong research and a poignant reminder of his loss to the field. It continues to inspire and challenge scholars and citizens alike to grapple with the hollow spaces in our democracies – the very void that Mair, with prescience and rigor, urged us to confront.

Sources:

- Mair, Peter. *Ruling the Void: The Hollowing of Western Democracy.* London: Verso, 2013. (Posthumous publication with introduction by C. Bickerton)
- Mair, Peter. "Ruling the Void." *New Left Review* 42 (Nov–Dec 2006): 25–51. (originating essay outlining the twin withdrawals and democratic hollowing)
- Crawford, Chris. "Ruling the Void: The Withdrawal of the Elites." Verso Blog, 21 Sept. 2020. (includes excerpts of Mair's work on mutual withdrawal and depoliticization)
- Theos Think Tank (Ben Ryan). "Ruling the Void: The Hollowing out of Western Democracy." *Theosthinktank.co.uk*, 4 Apr. 2014. (review summarizing Mair's data on party membership and turnout decline, and noting the EU chapter assembly)
- Müller, Jan-Werner. "The Party's Over." *London Review of Books* 36(10), 22 May 2014. (review of *Ruling the Void* highlighting main arguments and evidence, and lack of remedies due to Mair's death)
- Dublin Review of Books. "Slim Pickings for the Soft Left." *drb.ie*, July 2014. (discussion of Mair's cartel party thesis and analogy to aristocracy)
- Verso Books – Promotional page for *Ruling the Void*. (contains synopsis of Mair's thesis and excerpts of endorsements by scholars and journalists)
- ResearchGate Abstract – Bardi, Luciano. "Democracy in the 'Void': Peter Mair and Party Politics." *Irish Political Studies* 37(2), 2022. (overview of Mair's contribution and its continuing relevance in party politics research)

Jens Steffek: International Organization as Technocratic Utopia

Context and Motivation

Jens Steffek's work arises at a time when global crises and political currents have renewed interest in expert-driven governance. As he notes in the opening, contemporary challenges like climate change and the COVID-19 pandemic have given "the concept of expert governance" new urgency. Steffek seeks to historicize this impulse by examining a long-standing idea: that *scientists, bureaucrats, and lawyers*, rather than politicians, should manage international relations. This inquiry is timely because the legitimacy of international organizations (IOs) is being questioned by populists who argue that "unelected experts" are out of touch with popular will. In an era of skepticism toward multilateral institutions, Steffek's motivation is to understand the intellectual roots of viewing international organization as a technocratic solution to world problems. By tracing this history, the book illuminates why the notion of expert-led global governance has proven so persistent, even *utopian*, in the face of recurring crises of confidence in IOs.

Key Arguments and Theoretical Foundations

At its core, *International Organization as Technocratic Utopia* is an intellectual history of what Steffek calls *"technocratic internationalism"*. This concept refers to a loose but identifiable strand of thought which holds that technical expertise and rational administration can bridge political divides on the global stage. Steffek defines technocratic internationalism as an *"intellectual and political project that aims at bridging national, imperial, and cultural divides by moving attention away from the politics of international order to its technical aspects"*. In other words, proponents of this view believe that international cooperation should be grounded in depoliticized, scientific problem-solving – making policy more "scientific" and apolitical in nature.

Theoretical foundations: Steffek situates this tradition in the context of modernity's faith in rationalization and bureaucratization. Drawing on Max Weber's theories of rationalization, he suggests that as societies modernized in the 19th and 20th centuries, it seemed plausible to extend bureaucratic governance beyond the state. The technocratic internationalist outlook is thus rooted in Weberian public administration theory, envisioning international institutions as impartial bureaucracies applying expertise to manage global issues. Steffek is careful not to treat technocratic internationalism as a monolithic ideology; instead, it is portrayed as a recurring theme that *adapts to different ideological contexts* (liberal, socialist, even fascist or imperial) rather than a single coherent "-ism". This nuance is important – as one commentator notes, Steffek "is far too sophisticated a scholar to suggest that international technocracy forms a coherent body of thought" evolving linearly. Instead, the book shows how diverse

thinkers across eras shared a common belief in *expert rule*, even as they pursued it for varying ends and under different philosophical banners.

Steffek identifies a *"technocratic tradition"* in international thought that spans over a century and a half. A key argument is that this tradition consistently promised to transform chaotic power politics into orderly, *competent public administration* at the global level. In Steffek's view, technocratic internationalism held out a utopian promise: the transformation of international affairs – often seen as violent, nationalistic, and unpredictable – into a realm governed by neutral expertise and administrative efficiency. This promise is the *"specific"* utopia of the technocratic vision of IOs.

Historical Development and Empirical Examples

To substantiate his thesis, Steffek conducts a sweeping historical analysis, dividing the evolution of technocratic internationalism into four major phases. Each phase is tied to broader social changes and is illustrated with empirical examples from international organizational history:

- 1. Pioneering Phase (1815–1914): From the post-Napoleonic era through the 19th century, early thinkers began merging *internationalist ideals with faith in expert governance*. Philosophers and jurists – influenced by currents like Saint-Simonianism and utilitarianism – imagined that scientific knowledge and administrative skill could foster peace between nations. This period saw the rise of the first international unions and congresses (for example, postal, telegraph, and public health conferences) managed by professional experts. Steffek notes that mid-19th-century technocratic internationalists spoke in a *"supposedly impartial, pacifist, and egalitarian idiom"*, seeing science and technology as universal languages to unite nations. However, he also observes a paradox: these ideas, while idealistic, often served as *legitimation for imperialism*, as European powers portrayed their global dominance as a benevolent, technocratic project to spread progress. This foreshadows a recurring tension in technocratic internationalism – the claim of neutral expertise vs. the reality of power imbalances.
- 2. Utopian Interwar Period (1920s–1930s): In the aftermath of World War I, visions of technocratic global governance flourished. Steffek describes this phase as a true *"technocratic utopia"* moment: thinkers and officials imagined international organizations that would transcend traditional state sovereignty (the *"principle of territoriality"*) altogether. The League of Nations (est. 1920) became a focal point for these ideas. Key architects of the League explicitly *promoted a non-political, expert-driven identity* for the new institution. For example, American lawyer Raymond B. Fosdick – an early League official – declared in 1919 that the League's duties would be "inevitably more non-political than political". This statement, as Steffek highlights, epitomizes the technocratic utopian hope that an IO could rise above power politics entirely. In practice, the League's structure included numerous technical organizations (e.g. the Health Organization, Economic and Financial Section) staffed by professionals. Steffek documents how *internationalists of the era built expert-centric agencies* such as the Allied Maritime Transport Council (1917), which coordinated shipping among Allies via technocratic means. Influential figures like Sir Arthur Salter (head of the League's Economic and Financial Section), Per Jacobsson (Swedish economist in the Bank for International Settlements, later IMF), and Ludwik Rajchman (Polish bacteriologist who founded UNICEF) all viewed the League as a

vehicle for technical cooperation and international problem-solving. Their work on European post-war economic reconstruction and epidemic control cemented "the connection between internationalism and technical expertise". This interwar period was thus marked by an optimistic belief that *global technocracy* – through institutions like the League – could prevent a return to nationalist rivalry and war.

- 3. Post-WWII Technocratic Paradigm (1940s–1960s): Steffek shows that technocratic internationalism not only survived World War II but became *the dominant paradigm in building new international institutions* thereafter. The creation of the United Nations system and Bretton Woods institutions (IMF, World Bank, GATT) in the 1940s was heavily informed by functionalist and expert-driven logic. Functionalist theory in IR – championed by thinkers like David Mitrany – held that cooperation on *technical and economic issues* would generate peace, an idea very much in line with technocratic internationalism. Steffek's analysis highlights how early UN agencies (e.g. WHO, UNESCO, FAO) were conceived as *apolitical problem-solving bodies*, staffed with specialists tackling health, education, and development beyond the confines of national politics. In Europe, this era saw the beginnings of supranational integration explicitly founded on technocratic principles: Jean Monnet, a key architect of the European Coal and Steel Community, advocated integration "based on rational cooperation on technical…common interests" rather than grand political federations. By the 1950s and 60s, international organization was often equated with expert administration of global issues – a trend exemplified by Secretary-General Dag Hammarskjöld's vision of an international civil service and by the technical commissions that proliferated in the UN. Steffek argues that during this phase the *"technocracy paradigm" reached its height*, with IOs widely seen as engines of modernization and development guided by scientific knowledge.
- 4. Disillusion and Persistence (1970s–Present): According to Steffek, the technocratic paradigm began to disintegrate from the 1970s onwards. The later 20th century introduced new challenges to the idea of neutral expertise governing world affairs. Decolonization brought calls for a New International Economic Order, injecting politicized demands into economic governance that technocratic institutions like the IMF could not ignore. Likewise, transnational civil society and human rights movements in the 1980s–90s pressed for transparency and accountability in global agencies, highlighting a democratic deficit in expert-led IOs. Nevertheless, Steffek notes that *important elements of technocratic internationalism remain in place to the present day*. Even as global governance became more contested, the reliance on technical experts and bureaucratic networks persisted in areas like environmental policy (e.g. IPCC scientists), public health (e.g. WHO epidemiologists), and economic regulation. Today's European Union, often criticized for technocratic tendencies, is a case in point of the lasting legacy of this mindset. Steffek's historical account thus comes full circle: while the *unalloyed* technocratic utopianism of the mid-20th century has faded, the core notion that international organizations *should be insulated from politics and run by skilled administrators* continues to influence how we design and evaluate global governance institutions.

Throughout these phases, Steffek provides rich empirical illustrations. He shows how ideas translated into institutional innovations – from the *International Postal Union's* depoliticized cooperation in the 19th century, to the *League's health and economic missions*, to the *UN's specialized agencies and the European Commission*. These examples ground his argument that technocratic internationalism was not just abstract theory, but a powerful force shaping real organizations.

International Organizations as *Technocratic Utopias*

Steffek intentionally labels his study a "technocratic utopia" to emphasize the idealistic, almost visionary quality that this strain of thought carries. The notion of international organization as a technocratic utopia reflects the belief that expert-run institutions could perfect international relations in ways that nation-states and power politics failed to do. In the interwar years especially, many internationalists genuinely imagined that new organizations could *overcome the nation-state system* entirely. For instance, plans were drawn up for global authorities over aviation, finance, or health that would bypass national sovereignty – essentially a *world governed by technocrats*. Steffek documents how interwar blueprints for bodies like a world transport authority or an international economic administration had explicitly utopian aims: to remove the causes of war by placing critical functions under neutral, scientific management. The League of Nations itself was often portrayed by its supporters as a harbinger of a "world government" of experts in law, economics, and social affairs.

Calling this a utopia signals that these ideas were aspirational and not fully attainable. The *"technocratic international organizations"* envisioned by idealists in the 1920s – which would transcend territorial sovereignty – never entirely materialized. Yet, they left a legacy in the form of the functional agencies and norms that did take root. Steffek discusses, for example, how League-era health experts built global networks to combat diseases, or how economic advisors in the League and later UN sought to rationalize fiscal policies across countries. These efforts were partial fulfillments of the technocratic utopian dream. They transformed aspects of international politics into what one might call international *public administration*, even if world peace was not completely secured.

Importantly, Steffek's analysis shows that the utopian element was not just naïveté – it had concrete influence. The belief in apolitical expertise gave *political clout* to proposals that might otherwise have been dismissed. For instance, framing an international initiative as a technical mission (rather than a political power grab) often helped it gain acceptance. The book notes that *many founders of IOs deliberately adopted technocratic rhetoric* to allay fears of national sovereignty loss. In this sense, technocratic internationalism functioned as a utopian narrative that mobilized support for institution-building. It projected an image of a better world governed by knowledge and reason – a powerful sell in the wake of world wars.

At the same time, Steffek does not take the "utopia" at face value; he critically examines the gap between the ideal and reality. The *utopian vision* glossed over the fact that experts and international civil servants could themselves become a new elite, and that their supposed neutrality often aligned with the interests of dominant powers (as seen in colonial contexts). Thus, *International Organization as Technocratic Utopia* invites readers to reflect on both the inspiring and problematic facets of this vision: it is *utopian* in aiming for a world free of politics-as-usual, yet it can be *technocratic* to a fault, ignoring issues of power and participation.

Implications for Global Governance, Democratic Legitimacy, and Public Administration

Steffek's work carries significant implications for how we understand and assess global governance today. By excavating the technocratic roots of IOs, the book helps explain enduring practices – and tensions – in international administration.

Global governance: The technocratic internationalist tradition contributes to a view of global governance as primarily about *problem-solving and service delivery* across borders. International organizations, in this view, are instruments for managing global common goods (health, finance, environment) in a rational, centralized way. Steffek shows that this mindset has structured many IOs to function akin to administrative agencies rather than political arenas. For example, institutions like the World Health Organization or the International Civil Aviation Organization are set up as expert agencies defining standards and best practices – a legacy of the belief that *technical harmonization* can advance international order. The benefit of this approach is evident in cases where specialized knowledge is indispensable: it allows coordinated responses guided by science (e.g. disease eradication campaigns, airline safety regulations). However, the book also illuminates a fundamental tension: *global governance by experts can struggle to reconcile with the inherently political nature of global problems*. Critics have long noted that treating issues like development or trade as purely technical can mask the value judgments and distributional consequences involved. Steffek's historical analysis underscores that technocratic governance often proceeded by *deflecting political disagreements*, which can later resurface and undermine the arrangements made. Thus, one implication is that today's IOs, many still rooted in a technocratic ethos, face challenges when confronted with politicized demands (for instance, calls for climate justice or vaccine equity) that cannot be solved by expertise alone.

Democratic legitimacy: A central question raised by Steffek's study is how democratic legitimacy (or the lack thereof) intersects with technocratic international authority. By definition, technocracy prioritizes *expertise over electoral representation*. International organizations historically have been staffed by appointed officials and guided by professional communities, not by direct democratic mandates. Steffek's narrative shows this was by design – the *utopia* was a world run by the "right" answers of science, not the messy compromises of politics. The implication is a persistent democratic deficit in global governance. Steffek's work provides context for why IOs like the EU or UN often face public criticism for being unaccountable: they were, in part, built on an ideal that *bypasses mass politics*. The E-IR commentary on his book notes that reliance on experts can "undermine [IO] legitimacy when organizations appear to deflect from the political tensions underpinning those problems". In other words, if international technocrats make decisions that affect citizens' lives, but citizens feel shut out of the process, legitimacy suffers. Steffek does not advocate an outright rejection of expertise, but his historical lens suggests that *democratic control and technocratic governance need rebalance*. As global governance scholars grapple with how to make institutions more responsive and inclusive, Steffek's account of technocratic internationalism serves as a cautionary tale: the very strength of expert-driven IOs – their efficiency and rationality – can become a weakness if it comes at the expense of transparency and public trust. The book thereby contributes to debates on reforming IOs to enhance their democratic legitimacy, perhaps by creating channels for stakeholder participation or parliamentary oversight to supplement the work of experts.

Public administration (international): Steffek's analysis effectively treats international organizations as a form of public administration beyond the state. The Weberian bureaucratic principles – hierarchy, legal-rational authority, specialization – were transplanted to the international level as part of the technocratic project. One implication for public

administration scholarship is the recognition that *IO bureaucracies* (like the UN Secretariat, World Bank staff, EU Commission civil service) see themselves as serving an international public interest in a non-partisan way. Steffek details how the identity of the international civil servant was crafted in the early League of Nations era to embody technocratic virtues: neutrality, expertise, fidelity to the international community rather than national governments. This legacy continues to shape administrative cultures in many IOs. The positive side is the development of a professional ethos devoted to global common good, which can transcend parochial interests. Indeed, the "orderly and competent public administration" of world affairs was the promise technocratic internationalism held out – and to some extent delivered in fields like standardized measurements, postal services, and disease control. On the other hand, Steffek's work implies that international public administration must confront issues of accountability and effectiveness. A technocratic bureaucracy may be efficient, but whom does it answer to? The book spurs reflection on mechanisms like inspector-generals, parliamentary assemblies (e.g. the European Parliament in the EU context), or transparency initiatives as ways to ensure that international bureaucracies remain *servants* of the global public rather than detached technocratic fiefdoms. It also suggests that public administration theory should incorporate the international dimension: ideas of good governance, administrative law, and public sector ethics cannot stop at national borders if we consider how much governance is now done by IOs. In sum, the implications drawn from *International Organization as Technocratic Utopia* highlight a trade-off inherent in global governance: the expertise and rationalization that make IOs effective in tackling complex problems may simultaneously dilute direct democratic oversight. Steffek's historical perspective enriches our understanding of why this trade-off exists – it was built into the DNA of international organizations by design. Moving forward, it raises the question of how to retain the benefits of technocratic efficiency while mitigating the democratic and political deficits that come with it.

Critical Reception and Scholarly Commentary

Steffek's book has been met with considerable interest in both International Relations (IR) and international law circles. Reviewers note that it offers a *"rich intellectual history"* of technocratic internationalism, shedding light on an aspect of IOs often overlooked by traditional IR theory. Negar Mansouri, writing in the *Journal of the History of International Law*, praises *International Organization as Technocratic Utopia* for constructing a comprehensive genealogy of this idea and situating it in historical context. The depth of archival research and breadth of thinkers covered have been highlighted as strengths – the book spans from 19th-century pacifist engineers and legal scholars to Cold War-era development economists. This wide scope, according to Mansouri, makes Steffek's analysis a "fantastic resource" for understanding the ideological underpinnings of institutions that we largely take for granted.

Jan Klabbers, a renowned scholar of international law, reviewed the book in the *European Journal of International Law*. He commends Steffek for not oversimplifying the concept of technocratic internationalism: rather than treating it as a single lineage of thought, the book demonstrates how technocratic ideas were adopted by different movements and regimes (liberal, socialist, even authoritarian) over time. This point confirms one of Steffek's own conclusions – that *technocratic internationalism "spans ideological divides" and can be adapted by virtually any political camp, while still remaining an ideological project of its own*. Klabbers notes that Steffek's nuanced approach avoids the pitfall of portraying technocracy in global governance as uniformly benevolent or coherent; instead, the book acknowledges the contradictions and evolution within this intellectual tradition.

Another theme in the scholarly commentary is the contemporary relevance of Steffek's findings. In *Perspectives on Politics*, a reviewer remarked that *Steffek's book is especially valuable "in a moment when the legitimacy of international organizations is very much in doubt"*. By unpacking why experts were entrusted with global governance in the first place, the book offers insights into current debates – for example, the backlash against "globalist" elites or the technocratic character of the European Union. The historical lens helps explain why these organizations lack strong democratic grounding and why publics might feel alienated, thereby providing a backdrop for discussions on reform. Glowing endorsements have underscored the originality of Steffek's contribution: one assessment lauded *"the originality and depth of his analysis"*, noting that it addresses an important question that cuts across international relations and public administration.

Critiques of the work have been mild and mostly focus on scope rather than substance. Some readers wished for more engagement with the *practical outcomes* of technocratic governance – as Klabbers observes, the book "does not deal with the praxis of governance by international organizations", staying largely at the level of ideas and intellectual debates. In other words, Steffek traces what people thought and argued about IO governance, rather than evaluating in detail how technocratic or effective actual IO operations were. This is arguably a conscious choice, given the book's intellectual history orientation, but it leaves room for further research on implementation and practice. Additionally, there is an implicit Eurocentric bias in the narrative (most of the protagonists are European or North American men, and the story centers on Western institutions). Critics have suggested that a fuller picture of technocratic internationalism's legacy would consider non-Western perspectives or alternative internationalisms beyond the West. Steffek does acknowledge this limitation and indeed the *need to "decentre" the study of technocratic internationalism* has been echoed by other scholars.

Overall, *International Organization as Technocratic Utopia* has been received as a thought-provoking and foundational study on the nexus of knowledge, power, and international cooperation. It fills a gap by giving a name and genealogy to a phenomenon that many have observed but few have systematically analyzed. For students of global governance, the book offers a valuable historical compass for navigating present challenges of expert authority and legitimacy. As one reviewer aptly summarized, Steffek's work *"represents a fantastic resource to think about why we still, despite everything, turn to experts to save the world"* – a question that remains as pertinent as ever.

Sources:

- Steffek, *International Organization as Technocratic Utopia* (Oxford University Press, 2021) – summary and abstract
- E-IR, "The Technocratic Legacies of International Organisations" – discussion of Steffek's concept and historical examples
- Negar Mansouri, *Journal of the History of International Law* 24(3) (2022) – review excerpt
- Jan Klabbers, *European Journal of International Law* 33(2) (2022) – review excerpt
- Perspectives on Politics (Cambridge Core) – review excerpt
- E-IR article – context on expertise and legitimacy and definition of technocratic internationalism.

Anne-Marie Slaughter: A New World Order

Introduction

Anne-Marie Slaughter's *A New World Order* (2004) presents a bold reconceptualization of global governance in the early 21st century. Slaughter, a distinguished scholar of international law and former Dean of Princeton's Woodrow Wilson School, challenges traditional state-centric views of world politics. She argues that while the post-Cold War world still lacks a centralized world government, a new form of order has already emerged – one built on networks of government officials working across borders. In this paradigm, states are not monolithic units solely represented by presidents or foreign ministers, but rather composed of various domestic agencies and branches that increasingly interact directly with their foreign counterparts. Slaughter's book asks readers to rethink their "conceptual blind spot" in international affairs and recognize global governance as it truly operates: through a complex web of intergovernmental networks rather than through top-down international hierarchies.

Published by Princeton University Press in 2004, *A New World Order* quickly gained attention in both academic and policy circles as a "major new statement about modern global governance". Written in a scholarly style, the book maps out the landscape of these transnational networks and offers a normative vision for harnessing them to address global problems. What follows is an in-depth analysis of Slaughter's work, including its central thesis and structure, key concepts, theoretical foundations, supporting examples, critical reception, and its impact on debates about global governance and international law. A summary table of the book's major concepts and their implications for global governance is also provided for quick reference.

Central Thesis and Structure of *A New World Order*

Central Thesis: Slaughter's central argument is that "global governance is here – but not where most people think". Instead of emerging from formal world-government institutions, global governance is largely occurring through decentralized networks of national government officials. These networks – involving regulators, judges, legislators, and other authorities – cooperate across borders to solve common problems, enforce laws, and regulate global activity. In Slaughter's view, we already "have a new world order" in the form of this networked governance, and it presents a way to tackle transnational issues without the need for a centralized supranational government. This vision is presented as a solution to the so-called "globalization paradox": the world urgently needs collective action on issues that cross borders, yet there is widespread (and justified) fear of an all-powerful world government. Slaughter argues that strengthening government networks can square this circle by improving global problem-solving while preserving state sovereignty and democratic values.

Book Structure: *A New World Order* is organized into an introduction, six substantive chapters, and a conclusion. The book's structure methodically builds Slaughter's case for network-based global governance:

- Introduction: Lays out what is "possible and desirable" in global governance, introducing the idea that nation-states are *disaggregating* into their component institutions which now engage internationally. Slaughter sets the stage by contrasting her vision with older paradigms of world order (the failed ideal of a centralized "liberal internationalist" order versus the diffuse "new medievalist" vision of diminishing state authority). She posits that a more *realistic* new world order is already here in the form of transgovernmental networks.
- Chapters 1–3: These chapters map the landscape of government networks in different branches of government:
    - Chapter 1 ("Regulators: The New Diplomats") – Describes horizontal networks among executive branch officials and regulatory agencies. Slaughter shows that regulators (from financial authorities to law enforcement agents) increasingly serve as "the new diplomats," working directly with foreign counterparts to handle issues like banking standards, money laundering, and antitrust enforcement. She notes these technocratic ties often operate beneath high-level politics yet form a critical layer of international cooperation.
    - Chapter 2 ("Constructing a Global Legal System") – Explores networks of judges and legal officials, illustrating how national courts engage with each other and with international courts. Slaughter documents a "global legal system" emerging from judges citing each other's decisions and collaborating through judicial conferences and forums. This transjudicial dialogue helps harmonize legal principles (for instance, on human rights or commercial law) and enforces international agreements through domestic courts.
    - Chapter 3 ("Lagging Behind") – Examines the legislative branch and observes that national legislatures are far less networked globally than regulators or judges. Slaughter argues that lawmakers are "lagging behind" other branches in transnational cooperation, which creates a democratic deficit in global governance. While executives and courts build global ties, parliaments have only nascent networks (e.g. the Inter-Parliamentary Union) and thus public accountability on the global stage remains weak. This insight underscores a recurring theme: the trilemma of global governance, where effectiveness, state sovereignty, and democratic accountability are difficult to fully reconcile.
- Chapters 4–6: These chapters shift from mapping networks to theorizing and normatively assessing the "networked" order:
    - Chapter 4 ("A Disaggregated World Order") – Articulates the concept of *disaggregated sovereignty* and explains how a world of government networks redefines the Westphalian system. Slaughter argues that the state is "disaggregating into its separate, functionally distinct parts" – courts, agencies, executives, even legislatures – which then network with counterparts abroad. This results in a new kind of world order where state sovereignty is exercised collectively through networks rather than hoarded in isolation. She emphasizes that this is not a loss of sovereignty but a transformation: states voluntarily "cede" certain sovereign functions to interlocking networks (for example, agreeing to mutual regulatory standards or judicial cooperation) in order to better address shared challenges. In this model, power is not centralized in a

world government; instead, governance is distributed across many connected national nodes – a vision she terms a *disaggregated world order*.
    - Chapter 5 ("An Effective World Order") – Evaluates the effectiveness of transgovernmental networks in tackling global problems. Here Slaughter provides case studies of successes (and limitations) of networks in areas like combating terrorism, fighting organized crime, and managing financial crises. She argues that these flexible, issue-specific networks often respond faster and more effectively than traditional international organizations. For example, networks of central bankers and financial regulators (such as the Basel Committee or the Financial Action Task Force) have proven crucial in maintaining global financial stability. Slaughter contends that by strengthening such networks and fostering new ones in under-governed areas, the international community can greatly improve problem-solving capacity. The chapter also addresses how networks can be made more robust—through better information-sharing, capacity-building for weaker states' agencies, and inclusion of more stakeholders—so that the world order they compose is more resilient and responsive.
    - Chapter 6 ("A Just World Order") – Focuses on the normative and ethical dimensions, particularly the accountability and legitimacy of governance networks. Slaughter confronts the critique that transgovernmental networks might be technocratic, opaque, or "unaccountable" to the public. She acknowledges these risks and explores mechanisms to make networks more transparent and answerable to citizens. Proposed solutions include greater transparency (so that network decisions and standards are visible and open to public scrutiny) and inclusiveness (integrating NGOs, civil society, and feedback from affected communities to prevent networks from becoming closed elitist clubs). Slaughter argues that with the right norms and oversight, networks can uphold the rule of law and democratic values, creating what she calls a "global rule of law without centralized global institutions". In essence, this final chapter attempts to ensure that the new world order is not only effective, but also just and legitimate.
- Conclusion: The book concludes by "Pushing the Paradigm," summarizing how the networked approach to world order can be systematically strengthened and advocating for a paradigm shift in how we conceptualize sovereignty and governance. Slaughter reiterates that "the governments we already have at home are our best hope for tackling the problems we face abroad, in a networked world order". Rather than fearing loss of sovereignty, nations should *embrace* networking as a means to reclaim control over globalization on their own terms. The conclusion also calls policy-makers to invest in and legitimize these transgovernmental ties – for example, by training domestic officials for international collaboration and by creating frameworks to hold networks accountable to citizens. Slaughter's parting message is optimistic: if properly harnessed, government networks can ensure a more peaceful, prosperous, and cooperative global future.

Through this structure, *A New World Order* moves from diagnosis to prescription: it not only describes a world of disaggregated, networked governance, but also lays out a vision for empowering these networks to fulfill their potential as the foundation of a new, more effective world order.

Key Concepts and Framework

Slaughter introduces several key concepts to explain and justify her vision of network-based global governance. The following are the central concepts, along with detailed explanations:

Disaggregated Sovereignty

One of the book's foundational ideas is "disaggregated sovereignty," a redefinition of state sovereignty in the age of globalization. Traditionally, sovereignty implies a unitary state with supreme authority over its territory, interacting with other states only through top leaders or foreign ministries. Slaughter argues this notion is outdated. Instead, states are "disaggregating" into their component institutions, and these parts are exercising aspects of sovereignty beyond national borders. In her words, "the state is not disappearing, it is disaggregating into its separate, functionally distinct parts" – meaning that courts, regulatory agencies, central banks, legislatures, and executive departments increasingly operate as independent actors on the global stage.

Under disaggregated sovereignty, national officials can strike agreements and collaborate internationally without a wholesale surrender of sovereign authority to a higher body. Sovereignty is thus ceded in specific slices to facilitate cooperation on critical issues, but no *centralized world authority* takes over entirely. For example, environmental regulators from the U.S., Canada, and Mexico might jointly enforce pollution standards under a regional pact (ceding a bit of autonomy to a network) without creating a new supranational government. Likewise, judges may respect each other's rulings across borders, creating a quasi-global jurisprudence while each court still derives authority from its state. Slaughter and others argue this disaggregated arrangement is *de facto* how global governance works today and is preferable to the 20th-century dream of a single world government.

Implications: Disaggregated sovereignty changes the fundamental unit of international relations. It suggests that sovereign authority can be shared or pooled through networks for mutual gain. States remain the primary building blocks of world order, but they govern collectively by empowering their domestic organs to collaborate abroad. This concept blurs the line between domestic and international affairs: domestic policy bodies become part of transnational problem-solving without a loss of sovereign *identity*. As a result, global governance can advance through voluntary cooperation and mutual obligations, reflecting what Slaughter calls a *"world of governments"* (plural) rather than a world government. However, this also means we must reconceptualize accountability – when a regulator or judge acts transnationally, citizens must ask to whom that official is accountable (a point addressed later under *networked governance*). Overall, disaggregated sovereignty provides the theoretical backbone for Slaughter's claim that networking, not hierarchy, will define the new world order.

Transgovernmental Networks

At the heart of *A New World Order* are transgovernmental networks – the webs of direct, institution-to-institution links connecting officials across national borders. Slaughter uses this term to describe how government entities (outside the foreign ministry) interact with their foreign peers to address common issues. These networks can be classified into two broad types:

- Horizontal networks: relationships among counterpart agencies or officials in different states. For example, national regulators of multiple countries form a horizontal

network when they regularly meet to coordinate banking regulations or share intelligence on crime. Slaughter provides many examples: *financial regulators* networking through bodies like the Basel Committee or the International Organization of Securities Commissions; *law enforcement agencies* cooperating via Interpol or informal investigator-to-investigator ties; *judges* forming judicial networks by citing each other's rulings and attending global judicial conferences. These horizontal networks are typically informal and driven by professional communities addressing issues (finance, crime, human rights, etc.) that transcend borders. They operate peer-to-peer, without needing approval from each country's head of state for every interaction.

- Vertical networks: relationships that link national officials with supra-national institutions or legal bodies that have a degree of authority over them. An example is a national court engaging with an international court – such as the relationship between EU member state courts and the European Court of Justice (ECJ). When a national regulator participates in a global regulatory regime that can set binding standards (like the World Trade Organization's dispute panels or UN Security Council mandates), it forms a vertical network. In these cases, some authority is delegated "upward" to a collective body, creating a hierarchical element. However, Slaughter notes that even these vertical ties rely on national officials' involvement and consent – for instance, a U.S. judge enforcing an International Criminal Court warrant, or national central banks implementing Basel capital rules at home. Thus, vertical networks represent another way sovereignty is shared: states *bind themselves* to joint frameworks (as in the EU) to solve problems more effectively.

Whether horizontal or vertical, transgovernmental networks are the mechanisms through which a "dense web of relations" now binds countries together. Slaughter documents how these networks perform many functions of governance: they *exchange information*, *harmonize rules*, *coordinate enforcement*, and *build trust* among countries. For example, through the Basel Committee (a horizontal network of central bankers), states collectively set global banking standards to prevent financial crises. Through the G8/G20 (informal forums of national leaders and finance officials), major economies jointly manage economic policy and crises. Through judicial networks, national high courts borrow legal reasoning from one another, gradually aligning constitutional principles (e.g. on free speech or privacy rights) across democracies. Even in security, networks matter: after the September 11 attacks, coalitions of intelligence and law enforcement agencies from many nations formed to combat terrorism – effectively a networked response rather than a single new organization.

Implications: Slaughter contends that transgovernmental networks are "a key feature of world order in the twenty-first century". They represent a shift from seeing international politics purely as interactions between unitary states. Instead, the day-to-day work of global governance happens via informal, issue-specific coalitions of officials. This has several implications:

- Effectiveness: Networks can be more flexible and responsive than formal treaties or international bureaucracies. They allow specialists to troubleshoot problems directly (e.g. health officials sharing real-time data in a disease outbreak network). As Ikenberry summarizes, officials are "exchanging information, coordinating policies, enforcing laws, and regulating markets" through informal channels to meet interdependence challenges. Slaughter argues this often yields *better results* than waiting for slow, consensus-based multilateral negotiations.

- Sovereignty Compatibility: Transgovernmentalism is presented as a way to enhance cooperation without eroding sovereignty in the eyes of domestic constituencies. Because networks work through national agencies, each state retains control over its personnel and can opt in or out. For example, a country can participate in an international financial network and implement agreed standards in its own way, rather than being dictated to by a global central bank. This assuages fears of supranational bodies "dictating" policies – cooperation happens through national authorities, preserving a sense of sovereignty.
- Democracy and Accountability: A critical implication (and challenge) is how to ensure these networks are accountable. National officials acting globally can bypass traditional oversight (parliaments or public scrutiny) because much of their cooperation is technical or behind closed doors. Slaughter acknowledges this democratic deficit and insists that networks must develop transparency and include broader stakeholders. We will further discuss this under *networked governance* and in the critique section.
- Transformation of Diplomacy: The rise of transgovernmental networks means diplomacy is no longer confined to diplomats. Regulators, judges, legislators, and even city mayors (in other contexts) become diplomatic actors, forging direct ties abroad. Slaughter dubs regulators "the new diplomats" for this reason. This democratization and pluralization of diplomacy imply that international relations occur on many levels simultaneously – a phenomenon earlier theorists Keohane and Nye called "complex interdependence," where multiple channels (not just state leaders) connect societies.

In essence, transgovernmental networks are both the *vehicles* of Slaughter's new world order and a conceptual lens that reveals a web-like structure underpinning global governance. By highlighting these networks, Slaughter shows that much of what holds the international system together today is informal cooperation by government professionals, rather than formal treaties alone.

Networked Governance (Networked World Order)

Slaughter's overall vision is often described as networked governance or a networked world order. This refers to the idea that governance functions traditionally associated with a centralized government are increasingly carried out by loosely coordinated networks of institutions across borders. In a memorable formulation, Slaughter suggests that *"networked institutions perform the functions of a world government – legislation, administration, and adjudication – without the form"*. In other words, the functions of governing (making rules, implementing them, resolving disputes) are being achieved by networks of national agencies and courts, even though we lack a singular global government structure.

Key elements of this networked governance model include:

- Decentralization: Authority is decentralized among many nodes. There is no single apex institution; rather, power is distributed in a horizontal manner among network participants. For example, instead of a world legislature, we see *coordination among national legislatures* or regulators to shape policy norms. Instead of a world court with compulsory jurisdiction over all states, we see *judicial networks* and reciprocal recognition among courts building a global legal order.
- Informality and Flexibility: Networked governance often operates through informal understandings, soft law, or non-binding agreements, rather than formal treaties alone.

This informality allows networks to adapt quickly. Slaughter highlights that many networks start as voluntary clubs or associations (e.g. the International Association of Insurance Supervisors or meetings of constitutional court judges) and over time gain influence by developing best practices or model regulations. The Global Financial Network that managed the 2008 crisis, for instance, relied on informal coordination via the G20 and central banks rather than any treaty-based global economic authority.

- Multi-level Participation: While primarily state-based, networked governance can incorporate non-state actors. Slaughter notes that government networks often consult with NGOs and experts, or work alongside private transnational networks. For instance, a network of competition (antitrust) regulators might engage with global business associations and consumer groups when crafting new antitrust guidelines, creating a multi-stakeholder flavor. This blurs the line between public and private governance and reflects the real complexity of tackling issues like internet regulation or public health (where states, firms, and civil society all have roles).

When Slaughter talks of a *"new world order"* in her title, she means precisely this networked order of governance. Crucially, she argues it is *already in existence*: "not only should we have a new world order but we already do". This claim is backed by her extensive documentation of networks in action, showing that if one looks beyond the surface of international summits and UN meetings, one finds a dense substrate of working-level connections quietly managing global affairs.

Implications: Adopting a networked governance perspective has profound implications for global politics:

- It reconciles the need for global cooperation with the persistence of nation-states. Slaughter's networked world order suggests we don't need to choose between an ineffective system of wholly sovereign states and an unaccountable world government – there is a middle ground where states govern together through networks. This has been described as solving the "governance dilemma" or "trilemma" of globalization.
- It highlights the importance of supporting and reforming networks rather than creating new institutions from scratch. If one accepts Slaughter's view, then investing in things like cross-border training for judges, establishing regular summits for legislators, or improving information technology for regulatory cooperation can significantly improve global governance. Slaughter even proposes a blueprint for bolstering these networks – for example, creating a network of democratic oversight (like a network of legislative committees to monitor global regulatory networks) to address the accountability gap.
- It challenges traditional international relations theory. The networked governance concept draws heavily on liberal internationalist and institutionalist theory (which values cooperation and multiple channels of interaction) and rejects strict realist notions that only power and state-to-state bargaining matter. As Kenneth Anderson notes in his review, Slaughter's argument sits between extreme positions: she neither endorses pure Westphalian sovereignty nor utopian world government, but rather a liberal internationalist middle ground of governance through networks. This has provoked debate about whether networked governance truly transforms international politics or merely extends existing intergovernmental cooperation under a new guise.

In summary, networked governance is the broad paradigm that Slaughter offers: a way of understanding the emerging world order as a system of interlocking networks performing

governance functions. It encapsulates both the descriptive claim (this is how the world currently works) and the prescriptive claim (this is how we *should* leverage global networks to address problems).

Theoretical Foundations of Slaughter's Argument

Slaughter's argument builds on and contributes to theoretical debates in international relations (IR), liberalism, and legal theory:

- Liberal IR Theory and "Complex Interdependence": Slaughter's vision aligns with liberal institutionalist thought, which challenges the realist view of states as unitary, self-interested actors. She explicitly draws on the work of Robert Keohane and Joseph Nye, who in the 1970s observed the rise of transgovernmental relations under complex interdependence. In that model, multiple channels (not just heads of state) connect countries, and domestic actors (bureaucracies, legislators, interest groups) play a role in foreign affairs. Slaughter takes this further by arguing these connections have evolved into structured networks that are now the primary mode of governance in certain domains. Her emphasis that states are not unitary but composed of various actors is a core liberal insight, reflecting theories that domestic institutions and sub-state actors crucially shape international outcomes.
- Liberal Internationalism vs. Realism: The book can be seen as part of a larger dialogue about how to achieve global cooperation. Traditional liberal internationalists often advocated building formal international organizations and even federalist world government ideals after WWII. Realists, in contrast, emphasize anarchy and state sovereignty, often downplaying supranational cooperation. Slaughter stakes out a position in between: she critiques the infeasibility of a world government ("liberal internationalist ideal") and rejects the notion that the nation-state is simply withering away ("new medievalism"). Instead, she offers transgovernmental networks as a *pragmatic* form of order that realist states can accept (since it does not force them under a higher authority) yet that liberals can celebrate (since it fosters cooperation and rule of law). Reviewers have noted that Slaughter is attempting to "reconcile sovereignty and global governance" by threading a path between the two extremes. Kenneth Anderson places her approach on a continuum between pure Westphalian sovereignty and full world government, alongside concepts like "democratic sovereignty" and "liberal internationalism". Slaughter's networks paradigm thus contributes a distinctive liberal theory of international relations for the 21st century: one that envisions governance as an emergent property of state interactions rather than as a new suprastate entity.
- Transnational Legal Theory: Slaughter's background as a legal scholar informs her theoretical foundations. She builds on transnational legal process theory and the work of scholars like Harold Koh, Abram Chayes, and Antonia Chayes who argued that international law increasingly operates through iterative interactions between domestic and international institutions (the "new sovereignty" being the capacity to participate in legal regimes). Slaughter extends this by detailing how judicial and regulatory networks create and enforce international norms. For instance, when courts in different countries reference each other's decisions on human rights or commerce, they are collectively developing a *global common law*. This draws from concepts of judicial globalization and comparative constitutionalism in legal theory. Moreover, Slaughter's call for network accountability connects with emerging ideas of a "global administrative law," which seeks to apply administrative law principles (transparency,

reason-giving, review) to international networked governance. She argues that the same principles that ensure domestic agencies are accountable (such as open meetings or judicial review) need adaptation to the transnational context. Thus, her work is grounded in a larger theoretical effort to marry international law and domestic public law in the context of globalization.

- Political Theory – Sovereignty Redefined: On a more philosophical level, Slaughter is reinterpreting the concept of sovereignty. She treats sovereignty not as absolute authority to exclude interference, but as the ability to jointly govern problems with others. This echoes earlier political theorists who suggested sovereignty can be *divided* or *shared* (e.g., the idea of pooled sovereignty in the European Union). Slaughter's notion of disaggregated sovereignty contributes to this line of thought by providing a concrete mechanism (government networks) for how shared sovereignty functions in practice. It also resonates with the idea of subsidiarity (from Catholic social thought and EU law), where decisions should be made at the most local level possible, but higher levels step in for issues that exceed local capacity. In Slaughter's vision, national governments remain the core (local level for citizens), and networks allow coordination at the higher (global) level only when needed – thereby attempting to satisfy both local autonomy and global action.

In sum, Slaughter's *A New World Order* is firmly rooted in liberal IR theory and legal scholarship, yet it pushes those theories forward by arguing that networks have changed the game of global governance. She provides a conceptual framework that challenges realists to account for the influence of law and bureaucracy in world politics, and challenges liberals to incorporate questions of democracy and legitimacy in new ways. Her theoretical contribution lies in breaking down the dichotomy of national vs. international, showing that in a networked world the two are increasingly interwoven.

Case Studies and Examples Supporting Her Claims

Throughout *A New World Order*, Slaughter bolsters her thesis with a rich array of examples and case studies. These examples illustrate how transgovernmental networks operate and lend credence to her claim that a new governance order is already in place. Key examples include:

- Global Financial Regulation: Slaughter highlights the Basel Committee on Banking Supervision as a prime example of a regulatory network. This committee, comprising central bank governors and financial supervisors from major economies, coordinates banking regulations (such as capital adequacy standards) worldwide. The Basel Committee has no formal treaty backing it; its guidelines are technically voluntary. Yet, its standards (Basel I, II, III accords) have been widely implemented, effectively harmonizing banking rules across dozens of countries. This demonstrates how an informal horizontal network can create de facto global policy. It supports Slaughter's point that networks "make things happen" in global governance, often with more agility than formal organizations. Another financial example is the Financial Action Task Force (FATF), a network to combat money laundering and terrorist financing, which sets international norms through peer pressure and review.
- Law Enforcement Cooperation: Transnational crime and terrorism are cited as issues where networks of police, prosecutors, and intelligence officials have become indispensable. Slaughter points to bodies like Interpol and less formal working groups (e.g. the "Lyon Group" of G7 interior ministers on counter-terrorism) as horizontal networks that exchange information to track criminals across jurisdictions. After the

September 11, 2001 attacks, the cooperation among national agencies (FBI, CIA, MI6, etc., along with allied countries' security services) formed a networked counter-terrorism coalition. These ties often bypass slower diplomatic channels. Slaughter argues that such networks have made law enforcement more effective globally – for instance, coordinated raids and investigations across countries have broken up terror cells and cybercrime rings that no one country could tackle alone. The Egmont Group (a network of national financial intelligence units) is another example, facilitating rapid sharing of financial data to prevent illicit flows.

- Judicial Networks and the Globalization of Law: Perhaps the most striking case studies come from the judicial realm. Slaughter discusses how national judges, especially high court judges, are increasingly referencing foreign and international law in their rulings. For example, the U.S. Supreme Court in the early 2000s cited foreign precedents in cases about the death penalty and privacy rights; European and Commonwealth courts routinely look to each other on issues like free speech and anti-terror laws. Slaughter describes a "remarkable account of the cooperation between national judicial authorities and international and regional courts", noting that judges participate in transnational conferences and networks (such as the Global Constitutional Justice network or regional associations of supreme courts). One concrete illustration: European Court of Human Rights (ECHR) decisions have been voluntarily followed by courts in countries outside Europe, because judges abroad find those rulings persuasive and part of a global human rights jurisprudence. This "globalization of jurisprudence" shows how a global legal system is being constructed through network interactions rather than a single global court imposing decisions. It supports Slaughter's claim that an integrated rule of law can emerge from decentralized judicial cooperation.
- Environmental and Health Networks: Slaughter also gives examples of networks in areas like environmental regulation and public health. Within the NAFTA framework, she notes the collaboration of the environmental agencies of the U.S., Canada, and Mexico to enforce environmental standards. This North American environmental enforcement network operates through joint inspections and information-sharing, demonstrating regional networked governance. Globally, environmental ministers often meet (e.g. through the UNEP forums or climate summits) forming a loose network driving initiatives like the Paris Climate Agreement's implementation. In public health, the Global Outbreak Alert and Response Network (GOARN) under the WHO connects national health authorities to share data on epidemics – an example not explicitly in Slaughter's 2004 book (it was nascent then), but very much in her spirit of illustrating how national health agencies and labs network to manage diseases (as seen later during H1N1 and Ebola outbreaks). These examples reinforce the idea that no single country or UN agency manages these issues alone; rather, a coalition of national officials co-manage them.
- Supranational Courts and Vertical Networks: For vertical networks, Slaughter discusses the European Union and other supranational regimes. The European Court of Justice (ECJ) is a linchpin of a vertical network connecting EU member state judiciaries. National courts routinely refer questions to the ECJ and implement its rulings, creating a tightly integrated judicial network in Europe. Slaughter uses this as a leading example of how some sovereignty has been pooled vertically to attain deeper legal integration. Outside the EU, she might cite the WTO dispute settlement system: national trade officials and the WTO Appellate Body form a network where countries' representatives litigate and adjudicate trade disputes, blending national and international authority. Such vertical networks show that states do sometimes delegate

real authority upward – but notably, even these work because national officials (judges, trade delegates) are actively engaged rather than ceding all responsibility to an autonomous world bureaucracy.

- Informal Clubs and Governance Forums: Slaughter also references informal leadership networks like the G7/G8 (now G7/G20) summits. Though these are meetings of heads of state or finance ministers rather than bureaucratic networks, Slaughter treats them as part of the networked order because they lack formal treaty structure and rely on personal and institutional ties. Agreements at G20 meetings often filter down into networks of central banks or regulators who implement them. For instance, the G20's decisions after the 2008 financial crisis empowered networks like the Financial Stability Board (a transgovernmental network of financial authorities) to act. These examples underscore a point: many effective responses to global challenges (financial crises, terrorism, health emergencies) have come not from new treaties or UN organs, but from coalitions of national officials coordinating action – exactly as Slaughter's theory predicts.

Together, these case studies serve to validate Slaughter's empirical claim: government networks are already crucial to how the world is governed. They demonstrate tangible outcomes achieved by networks – from harmonized regulations and joint law enforcement actions to cross-fertilization of legal doctrines. However, Slaughter also uses them to illustrate challenges, such as the uneven development of networks (legislators lag behind regulators, poorer countries may struggle to participate equally in elite networks, etc.). These examples ground the book's more theoretical discussions in real-world practice and make a compelling case that any analysis of global governance must account for this networking phenomenon.

Critical Responses and Scholarly Reception

Slaughter's *A New World Order* has sparked substantial discussion among scholars of international relations, law, and political theory. The reception has been mixed, with many praising the work's innovative perspective and others critiquing its assumptions or implications. Below is an overview of the critical responses, highlighting both praise and criticism:

Praise and Positive Influence:

- *Innovative Paradigm:* Reviewers lauded Slaughter for offering a fresh lens on global governance. G. John Ikenberry, writing in *Foreign Affairs*, called it a "major new statement about modern global governance". He and others noted the book's bold claim that the "new world order" is already here in the form of networked governance, which was a provocative contrast to prevailing debates about U.N. reform or American hegemony in 2004. The mapping of government networks across various sectors was seen as a groundbreaking synthesis – revealing "the forest" of global networks that observers had previously seen only as disparate trees. Douglas Foyle, in an essay review aptly titled "Seeing the Forest: Networks and the Global Order," pointed out that Slaughter's work helps us see the *systemic pattern* behind myriad instances of cooperation (the forest), rather than treating them as isolated cases. This perspective has since influenced academic discourse by making transgovernmental networks a common unit of analysis in IR scholarship.
- *Bridging Theory and Practice:* Commentators also praised Slaughter for bridging the gap between academic theory and practical policy insights. As the *Publishers Weekly*

review suggested, her ideas "generate much discussion about foreign policy and whether, as Slaughter believes, the U.S. should welcome such networks in a globalized world". Indeed, Slaughter's argument that the United States and other nations can use networks to further their interests (while also contributing to global problem-solving) was seen as an important practical takeaway. It offered a counternarrative to isolationist or purely unilateral approaches, suggesting that building networks of cooperation can enhance national security and prosperity. Policymakers in the U.S. State Department and beyond took note – later, as Director of Policy Planning (2009–2011) at the State Department, Slaughter herself advocated for a "networked" approach to diplomacy, reflecting the influence of her own scholarship.

- *Comprehensive and Authoritative:* Many legal scholars appreciated the book's extensive documentation and analysis. For instance, a review in *Perspectives on Politics* noted that Slaughter "provides the most compelling and authoritative description to date" of the world of government networks. Her dual expertise in law and IR lent credibility to her descriptions of how networks function in practice. The concept of "disaggregated sovereignty" has since entered the lexicon of international law discussions, and her typologies of horizontal vs. vertical networks are frequently cited in academic literature and classrooms. In short, *A New World Order* has become a standard reference for studies of global governance, often praised as a pioneering work that identified a real and growing phenomenon in world politics.

Criticisms and Debates:

- *Democratic Deficit and Sovereignty Concerns:* The most common critique centers on the accountability of transgovernmental networks. Skeptics argue that while networks may be efficient, they risk creating an unaccountable "global technocracy" of bureaucrats. Kenneth Anderson's detailed 58-page review ("Squaring the Circle? Reconciling Sovereignty and Global Governance…") articulates this point. He concludes that Slaughter's vision, "ingenious as it is, does not finally avoid… the global governance dilemma, because ultimately it privileges global networks over democratic sovereignty". In his view, no matter how well-intentioned, empowering networks of regulators or judges could erode the ability of citizens to control policy, since these networks operate outside traditional democratic oversight. Similar concerns were raised by other commentators: for example, Peter Berkowitz noted the fear of a "new world order" of connected elites making decisions without voter input, though he acknowledged Slaughter tries to mitigate this danger. Slaughter's proposal to cure the democratic deficit (via transparency and inclusion norms) was appreciated but seen by some as insufficient or hard to implement. After all, critics ask, *who* will enforce transparency on a loose network, and to whom are network members ultimately accountable – their national electorate or an international peer group? This debate continues in the literature on global governance, often citing Slaughter's work as a starting point for discussing how to make global networks more answerable to the public.
- *Evidence and Scope:* Some reviewers questioned whether Slaughter might be *overgeneralizing* the prevalence and efficacy of networks. Michael Morris, in a political science journal review, argued that it is "hard to verify the claim… that we already have a new world order" of networks everywhere, and that this order can be systematically strengthened (as Slaughter argues). Essentially, the critique is that many of Slaughter's examples, while real, may not add up to a cohesive global system

– they could be isolated pockets of cooperation that still rely on major power support or face limitations. For instance, do networks truly function effectively when there is deep political conflict or divergence of interests (e.g. between the U.S. and China, or in areas like climate change where cooperation has lagged)? Realists would point out that when vital national interests clash, networks might break down, and states revert to power politics. Thus, some see *A New World Order* as perhaps too optimistic or at least incomplete in accounting for areas where networks have not solved global problems (such as preventing war or handling great-power rivalry).

- *State Power and Inequality:* Another line of critique is that Slaughter understates how power asymmetries play out in networks. Not all nodes in a network are equal; powerful states' agencies (like U.S. regulators or EU courts) can dominate agendas and export their preferences through networks. For example, weaker countries might simply adopt standards set by rich countries' regulators in networks like the Basel Committee, without true reciprocal influence. This raises the question: are networks truly a novel egalitarian order, or just another arena for powerful states (or blocs) to exercise influence in a less visible way? Slaughter does acknowledge U.S. dominance in some contexts but generally portrays networks as mutually beneficial. Critics from the global South or critical theorists might argue she is too sanguine about the inclusiveness of these networks. If, say, African regulators are absent or marginal in the key financial and environmental networks, the resulting global policies could be biased toward the interests of developed nations. Such concerns call for more analysis of the political economy of networks – something outside Slaughter's central focus, but an important extension of the discussion.
- *Legal Consistency:* Within international legal scholarship, some have probed the implications of Slaughter's ideas for the coherence of international law. If courts selectively engage in a global dialogue, does that risk inconsistency or conflict with domestic law mandates? Slaughter's portrayal of judges as cooperative global actors was contested by those who emphasize judges' primary duty to their national constitution. Additionally, while Slaughter celebrates judges citing foreign law, critics (including some jurists and conservatives in the U.S.) have been wary of this trend, arguing it could import unwelcome foreign norms. These debates often cite *A New World Order* as a prominent defense of transjudicialism, and then respond with arguments about the limits of such practices.

In summary, *A New World Order* received wide acclaim for its originality and depth, but it also opened a debate about the legitimacy and limits of network-based governance. Slaughter's work has been both influential and contested: influential in that it set the agenda for studying transgovernmental networks (many subsequent studies have empirically examined networks in finance, security, health, etc., often corroborating her observations), and contested in that it forces scholars to wrestle with tough questions of democracy, sovereignty, and power in the new global context. The mixed reception underscores the complexity of the subject—an acknowledgment that Slaughter's "networked world" is insightful, but not a panacea, thus inviting ongoing discussion and refinement of the ideas she put forward.

Impact on Global Governance Discourse and Policy

Slaughter's book has had a significant impact on how scholars and practitioners think about global governance, international law, and even foreign policy strategy. Some of the notable impacts include:

- Academic and Intellectual Influence: *A New World Order* firmly established transgovernmental networks as a core concept in global governance literature. Subsequent research has expanded on Slaughter's insights. For instance, political scientists and international lawyers have catalogued the proliferation of regulatory networks and evaluated their performance. A 2018 OECD working paper observed that trans-governmental networks "have become among the most important international institutions in many areas of regulation and a major locus of [international regulatory cooperation]". This statement, coming more than a decade after Slaughter's book, confirms that what was once an academic hypothesis is now widely recognized: networks are central to global regulatory governance. The term "disaggregated sovereignty" is now regularly cited in discussions about how state authority is shared in trade agreements, climate accords, and security alliances. By reframing the discussion, Slaughter influenced fields as diverse as international organization studies, transnational legal studies, and public administration. Her work is frequently assigned in university courses on global governance, ensuring new generations of students grapple with the network paradigm.
- Rethinking International Law and Institutions: Slaughter's ideas have pushed international legal scholars to reconsider how international law is made and enforced. Rather than viewing international law solely as treaties made by states and enforced by international courts, scholars increasingly examine the role of network interactions – such as regulators mutually recognizing each other's standards, or national courts collectively shaping norms. For example, the enforcement of anti-corruption laws via networks (like the network of national enforcement agencies cooperating under the OECD Anti-Bribery Convention) shows law being carried out through networked action. The concept of a "global administrative law" mentioned earlier partly arose from recognizing that informal networks needed oversight akin to administrative agencies. Slaughter's work thus fed into practical proposals: e.g., how to make the Basel Committee more transparent (it now publishes more and consults stakeholders, steps arguably influenced by external calls for accountability, of which Slaughter was a notable voice). International institutions, too, have adjusted – organizations like the United Nations now often seek to act as facilitators of networks (for example, UNODC aiding networks of anti-narcotics agencies, or the UN Framework Convention on Climate Change coordinating networks of climate policy experts). The discourse around global governance has shifted from "Do we need a world government or stronger UN?" to "How do we strengthen and steer the networks that actually govern?" – a shift largely attributable to Slaughter's intervention.
- Foreign Policy Practice: In the realm of policy, Slaughter's network approach resonated with the challenges of the post-9/11, post-financial crisis world. She advocated that the United States, in particular, should embrace government networks as a tool of statecraft, coining the idea of "power in networks." In 2009, writing in *Foreign Affairs*, she argued that America's unique strength could lie in convening and leading global networks – from alliances of entrepreneurs to coalitions of regulators – thereby extending its influence through connection rather than dominance. This outlook influenced the U.S. State Department's concept of "21st-century statecraft," which emphasized engagement not just government-to-government, but also via networks of civil society, cities, and experts. While Slaughter's tenure in government was short, her ideas percolated through initiatives: for example, the Obama administration's security strategy spoke of "strengthening alliances and networks" as critical for global security. Another concrete impact can be seen in how issues like cybersecurity or global health were approached – rather than proposing new treaties,

the U.S. and others focused on building information-sharing networks (e.g. for cyber threat intelligence or for epidemic alerts). Slaughter's influence is evident in the way policymakers now often speak of *networks of cooperation* (e.g. a "network of states" imposing sanctions on money laundering, or networking local officials worldwide to combat climate change).

- Normative Debate on Global Governance: Perhaps the greatest impact is that Slaughter forced a broad conversation on legitimacy and reform of global governance. Her optimistic portrayal of networks was met with calls (including her own in Chapter 6) to ensure such networks serve the people. This has fed into real-world changes: many transgovernmental networks have consciously tried to self-reform. For instance, the International Organization of Securities Commissions (IOSCO) – a network of securities regulators – has increased engagement with emerging market members and allows public input in ways it didn't in the 1990s, partly to shake the image of being a closed club. Similarly, judicial networks have grown to include judges from developing countries and hold meetings that are publicly reported. While it's hard to draw a straight line from the book to each change, the general pressure for greater inclusiveness and transparency in informal global bodies has certainly grown since the book's publication. Slaughter's articulation of the problem (networks need legitimacy) galvanized both scholars and reformers to propose solutions, whether it be creating parliamentary oversight of EU regulatory networks or developing global ethics codes for network participants.

In sum, Slaughter's *A New World Order* has left a lasting imprint on the discourse about how the world is governed. It shifted the focus toward networks, reframed debates in both academic and policy arenas, and even anticipated trends (such as the rise of G20 networks and multi-stakeholder governance in internet and health domains). The book's impact is evident in the way phrases like "global governance networks" or "transgovernmental cooperation" are now common, where before 2004 they were niche concepts. It has provided both a vocabulary and an analytic framework that continue to shape how we understand international cooperation today.

Relevance in the Current Geopolitical Context (2025)

As of 2025, the core ideas of *A New World Order* remain highly relevant, though they face new tests in a changing geopolitical landscape. Here's how Slaughter's concepts apply today:

- Transgovernmental Networks in Action: Many events in recent years underscore the importance of the networks Slaughter described. The global COVID-19 pandemic (2020–2021) is a prime example: lacking a world government to manage the crisis, countries relied on networks of scientists and public health officials. The World Health Organization coordinated a network of national health ministries and experts (GOARN, as noted, and other forums) to share information on the virus and best practices. Regulators collaborated on vaccine approval processes and standards for therapeutics, essentially functioning as a transgovernmental network to accelerate solutions. Another current issue is climate change – while the 2015 Paris Agreement provides a framework, much of the real work is done via networks: national environment agencies share policy approaches in the *NDC Partnership* network; cities and states form transnational networks (like C40 Cities or the Under2 Coalition) to cut emissions. This multi-level networking approach aligns with Slaughter's vision that solutions come from connecting parts of government and society across borders.

- Technology and Cyber Governance: The rise of digital technology and cyberspace governance has, if anything, validated the network model further. Issues like cybersecurity, data privacy, and internet standards are not governed by any single treaty regime. Instead, we see networks of national cyber agencies collaborating, often informally, to counter threats (for example, the network of computer emergency response teams – CERTs – globally). Privacy regulators from different countries meet in bodies like the Global Privacy Assembly to coordinate rules for data protection. These efforts reflect the reality that cyberspace is borderless and fast-changing, requiring the agility of networks. Slaughter's concept of horizontal networks is exemplified here: tech regulators or experts link across jurisdictions to manage problems that traditional diplomacy is ill-suited for. Importantly, these networks often include non-state players (tech companies, internet governance bodies like ICANN), showing the adaptability of the network paradigm to include a range of stakeholders.
- Geopolitical Rivalry and Network Strain: One new challenge since 2004 is the return of great-power rivalry, particularly between the United States and China, and the rise of more nationalist politics in various countries. This has a dual effect on networks. On one hand, global networks still persist – for instance, even when U.S.-China strategic relations are tense, their scientists or regulators might still cooperate on certain technical matters (e.g. joint research on climate or communication between central banks to stabilize the global economy). On the other hand, rivalry can lead to competing networks or fragmentation. We see hints of this in technology: a potential bifurcation where Chinese-led standards bodies and Western-led ones diverge (for example, separate networks on 5G technology or internet governance philosophies). Slaughter's optimistic take assumed a generally cooperative global context; by 2025, networks have to navigate a more adversarial environment. Yet, one could argue this makes some networks even more crucial – they can quietly maintain dialogue and coordination even when top-level political relations sour. For example, military officers from rival states may still communicate in networks to avoid accidents (like the Incidents at Sea agreements), or health officials might share flu data despite geopolitical frictions. Thus, while the political climate tests the resilience of networks, many have proven durable, continuing their work beneath the turbulences of high politics.
- Inclusion of Emerging Powers: The global governance networks today are more inclusive than in the past. Back in 2004, many networks Slaughter described (Basel Committee, G7, etc.) were dominated by Western nations. In 2025, forums like the G20 have supplanted the G7 in importance, bringing in emerging powers like China, India, Brazil, and others into the core of economic governance. Similarly, regulatory networks have expanded membership – e.g., the International Organization of Securities Commissions now includes regulators from over 100 jurisdictions. This broader inclusion validates Slaughter's idea that networks can expand and adapt; it also addresses some early critiques about Western-centrism. Emerging powers actively participate and even lead some networks (China leads on the Shanghai Cooperation Organization, an intergovernmental security network in Asia; India has been prominent in the International Solar Alliance linking energy agencies). The test for Slaughter's vision is whether these diverse actors can find common ground through networks. So far, on issues like financial stability or pandemic response, a basic level of cooperation has held, although deep divisions remain on others (e.g., internet freedom vs. cyber sovereignty debates).
- Network Accountability and Reform Efforts: In the current context, the question of how to govern the networks themselves remains salient. There is growing public

scrutiny of any transnational collaboration – sometimes manifested in suspicion or even conspiracy theories (e.g., unfounded "new world order" conspiracies that misconstrue coordination as a sinister plot). This makes the transparency of networks even more important. Encouragingly, some networks have taken steps: for instance, the Financial Stability Board (an outgrowth of the Basel process) publishes detailed reports and engages with civil society. Networks related to global health, like COVAX (for vaccine distribution), included numerous stakeholders in governance. These trends echo Slaughter's prescriptions that norms of inclusiveness and transparency are key to sustaining a networked order. In an era of social media and instantaneous information, networks cannot operate as quietly as before; they need to demonstrate legitimacy. The *current geopolitical context thus underscores the continuing need to implement Slaughter's calls for accountable network governance.*

- Climate for Global Governance Ideas: Finally, as of 2025, there is a renewed discussion about how to reform the international system to cope with transnational crises (climate change, pandemics, financial shocks). Slaughter's network model remains one of the most viable proposals because the creation of entirely new global institutions is politically unlikely. Nations remain jealous of sovereignty, yet plainly cannot solve these crises alone. Therefore, many policy proposals default to network-based approaches: e.g., forming a "Global Pandemic Network" of national health authorities to respond faster than the WHO alone can; or a "Climate Club" network of countries committed to stronger emissions cuts (an idea actually being pursued by some G20 members). Such initiatives are essentially transgovernmental networks by another name. The language of networks might not always be used explicitly, but the logic is evident. In this sense, *A New World Order* is as relevant as ever – it anticipated the very mechanisms now being floated as solutions for today's problems.

In conclusion, the world of 2025, with its interdependent challenges and complex power dynamics, continues to validate Anne-Marie Slaughter's insights. Government networks remain indispensable to global governance. While the context has evolved – presenting new hurdles in terms of rivalry and public skepticism – the fundamental idea that "the governments we already have" can collectively address global issues still rings true. Slaughter's emphasis on networked cooperation provides a guiding framework for navigating current geopolitical realities, making her work not just historically significant but a living reference for contemporary policy discussions.

Conclusion

Anne-Marie Slaughter's *A New World Order* reshaped our understanding of how the world is governed by illuminating the power of disaggregated state institutions and their transnational networks. This academic analysis has examined the book's central thesis – that a networked globe of government officials is already solving global problems – and unpacked its key concepts like disaggregated sovereignty, transgovernmental networks, and networked governance. We have seen that Slaughter's argument is grounded in liberal internationalist theory yet innovative in its focus, shifting attention from monolithic states and formal IGOs to the vibrant interactions among regulators, judges, and legislators across borders. The book's detailed case studies, from financial regulators setting global bank standards to judges collectively weaving a global legal fabric, provide compelling evidence that these networks are not mere theoretical constructs but real drivers of governance.

The scholarly reception of *A New World Order* reflects its importance: it has been praised for opening new avenues of inquiry and critiqued for the very challenges it acknowledges (accountability, power imbalances). This discourse has, in turn, spurred refinements and responses, enriching the debate on global governance. In policy terms, Slaughter's ideas have nudged statesmen and institutions toward working with and through networks – a trend that the crises of the past two decades have only made more salient. Indeed, as we assessed the current 2025 context, it became evident that Slaughter's network paradigm remains a vital tool for both explaining and addressing today's transnational issues, from pandemics to cyber threats to climate change.

Ultimately, *A New World Order* invites us to embrace a nuanced view of sovereignty and cooperation: one where nations do not lose their identity or independence, yet choose to *intermingle their capacities* in myriad flexible ways to govern the global commons. It posits that the solution to globalization's paradoxes lies not in retreating behind borders nor in erecting a distant world government, but in diligently connecting the many nodes of governance we already have. Slaughter's book thus leaves a lasting legacy in both thought and practice – a legacy of viewing world order not as a static map of nations, but as a dynamic network web stretching across our planet, capable of both great achievements and in need of wise guidance. As international challenges continue to mount, the conversation around *A New World Order* – its insights and its cautions – will remain a cornerstone in the quest for a more cooperative and just global governance system.

Sources:

- Slaughter, Anne-Marie. *A New World Order.* Princeton University Press, 2004. (Analysis and concepts as summarized above)
- Slaughter, Anne-Marie. "The Real New World Order." *Foreign Affairs*, vol. 76, no. 5, 1997, pp. 183–197. (Early articulation of transgovernmental networks)
- Ikenberry, G. John. "A New World Order." *Foreign Affairs* (Capsule Review), May/June 2004.
- Publishers Weekly. Review of *A New World Order*, Feb. 2004.
- Choucri, Nazli. Review of *A New World Order*. *Perspectives on Politics*, vol. 2, no. 4, 2004.
- Anderson, Kenneth. "Squaring the Circle? Reconciling Sovereignty and Global Governance Through Global Government Networks." *American University WCL Research Paper*, 2005.
- Foyle, Douglas C. "Seeing the Forest: Networks and the Global Order." *International Studies Review*, vol. 8, no. 2, 2006. (Review essay on Slaughter's book, discussing the "trilemma" of global governance).
- OECD (Kenneth W. Abbott et al.). *The Contribution of Trans-Governmental Networks of Regulators to International Regulatory Cooperation*. OECD Working Paper, 2018. (Contemporary analysis of the growth and importance of regulatory networks)
- Wikipedia contributors. "Disaggregated sovereignty." *Wikipedia, The Free Encyclopedia*, last modified 2021. (Overview of Slaughter's concept with examples)
- Carnegie Council. "A New World Order." Public Affairs Program Transcript, April 15, 2004. (Slaughter's remarks introducing the book's themes)

Part 2.
Global law and constitutionalization of international law

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Introduction

The notion of constitutionalization of international law refers to the trend of international legal norms and institutions acquiring traits analogous to a constitution – potentially constraining and guiding national constitutions "from above." This idea has gained momentum in recent decades amid globalization and the search for an overarching legal order to manage global issues. Scholars debate whether international law is developing *constitutional features* comparable to national constitutions, and what this means for state sovereignty, the hierarchy of laws, and the prospect of a world legal order (even a step toward *world government*). Below is a detailed list of influential authors and their major works on this topic, outlining their core arguments, theoretical frameworks, methodologies, and conclusions. Both proponents of constitutionalization and their critics (including advocates of pluralism and defenders of state-centric views) are included, to capture the full spectrum of the debate.

Proponents of International Constitutionalization

Jan Klabbers, Anne Peters & Geir Ulfstein – *The Constitutionalization of International Law* (2009)

- Core Argument: In this seminal book, Klabbers, Peters, and Ulfstein systematically examine the extent to which the international legal system has *"constitutional features"* comparable to domestic constitutions. They ask whether globalization and the rise of new international institutions and courts indicate that constitutionalization is taking place at the *global* level. The authors ultimately argue that the evolution of international law can indeed be *reconstructed as a process of constitutionalization*, which offers new explanatory power and insights.
- Framework: The work identifies what might count as *constitutional features* in the international order (e.g. fundamental norms like human rights or jus cogens, institutional separation of powers, or community values) and compares these to

national-level constitutional principles. The authors contrast constitutionalization with other trends such as the *"fragmentation"* of international law into specialized regimes and the *"verticalization"* of law (the increasing direct impact of international rules on individuals). They view the constitutionalist paradigm as one possible lens – alongside competing paradigms – to understand the emerging global legal order.

- Methodology: The book is a collaborative, critical appraisal of constitutionalist ideas and their critiques. It uses doctrinal analysis across various fields (UN law, trade law, human rights, etc.) to identify constitutional traits: for example, the UN Security Council's quasi-legislative role or the *constitutional* quality of the UN Charter's fundamental principles. It also addresses how these international norms interact with domestic constitutions. Each author contributes chapters (on institutions, law-making, global "membership," democracy, etc.), culminating in shared conclusions. Notably, they discuss both the promise of the constitutionalization paradigm (greater coherence, legitimacy, and rule-of-law in international affairs) and its pitfalls (tension with state consent, risks of disconnect with democratic publics). They even sketch the *outlines of a constitutionalized world order* – envisioning what a global constitution "could and should imply", while remaining cautious and critical.
- Implications: If international law is viewed as undergoing constitutionalization, sovereignty is no longer absolute; states become embedded in an order where certain fundamental norms trump ordinary state consent. The authors suggest a *pluralistic* but coordinated interaction between the international and national constitutional levels. Rather than world government, they foresee an emerging *constitutional network* of institutions and norms. National constitutions would still operate, but they would increasingly be interpreted in harmony with international constitutional principles (like human rights or prohibitions on the use of force). This raises challenges of constitutional pluralism – how to manage conflicts between national constitutions and global norms – and the book grapples with these by proposing dialogue and legal procedures to mediate different levels of law. In sum, Klabbers, Peters, and Ulfstein are cautiously optimistic that a form of constitutional order is in the making globally, bringing a degree of legal hierarchy (e.g. peremptory norms at the apex) and common values to the international system. They also acknowledge, however, that this is not a uniform or uncontested development, and they address counterarguments throughout the work.

Bardo Fassbender – *The UN Charter as the Constitution of the International Community* (2009)

- Core Argument: Fassbender contends that there *"indeed exists a constitutional law of the international community that is built on and around the Charter of the United Nations."* In earlier works (notably a 1998 article) and this comprehensive monograph, he argues that the UN Charter functions as the *de facto* constitution of a global community of states. The constitutionalization of international law, in his view, is evidenced by a shift from a classical inter-state order to one centered on *community interests* and universal values. Key elements – such as the Charter's principles on the non-use of force, the protection of human rights, and the collective security system – are seen as constitutional principles binding on states.
- Framework: Fassbender's framework involves applying constitutional concepts to the global level. He highlights features that distinguish the *current* international order from old-style international law: the move from *bilateralism to community interest*, and from an order serving only states to one *"committed to the well-being of the*

individual person." These features mirror how national constitutions shift a society from a state of nature to an organized community under rule of law. He identifies the UN Charter's quasi-constitutional traits: a founding document with broad scope, an overarching purpose (maintaining peace and security, and promoting human rights and development), and supremacy over other international agreements (via Article 103 of the Charter). The Charter's near-universal membership and its aspirational opening words "We the Peoples…" are invoked as analogous to a constitutional preamble for the international community.

- Methodology: Fassbender employs doctrinal analysis, historical interpretation, and comparative reasoning. He traces the intent of the Charter's drafters and subsequent state practice to argue the Charter was not just a treaty among states, but the foundation of a legal *community*. He explains *why* the Charter has constitutional quality – for example, it establishes institutions akin to branches of government (executive-like Security Council, deliberative General Assembly, judicial ICJ), it articulates fundamental values (e.g. human rights in the preamble and Article 1), and it claims primacy (Article 103). He also discusses the legal consequences of this characterization: if the Charter is a constitution, then U.N. organs may exercise public authority over states, and states in turn must adjust their *"political self-understanding"* to accept limits on their sovereignty.
- Implications: Fassbender's thesis implies a significant reconfiguration of *sovereignty*. States are no longer completely free actors; they are members of an "international community" governed by a constitutional Charter. Sovereignty is conditioned by obligations erga omnes (owed to all) and by the Charter's higher norms (e.g., the prohibition of aggression). In practical terms, this means national constitutions and laws should be interpreted consistently with the UN Charter's principles. There is a nascent legal hierarchy: e.g., *jus cogens* norms (peremptory norms like the ban on genocide) and the Charter sit at the top of the pyramid, analogous to a global supreme law. Fassbender sees the Charter's constitutional status as fostering an *emerging world order*: it nurtures aspirations toward *world government in the sense of lawful global governance*, though not a world state. Importantly, he notes that recognizing the Charter as a constitution requires states to *alter their self-conception*, accepting that their authority is limited by a worldwide legal framework. In sum, Fassbender is a leading voice asserting that we already have the rudiments of a *world constitution* in force – and he explores the consequences, from UN reform debates to the need for judicial review of Security Council acts, that flow from this bold recharacterization of the UN system.

Jürgen Habermas – *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society"* (2008, *Constellations* 15(4))

- Core Argument: Habermas, a prominent philosopher, makes a normative case for constitutionalizing international law as part of a project to build a *legitimate* global order – one that he describes as a *"global domestic politics without world government."* He seeks a middle path between two undesirable extremes: on one hand, a *world state* (which he and Kant feared could become an oppressive "soulless despotism"), and on the other, a purely intergovernmental order where states remain fully sovereign and global governance is ineffectual. Habermas argues that certain constitutional principles (e.g. human rights, rule of law, separation of powers) can and should be entrenched at the international level to constrain power politics and provide

a framework for solving global problems. This is seen as an evolutionary leap in law – a cosmopolitan constitutionalization that doesn't create a singular world government, but establishes a binding legal order above the nation-state.

- Framework: Habermas proposes a multi-level cosmopolitan order. In his vision, global governance operates on *three levels*: (1) a supranational level with limited but critical functions (centered on the U.N.) to *"secure peace and promote human rights"* – essentially, an executive/peacekeeping function and enforcement of basic rights analogous to a minimal central authority; (2) a transnational level of issue-specific cooperation, where states (especially major powers) jointly address global economic, environmental, and other interdependence issues through negotiated regimes (think of G20, climate conferences, WTO negotiations); and (3) the national level, where democratic self-government continues within states. The European Union is often cited by Habermas as an innovative model that complicates and enriches this multi-level structure. Crucially, Habermas emphasizes *heterarchy* over hierarchy – these levels must interact in a non-centralized way, maintaining a balance between global norms and local autonomy. He calls this approach *"institutional cosmopolitanism"*: strong international institutions constrained by constitutional norms, yet no single world sovereign.
- Methodology: Habermas uses a blend of legal analysis, democratic theory, and Kantian philosophy. He examines post-WWII developments (like the UN Charter's human rights linkage to peace, and the growth of international courts) and post-Cold War trends to argue that the world has already moved partway toward constitutionalization. By invoking Kant's ideas (world republic vs. confederation of states) and updating them, Habermas modifies the Kantian project: instead of a *unitary* world republic, he envisions a *"cosmopolitan condition"* of law where states remain but are constitutionally tamed. His work is theoretical, but he also engages with concrete proposals (e.g., reforming the UN to make the Security Council more accountable, creating a parliamentary assembly, etc.). Habermas openly addresses legitimation problems: global decisions suffer a democratic deficit, so he investigates how constitutionalization can introduce accountability (through judicial review, global public spheres, and greater transparency) even without a world government.
- Implications: In Habermas's model, state sovereignty is transformed, not abolished. States no longer possess unchecked Westphalian sovereignty; they must exercise sovereignty in accordance with international constitutional principles (for instance, they cannot legally wage aggressive war or perpetrate human rights abuses without violating the *constitution* of world society). Yet states keep a crucial role as bearers of democratic legitimacy at the local level. This results in a form of constitutional pluralism: national constitutions and international law co-exist, each adjusting to the other. Habermas speaks of *"world society"* being *politically constituted* without a singular world state. Importantly, he acknowledges real-world challenges: international politics often operates in a *"communicative-strategic twilight"*, meaning that power and self-interest frequently trump reasoned consensus. He notes that global decision-making today is still *"machtgesteuert"* (power-driven), and that many cosmopolitan norms remain aspirational. Therefore, his plea for constitutionalization is partly to *legitimize* and tame global power through law. In terms of legal hierarchy, Habermas does imply a layering: e.g., the UN Charter and peremptory norms sit at a constitutional apex, but enforcement of and compliance with those norms require cooperation of states and international institutions at multiple levels. Ultimately, Habermas interprets the constitutionalization of international law as a key component of an *"emerging global legal order"* that strives to fulfill the Enlightenment aspiration

of a lawful world, aiming for a kind of *world government by law* (if not by a world state) that reconciles global interdependence with democratic legitimacy.

Matthias Kumm – *"The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and beyond the State"* (2009 in **Dunoff & Trachtman (eds.),* Ruling the World?**) and *"The Cosmopolitan Turn in Constitutionalism: An Integrated Conception of Public Law"* (2013)

- Core Argument: Kumm is a leading proponent of *cosmopolitan constitutionalism*, arguing that constitutional theory must *"take a cosmopolitan turn"* in order to remain normatively credible in an age of globalization. He posits that the legitimacy of national constitutional orders is now partly *dependent* on their integration into the wider international legal system. In other words, a state's constitution is not fully legitimate if it disregards global justice and international law. Kumm's bold claim is that *constitutionalism is no longer solely a domestic concept*; instead, we must conceive of a *global constitutional framework* wherein state sovereignty is constrained by, and conditioned on, respect for cosmopolitan norms (such as human rights, prevention of harm beyond borders, etc.). He famously writes that *"constitutionalism has to occupy itself with the global legitimacy conditions for the exercise of state sovereignty."* States must align their conduct with international law's requirements (addressing cross-border problems and respecting fundamental rights) or risk losing moral legitimacy. Only a "cosmopolitan state", which *incorporates and reflects global legitimacy conditions in its constitutional structure and foreign policy*, can be considered fully legitimate.
- Framework: Kumm builds a theoretical framework where domestic and international constitutional law form a single integrated system of public law governed by cosmopolitan principles. He challenges the traditional divide between national constitutional supremacy and international law voluntarism. In his view, *constituent power* is now dual: it resides both in "We the People" of a state and in the *"international community"* as a whole. Thus, constitutional authority is shared. For example, he would argue that when a state joins a human rights treaty, the *people* of that state and *humanity* at large co-authorize those higher norms. This integrated approach uses a *subsidiarity* logic – issues should be handled at the level where they can be most effectively and justly addressed. Global public goods and externalities (like climate change, trade imbalances, pandemics) are beyond any single state's capacity and therefore must be governed by international law; doing so is part of what legitimate sovereignty entails. Kumm's framework aligns closely with liberal democratic values: it sees international law (properly constituted) as an extension of the constitutional rule of law and human rights project outward, beyond the state.
- Methodology: In developing these ideas, Kumm uses analytical jurisprudence, constitutional theory, and normative reasoning. His 2009 chapter in *Ruling the World?* and his 2013 Indiana J. Global Legal Studies article both articulate general principles rather than detailed case studies, but he illustrates his arguments with references to practical developments: e.g., national courts applying international human rights law even against national legislation, or the idea that European Union law and national law are intertwined in a constitutional network. Kumm formulates tests like a *"cosmopolitan legitimacy test"* for international law: international norms should be binding if they protect individuals across borders from injustices that single states can't prevent. He addresses counter-arguments (such as the democratic deficit of international law) by suggesting ways to democratize global governance (increasing

transparency, involving domestic parliaments in treaty-making, etc.), but maintains that *some* global regulation is necessary for any constitution's promises of justice to be realized.

- Implications: Kumm's cosmopolitan constitutionalism redefines sovereignty as a *fiduciary duty* rather than absolute power – states are trustees of humanity's interests as well as their own people's. This means that in cases of conflict, a state should defer to international norms that address global justice concerns, because failing to do so would breach the cosmopolitan requirements of legitimacy. For instance, if a national constitution allowed torture of foreigners, Kumm would argue that international human rights law invalidates such allowance as the national constitution's legitimacy is contingent on observing basic human rights standards. In terms of constitutional pluralism vs. hierarchy, Kumm leans toward an integrated hierarchy of values (human dignity, etc.), but a pluralism of institutions. He does not call for a world state or a single world constitution-text; rather, he envisions multiple legal sites (national courts, international courts, legislatures, organizations) interacting under shared fundamental principles. This is sometimes called a *"pluralistic cosmopolitan constitutional order."* Sovereignty and constitutional authority are thereby shared across levels: domestic constitutions remain crucial for democracy and identity, while international law provides an overarching legal *context* that legitimizes and limits state action. Kumm's work has far-reaching implications: it justifies international judicial review of state actions (e.g., by human rights courts), it encourages doctrines like the *"margin of appreciation"* to balance levels, and it essentially fuses constitutional and international law into one coherent field governed by common values. This perspective strongly supports the idea that constitutionalization of international law is not only happening but is *normatively necessary* for a just global order.

Armin von Bogdandy – *"Constitutionalism in International Law: Comment on a Proposal from Germany"* (Harvard ILJ 47:223, 2006)

- Core Argument: Von Bogdandy, a prominent German international and European law scholar, has engaged deeply with the question of international constitutionalism. In this 2006 article and other writings, he examines whether international law can and should be understood in constitutional terms. His position is nuanced: he acknowledges emerging constitutional elements in international law, but offers a cautious assessment of how far this trend goes. The article was a response to proposals in German academia and politics that advocated explicitly *constitutionalizing* the international order (such as drafting a "World Constitution" or significantly empowering the UN). Von Bogdandy's core argument is that while international law is developing *"constitution-like"* features (e.g., community values, hierarchy of norms, institutional frameworks), it still lacks key attributes of a constitution as understood domestically (such as a clear sovereign constituent power or robust enforceability). He thus supports the idea of *"constitutionalization without a constitutional document"* – an ongoing process rather than a finished state.
- Framework: Adopting a comparative constitutional perspective, von Bogdandy analyzes international law through the prism of classical constitutional concepts: *fundamental norms*, *organized public authority*, *hierarchy*, and *legitimacy*. He identifies candidate features of an international constitution: the UN Charter (and certain peremptory norms) as *higher law*, the network of international organizations as an *executive/administrative structure*, the International Court of Justice and other tribunals as a *judiciary*, and principles like human rights and sustainable development

as part of an *international value system*. However, his framework also points out crucial differences: international law's decentralization and reliance on state consent mean it doesn't have the same *democratic pedigree or enforcement mechanism* as national constitutions. Von Bogdandy introduces the idea of *"multilevel constitutionalism"*, derived partly from the EU experience, to conceptualize how national and international legal orders together might form a composite constitutional system. This multilevel approach inherently accepts plurality – no single constitution covers everything, but there is an overarching constitutional quality to their interaction.

- Methodology: The 2006 comment is largely doctrinal and conceptual, engaging with literature and proposals (the "proposal from Germany" being, for example, calls to upgrade the UN General Assembly to a world legislature, etc.). Von Bogdandy evaluates such proposals against legal reality and constitutional theory. He uses a lot of *analysis of legal texts* (UN Charter, WTO Agreement, etc.) and how they are applied, to judge if they fulfill constitutional functions. For instance, he examines whether the UN Security Council's Chapter VII powers resemble a constitutional executive power, or whether the existence of *jus cogens* (peremptory norms) indicates a hierarchy of norms akin to constitutional supremacy. Additionally, he dialogues with other theorists (both proponents like Fassbender and skeptics) to map the spectrum of views. His methodology is characterized by a search for *principles* that could unify international law (like respect for *human dignity* or *peace*) and whether these principles are accepted as binding constraints.
- Implications: Von Bogdandy's conclusions are somewhat intermediate. He essentially argues that international constitutionalization is a partial reality – present in some areas, absent in others – and that we should neither dismiss it nor overstate it. Sovereignty, in his view, is undergoing change: states are increasingly bound by common norms and submit to international adjudication in various fields, which is constitutional-esque. However, states remain the primary actors, and without their continued consent and participation, international law cannot function. This places a premium on *constitutional pluralism*: rather than a single written world constitution, we have multiple levels (national, regional, global) each with constitutional qualities that need to be harmonized. Von Bogdandy thus often advocates practical steps to *constitutionalize incrementally* – such as strengthening judicial accountability of international bodies, clarifying the hierarchy of norms (e.g., giving priority to jus cogens and UN Charter obligations explicitly in domestic legal systems), and fostering a sense of *international community* to buttress the legal developments. In terms of legal hierarchy, his work implies a limited hierarchy: he agrees that some international norms stand above ordinary international agreements (for example, one cannot treaty around a jus cogens norm) which is akin to a constitutional layer. Yet, he stops short of claiming that international law is hierarchically integrated to the extent domestic law is; instead, there remain *gaps and conflicts* that constitutional theory must accommodate. Ultimately, von Bogdandy represents a thoughtful pro-constitutionalization voice tempered by realism: he sees an *emerging global public law*, but also insists on preserving democratic legitimacy and diversity, meaning the end result is likely a pluralistic constitutional order rather than a monolithic world constitution.

Erika de Wet – *"The International Constitutional Order"* (International & Comp. Law Quarterly, 2006)

- Core Argument: De Wet argues that we are witnessing the emergence of an *"international constitutional order"*, characterized by core values and structural principles that bind the international community of states. In her influential article, she identifies three pillars of this nascent constitutional order: (1) the existence of an international *community* (as opposed to just a collection of states), (2) an international *value system* (shared fundamental values such as human rights, peace, and self-determination), and (3) a degree of *hierarchy* in norms (for example, the concept of *jus cogens* – peremptory norms that no state can legally violate). These elements mirror the features of a constitution: a community of persons, foundational values, and a hierarchy of law. De Wet's core argument is that international law is no longer flat and purely consensual; rather, it has vertical components and common goods that justify calling it *constitutional*.
- Framework: De Wet uses a framework that blends classic sources doctrine with constitutional theory. She examines how certain international rules have a *higher status* – citing examples like the UN Charter obligations, jus cogens norms (e.g. prohibitions on genocide, torture, aggressive war), and decisions of the UN Security Council under Chapter VII. She also considers institutions that perform *constitutional functions*: the UN Security Council acting (imperfectly) as a global executive enforcing peace and security, the ICJ and other courts as interpreting higher law, and even national courts reviewing the compatibility of domestic actions with international peremptory norms (which she regards as a form of constitutional review across levels). Her value-oriented approach points out that nearly all states now accept some *common values*, such as the illegality of genocide or apartheid, which implies an international public order beyond individual treaties. This web of *erga omnes* obligations (owed to all) is a hallmark of a constitutionalized system.
- Methodology: The article employs doctrinal research and synthesis of state practice. De Wet surveys developments like the International Criminal Court's establishment (ending absolute impunity for leaders), the binding nature of Security Council resolutions, and the increasingly automatic incorporation of human rights norms into domestic law, to support her thesis. She references constitutional terminology used by courts and scholars – for instance, national courts referring to UN Charter principles as part of a "constitutional structure" of international law. By drawing analogies to federal systems (where a federal constitution coexists with state constitutions), she rationalizes how a global constitutional order might coexist with national constitutions. Her methodology is both descriptive (highlighting what *is* happening in law) and normative (arguing that recognizing these trends as constitutional could reinforce them).
- Implications: If one accepts de Wet's *international constitutional order* thesis, the implications for sovereignty are significant. State sovereignty becomes *embedded in a higher legal framework*: states remain crucial actors, but they cannot "opt out" of certain fundamental norms of the international system. For example, even if a state hasn't ratified a particular treaty, it is still bound by jus cogens rules like the ban on genocide – much as in a constitutional system, a sub-unit (state/province) cannot opt out of fundamental rights guaranteed by the federal constitution. This enhances the hierarchical nature of international law: not all norms are equal; some have *constitutional status*. De Wet explicitly notes that customary international law and peremptory norms have been "characterised as a form of international constitutional law" by other scholars, reinforcing her argument. For constitutional pluralism, her view suggests a layering: national constitutions still operate, but above them lies a thin but critical layer of international constitutional norms that national law must respect.

This can be seen in cases where domestic courts invoke international human rights or UN Charter obligations to invalidate national legislation, effectively treating the international norm as superior. De Wet's work also touches on legal hierarchy: she argues, for instance, that the UN Charter and jus cogens create a hierarchy where, say, a Security Council resolution (acting under the Charter's Chapter VII) can even override conflicting treaties between states. The order is "constitutional" in that it provides an ordering of norms and values internationally. However, she acknowledges the order is still *emerging* and not as complete or clear-cut as a national constitution. There are enforcement deficits and ambiguities about who decides when norms conflict (a role often filled by national courts or ad hoc tribunals). Overall, de Wet's scholarship strengthens the case that international law is moving toward a structure where *sovereignty is exercised within the constraints of an international constitutional framework*, aligning the global legal order more closely with the ideals of world rule of law and even inching toward the world community Kant once envisaged (short of a world state).

Deborah Z. Cass – *The Constitutionalization of the World Trade Organization: Legitimacy, Democracy, and Community in the International Trading System* (2005)

- Core Argument: Cass's monograph zooms in on one specific regime – the World Trade Organization – as a microcosm of international constitutionalization. She investigates whether the WTO's legal and institutional developments amount to a "constitutionalization" of the international trade system. The core argument is that the WTO has acquired several features akin to a constitution for global trade: it has foundational principles (free trade, non-discrimination) that constrain members' policies; it possesses a *binding dispute settlement mechanism* with an appellate body that can invalidate national measures; and it aspires to permanence and stability in a way that goes beyond a traditional treaty organization. However, Cass critically evaluates these developments against criteria of *legitimacy* and *democracy*. She probes a central tension: the more the WTO looks like a constitution (strong legal rules above national law), the more it encounters a democratic deficit and questions about whose values it enshrines. Thus, her book weighs the benefits of constitutionalization (predictability, rule of law in trade) against the costs (loss of national regulatory autonomy and weak input from citizens).
- Framework: Cass uses a framework of *legitimacy, democracy, and community* (as the subtitle indicates). She examines WTO law in terms of constitutional legitimacy – does it have a justificatory foundation like a social contract or global consensus? She explores democracy – noting that the WTO's rules can deeply affect domestic choices (e.g., health, environment, industrial policy) without direct democratic control by the affected populations. And she looks at community – is there a sense of a global trading community with shared values that could underpin a constitutional order? The book delves into how some commentators started referring to the WTO as a "constitution" of world trade (for example, because the WTO agreements are hierarchically above domestic law in member states on trade matters, and because the dispute rulings have direct effect on national legislation). Cass contrasts this with the more fragmented view: that the WTO is just one regime among many and lacks broader constitutional resonance (since it's narrowly about trade and doesn't integrate, say, human rights or environmental values sufficiently).

- Methodology: The work is interdisciplinary, blending legal analysis of WTO agreements and case law with political theory. Cass systematically reviews WTO jurisprudence for constitutional tendencies – e.g., the way the Appellate Body's decisions effectively *authoritatively interpret* trade law could be seen as judicial review. She also charts the institutional evolution from GATT (General Agreement on Tariffs and Trade) to WTO: the shift from a relatively weak GATT system to the WTO's much stronger enforcement and rule-making procedures is likened to moving from a loose confederation to a more constitutionalized federation. Importantly, Cass doesn't treat constitutionalization as unequivocally positive; her methodology includes a critical lens: she draws on democratic theory (e.g., discussing how the WTO's one-country-one-vote and consensus process still leaves power imbalances) and global governance scholarship to ask if the WTO's "constitution" serves *global public interest* or predominantly corporate/major power interests. Case studies, like controversies over WTO rulings on public health (the famous Tuna/Dolphin, Shrimp/Turtle cases, etc.), illustrate how constitutional-like WTO norms (free trade commitments) can clash with domestic *"constitutional"* values (like environmental protection as found in national law).
- Implications: Cass's findings underscore a nuanced implication: parts of the international system *can become constitutionalized in sectoral ways*. The WTO might be forming a sort of *economic constitution* for globalization, with rules that override national trade laws much as a constitution overrides ordinary statutes. This means sovereignty in trade policy is pooled and limited – WTO members have ceded a slice of their sovereign authority to make trade rules unilaterally. National constitutions in many countries explicitly defer to WTO obligations (for example, the European Union treats WTO law as binding, and many states change laws following WTO dispute losses). However, Cass highlights the problems this raises: if the WTO is a constitution, it's one that was not drafted with direct public participation; it prioritizes certain liberal economic values that might conflict with other constitutional values at national or international level (like labor rights or environmental sustainability). This exposes a legitimacy gap – calling forth either reforms (to democratize the WTO, include more exceptions for public interest, increase transparency) or, arguably, a rebalancing by embedding the WTO in a larger constitutional context (for instance, coordinating it with international human rights or environmental agreements). In terms of constitutional pluralism, Cass's work implies that we are getting *multiple* partial constitutions – e.g., an economic constitution (WTO), a security constitution (UN Charter), etc. – that are not always harmonized. She points out that the WTO's strong legal framework exists alongside weaker frameworks in other areas, which can lead to *"constitutional asymmetry"* globally. Her focus on community suggests that a true constitution usually reflects a community's identity and values; for the WTO, the sense of community is underdeveloped – the "international trading system" is a community mainly of states and corporations, not of *peoples* in any emotionally resonant sense. Thus, she is somewhat critical: the WTO's constitutionalization advances rule of law in trade, but it also exemplifies the technocratic, democracy-thin nature of current global governance. Cass's balanced approach is a key contribution, illustrating concretely how constitutionalization works in practice and why many observers have both high hopes and deep concerns about it.

Constitutional Pluralism and Alternative Perspectives

Nico Krisch – *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (2010)

- Core Argument: Krisch's landmark book is a critique of the drive toward a single global constitution. He argues that the global legal order is better understood in terms of *pluralism* rather than hierarchical constitutionalism. In other words, instead of moving toward one unified constitutional pyramid with international law at the top, we are (and should be) in a condition where multiple legal systems overlap without a clear hierarchy. He posits that such "postnational pluralism" is more viable and normatively defensible in the absence of a world state. Krisch essentially goes *"beyond constitutionalism"* by contending that attempts to force a constitutional unity on international law are misguided; instead, maintaining a flexible pluralist structure will accommodate diversity and mitigate power struggles. He notes that the prevailing constitutionalist narratives create a false dichotomy – framing the choice as either constitutional unity or chaos – whereas in reality a middle ground of *constitutional pluralism* exists and is growing.
- Framework: Krisch sets up a theoretical contrast between the *constitutionalist paradigm* (which seeks *unity, hierarchy,* and a ultimate authority in the international sphere) and the *pluralist paradigm* (which accepts *heterarchy, multiplicity,* and negotiated order among different authorities). He observes that even within domestic contexts, pluralism can exist (e.g., in federations or the EU, constitutional authority is sometimes shared). Extending this to the global arena, he envisions a web of intersecting norms: national constitutions, international treaties, customary international law, regional legal orders (like the EU), and transnational regulatory regimes – none of which has absolute priority in all circumstances. Instead of a Kelsenian pyramid, think of a network where various nodes have greater authority in some contexts but yield in others. Krisch's framework acknowledges that there are emerging *constitutional elements* (like human rights norms widely accepted, or the UN Charter's special status), but he resists labeling the entire system as *"constitutionally ordered"*. Rather, these elements themselves operate in a pluralist environment; for example, the European Court of Human Rights and national supreme courts might engage in dialogue rather than one definitively bossing the other. He introduces concepts like *"pluralist accommodation"* to describe how, for instance, the UN Security Council's decisions and national constitutional protections (like due process rights) can clash and then be adjusted pragmatically by courts without a clear rule that one level always prevails.
- Methodology: The book is rich in both theory and empirical case studies. Krisch examines real situations of legal conflict and cooperation: e.g., how national courts reacted to European Community law before the EU developed its constitutional doctrine; how domestic courts and the European Court of Human Rights handle contradictions (the famous Kadi case in EU law, where the European Court of Justice asserted that EU constitutional principles could invalidate a UN Security Council sanctions mandate, is a prime example he discusses as pluralism at work). He also looks at investment arbitration vs. national law, and the interplay of WTO rulings with domestic constitutional courts. Through these, Krisch demonstrates that often no overarching authority settles disputes; instead, actors find compromises or face stalemates – a state of affairs he believes is not an interim disorder but a potentially permanent design. He critically reviews the literature advocating global constitutionalism (including authors like Peters, Habermas, etc.) and points out what he sees as their shortcomings – notably, the lack of a global demos and the danger of

pretending international judges or elites can substitute for it. His methodology also involves normative assessment: he asks which model (constitutionalism vs pluralism) better promotes values like *accountability, liberty, and justice* in the international realm. He concludes pluralism often better respects diversity and avoids the risk of oppressive centralization.

- Implications: Krisch's pluralist thesis has major implications for sovereignty and legal hierarchy. In a pluralist order, sovereignty remains distributed – states retain significant authority, but so do international institutions in their domains, and neither is absolute. Instead of a hierarchy with international law automatically at the apex (as many constitutionalists imply with terms like international "supremacy"), each conflict of norms has to be worked out contextually. For example, a nation might choose to prioritize a constitutional free speech guarantee over an inconsistent UN resolution (as some courts have done), whereas in other matters it might accept that international law dictates the outcome. There is no *single* rule of what trumps what – which is anathema to a strict constitutional mindset but natural in pluralism. Constitutional pluralism, as Krisch develops, means accepting overlapping constitutional claims. The EU, for instance, claims constitutional status for its treaties, while member states maintain their constitutions are supreme – a pluralist arrangement persists because neither side can conclusively defeat the other, and so a constant negotiation maintains order. Krisch suggests the global arena will (and should) function similarly. This guards against one-size-fits-all solutions; it also provides checks and balances in an unorthodox way (if an international body overreaches, states can push back citing constitutional reasons, and vice versa). Normatively, Krisch sees world government ambitions as unrealistic and potentially dangerous – a world state without a world democracy could be tyrannical. Pluralism avoids that by preventing full centralization of power. However, pluralism comes at the cost of clarity and efficiency: there's a perpetual ambiguity about who has the final say. Krisch responds that this is an acceptable trade-off and even mirrors the pragmatic evolution of law. His work essentially tells constitutionalists: *global law can achieve a form of order and rights protection without a final constitutional settlement.* Indeed, some evidence he highlights is that in certain domains a *"rights-based constitutional order is being constructed on pluralist foundations"*, meaning human rights can be upheld through cooperative interactions of various legal systems rather than a single hierarchy. In summary, Krisch is the leading voice for embracing a *decentralized, plural global legal order*, serving as a counterweight to theories that seek to constitutionalize away the rich complexity of international governance.

Neil Walker – *"The Idea of Constitutional Pluralism"* (Modern Law Review, 2002) and subsequent works on global law

- Core Argument: Walker introduced and elaborated the concept of constitutional pluralism, initially in the context of the European Union but with implications that reach into global governance. The core idea is that we can have *multiple constitutional orders coexisting* without a single ultimate arbiter or hierarchy. In a post-Westphalian world, "there exists a range of different constitutional sites and processes" rather than one unified constitutional pyramid. Walker argues that constitutional authority can be dispersed: for example, the EU legal order and the member state constitutions both claim fundamental authority, yet they co-operate and coexist through a form of mutual accommodation. Extrapolated globally, this suggests that *no single constitution or level of governance (national or international)* holds a monopoly on constitutional

legitimacy. Instead, we live under plural sources of constitutional normativity, and this pluralism can be stable and normatively desirable.

- Framework: Walker's framework challenges the traditional Westphalian dichotomy that saw each state as having its constitution internally and anarchy (or simple treaties) externally. He posits a "pluralist constitutional landscape" where national constitutions, supranational frameworks (like the EU or perhaps regional bodies like the Inter-American system), and international regimes all have constitutional qualities. Key features of constitutional pluralism include: heterarchy (no fixed hierarchy among constitutions), overlapping membership (individuals and states belong to multiple constitutional orders at once), and discursive resolution (conflicts are managed by dialogue and negotiation, not by a clear rule of supremacy). Walker distinguishes between *"pluralism"* and mere *"plurality"*: pluralism for him is a normative concept – it is about accepting and managing diversity in authority, not simply noting that diversity exists. In some of his later writings (e.g., on global law), Walker suggests that as legal problems globalize, we are moving toward a "constitutional pluralism in a global context" where even worldwide governance might consist of multiple interlocking constitutional regimes (for example, a climate change regime, a world trade regime, human rights regimes) rather than a single document or institution.
- Methodology: Walker's approach is heavily theoretical and constitutional-philosophical. He examines jurisprudence (like the famous Solange decisions of the German Constitutional Court, which balanced national constitutional integrity with European Community law supremacy, effectively an exercise in pluralist accommodation). He also analyzes constitutional doctrines and language used by courts and scholars to see how pluralism is being handled implicitly. In EU scholarship, Walker's 2002 article is often cited for articulating how the EU and member states each consider their legal order ultimate *in their own sphere*, yet practically a spirit of cooperation has avoided open sovereign conflict. Methodologically, Walker employs conceptual analysis: for example, asking *"What makes a constitution?"* and then showing that several entities beyond the state fulfill many of those criteria (like having a foundational charter, a bill of rights, a court, etc.). He then questions the necessity or even coherence of insisting on a single ultimate legal source. He often confronts skeptics of pluralism by defending its rationality: yes, it's counter-intuitive to have two claims to final authority, but it reflects the *reality* of divided sovereignty and, in practice, constitutional conflicts are rare because actors have incentives to find workable compromises.
- Implications: Walker's constitutional pluralism has deep implications for sovereignty and the hierarchy of laws. It essentially recasts *sovereignty* as *shared* or *negotiated*. For example, in the EU context, sovereignty is neither entirely with states nor with the Union, but partitioned and continually discussed. Applying this to the world: a state might say "my constitution is supreme," while an international court says "a UN Charter obligation is supreme" – pluralism means both claims hold weight, and we manage the tension case by case. This reduces the risk of a single, potentially oppressive world authority by preserving multiple poles of legitimacy (national democratic sovereignty *and* international legal principles). It also respects diversity: different communities may embed different values in their constitutions, and pluralism allows that to persist rather than ironing everything into one global constitutional mold. From a world order perspective, Walker's idea aligns with a system of *"checks and balances"* across levels – much like federalism, but without a formalized federal constitution. Instead of one hierarchy, we might get a plural order where, say, the International Criminal Court, the UN Security Council, and national courts all assert

authority in overlapping ways, but none can completely dictate to the others. Walker acknowledges that this situation can cause legal uncertainty, but he, like Krisch, often argues that it's an acceptable price for maintaining legitimacy at multiple levels. Notably, constitutional pluralism has been invoked to describe the relationship between international human rights law and national law: for instance, the UK courts treat the European Convention on Human Rights as deeply influential but not absolutely supreme over Parliament – a pluralist stance. Walker's contribution helps conceptualize such arrangements not as failures or transition points, but as a stable equilibrium for global governance. By emphasizing flow and dialogue over rigid hierarchy, his work provides a governance model that aspires to combine the best of global rule-of-law (cooperation, common standards) with the best of sovereignty (local self-rule, cultural variation). In sum, Walker, especially combined with Krisch, shifts the conversation from "Will we have a world constitution or not?" to "We already have many constitutional pieces – how do we live with that plurality constructively?".

Gunther Teubner – *Constitutional Fragments: Societal Constitutionalism and Globalization* (2012)

- Core Argument: Teubner, a legal sociologist, proposes an alternative vision termed "societal constitutionalism." He argues that globalization does not yield a single top-down constitution, but rather multiple *"constitutional fragments"* emerging within various social domains or sectors of global society. Each *"fragment"* is a set of fundamental norms and institutions that constrain a particular social system (like the global economy, the digital sphere, science, etc.), analogous to how a constitution constrains government power in a state. In other words, *global constitutionalization* happens, but not primarily at the level of states or comprehensive political institutions – instead, it happens spontaneously within decentralized networks (for example, the lex mercatoria serving as a constitution for cross-border commerce, or internet governance regimes acting as a constitution for cyberspace). Teubner's core argument is that these sectoral constitutions are crucial to bringing *"the values of constitutionalism to bear on private and transnational regimes"* that operate beyond the nation-state. No single document ties these fragments together; hence, the world is left with a plural, fragmented constitutional landscape rather than one unified world constitution.
- Framework: Teubner's framework is rooted in systems theory, drawing on the ideas of sociologist Niklas Luhmann. He sees society as composed of various *autonomous communication systems* (like the legal system, economic system, political system, etc.), each following its own logic. Constitutional norms can emerge in each system as that system's way of self-limiting and preventing destructive tendencies. For example, in the global *economic* system, an analogue to a constitution might be rules that prevent total market failure or protect certain fundamental rights (like labor rights) against pure market logic. In the *scientific* or academic system, constitutional norms might guarantee academic freedom and ethical standards globally. Teubner famously discussed the idea of a *"constitutionalization of international private law"* – meaning even contracts and corporate governance across borders might be subject to higher legal principles acting like a mini-constitution (e.g., corporate social responsibility codes as a quasi-constitutional restraint on corporate power). The *"fragments"* in his title reflects that these norms are partial and incomplete – they don't add up to a coherent whole, and often there's tension or gaps between them. This stands in

contrast to state constitutions which present themselves as holistic foundational charters.

- Methodology: Teubner's method is theoretical, supported by case studies of transnational regimes. For instance, he examines things like the *Basel Committee* (which sets global banking standards) or the *ISO standards* bodies, and the internal constitutive rules they develop (often without state legislatures). He notes how such bodies voluntarily adopt principles of transparency, accountability, or rights of participation in order to legitimize themselves – effectively mimicking constitutional principles. Another example is the *FCC's (Football Club)* and *Lex Sportiva* – global sports law – which has its own court (Court of Arbitration for Sport) and rules about fairness, acting almost like a constitution for international sports competitions. Teubner combines legal analysis with social theory, observing real governance phenomena (like the rise of *ICANN* for internet domain management, which has quasi-constitutional processes for stakeholder input). He then generalizes: these separate developments are not anomalies but indicate a broader pattern of *polycentric constitutionalization*.
- Implications: Teubner's perspective reframes sovereignty and legal authority in global society. Rather than sovereignty residing neatly in states or a world state, it *dissolves* into various networks and communities. Power exists in many forms (economic power, media power, technological power), and each needs constitutional checks. This implies that relying solely on inter-state law (e.g., treaties made by governments) is insufficient for a truly constitutional global order. We need to recognize and foster the constitutional norms that arise in *non-state arenas*. For instance, the spontaneous emergence of human rights-like codes in multinational corporations or the global NGO pressure resulting in better environmental standards for industries – these are parts of a global constitutional puzzle. In terms of constitutional pluralism, Teubner's world is inherently plural: each sector's constitution is relatively autonomous. That means conflicts will occur – e.g., the "economic constitution" (free trade norms) might conflict with the "environmental constitution" (climate change agreements) – and there's no final arbiter. Society must manage these conflicts through political processes or ad hoc tribunals. This vision resonates with pluralists like Krisch, but Teubner goes further by decentering the state: states are not the only nor even the primary sites of constitutional norms now. The idea of world government is replaced by a *patchwork governance*: a *"complex internationalism,"* as Chimni might call it, where different movements and networks provide impetus for each constitutional fragment. One implication is positive: it brings constitutional values (like rights, separation of powers, rule of law) into spheres where inter-state law might not reach (like purely private global contracts). But a negative implication is the risk of legitimacy deficits – many of these sectoral constitutions (e.g., a code decided by a private association of companies) lack democratic oversight. Teubner is aware of that and suggests the need for *"societal constitutionalism"* to consciously inject public interest and participation into these regimes. For the hierarchy of laws, Teubner's approach implies a heterarchical network – much like Walker and Krisch's pluralism. No single constitution (national or international) can claim comprehensive supremacy because other spheres (like the internet, or global finance) have their own quasi-constitutional order that doesn't neatly subordinate to state or UN authority. In summary, Teubner provides a radically different angle: constitutionalization is happening, but not where traditionalists look for it – instead of one world constitution, there are many partial constitutions forming organically within the fabric of global society.

Skeptics and Critics of the Constitutionalization Trend

Martti Koskenniemi – *"Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization"* (Theoretical Inquiries in Law, 2007)

- Core Argument: Koskenniemi, a leading critical international law scholar, takes a skeptical and nuanced view of the constitutionalization discourse. He suggests that treating international law as if it were undergoing constitutionalization is often less a description of reality and more a "mindset" or ideological orientation among international lawyers. This *constitutionalist mindset* reflects a desire to impose coherence, unity, and higher purpose on international law in response to anxieties about fragmentation and power politics. Koskenniemi argues that while it is *"always possible to grasp the world through a constitutional vocabulary,"* doing so does not necessarily *"provide determinate answers"* to practical problems. In other words, calling something a constitution doesn't magically resolve conflicts or power imbalances. He is critical of the assumption that simply invoking Kant or global constitutional ideals can overcome the inherently political and often contentious nature of international relations. At heart, he warns that constitutionalization can become a *myth* that international lawyers tell themselves – a utopian narrative that might obscure ongoing injustices or empire-like dynamics.
- Framework: Koskenniemi frames constitutionalism in international law not as an emerging legal structure per se, but as one of several *competing responses* to globalization. He contrasts it with what he terms "managerialism" (the technocratic governance approach of solving issues pragmatically without higher principles) and "empire" (the raw exercise of power by hegemonic states or blocs). Constitutionalism, in this triad, is the approach that seeks to civilize and organize global power by subjecting it to overarching legal norms. However, Koskenniemi believes this approach often involves *projecting Western liberal legal concepts* onto a plural world, which can be problematic. He also delves into Kantian themes – noting that many constitutionalists hark back to Immanuel Kant's vision of a lawful world order. Koskenniemi re-reads Kant not as a simplistic global federalist, but as someone aware of the tension between moral ideals and political realities. He suggests that rather than seeing Kant's *Perpetual Peace* essay as a blueprint for a world constitution, one could interpret it as espousing a *mindset* of hope in progress. Thus, he says *constitutionalism is best seen as a mindset — a tradition and sensibility about how to act in a political world*, which means it guides one's orientation but doesn't yield concrete, undisputed legal rules or institutions.
- Methodology: Koskenniemi's method is deeply reflective and influenced by critical legal studies. He examines the language and rhetoric of international lawyers – how terms like "constitution" and references to Kant are used – and questions the *politics behind these usages*. He often employs a historical perspective: for example, looking at how 19th-century international lawyers once used *natural law* or *civilization* narratives to similar effect (imposing order or justifying hierarchy). By drawing parallels, he implicitly cautions that today's constitutionalist rhetoric could be another form of *juridical hubris* or even a cover for dominance (e.g., powerful states can accept certain global norms that align with their values, labeling them constitutional, while ignoring others). In "Constitutionalism as Mindset," he doesn't completely reject constitutionalization efforts; instead, he deconstructs them to reveal that without

genuine global political will and community, constitutionalist claims remain indeterminate – they require *"spiritual or professional regeneration"* to come true. That somewhat cryptic conclusion suggests international lawyers need to change their ethos (becoming more cosmopolitan in spirit) for any constitutional project to be meaningful, rather than just *legal engineering*. Koskenniemi also critically engages Kant's writings, showing that even Kant oscillated between envisioning a world republic and warning against it (fearing a global monarchy). This dialectic in Kant is used to mirror today's debate and caution that easy answers are elusive.

- Implications: From Koskenniemi's critical standpoint, sovereignty and power are still the central facts of international life, and constitutional talk doesn't abolish that – it may even mask it. He implies that many so-called constitutional norms in international law (like human rights, or the responsibility to protect) are ultimately contingent on the political context and the preferences of powerful states. Thus, proclaiming a global constitution doesn't necessarily restrain the strong or uplift the weak unless there is actual political commitment. For constitutional pluralism, Koskenniemi's analysis would likely see pluralism as just the empirical state of affairs – we have a diversity of normative orders – and skepticism that a neat pluralist harmony can be engineered by lawyers alone. He often emphasizes the role of the *"professional sensibility"* of lawyers: if lawyers adopt a constitutionalist mindset, they may strive to make international law coherent and principled, but they might also become prone to self-delusion, believing in an order that reality doesn't support. In terms of legal hierarchy, he challenges whether purported hierarchies (like jus cogens) are truly effective. For instance, yes, torture is a peremptory norm prohibition – quasi-constitutional – but that didn't stop some powerful states from engaging in it in the war on terror. Koskenniemi would ask: what did the *"constitutional"* norm avail when confronted by politics? The implication is not to abandon ideals, but to recognize the *limits of law in the international sphere* without material power and community backing. He encourages international lawyers to be self-aware – to know that when they argue for a hierarchy or a cosmopolitan legal order, they are making a *value choice and a political move*, not unveiling a scientific truth. This reflective stance doesn't provide a rival blueprint (Koskenniemi doesn't, for example, champion sovereignty absolutism either) – instead, it's a call for prudence and modesty. In summary, Koskenniemi injects a healthy dose of realism and critical insight: constitutionalization of international law, as attractive as it sounds, might often be more about how we *imagine* international law (*"through a constitutional vocabulary"*) than about a structural transformation fully underway. Without broader changes in global politics and the mindset of practitioners, constitutionalization could remain an indeterminate project or even a *smokescreen* for existing power structures.

Eric A. Posner (and Jack L. Goldsmith) – *The Limits of International Law* (2005) & *The Perils of Global Legalism* (2009)

- Core Argument: Posner (often along with Goldsmith) represents a realist and skeptical view of international law's authority, fundamentally questioning the constitutionalization narrative. In *The Limits of International Law*, Goldsmith and Posner argue that international law is not a constraint on states in any robust, law-like sense; rather, it is a product of states pursuing their interests (through coincidence, coordination, or coercion) and it lacks an independent enforcement mechanism or democratic foundation. Therefore, the idea of international law "trumping" national law the way a constitution trumps ordinary laws is, in their view, either false or

extremely limited. Later, in *The Perils of Global Legalism*, Posner zeroes in on what he terms *"global legalism"* – the belief that global problems can be solved by creating legal rules and institutions at the international level. He critically examines this as a kind of utopian project and strongly asserts that *"global legalism is the world government approach except without the government."* Legalists, he says, **"believe that law without government can nonetheless solve global problems,"* but Posner finds this assumption flawed. Essentially, his core argument is that *law needs sovereign power to be effective*; without a world government, international "law" will often be impotent when it truly clashes with national interests. And if one did try to create a true world government, Posner (like many realists) would likely warn of even greater perils (loss of national freedom, potential tyranny, etc.).

- Framework: The Posner/Goldsmith framework is grounded in rational choice theory and international relations realism. They treat states as the primary actors, each guided by self-interest (security, economic gain, etc.), and international law as an epiphenomenon – a byproduct of states finding it convenient to cooperate at times. In this framework, concepts like *"international community"* or *"global constitution"* are either empty or dangerously idealistic. Sovereignty remains the bedrock: each state is ultimately answerable only to itself (or perhaps its own people), and will abandon international commitments if they become too costly. In *Limits*, they categorize international law into *"coincidence of interest"* (states do the same thing because it's in their separate interest, not because of law), *"coordination"* (states create rules for mutual benefit in harmony, like driving on a certain side of the road internationally), and *"cooperation"* (harder cases where short-term incentives to defect exist, like treaties on arms control – here enforcement is tricky). Notably, they found little room for moral or constitutional constraint in this schema. In *Perils of Global Legalism*, Posner explicitly addresses the mindset of those who push for things like the International Criminal Court, or strong human rights courts, or other "constitutional" global institutions. He claims they underestimate the importance of political legitimacy and power, espousing *"law without politics"* which he finds unsustainable. Posner labels global legalism as a quasi-religious faith among some lawyers, a faith that international law can substitute for politics. His framework thus directly challenges the constitutionalist framework that sees law as gradually taming politics at the global level.
- Methodology: Posner and Goldsmith use a mix of qualitative historical analysis and game theory logic. *The Limits of International Law* famously combs through examples like the laws of war, human rights treaties, and customary international law case studies, arguing that state behavior is better explained by self-interest and distribution of power than by any normative commitment. For instance, they argue that human rights treaties have little influence on repressive governments' behavior; those that comply do so for other reasons (internal politics, etc.), not because the treaty *constitutionally* bound them. They also often point out instances where powerful countries ignore international law (like the U.S. in some security matters) with few consequences, to illustrate the lack of a true *legal* order above states. Posner's *Perils* book takes a polemical tone at times, critiquing specific advocacy for things like universal jurisdiction or the idea of global constitutional rights, suggesting such efforts can backfire or be hypocritical. Throughout, the methodology emphasizes empirical evidence of compliance (or non-compliance) and a cost-benefit lens on why states join or break international commitments. They do not engage much in moral philosophy or constitutional theory – indeed, they consider much of that as *wishful thinking*. Instead,

they might invoke Hobbesian or realist political theory: without a *Leviathan* (a sovereign), law is not binding in the same way.

- Implications: From Posner and Goldsmith's perspective, national sovereignty remains the highest authority, and they are inherently suspicious of any claims that an international norm or institution can legitimately override a national constitution or the will of a state's government. They likely would view constitutional pluralism as simply a euphemism for the messy reality that different legal systems exist, but ultimately power decides which prevails when they conflict. For example, if a national court defies an international court, and the state backs its court, nothing will force the state to yield (unless other states impose sanctions, which again is politics, not an automatic legal mechanism). Their critique suggests that efforts toward *world constitutionalism* might undermine democratic accountability – they echo a concern that transferring decisions to international bodies can bypass national democratic processes, leading to what some call a global democratic deficit. Posner especially highlights that *global legalism espouses "law without government," which to him is inherently unstable*. This viewpoint implies that attempting to build a constitutional order without a corresponding global political community (and enforcement power) is putting the cart before the horse. If taken to the extreme, one hears echoes of the "new sovereigntist" stance (often found in the U.S.) which resists binding international commitments that constrain U.S. constitutional autonomy (for instance, the U.S. not joining the ICC out of fear it would override U.S. legal processes). Posner doesn't necessarily argue for total isolation; rather, he advocates pragmatism: states should cooperate when it's mutually beneficial and use flexible, sometimes non-legal, arrangements. He sees *aspirations toward world government or stringent global legal regimes as dangerous*, because they either won't work and will erode respect for law, or if they do work, they might create unaccountable global bureaucracies. In terms of legal hierarchy, the realist view is that any apparent hierarchy (like the UN Charter above national law) is contingent on the will of powerful states to obey it. Should their vital interests be at stake, the hierarchy will collapse (as evidenced by moments like the Iraq War 2003, launched without UN authorization). Posner's provocative stance serves as a counterbalance to idealistic narratives: it reminds that *without power and public buy-in*, legalistic schemes fail. Thus, the constitutionalization trend, in his opinion, should be approached with great caution, keeping in mind that international law *still ultimately operates in the shadow of sovereign power*.

Dieter Grimm – *"The Achievement of Constitutionalism and its Prospects in a Changed World"* (2015, in *Twilight of Constitutionalism?*) and *Sovereignty: The Origin and Future* (2016)

- Core Argument: Grimm, a former Justice of the German Constitutional Court and a constitutional scholar, admires the historical success of constitutionalism at the nation-state level but is wary of transplanting it wholesale to the international level. He argues that the strength of constitutions has historically depended on the existence of a *"constituent power"* – a people – and robust democratic institutions. These conditions, he points out, do not (yet) exist in the international realm. Thus, Grimm's core argument is that *constitutionalization beyond the state faces a legitimacy problem*: without a global people (demos) and without mechanisms of democratic accountability, a global constitution would lack the very qualities that give national constitutions their authority and success. In his view, while international law can certainly constrain states, trying to imagine it as a *full analogue* to a domestic

constitution might undermine both democracy and effectiveness. For example, in the EU context (which Grimm often discusses), he notes that while the EU has quasi-constitutional elements, it struggles with democratic legitimacy – a problem that would be even more acute globally. So Grimm is a *friendly critic*: supportive of international cooperation and law, but cautioning against overshooting into a world constitutional framework that citizens cannot control.

- Framework: Grimm's framework emphasizes democratic sovereignty and the principle of constituent power. He often returns to basic questions: *who* can enact a constitution, *to whom* does it answer, and *who* enforces it. In a nation, the answer is the people (even if indirectly, through representatives and courts). In the international system, Grimm finds no equivalent answer – states are the ones making and enforcing law, and the "people of the world" have no global electoral or participatory system to influence those laws. He also distinguishes between a constitution's functional aspects and its legitimating aspects. Functionally, international law can do some things a constitution does (organize power, enumerate principles), but it does so by inter-state agreement and often technocratic means, not via popular sovereignty. Therefore, he suggests that we might end up with the form of constitutionalism (rules above states) without the substance (democratic legitimacy and self-government). Grimm is a proponent of constitutional pluralism in the sense that he accepts multi-level governance, but he tends to assign the final *legitimacy* to the state level. His model is that international law should remain largely derived from states' consent, and national institutions should mediate international obligations (so that parliaments and courts keep control).
- Methodology: Grimm uses historical analysis (looking at how constitutions emerged alongside the nation-state) and normative reasoning grounded in democratic theory. He often references the post-World War II constitutional moment – how constitutions (like Germany's Basic Law) were built on a clear demos and public deliberation – and contrasts that with treaties negotiated by diplomats. In his essays, he analyzes specific cases of tension: for instance, the European Court of Justice's expansive interpretation of EU powers versus national parliaments' will, or the WTO's trade rules overriding national social policies. He tends to illustrate his concerns with these examples, arguing that when international bodies effectively "constitutionalize" certain policies, national citizens may feel disenfranchised (as seen in protest movements claiming *"no democracy without a country"* or skepticism toward "unelected" international bureaucrats). Grimm's methodology also includes proposing reforms: he doesn't simply object, he might suggest ways to increase accountability – for example, enhancing the role of national legislatures in international decision-making or requiring parliamentary ratification of major international court rulings before they take effect domestically. Another method he uses is conceptual clarification: he defines what a constitution *is* (for Grimm, tied to statehood and a specific political community) and thus why speaking of a "world constitution" is more metaphorical than real at present.
- Implications: The implications of Grimm's perspective center on sovereignty and democratic legitimacy. He is effectively defending a continuing role for the nation-state as the primary locus of democracy. That means, in cases of conflict, Grimm would likely favor national constitutional law having the *last word* unless and until international lawmaking becomes democratized. For example, if an international court issues a ruling that deeply contravenes a country's constitutional principles or electoral choices, Grimm would empathize with that country's courts or legislature asserting final authority (this logic underpinned, for instance, the German Constitutional Court's

approach in the Lisbon Treaty judgment, insisting on safeguarding core constitutional identity vis-à-vis the EU). In terms of *constitutional pluralism*, Grimm envisions something like a balanced dualism: international law and national law both exist, but international law should not completely dominate national constitutional autonomy, nor should nations ignore international law's cooperative necessities. He thus might support a pluralism where each level respects the other's sphere – e.g., international law sets broad frameworks, and national law implements them in line with local democratic preferences. Grimm also raises the point that pushing constitutionalization too far can provoke nationalist backlash. He observes that many citizens feel attachment to their national constitution as a guarantor of rights and democracy; if told that an impersonal global constitution now overrides it, they may react negatively (a phenomenon arguably seen in the rise of populisms). Regarding world government aspirations, Grimm is on the side of caution: he basically says *the world is not ready for a world government or global constitution*, and pretending otherwise may do harm. Instead, he advocates incremental changes that increase international law's effectiveness without outpacing what democratic control mechanisms can handle. One immediate implication of his view is support for the principle of subsidiarity – decisions should be taken as close to the people as possible (global decisions only for global problems that cannot be handled by states). Grimm's contributions thus serve as a reminder that constitutionalization is not just a legal project but a profoundly political one, requiring a community and legitimacy. Until a global community with shared political identity emerges (if ever), any global constitutional order will remain, in his eyes, a partial and fragile construction that must be managed carefully so as not to erode the achievements of national constitutional democracy.

B. S. Chimni – *International Law and World Order: A Critique of Contemporary Approaches* (2nd ed. 2017; 1st ed. 1993) & *"International Institutions Today: An Imperial Global State in the Making"* (EJIL, 2004)

- Core Argument: Chimni, a scholar from the Global South and a founder of the Third World Approaches to International Law (TWAIL), offers a penetrating critique of global constitutionalization from a Marxist and postcolonial perspective. He argues that what some call the emerging constitutional order of international law can actually be seen as the emergence of an "imperial global state" underpinned by the interests of powerful states and transnational capitalist classes. In his 2004 article, he provocatively describes a *"nascent global state"* composed of the growing network of international economic, political, and social institutions, which *"has an imperial character."* The current trajectory of international law, in his view, is not toward a neutral cosmopolitan constitution for all humanity, but rather toward a form of global governance that entrenches inequalities and allows elite interests to prevail under the guise of common rules. Chimni thus critically analyzes constitutionalization as an *ideology* that may domesticate or sideline dissent, noting that the supposed universal norms often reflect Western values or neoliberal economics. He doesn't necessarily deny that international law has stronger institutions now; rather, he questions *whom* this serves. His core message: beware a *"constitutionalization"* that could legitimize an unjust status quo and undermine genuine democratic and redistributive possibilities at both international and national levels.
- Framework: Chimni's theoretical framework is an integrated Marxist approach to international law (which he abbreviates IMAIL). He combines insights from Marxism (class analysis, the influence of capitalist modes of production), socialist feminism,

and postcolonial theory. In this framework, international law and institutions are superstructures that reflect the economic base – particularly the globalization of capital. The expansion of institutions like the WTO, IMF, World Bank, and even international courts is seen as part of a project to create a stable environment for transnational capital, often at the expense of *"subaltern classes in the Third and First Worlds."* Chimni describes an "imperial global state" not as a fully centralized world government, but as a *decentralized*, multilayered governance structure (including NGOs and local authorities) that nonetheless operates to fulfill a certain imperial logic. This is a twist on constitutionalization: yes, there is more global governance (like a state's functions) but it's biased in character. He also scrutinizes concepts like *global civil society* or *international community*, arguing that these can be deceptive if one doesn't ask who really has voice and power within them. Chimni emphasizes democracy and justice: he notes that developments so far *"seriously undermine substantive democracy at both inter-state and intra-state levels,"* since decisions shift to international venues far from popular scrutiny. Unlike some TWAIL scholars who might reject international law wholesale, Chimni is actually sympathetic to *reforming* international law for genuine global justice – he calls for a *"complex internationalism"* where reforms are pursued by a broad coalition of social forces. But he insists those reforms be informed by an awareness of class and power dynamics, not just idealistic constitutionalism.

- Methodology: Chimni's approach is heavily critical and diagnostic. In his 2004 piece, he systematically builds the case that we have the outlines of a global state: he lists the expanding scope of international rule-making, the enforcement mechanisms, the surveillance of state compliance, etc., drawing parallels to state functions. He then identifies whose interests are being served – highlighting, for example, how structural adjustment programs of IFIs eroded poor countries' sovereignty in practice, or how WTO rules limit developmental policies (locking in advantages for already industrialized nations). Chimni also engages other approaches (hence the subtitle of his book "a critique of contemporary approaches") – he critiques liberal, realist, and even mainstream Marxist takes on international law for not fully capturing the *"contemporary phase of global capitalism."* He uses both abstract theory and concrete cases: e.g., peacekeeping operations, the international criminal tribunals, and how these might impose certain values or even serve geopolitical ends while claiming cosmopolitan purpose. Another part of his methodology is outlining *objections* to his thesis and responding to them – in 2004, he anticipates eight objections (like "isn't global governance too weak to be a state?" or "don't international institutions sometimes act against powerful states' wishes?") and addresses them to strengthen his argument that an imperial pattern is nonetheless emergent. In later works, such as the 2017 edition of his book, he further refines his perspective, articulating concepts like *"global democracy deficits"*, and proposing the idea of *"radical pluralism"* where multiple ideologies and interests must be balanced in world order.
- Implications: Chimni's critique implies that sovereignty, especially for Third World states, has been hollowed out in the era of neoliberal globalization under the false promise of a benevolent global order. What constitutionalization enthusiasts might call a reduction in sovereignty for the sake of global rule of law, Chimni might call a reduction in sovereignty for the sake of *global capital* or powerful states' agendas. For example, constitutionalists applaud strong WTO dispute enforcement; Chimni would point out that this often forces developing countries to remove trade barriers or subsidies that were crucial for local industries or food security, effectively prioritizing free trade orthodoxy over local needs. On constitutional pluralism, Chimni might

observe that pluralism doesn't really exist for the weakest players – it's pluralism among the powerful, while smaller states and marginalized groups have to accept rules made elsewhere. He frequently emphasizes the *lack of democratic control*: international institutions are not accountable to the people affected by their decisions. This leads to his call for *complex internationalism* – basically a strategy to reclaim international law through broad movements, aiming for reforms like empowering the UN General Assembly (where developing countries have numbers), democratizing international financial institutions, recognizing *"common but differentiated responsibilities"* in environmental law (so that burdens aren't unfairly placed on the South), etc.. In terms of world government, Chimni's analysis might ironically say: *we are inching toward a form of world state, but it's not the egalitarian, peaceful Kantian kind – it's one managed by and for elites.* Thus, he likely opposes further empowering of global institutions without simultaneous radical reform. Instead of a world constitution that current power dynamics would dominate, he'd possibly favor reinforcing some sovereign rights for developing nations (policy space for economic development) *and* building international rules that genuinely tackle inequality (like regulating multinational corporations, or fair trade rules). Chimni's perspective broadens the conversation by injecting a class and postcolonial consciousness: it reminds that constitutionalization can't be separated from issues of *global capitalism, North-South divide, and social justice*. Aspirations toward a *world rule of law* must contend with the reality that law can entrench as well as challenge power. Thus, his work stands as a critique of naive constitutionalism and a plea for any emerging global order to be shaped by *"a powerful global social movement"* pushing for equity and democratic control, rather than leaving it to experts and elites under the banner of cosmopolitanism.

Conclusion: The scholarship on the constitutionalization of international law reveals a rich debate at the intersection of law, politics, and theory. Proponents of global constitutionalism – like Klabbers/Peters/Ulfstein, Fassbender, Habermas, Kumm, de Wet, and others – highlight the emergence of constitutional *features* in international regimes and often welcome this as progress toward a *rule-of-law-based global order*. They see in international law the seeds of a structured hierarchy of norms (e.g. human rights, jus cogens, UN Charter principles) and institutions that could mitigate anarchy and deliver global public goods, sometimes even framing it as an answer to the aspirations of world government (tempered by modern realities). These scholars analyze how concepts like *sovereignty* are evolving – from absolute to relative, from monolithic to shared – and explore constitutional pluralism as a way to balance global norms with domestic autonomy. On the other hand, critics and cautionary voices – ranging from Koskenniemi's critical legal skepticism, to Krisch's pluralist skepticism of unity, to Posner's realist doubts about "law without government", to Grimm's democratic concerns, and Chimni's exposé of hidden power dynamics – emphasize that constitutionalization is not a neutral or unalloyed good. They urge us to ask: *constitutionalization for whom and by whom?* They worry about illegitimacy, enforceability, and the potential suppression of diversity or democracy.

The emerging global legal order is thus interpreted in very different ways. To some, it is an opportunity to *constitutionalize* international relations – to enshrine peace, human rights, and the rule of law above the nation-state, inching closer to Kant's cosmopolitan ideal in lieu of a full world government. To others, it is a reality to be acknowledged (in that states are increasingly constrained by international rules), but also a trend to be kept in check – favoring a pluralist or intergovernmental structure that respects local constitutional self-government

and prevents hegemony. This tension reflects fundamental questions of legal hierarchy: Is there (or should there be) a clear hierarchy with international constitutional norms at the pinnacle (and if so, who decides what they are), or will the global order function with overlapping authorities requiring constant negotiation?

Both proponents and critics agree on one thing: the landscape of international law today is vastly different from that of a century ago. There is far more *density* of norms and institutions, and national constitutions no longer operate in isolation. Issues like human rights, trade, environment, and security are governed by complex interlocking legal regimes. The discourse of constitutionalization is an attempt to make sense of this complexity – whether to celebrate it, shape it, or ensure it does not betray the values (sovereignty, democracy, justice) that constitutions are meant to protect. Scholars continue to engage with new developments (e.g., the rise of populist challenges to international courts, or novel global issues like cybersecurity) to reassess these theories. As this comprehensive overview shows, the academic conversation is vibrant and reflects a variety of methodologies: doctrinal, theoretical, historical, empirical, and critical. It remains an open question whether a *world constitution* will ever formally emerge. In the meantime, debates about constitutionalism beyond the state will inform how we understand the legitimacy and limits of the growing global legal order – effectively guiding how we might *govern the world* or, alternatively, prevent a governance devoid of the local constituencies it ought to serve.

Sources:

- Klabbers, Jan, Peters, Anne & Ulfstein, Geir. *The Constitutionalization of International Law*. OUP, 2009 (analysis of global constitutional features and challenges).
- Fassbender, Bardo. *The United Nations Charter as the Constitution of the International Community*. Martinus Nijhoff, 2009 (arguing UN Charter is a constitutional foundation).
- Habermas, Jürgen. *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society."* Constellations 15(4), 2008 (normative defense of a multi-level global constitutional order without a world government).
- Kumm, Matthias. *"The Cosmopolitan Turn in Constitutionalism."* in Dunoff & Trachtman (eds.), *Ruling the World?*, 2009; and IJGLS 20(2), 2013 (theorizing global constitutional legitimacy and the duty of states to cosmopolitan law).
- Dunoff, Jeffrey & Trachtman, Joel (eds.). *Ruling the World?: Constitutionalism, International Law, and Global Governance*. CUP, 2009 (interdisciplinary essays on international constitutional discourse, pluralism, and regimes).
- von Bogdandy, Armin. *"Constitutionalism in International Law: Comment on a Proposal from Germany."* 47 Harv. ILJ 223 (2006) (assessing the prospects and limits of an international constitution).
- de Wet, Erika. *"The International Constitutional Order."* 55 ICLQ 51 (2006) (identifying community, values, and hierarchy as elements of an emerging international constitution).
- Cass, Deborah Z. *The Constitutionalization of the World Trade Organization*. OUP, 2005 (examining WTO through a constitutional lens and its legitimacy and democratic deficits).

- Krisch, Nico. *Beyond Constitutionalism: The Pluralist Structure of Postnational Law*. OUP, 2010 (advocating legal pluralism over hierarchical constitutionalism in global governance).
- Walker, Neil. *"The Idea of Constitutional Pluralism."* 65 Mod. L. Rev. 317 (2002); and *Intimations of Global Law*. CUP, 2015 (pioneering the concept of constitutional pluralism in Europe and globally, with multiple overlapping constitutional orders).
- Teubner, Gunther. *Constitutional Fragments: Societal Constitutionalism and Globalization*. OUP, 2012 (proposing a theory of multiple spontaneous constitutions in different sectors of global society).
- Koskenniemi, Martti. *"Constitutionalism as Mindset: Reflections on Kantian Themes."* 8 Theor. Inq. L. 9 (2007) (critical examination of constitutionalist ideology in international law).
- Posner, Eric A. & Goldsmith, Jack L. *The Limits of International Law*. OUP, 2005 (realist analysis arguing international law is guided by state self-interest, not higher law).
- Posner, Eric A. *The Perils of Global Legalism*. Univ. of Chicago Press, 2009 (criticizing the belief in international legal solutions absent global government; law needs power to be effective).
- Grimm, Dieter. *"The Achievement of Constitutionalism and its Prospects in a Changed World."* in Dobner & Loughlin (eds.), *The Twilight of Constitutionalism?*, OUP 2010; and *The Cosmopolitan Constitution*. OUP, 2016 (highlighting the importance of a demos for any constitution and warning against the democratic shortfall of supranational constitutionalization).
- Chimni, B. S. *International Law and World Order: A Critique of Contemporary Approaches*. 2nd ed., CUP, 2017; and *"International Institutions Today: An Imperial Global State in the Making."* 15 EJIL 1 (2004) (presenting a TWAIL and Marxist critique that current global governance structures amount to an imperial project that undermines democracy and equality).

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Jan Peters Klabbers Anne & Ulfstein, Geir: The Constitutionalization of International Law

Structure and Main Arguments of the Book

Overview: *The Constitutionalization of International Law* is a collaborative work examining whether and how the international legal system exhibits "constitutional" features akin to those of national constitutions. The authors – Jan Klabbers, Anne Peters, and Geir Ulfstein – frame their inquiry around globalization's pressures and the proliferation of international institutions and courts, asking if a *global* constitutional order is emerging alongside or beyond the state. They approach this question with a critical but ultimately constructive perspective: the book is both an analysis of constitutionalist ideas in international law and a *"critical appraisal"* of their critiques. In essence, the authors argue that interpreting the evolution of international law as a process of constitutionalization (in tandem with other phenomena like the fragmentation and "deformalization" of international law) can yield *explanatory power* and fresh insights. They stop short of claiming a full-fledged world constitution is already in place; rather, they identify constitutional trends and outline what a *"constitutionalized"* world order *could* and *should* entail.

Structure: The book is organized into an introduction, five thematic chapters, a conclusion, and an epilogue. Each chapter explores a different dimension of constitutionalism in international law, as summarized below:

1. Setting the Scene (Introduction): Defines the problem and concepts, surveying the debate on global constitutionalism. It situates constitutionalization as a response to contemporary challenges like *fragmentation*, *"verticalization"* of law, and the erosion of clear legal hierarchies. Klabbers (who authors this opening chapter) introduces constitutionalism as a way to impose *order and hierarchy* on international norms and to balance empowerment of international actors with restraints on their power.
2. Institutions and Competences: Analyzes international organizations (such as the UN and others) and their allocation of authority. This chapter asks whether the distribution of competences in the international system resembles a constitutional separation of powers or federal structure. It examines the creation of *"international organisational structures"* and their foundational charters as potential constitutional frameworks. Topics include the extent of powers conferred on bodies like the UN Security Council and how those powers are limited or checked (a constitutional concern of balancing authority).
3. Law-Making and Constitutionalism: Explores the processes of international law-making (treaties, custom, etc.) through a constitutionalist lens. This chapter considers whether international law has *constitutional norms* that hold a higher status (analogous to a constitution being supreme law) and evaluates the emergence of legal hierarchies (e.g. jus cogens or peremptory norms) that override ordinary international agreements. It also assesses the coherence of law-making across fragmented regimes, asking if a

constitutional framework could integrate diverse normative orders. In essence, the authors discuss whether international law's sources and normative order exhibit the stability and hierarchy expected of a constitutional system.

4. The International Judiciary: Focuses on the role of international courts and tribunals as a quasi-judicial branch in a constitutionalized order. The chapter evaluates how judicial bodies (like the International Court of Justice, WTO Appellate Body, International Criminal Court, etc.) contribute to the rule of law globally. The authors examine mechanisms of *judicial review* and enforcement: to what extent do international courts review the legality of actions (similar to constitutional courts reviewing legislation) and ensure accountability under international law. The judicialization of international relations – the increasing reliance on courts to resolve disputes and interpret norms – is presented as a core element of constitutionalization, helping to constrain political power through law. Notably, the authors observe that constitutionalization at the global level has been "lopsided," occurring *"adjudicative rather than deliberative"* – meaning progress has come through judges enforcing fundamental norms more than through political organs enacting a true global constitution.
5. Membership in the Global Constitutional Community: Investigates who the subjects of a constitutionalized international order are. Peters leads this discussion, examining the notion of an "international community" and the inclusion of individuals, states, and other actors as members of that community. This chapter addresses fundamental rights and the protection of the individual in international law (comparable to constitutional rights in national constitutions). It asks whether individuals and non-state entities have direct legal standing or rights in the international legal system – a key aspect of constitutionalization since constitutions typically mediate the relationship between a polity and individuals. The authors highlight *human rights* as a recurring theme across these discussions, suggesting that the emergence of universal human rights norms is a strong constitutionalizing force in international law.
6. Dual/Multilevel Democracy: Deals with the question of legitimacy and democracy in international law. Acknowledging the oft-cited "democratic deficit" beyond the state, the authors propose a model of "dual democracy" or "multilevel democracy" to enhance legitimacy. This means that democratic principles should operate on two reinforcing levels: within states (each state's own democracy) and at the global level through more accountable international institutions. They argue that constitutionalization must involve *"constitutional principles"* like democratic participation, transparency, and accountability in global governance. In practice, this could entail strengthening parliamentary oversight of international decision-making, involving civil society, or even imagining nascent forms of global representative institutions. The chapter grapples with how to ensure that international law-making and institutions are not only effective but also *democratically legitimate*. The term "multilevel democracy" underscores that legitimacy in a constitutionalized world order would derive from a combination of national democratic processes and emerging international norms of participation.
7. Conclusions: In the concluding chapter, the authors tie together their findings, acknowledging both the potential and the limits of the constitutionalization thesis. They conclude that while international law is *acquiring* constitutional traits (e.g. stronger enforcement of fundamental norms, more institutional governance, some hierarchy of norms), it remains an incomplete and uneven process. Notably, they reiterate that global constitutionalization has advanced more through judicial developments than through deliberate political design, and they call for balancing this

with improvements in deliberative, inclusive global law-making. The conclusion is cautiously optimistic: it suggests that viewing international law's evolution in constitutional terms *"permits new insights and allows for new arguments,"* even if a fully realized world constitution is not (and may never be) in place.

An Epilogue follows, which transcribes a debate about the book on the EJIL:Talk! blog. In this dialogue, the authors respond to commentators' critiques. The inclusion of this debate underscores that the book's claims were meant to spur discussion in the international law community, and it captures the interactive nature of scholarly engagement with the constitutionalization idea.

Overall, the main argument of the book is that we can discern nascent *constitutional* structures and principles in the international legal order – in its institutions, normative hierarchy, adjudication, and values – and that understanding these through a constitutionalist framework both explains current trends and points toward normative improvements. At the same time, the authors maintain a critical stance, acknowledging ambiguities and challenges rather than claiming that a world constitution is fully realized or universally accepted.

Constitutionalization in Context: The Authors' Concept

At the heart of the book is an exploration of what "constitutionalization" means when applied to international law. Klabbers, Peters, and Ulfstein develop a nuanced concept of constitutionalization that goes beyond a single definition – instead, they identify a set of characteristics and processes that would signal a constitutional quality in the international legal system. In their view, constitutionalization entails introducing into international law certain features analogous to national constitutions: limitations on political power, legal hierarchy, organized institutions with defined competences, protection of fundamental rights, and mechanisms of accountability. In a formal sense, a constitutionalized international order would impose the rule of law on power politics: *"limitation of political power, separation of powers, accountability and control over institutions, [and] protection of individual rights against the exercise of power"* are key elements of this vision. All these serve to "organize" the international community under law, much as a constitution organizes a state.

Crucially, the authors distinguish between formal and substantive aspects of constitutionalization. Formal constitutionalization refers to structural and procedural elements – for example, judicial enforcement of rules (the judicialization of international affairs) and the emergence of a hierarchy of norms (some rules being "higher" law) are seen as formal constitutional traits. Substantive constitutionalization, on the other hand, refers to value-oriented content like the incorporation of democratic principles, rule of law, and human rights into the fabric of international governance. Peters, in particular, emphasizes that constitutionalization can be viewed as *both* a descriptive process and a normative project: descriptively, it is *"the search for order and hierarchies"* in a fragmented legal system, and normatively it carries *"a promise of improvement"* in global governance. In other words, the constitutionalization discourse is about making international law more law-like (predictable, coherent, and binding) and more just (imbued with common values and fairness).

One of the first tasks the authors undertake is to identify what might count as constitutional features of the international order. They compare international arrangements to national constitutions, while recognizing fundamental differences. For instance, they ask whether there is an analogue to a "supremacy clause" in international law (some overarching norm that has

priority, like the UN Charter or jus cogens) and whether international law has something like a "separation of powers" (distributed among institutions). They note that unlike a state, the international system has no central legislature or executive elected by a single people; hence any constitutionalization is *partial* and must function in a decentralized, pluralistic environment. As the book investigates, the challenges of constitutionalizing at the global level differ from the national level in key ways – lacking a world government or demos, international constitutional norms must emerge through consensus and practice rather than formal enactment. The authors explicitly examine these differences, cautioning that one cannot simply transplant domestic constitutional concepts to the international sphere without adaptation.

Despite these challenges, Klabbers, Peters, and Ulfstein assert that constitutionalization *"is actually going on in international law"* to a significant extent. Rather than being a utopian blueprint, it is a process – an ongoing evolution where bits of constitutional logic appear in various areas of international law. They cite developments like the strengthening of peremptory norms (jus cogens), the binding character of UN Security Council decisions under the UN Charter (often called the closest thing to a world constitution), the increasing judicial oversight by international courts, and the spread of constitutional rhetoric (states and scholars referring to the UN Charter or human rights treaties as having constitutional status). All these indicate that international law, while still fundamentally consensual and anarchic in structure, is gravitating toward a more rule-based, principled order.

Importantly, the authors adopt a critical and somewhat modest methodology in approaching constitutionalization. They do not presume that global constitutionalization is an unequivocally positive or universally accepted phenomenon; instead, they scrutinize both the advantages and the pitfalls of thinking about international law in constitutional terms. In the introduction, Klabbers frames the inquiry against the backdrop of other trends like *"the verticalization of substantive law and the deformalization and fragmentation of international law"*, acknowledging that constitutionalization is just one narrative among many in contemporary international legal theory. This reflective approach means the authors are self-critical: they ask whether calling something "constitutional" might be more metaphor than reality, and whether it might carry ideological baggage (for example, a liberal democratic bias). Indeed, they engage with skeptics who argue that there is *"no international constitution"* or that pursuing one could undermine state sovereignty or democratic accountability. By the end, the book concludes that constitutionalization, if understood as a *deliberative process* rather than a fixed end state, is a useful lens through which to view the changes in international law. Anne Peters even notes in a later reflection that debating constitutionalization is useful for clarifying and potentially improving the international legal order (a *"cautiously positive"* stance).

In summary, the authors' concept of constitutionalization is not about a single document or world government; it is about convergence toward constitutional principles – legality, hierarchy, institutionalization, rights, and democracy – in the international sphere. They see this as an incremental and contested development, but one that can be discerned in the current system and steered normatively for the future. The next sections delve into how the book treats specific constitutional themes: the rule of law and hierarchy of norms, the institutional separation of powers, and the legitimacy of international law through democratic principles.

Key Themes Explored in the Book

Rule of Law and Hierarchy of Norms

A defining attribute of any constitution is the entrenchment of the rule of law – the idea that law, not power or discretion, governs decision-making. Klabbers, Peters, and Ulfstein investigate whether the international system operates under the rule of law and whether a hierarchy of norms exists internationally as it does in domestic constitutions (where constitutional law is superior to other law). They observe that in international law, the rule of law has been strengthened in recent decades primarily through the work of international courts and tribunals, which have incrementally imposed legal constraints on states and international bodies. This judicialization – from the ICJ's adjudication of inter-state disputes to human rights courts reviewing state conduct – signals that international actors are increasingly subject to legal rules, a core aspect of constitutional rule-of-law. The authors note, for example, how individual rights are now protected against state actions in fora like the European Court of Human Rights or UN human rights bodies, reflecting a constitutional principle that authority is limited by law to protect persons.

In terms of a normative hierarchy, the book discusses concepts like *jus cogens* (peremptory norms) and the UN Charter's primacy as potential candidates for "constitutional" norms of the international community. Jus cogens norms (such as the prohibitions of genocide, torture, or aggressive war) are widely understood to override conflicting treaties, hinting at a hierarchy akin to a supreme law. Likewise, Article 103 of the UN Charter gives Charter obligations priority over other treaties, a clause often cited as evidence that the Charter serves a quasi-constitutional function for world order. The authors critically assess these developments: on the one hand, such hierarchies are fragmentary and limited (there is no comprehensive catalog of higher norms like a written constitution would provide), but on the other hand they indicate a *"search for order and hierarchies"* in international law's evolution. The very fact that scholars and judges speak of fundamental norms and the *international community* suggests an underlying constitutionalist impulse to establish an order of norms rather than a flat, consent-based anarchy.

Moreover, Klabbers, Peters, and Ulfstein highlight how the principle of legality (a key component of rule of law) is gaining ground internationally. For example, decisions of the UN Security Council – once guided purely by political expediency – are now often scrutinized for their conformity with international law and even judicially reviewed in certain contexts (such as European courts reviewing Security Council sanctions for legality). This development mirrors constitutional judicial review at the domestic level, where courts ensure that legislative/executive acts comply with higher law. The book cites the emergence of "mechanisms of review for testing the legality" of international acts as a constitutional feature. For instance, the Kadi case in the EU (decided by the European Court of Justice in 2008) is an example where an international measure (a UN sanctions list) was tested against fundamental principles (due process rights), effectively asserting a constitutional-type check on international governance.

In summary, the authors find that the international legal order is gradually developing rule-of-law characteristics and a limited hierarchy of norms. These include supreme principles (like jus cogens and Charter commitments) and nascent forms of judicial constitutional review. However, they also acknowledge that these remain contested and embryonic. Unlike a national constitution that clearly ranks sources of law, international law's hierarchy is *"deformalized"* and often politically sensitive. Thus, while constitutionalization has advanced

the rule of law globally, it has done so in uneven ways – largely through courts and specific norm categories, rather than through a formal constitutional text.

Institutionalization and Separation of Powers

Another key theme the book tackles is the institutional structure of international law – essentially, whether one can speak of a separation of powers or an institutional "constitution" at the global level. In national systems, constitutions define and separate the legislative, executive, and judicial functions. Klabbers, Peters, and Ulfstein examine how international institutions might fit into analogous roles and how power is allocated among them.

They note that the post-1945 world saw an explosion of international organizations (the UN, specialized agencies, regional organizations like the EU, WTO, etc.), which together form an institutional landscape for global governance. The book's chapter on "Institutions and Competences" asks if this landscape amounts to a constitutional framework: for example, the United Nations Charter could be viewed as a constitutional document founding an international executive (the Security Council), a deliberative assembly (the General Assembly), and even a nascent judicial arm (the ICJ). The authors assess the extent of enumerated competences of these bodies – akin to how constitutions enumerate government powers – and the extent of constraints on those powers. A constitutional order implies both empowerment *and* limitation; thus, they are interested in whether international institutions are not only gaining authority but also being bound by rules. They discuss cases such as the Security Council's Chapter VII powers (to maintain peace and security) and whether there are constitutional limits to those powers (e.g. respect for human rights or jus cogens when imposing sanctions or authorizing force).

The book identifies trends of functional differentiation that resemble a separation-of-powers logic. For instance, they observe that international law-making is no longer solely in the hands of states concluding treaties; instead, quasi-legislative activities by bodies like the UN General Assembly, the Conference of Parties of environmental treaties, or even the UN Security Council (when it adopts binding resolutions) suggest an emerging legislative function at the international level. Meanwhile, enforcement of international rules (an executive function) is often carried out by organizations and their bureaucracies (for example, peacekeeping operations, or the IMF enforcing financial rules). And as discussed, adjudication is handled by various courts and tribunals. The authors stop short of claiming a neatly separated tripartite system – clearly, global governance is not as orderly as a nation-state government. However, they do argue that *in practice* a kind of separation-of-powers principle is being mimicked: horizontal allocation of governance authority is occurring, wherein different entities take on law-making, executive, or judicial roles, providing a system of checks and balances in a rudimentary form.

One illustration the authors likely use is the relationship between the Security Council and international courts. The Council's decisions (executive action) have been indirectly checked by judicial bodies such as the European Court of Justice or national courts refusing to give effect to Council measures that violate fundamental legal principles. This introduces a *balance* reminiscent of constitutional checks and balances. Another example is the WTO: its system includes a rule-making arm (through negotiations and agreements), an executive aspect (the WTO Secretariat's administration and monitoring), and a judicial arm (the WTO dispute settlement mechanism). Some scholars have indeed called the WTO's dispute system a form of constitutional judicial review of trade measures. Klabbers, Peters, and Ulfstein

discuss such sectoral constitutionalization, showing that specific regimes like trade or human rights often exhibit clearer constitutional features than the entire global system at once.

The authors also delve into the notion of "constitutional competences" – meaning certain fundamental powers that a constitutional order must address, such as the competence to make laws, to enforce laws, and to adjudicate disputes. In an international context, they ask: who makes international law and under what procedures (is it democratic, transparent, etc.)? Who enforces international norms (do we have an international executive or do states self-enforce)? Who interprets and applies the law authoritatively (is it courts, arbitrators, or states themselves)? By structuring the inquiry this way, the book paints a picture of an international order that is becoming more institutionalized – not a random collection of treaties, but a system with organs and processes that increasingly resemble those in constitutional orders. They emphasize the creation of *"international organizational structures"* and new procedures for global governance as evidence of constitutional trends.

However, the authors are mindful that any analogy to domestic separation of powers has limits. There is no world government to subordinate to a single constitution; instead, there is a plurality of institutions with overlapping mandates (for example, multiple international courts, or the UN versus regional organizations). This can cause fragmentation, where different regimes have different "constitutional" norms (the book likely mentions, for instance, how trade law's values might conflict with human rights law's values). Rather than view this as fatal, Klabbers, Peters, and Ulfstein suggest that constitutionalization might provide a *remedy* or framework for managing fragmentation – a sort of meta-order that ensures these institutions and regimes interact coherently. They propose that understanding the relationships between institutions (e.g. hierarchical, or by principles of specialty and subsidiarity) is part of constitutionalizing the global order.

In conclusion, under this theme the book finds significant institutionalization in international law that parallels constitutional structures: international organizations exercise governance functions and increasingly operate under constitutional-like constraints. Yet, the separation of powers globally is *nascent and imperfect*. The authors call attention to the need for clearer lines of authority and more robust checks to solidify the rule of law among international institutions – essentially advocating a conscious *constitutional design* at the global level to address unchecked power and institutional overlap.

Legitimacy and Democracy in Global Governance

The final major theme the book addresses is the legitimacy of international law, with a focus on democratic principles. No constitution is complete without some grounding in the concept of popular sovereignty or consent of the governed; hence, the authors grapple with how (or whether) democracy can be realized beyond the state. They acknowledge that international law has traditionally been insulated from direct democratic processes – it is made by states (often executive branches) and by diplomats, far removed from voters. This democratic deficit is a chief criticism of any notion of global constitutionalization: how can we call something a *constitution* if it wasn't created or sustained by a global "people"? Peters and her co-authors confront this head-on in the chapter on "Dual Democracy" (also termed "Multilevel Democracy and Constitutional Principles" in some editions).

Their answer lies in a multi-layered approach to democracy. The term *"dual democracy"* implies that democratic legitimacy must be secured at both the national and international

levels. First, states themselves must be democratic, so that when they participate in international decision-making, they carry the mandate of their people. This is the *indirect* legitimacy of international law – for example, a treaty negotiated by democratically elected governments has an indirect democratic pedigree. But the authors argue this is insufficient on its own, especially as international institutions gain more autonomous power. Therefore, they propose bolstering *direct* or *international* democratic accountability as well. This could involve measures such as: greater transparency of international negotiations, involvement of national parliaments in approving international agreements (so that the legislative branch, representing the people, has a say), creating parliamentary assemblies or forums at the international level (the European Parliament being a regional example, perhaps a model for something global), and strengthening the role of global civil society and NGOs in governance processes.

Klabbers, Peters, and Ulfstein explore concepts like "constitutional pluralism" and "democratic interconnectivity," suggesting that sovereignty and democracy need not be zero-sum between the national and international spheres. Instead, they envision a *multilevel governance* structure where each level reinforces the democratic legitimacy of the other. For instance, they highlight the idea of a United Nations Parliamentary Assembly (a proposal floated by some scholars and activists) as a way to give peoples a more direct voice in UN decisions – a clearly constitutional idea aimed at remedying the UN's democratic deficit. They also consider existing practices: many international bodies now have stakeholder consultations or include nongovernmental organizations in their processes (for example, the Aarhus Convention in environmental law gives the public rights to access international environmental decision-making). While modest, these practices point toward an international order that is more inclusive and participatory, embodying the spirit of democracy.

Another aspect of legitimacy covered is the concept of accountability. Even if full democracy is hard to achieve globally, the authors stress that international institutions must be accountable – legally, politically, and financially – to those whom their actions affect. This ties back to constitutional principles: checks and balances, judicial review, transparency, and reason-giving are all mechanisms that improve accountability. In various chapters, they note developments like the requirement for reasoned decisions by bodies like the UN Security Council when it acts quasi-legislatively, or the review of international bureaucracies (such as the World Bank Inspection Panel which hears complaints from communities affected by Bank projects). These can be seen as proto-democratic or at least accountability mechanisms that enhance legitimacy even absent one-person-one-vote at the global level.

Peters in particular brings a *cosmopolitan* normative outlook, arguing that the international legal order's legitimacy ultimately rests on serving humanity's interests – a concept she has elsewhere described as *"humanity as the ultimate source of legitimacy."* The book reflects this in its recurring concern for fundamental rights and the individual: by integrating human rights, international law directly connects to individuals and populations, thereby gaining a form of moral and legal legitimacy that recalls how national constitutions enshrine the rights of the people. In one debate cited in the book, Peters responded to critiques by emphasizing that her approach is *"value–neutral"* in a methodological sense (aiming to *describe* norms rather than impose new ones), but critics like Dunlop retorted that even choosing certain values (e.g. "humanity" or rule of law) as central is itself a normative stance. The authors are aware of this tension: promoting democracy and rule of law internationally is not a universally shared agenda (some regimes and scholars question it), yet they make a case that

legitimacy deficits must be addressed if international law is to function as a constitutional order.

Ultimately, *The Constitutionalization of International Law* advocates for strengthening the legitimacy of global governance through multilevel democracy: nation-states should democratize their international interactions (e.g. through parliamentary oversight and public debate on foreign policy) and international institutions should adopt procedures that mirror constitutional democracy (e.g. transparency, representation, and subsidiarity). The authors concede that full-fledged democratic global government is unrealistic at present, but they outline practical steps and principles – a kind of *blueprint* of what a more democratic international order *"could and should imply"*. By doing so, they inject a normative vision into the constitutionalization discourse: the legitimacy of international law can and must be improved, lest the constitutional project remain legally efficient but politically fragile.

Normative Claims and Methodological Approach: A Critical Perspective

The authors' approach in this book is both analytical and normative, and it has invited critical scrutiny from other scholars. Klabbers, Peters, and Ulfstein do not merely describe constitutional elements in international law; they also *evaluate* them and, at times, argue for certain reforms. For example, their advocacy of "dual democracy" and emphasis on human rights indicate a normative commitment to liberal-democratic values in the international sphere. At the same time, they are careful to present their work as a *"critical appraisal"* rather than a one-sided manifesto. Methodologically, they combine doctrinal legal analysis (examining treaties, cases, and institutional practices) with theoretical frameworks (drawing on constitutional theory and political philosophy). This blend allows them to ground their claims in concrete developments while also engaging in ideal-type modeling of what a constitutionalized international law *should* look like.

One hallmark of their method is the use of comparative analogies to domestic constitutional law, paired with an acute awareness of disanalogies. They frequently ask, *"If we treat X (say, the UN Security Council) as akin to a domestic institution (an executive), what constitutional principles would apply to it?"*, and then explore whether those principles are emerging or could emerge. This approach has been praised for bringing clarity to a previously amorphous debate: Antonios Tzanakopoulos lauds the book as *"coherent... well structured"* and notes that its arguments *"help put the whole constitutionalist debate in clear perspective."*. By structuring the inquiry around classical constitutional themes (rule of law, separation of powers, rights, democracy), the authors impose an order on the discussion that many found illuminating. Thomas Kleinlein similarly remarked that *The Constitutionalization of International Law* has become an *"obligatory reference"* for anyone interested in constitutionalism beyond the state, precisely because it systematically maps out the issues and possible answers.

However, the book's normative stance has also been a point of contention. Some critics argue that the authors, despite their critical tone, ultimately endorse a liberal constitutionalist project at the global level without fully confronting its potential downsides. For instance, the emphasis on rule of law and human rights, while widely seen as laudable, might be critiqued from a Global South or pluralist perspective as imposing Western legal values universally. The authors themselves engage with this critique in part: they examine how

constitutionalization might affect state sovereignty and the pluralism of international society. They acknowledge that a constitutionalized international law could be seen as diluting the Westphalian bargain (where states consent to all obligations) by introducing higher norms that constrain states without their direct consent (e.g. peremptory norms, or judicial law-making). Their approach to methodology is to remain value-conscious but exploratory – they propose enhancements to international law's legitimacy and coherence, yet also discuss the risks of, say, empowering international institutions too much (a concern that global constitutionalism could lead to a distant, unaccountable elite governance). This balanced method has been described as *"critical constitutionalism."* Indeed, an Oxford Bibliographies entry notes that the book *"develops a critical constitutionalist perspective"*, analyzing constitutional functions like lawmaking and adjudication (via Klabbers and Ulfstein) and fundamental norms and democratic values (via Peters).

Scholarly responses highlight this interplay of descriptive and prescriptive elements. Carlo Focarelli's review in the *American Journal of International Law* praised the book as *"an outstanding, thought-provoking contribution"* to the debate, indicating that its blend of theory and doctrine pushes readers to reconsider assumptions about international law. Yet Focarelli also hinted at a potential value-bias in the work. He pointed out, for example, that Anne Peters's contributions (on global constitutional community and democracy) might claim to be *theoretical* rather than prescriptive, but they inevitably carry normative weight. In an EJIL symposium, Peters responded to critics by asserting her analysis was *"value-neutral"* in that it sought to *describe* emerging norms, not create them. Critics like Emma Dunlop retorted that identifying certain norms as fundamental – essentially writing a theory of international constitutional norms – is *"value oriented"* in itself. This exchange reflects a core methodological debate: can one study constitutionalization *neutrally*, or is one inherently advocating a constitutional vision? Klabbers, Peters, and Ulfstein attempt to walk this line by critically examining both the *promise* and *perils* of constitutionalization. They discuss, for instance, arguments from skeptics such as Martti Koskenniemi (who warns that global constitutionalism might be an ideological project masking power), or from international relations realists (who doubt that law can tame power politics). By including these counterpoints, the authors demonstrate a methodology that is dialectical – weighing different viewpoints – rather than dogmatic.

Normatively, the book's claims are measured. It does *not* say, "International law is already a global constitution and all is well." Nor does it say, "International law should immediately adopt a world constitution." Instead, it argues that thinking in constitutional terms *reveals* where international law is deficient and where it is progressing. For example, the authors normatively *favor* stronger enforcement of fundamental norms (so they cheer the rule-of-law trend), and they *favor* increased democratic accountability globally, but they also caution against naive transplantations of concepts. They appear to advocate a *gradual, reflective constitutionalization*: consciously incorporating constitutional principles where appropriate to bolster international law's fairness and efficacy.

One noteworthy aspect of their methodology is interdisciplinary insight. They draw not only on legal sources but also political theory (e.g. discussing Habermas's ideas of constitutional democracy beyond the state, or federalism as studied by comparative scholars). This enriches their normative vision but also opens them to critique from multiple angles – legal purists might say they are too theoretical, while political theorists might say they do not go far enough in reconceptualizing global politics. The authors anticipate some of these critiques by

including the EJIL:Talk epilogue, effectively *inviting* debate on their methodology and conclusions.

In conclusion, the normative and methodological approach of *The Constitutionalization of International Law* is characterized by a careful optimism. The authors believe international law *can* evolve in a constitutional direction and that this is largely desirable (for stability, justice, and legitimacy), but they ground that belief in rigorous analysis and acknowledge counterarguments. This approach has been validated by many scholars as striking the right balance. As Tzanakopoulos summed up, the book's structured argumentation and clarity make it a reliable guide through a complex debate. And as Kleinlein and others note, even those who may disagree with the constitutionalist project consider this book an essential reference – a testament to its methodological soundness and the importance of its normative claims in the field.

Impact and Contemporary Relevance

Since its publication in 2009, *The Constitutionalization of International Law* has had significant influence on international legal scholarship and continues to be highly relevant to contemporary debates. It effectively catalyzed and framed a discourse that was already burgeoning, helping to consolidate the "constitutionalization" discussion into a coherent scholarly conversation. Subsequent research on global constitutionalism almost invariably cites Klabbers, Peters, and Ulfstein's work as a foundational text. As Thomas Kleinlein observed, *"Any international lawyer interested in these questions will not get around [this book] ... [It is an] obligatory reference[] in the discussion about constitutionalism beyond the state."*. In other words, it's become impossible to engage seriously with the topic of international constitutional law without grappling with the arguments made in this book.

One measure of the book's impact is the flurry of reviews and symposia it generated. In addition to the reviews by Focarelli (AJIL) and Tzanakopoulos (Edinburgh Law Review) already mentioned, the *European Journal of International Law* featured a 2010 debate on "constitutionalism beyond the state" where this book figured prominently. There, scholars like Thomas Kleinlein and Neil Walker discussed approaches to postnational constitutionalism, often reflecting on or responding to points raised by Klabbers, Peters, and Ulfstein. Kleinlein's own review essay in EJIL positioned the book alongside other key works (such as *The Twilight of Constitutionalism?*, ed. Dobner & Loughlin, 2010) to distinguish holistic versus pluralistic approaches to global constitutionalism. He credited *The Constitutionalization of International Law* with articulating a *holistic but critical* vision – "holistic" in that it attempts to see a big picture of constitutional principles in international law, but "critical" in that it does not uncritically celebrate every aspect of that picture. This balanced viewpoint has shaped subsequent scholarship that tries to mediate between extreme optimism and extreme skepticism about global constitutionalism.

Furthermore, the book's concepts have seeped into specialized literature: for example, trade law scholars, inspired by Peters' and others' contributions, have analyzed the "constitutionalization of international trade law"; human rights scholars have explored the constitutional nature of human rights regimes; and comparative constitutionalists like Federico Fabbrini have examined international law through a *federalism* analogy, explicitly building on ideas from this book. The book effectively provided a vocabulary – terms like "constitutionalization," "global constitutional community," "dual democracy" – that are now regularly used (and debated) in academic papers and conferences.

In terms of normative impact, the book has contributed to a gradual shift in mindset among practitioners and scholars. International judges and officials, for instance, increasingly refer to the *international community* and its fundamental norms in their decisions and reports, reflecting what the book identified as a constitutionalist mindset. While we cannot attribute this trend to any single book, *The Constitutionalization of International Law* captured and reinforced the zeitgeist of the late 2000s, when the successes and failures of post-Cold War international law (such as the proliferation of tribunals, but also the Iraq War's challenge to the UN Charter system) prompted soul-searching about the need for a sturdier international legal order. The book's critical yet constructive analysis gave academics and reformers a framework for discussing reforms like UN Security Council accountability, strengthening the International Court of Justice, or advocating for a more unified hierarchy of norms. These discussions are ongoing: for example, current debates about reforming the Security Council's veto, or proposals to create a World Human Rights Court, often invoke constitutionalist principles in line with those discussed by Klabbers, Peters, and Ulfstein.

The book also holds relevance in light of more recent developments. The rise of populist and nationalist movements in the 2010s, challenging aspects of international law, has given the idea of constitutionalizing international law a new dimension: some now ask if we are seeing a *de*-constitutionalization or backlash against global legal norms. In this context, the book's analysis of the fragility and unevenness of constitutionalization is prescient. Its call for bolstering legitimacy and democratic foundations of international law is perhaps even more urgent now, as trust in multilateral institutions has been tested. Scholars writing on the "crisis of multilateralism" have cited this work to argue that without constitutional principles, international law could regress into power politics.

In academic circles, the book's impact is evident from the robust dialogue it continues to inspire. Many scholars have written responses or follow-up studies: e.g., Matthias Kumm's work on "constitutionalism and legitimacy in international law" echoes themes from the book, and Armin von Bogdandy's writings on *multilevel constitutionalism* in Europe and beyond engage with similar ideas. Even skeptics have found it necessary to clarify their positions in relation to the constitutionalization thesis – for instance, realist or pluralist scholars often frame their counter-arguments by first summarizing the claims of Klabbers, Peters, and Ulfstein, underscoring its status as a reference point.

The praise from reviewers underscores the book's enduring value. Tzanakopoulos commended it for keeping the reader engaged through nearly 400 pages and for its clear structure, which indicates that the book succeeded in what it set out to do: make a dense theoretical subject accessible and relevant. Focarelli's positive review in a leading journal like AJIL suggests that even traditionally minded international lawyers took the book seriously as a scholarly achievement. Such recognition in top journals often signals that a work will be widely cited and discussed for years to come – a prediction that has proven true in this case.

In conclusion, *The Constitutionalization of International Law* has had a substantial impact on contemporary international legal theory, serving as a catalyst for ongoing debates about how to understand the international legal system. Its blend of critical analysis and normative vision continues to resonate in discussions about global governance reforms, the role of international courts, and the integration of international law into domestic constitutional orders. As the processes of globalization and fragmentation continue to challenge the international legal order, the questions this book raises – about the rule of law, hierarchy, institutional design, and legitimacy in a world of states and peoples – remain as pertinent as ever. Indeed, as one

review aptly put it, this book is *"an outstanding, thought-provoking contribution to the ongoing constitutional debate"* in international law, and it will likely remain a cornerstone in that debate for the foreseeable future.

Sources:

- Jan Klabbers, Anne Peters & Geir Ulfstein, *The Constitutionalization of International Law* (Oxford University Press, 2009).
- Carlo Focarelli, *Review of* The Constitutionalization of International Law, *104 AJIL* 557 (2010).
- Antonios Tzanakopoulos, *Book Review*, 15 *Edinburgh Law Review* 339-342 (2011).
- Thomas Kleinlein, *On Holism, Pluralism, and Democracy: Approaches to Constitutionalism beyond the State*, 21 *EJIL* 1075 (2010).
- Dunoff & Trachtman (eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge University Press, 2009).
- Oxford University Press, Book Description for *The Constitutionalization of International Law*

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Please describe and analyze the works of Jürgen Habermas *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society" in detail.*

Jürgen Habermas "The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society"

Introduction

Jürgen Habermas's essay *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society"* (2008) is a seminal contribution to debates on global governance and cosmopolitan law. In this work, Habermas grapples with the question of how international law can evolve to address global challenges in a *"postnational constellation"* – an age in which nation-states can no longer solely manage issues like peace, human rights, and global risks. He argues for a form of constitutionalization of international law: developing a legal and institutional framework at the global level that functions analogously to a constitution, restraining state sovereignty and protecting individuals, without creating a full world state. The essay's central themes include the need to secure international peace and human rights through law, the sources of legitimacy for a global legal order, and the lessons drawn from European integration as a model for transnational democracy. This report provides a comprehensive analysis of Habermas's essay and ideas, structured as follows. First, it summarizes Habermas's main arguments and themes. Next, it situates the essay in Habermas's broader discourse theory of law and democracy. It then examines key concepts employed by Habermas – constitutionalization, legitimacy, the postnational constellation, and world society – explaining their meanings in context. The subsequent section analyzes Habermas's discussion of international institutions, especially the United Nations and the European Union, and how they illustrate his vision of transnational legitimacy. The report then reviews the scholarly reception of Habermas's essay, highlighting both supportive and critical responses. Finally, it considers the practical implications of Habermas's arguments for international law, global governance, and cosmopolitan constitutionalism. Throughout, the aim is to present an academic-level exposition of Habermas's work, clarifying its theoretical foundations and real-world significance.

Main Arguments and Themes of Habermas's Essay

Habermas's essay opens by reflecting on the atrocities of the twentieth century and their impact on international law. He contends that the "monstrous mass crimes" of that era – notably genocide and total war – shattered the classical Westphalian norms of absolute state sovereignty. In Habermas's analysis, these events "forfeited the presumption of innocence" that sovereign states once enjoyed under international law. No longer can states be trusted by default to uphold justice internally; accordingly, the traditional principles of non-intervention and immunity of states must be rethought. Habermas argues that the post-1945 world has seen a transition from classical international law to cosmopolitan law, wherein individuals (not just states) are recognized as subjects of legal protection and concern. Key developments such as the Universal Declaration of Human Rights, the United Nations Charter, and the International

Criminal Court exemplify this shift, as they impose human-rights obligations on states and even hold leaders personally accountable for gross crimes.

Central to Habermas's thesis is the idea of "constitutionalizing" international law to create what he calls a *"politically constituted world society"*. By *constitutionalization*, Habermas means adopting a legal framework at the global level that functions like a constitution: it *restrains and regulates state power by higher legal principles*, rather than simply coordinating interactions between sovereigns. Importantly, Habermas does not advocate a world super-state or "global Leviathan." Instead, he envisions a multilevel system of governance: sovereign states would continue to exist, but they would be embedded in an overarching legal order with constitution-like features, capable of enforcing fundamental norms such as peace and human rights. In Habermas's words, *"the liberal type of constitution provides a conceptual frame for a politically constituted world society without a world government"*. A global constitution, as he conceives it, would *"take the institutional shape of a world organization that has the capacity to act in well-defined fields without itself assuming the character of a state"*. In practical terms, this means a strengthened United Nations (or equivalent body) that can intervene to prevent war and atrocity, backed by international courts and law-enforcement mechanisms – but with a limited mandate focused on securing peace and protecting human rights.

Another major theme in the essay is the question of legitimacy for this nascent world legal order. Habermas is acutely aware of the "legitimation problems" facing any *"constitution for world society"*. In democratic theory, legitimacy comes from laws being made by the people who are subject to them (the principle that authors and addressees of law coincide). How can this be realized beyond the nation-state, where there is no single global "demos" and no global democracy in the strong sense? Habermas's answer is a layered conception of legitimacy that corresponds to different levels of governance. He proposes that *democratic legitimacy* in the full sense will remain anchored at the national level, where citizens constitute a self-legislating political community (e.g. through their domestic constitutions and elections). States thus continue to derive legitimacy internally from democratic processes, and crucially, they supply legitimacy upward: the authority of international institutions can be justified in part by the democratic consent of their member states. At the same time, Habermas argues that individuals must also be granted a role in global legitimacy. He insists that *"any conceptualization of a juridification of world politics must take as its starting point individuals and states as the two categories of founding subjects of a world constitution"*. This means that a global constitutional order should recognize *world citizens* alongside states – for instance, by giving individuals enforceable human rights and perhaps representation in a reformed global assembly. Thus, legitimacy for a world society's constitution is dualistic: it is grounded both in the sovereign will of peoples (states) and in the cosmopolitan rights of persons.

Habermas's essay also sketches an institutional design to realize these principles. In broad strokes, he outlines a three-tiered architecture for global governance:

1. National Level (Nation-States): The foundation of the system remains sovereign states, each with its own democratic constitution. States retain control of the means of force within their territories and embody the principle that law should ultimately reflect a self-governing people's will. Because of this, nation-states have the *strongest form of legitimacy* in Habermas's model (they alone can achieve full democratic legitimation where *"the authors of law can also be its addressees"* under conditions

of popular sovereignty). However, states are no longer absolutely autonomous: they are constrained by the higher legal order and charged with two key functions beyond their borders – to enforce collectively decided international norms (e.g. deploying military or police power to uphold peace and human rights) and to channel democratic legitimacy to the transnational and global institutions (since those institutions derive authority in part from the states' own democratic credibility).

2. Transnational Level (Regional or Continental Unions): The second tier consists of intermediate alliances or unions of states – Habermas's prime example being the European Union, but he also cites bodies like ASEAN, Mercosur, or even great-power blocs. These transnational entities handle *"global domestic politics"* – cross-border issues such as trade, finance, public health, migration, and environmental policy that exceed the capacity of single nations. Habermas views this level as highly pluralistic: it encompasses democracies and non-democracies, varied cultures and regions. Accordingly, the legitimacy here is *"middling"* – greater than that of purely intergovernmental deals, but not as robust as a nation-state's internal democracy. Transnational organizations should strive for fair bargaining and include some participatory elements (for example, the EU's Parliament, or mechanisms for transnational civil society input), but they cannot yet meet the standard of full popular sovereignty. Crucially, Habermas insists that war and force have no place at this level: relations between regional unions or major powers, though still "international" in a sense, must be governed by law and negotiation, not military might.
3. Supranational Level (Global Institutions): At the apex is a reformed United Nations or similar world organization with universal membership. This supranational level is tasked with *only the most fundamental objectives – preventing war and mass violations of human rights* globally. Habermas foresees a division of powers akin to a minimal constitutional government: a UN Security Council (and allied forces) to execute peacekeeping and humanitarian intervention as an executive, an International Criminal Court as a judiciary for crimes against international law, and the UN Charter serving as a quasi-constitution that binds states' conduct. He even suggests the UN General Assembly could be expanded into a kind of *"world parliament"*, with two chambers representing states and world citizens, respectively. However, this global parliament's role would be limited to deliberation on principles and interpretation of the Charter, not full legislative authority as in a nation-state. Because there is no global voting public or shared political culture at the planetary scale, Habermas concedes that the requirements of democratic legitimacy are lowest at the supranational level. Instead of popular sovereignty, a *"liberal"* conception of constitutionality prevails: the UN's legitimacy rests on rule of law and justice (enforcing negative duties like *"do not wage aggressive war"* or *"do not commit genocide"*) and on the indirect consent of nations and peoples who benefit from a peaceful world order. In Habermas's terms, the UN would derive authority *"directly from the negative duties which it enforces…and indirectly from the legitimacy of the states which comprise it"*. The upshot is a "slender but robust" global consensus on core human rights and peace as the moral basis for world law – a consensus admittedly thin, but, Habermas hopes, sufficient to underpin the Charter's authority.

Habermas's main argument, then, is that the international community can and should evolve toward a constitutional order that civilizes power relations among states without morphing into a centralized world state. This entails "*the legal domestication of the intensified cooperation between states*" – effectively bringing Hobbes's *state of nature* between nations under the rule of law. The ultimate goal is a stable *"world society"* in which states and

citizens alike accept that some global governance is *"unavoidable in the contemporary postnational constellation"*, and crucially, that this governance must be constrained by constitutional principles and universal moral norms (rather than left to technocrats or hegemonic powers). Habermas explicitly positions his proposal as a middle ground between two extremes: on one side, a loose voluntary federation of states (which he finds too weak to enforce peace or rights) and on the other, a fully sovereign world republic (which he regards as unattainable or even undesirable under current conditions). In essence, he seeks to preserve the *democratic achievements* of the nation-state while extending the *rule of law* beyond national borders to address global problems.

Context: Habermas's Discourse Theory of Law and the Postnational Constellation

To fully appreciate Habermas's essay, it is important to situate it within his broader theoretical framework, especially his discourse theory of law and democracy developed in *Between Facts and Norms* (1992) and related works. Habermas's discourse theory posits that law is legitimate only if it arises from inclusive, rational deliberation among citizens – what he calls the public use of reason in democratic will-formation. In a legitimate polity, *"law is bound up with democratic self-determination"* such that legal norms can claim validity because they have been justified through discourse and approved by those subject to them. In the nation-state context, Habermas argued that the *rule of law* (legal norms, "facts") and *popular sovereignty* (democratic legitimacy, "norms") are co-original and interdependent – an idea he encapsulated in the concept of *"discourse democracy"*. The institutions of constitutional democracy (parliaments, courts, elections, a free public sphere) are vehicles for an ongoing communicative process by which citizens influence and consent to the laws that bind them. This approach to legitimacy is procedural and dialogic: it emphasizes that legitimacy emerges not from any transcendent source or mere power, but from the quality of the deliberative processes that produce law.

In *Between Facts and Norms*, Habermas largely focused on the constitutional state. However, by the late 1990s and 2000s, he turned increasingly to the "postnational" context – reflecting on how globalization, transnational integration, and the decline of Westphalian sovereignty challenge the traditional model of democracy. In his essay *"The Postnational Constellation"* (1998) and subsequent writings, Habermas observed that nation-states are enmeshed in global economic and political interdependencies that erode their capacity for independent action. Problems such as climate change, financial crises, terrorism, and human rights abuses spill across borders, while international institutions and agreements bind states in new ways. This is the *postnational constellation*: a constellation of political authority where the old correspondence between a sovereign state, a people, and a territory is loosening. Habermas's response, consistent with his Enlightenment orientation, is not to retreat into nationalism but to push democracy *beyond* the nation-state. He famously champions "postnational structures of political self-determination" and argues that emerging transnational governance arrangements are positive developments insofar as they embed state power in legal and democratic norms. For example, he lauds the European Union's evolution as a *"paradigmatic"* case of postnational democracy in the making. In the EU, sovereign states and citizens share power in a new legal order, suggesting that sovereignty and democracy can be recalibrated at a level above the nation. Habermas's notion of constitutional patriotism – loyalty to constitutional principles rather than ethnic or national identity – underpins this project by offering a basis for solidarity in diverse, multi-level polities. Citizens can identify

with the abstract values of a democratic constitution (like human rights, rule of law, and popular sovereignty) even in a multicultural, transnational setting, which is crucial if democracy is to work beyond traditional nations.

The essay on constitutionalizing international law directly builds on these ideas. It extends the discourse theory's core question – "*What makes law legitimate?*" – to the global plane. In absence of a world state, Habermas's answer is that legitimacy must be *reconceptualized* in a graded way: international law gains legitimacy indirectly through its anchoring in democratic states and directly through its morally oriented mission (peace and rights) that draws support from a global public conscience. Habermas's proposal reflects a *"cosmopolitan revision"* of Immanuel Kant's idea of a federation of states. In *Perpetual Peace* (1795), Kant envisaged a voluntary league of nations to secure peace, stopping short of advocating a world republic. Habermas agrees with Kant on avoiding a world government, but he revises Kant's model by insisting that individuals must be recognized as members of the global community, not just states. This dualistic view (states *and* persons as subjects of a world constitution) aligns with Habermas's discourse ethics, which is fundamentally humanist and individual-centered (every person capable of speech and reasoning is a potential participant in discourse). It also resonates with the post-1945 development of human rights law. Habermas thus bridges classical international law (where states were the only actors) and a cosmopolitan law (where persons have rights under international law) by proposing a hybrid *"state+individual"* foundation for world law.

It is also important to note Habermas's engagement with other theorists in this context. He explicitly rejects Carl Schmitt's grim view of international politics as an endless antagonism among sovereign powers. Schmitt had argued that a liberal world order would either collapse or become an oppressive universal empire, because he believed politics is inherently about friend-vs-enemy distinctions that cannot be abolished. Habermas, by contrast, insists on the possibility of taming power through law and rational agreement – a clear repudiation of Schmitt's realism. Habermas's stance is closer in spirit to Kantian cosmopolitanism, but he carefully adapts it: whereas Kant imagined a federation with states as the sole members and was wary of world citizenship, Habermas's world society formally includes individuals and seeks to guarantee democratic principles at multiple levels. Additionally, Habermas diverges from some contemporary liberal thinkers like John Rawls. In *The Law of Peoples* (1999), Rawls proposed a society of states model that allowed even non-liberal "decent" states as legitimate members and opposed a strong cosmopolitan law directly empowering individuals. Habermas is more demanding in terms of human rights standards (all states are expected to honor human rights internally) and more empowering of individuals (e.g. endorsing international criminal prosecution of state actors who commit atrocities). In this sense, Habermas's essay can be read as part of a broader critical discourse on how to reform international law to be more just and democratic, taking inspiration from Kant but updating it for the realities of globalization and the lessons of the 20th century.

In summary, Habermas's discourse theory provides the normative foundation for his vision of global constitutionalization: it supplies the criterion of legitimacy (participatory, reasoned assent of those affected) and insists that this criterion, while easy to fulfill within nation-states, must evolve and be approximated in novel ways at transnational and global levels. The postnational constellation provides the context and impetus – the factual condition of interdependence and the erosion of pure sovereignty that make such evolution not only possible but necessary. Habermas's essay is thus an attempt to carry the Enlightenment project of self-governance and the rule of law to the scale of world society, all the while

conscious of the unprecedented challenges (cultural, political, and conceptual) that this entails.

Key Concepts: Constitutionalization, Legitimacy, Postnational Constellation, and World Society

Constitutionalization of International Law: The concept of *constitutionalization* lies at the heart of Habermas's essay. By this term, Habermas means the process by which international law acquires a hierarchical, binding structure similar to a domestic constitution. In a national context, a constitution is a superior law that defines the basic rights of citizens, the powers of government, and the procedures of politics; it "tames" political power and channels it through legal norms. Habermas argues that international relations need a comparable legal framework to prevent chaos or might-makes-right scenarios. Constitutionalization involves embedding fundamental norms (such as the prohibition of aggressive war, protection of human rights, and crimes against humanity provisions) into international law in a way that *restricts state sovereignty* for the sake of global common goods. Notably, Habermas emphasizes that a liberal (rather than republican) model of constitution is apt at the global level. A liberal constitution prioritizes the rule of law and checks on power, without requiring that law be the direct emanation of a single people's will. In practice, constitutionalization manifests in things like the UN Charter functioning as a quasi-constitutional document, or the development of peremptory norms (*jus cogens*) that no state can legally transgress (for example, genocide and torture bans). It also means creating institutions (courts, assemblies, enforcement mechanisms) that resemble constitutional organs albeit on a global scale. Habermas is careful to say this is a gradual, evolutionary process – a "step-by-step" juridification of international politics – rather than a one-time founding moment like Philadelphia 1787. He sees evidence of constitutionalization already underway in the post-1945 international order: states have accepted limitations on their freedom to wage war, they have signed human rights treaties, and new actors like the International Criminal Court have been empowered. His proposal seeks to *consolidate and extend* these developments into a coherent constitutional system for world society.

Legitimacy: Legitimacy refers to the justification and acceptance of political authority. In Habermas's discourse theory, as noted, legitimacy comes from the informed consent and participation of those governed – "government by the people" in a deep sense. The legitimation problem at the international level is that there is no global "people" to give consent through elections or referendums, and international institutions are often technocratic or intergovernmental bodies one step removed from popular influence. Habermas tackles this by differentiating levels and types of legitimacy. He acknowledges that the supranational level (e.g. the UN) is *"neither democratic nor a state,"* and thus it cannot meet the high threshold of republican legitimacy one finds within democratic countries. Instead, he calls for what might be termed *derivative* or *output-oriented* legitimacy: global institutions gain authority by effectively safeguarding universal interests (security and human rights) – a sort of moral-functional justification – and by being authorized via the democratic states that form them. Habermas argues that if the UN prevents genocide or stops wars of aggression, it draws legitimacy *directly from those globally valued outcomes* (the "negative duties" enforced). At the same time, because the UN is constituted by member states, which (ideally) are democracies, it inherits an *indirect legitimacy* from the will of the world's citizens mediated through their national governments. Furthermore, Habermas envisions strengthening legitimacy through a *cosmopolitan public sphere*: global civil society and public opinion can

exert pressure and provide a communicative underpinning for international law. For example, worldwide protests against a war or global advocacy for human rights create a form of public consent or dissent that international institutions must heed. In short, Habermas redefines legitimacy in a plural way – input legitimacy (participation) largely at national and regional levels, and output legitimacy (problem-solving and rights protection) at the global level, with each level reinforcing the other. The ultimate test of legitimacy for a world constitution, in Habermas's view, is that it resonates with the *"slender but robust"* moral consensus of humanity on basic principles and that it operates transparently and fairly enough to win the trust of peoples. He concedes this is a delicate balance, and critics have indeed queried whether the consensus is too slender – for instance, whether divergent cultural views on rights might undermine the legitimacy of a purportedly universal Charter.

Postnational Constellation: This term describes the historical-political situation that has emerged in the late 20th and early 21st centuries, in which the primacy of the nation-state is challenged by transnational forces. Habermas introduced the concept to capture phenomena like globalization of markets, the rise of multilateral institutions, and the formation of blocs like the EU. In a *postnational constellation*, states find their sovereignty partially "disaggregated" – certain powers migrate upward (to international regimes), sideways (to regional unions), and downward (to local or private actors). Habermas notes that issues such as environmental protection or financial stability cannot be managed by any single state alone. Meanwhile, identities and loyalties are no longer exclusively tied to nationhood; people develop broader allegiances or at least accept external authorities (for example, European citizens obeying EU law). The postnational constellation is essentially the *factual context* that makes Habermas's proposal both necessary and feasible. It is necessary because purely intergovernmental cooperation (the old model of international law) has proven insufficient to handle global problems and prevent abuses – as evidenced by humanitarian catastrophes and global risks that transcend borders. It is feasible because the very interdependence of states creates incentives to cooperate more deeply, and because new forms of collective identity (like European identity through constitutional patriotism) show that political community can exist beyond the nation. Habermas's essay frequently references this context: he argues that *"some degree of global governance is unavoidable in the contemporary postnational constellation"*, and thus the task is to shape that governance constitutionally rather than let it be captured by technocratic or hegemonic forces. In other words, since we already live in a postnational constellation, the choice is not between national sovereignty or nothing, but between a lawful, principled globalization and an uncontrolled, power-driven globalization. Habermas advocates the former, seeing it as the continuation of the Enlightenment project under contemporary conditions.

World Society: In Habermas's usage, "world society" refers to the emerging community of all human beings organized (at least partly) under a set of shared legal and political institutions. The term has sociological roots (Niklas Luhmann and others spoke of *Weltgesellschaft* to denote the single global social system created by modern communication and interdependence). Habermas adopts it to emphasize that humanity is increasingly interconnected and that law and politics must catch up to this reality. A *"world society"* is not a world state; rather, it is a society in which states and individuals recognize overarching legal obligations and participate in common institutions. In the essay, Habermas imagines a world society that is politically constituted, meaning it has a legal order that binds even the most powerful states and empowers the weakest actors (such as individuals or small countries) with rights. The notion of world society underscores a fundamental shift: whereas previously one might speak of an international society of states, Habermas speaks of a societal framework

that includes persons, non-governmental organizations, and transnational publics. This concept is closely tied to cosmopolitanism – the idea that all human beings belong to a single moral community and should be co-authors of the rules governing that community. Habermas's world society is dualistic (to reiterate, comprised of both states and world citizens as co-subjects of law). It is also post-sovereign in character: members of world society accept that their absolute sovereignty is curtailed by mutually agreed law – just as citizens within a nation surrender some freedom of action in exchange for the protections of living under a lawful state. World society in Habermas's vision thus represents the horizon of a cosmopolitan order: a condition wherein global problems are addressed through legal and democratic means, and basic justice is upheld worldwide. Achieving a world society of this kind is an aspirational goal, but Habermas argues that the horrific experiences of the 20th century have already propelled us partway there by demonstrating the need for international legal constraints. The continued development of international norms and institutions – from the UN to international courts to global civil society networks – can be seen as building blocks of an eventual constitution for world society.

In summary, these key concepts interlock in Habermas's essay to form a powerful argument: In a postnational constellation, it is both necessary and possible to constitutionalize international law, thereby legitimating a nascent world society. This requires rethinking legitimacy beyond the state and fostering new forms of solidarity and public participation that transcend borders. Habermas's theoretical contributions here provide a normative vocabulary for discussing global governance not as a mere technical coordination, but as an extension of the project of democratic constitutionalism to the global stage.

International Institutions: The United Nations and the European Union

Habermas's abstract vision of a multi-level world constitution is grounded in concrete considerations of existing international institutions, notably the United Nations and the European Union. In the essay, he assesses how these institutions currently function and how they might be reformed or serve as models to achieve greater legitimacy in a postnational world.

The United Nations as a Supranational Constitution-Making Arena: Habermas places great importance on the United Nations, seeing it as the cornerstone of the supranational level in his model. The UN Charter, adopted in 1945, is for Habermas a proto-constitution for world society: it lays down fundamental rules (respect for human rights, prohibition of aggressive war) and establishes organs (like the Security Council, General Assembly, International Court of Justice) that embody a form of global public authority. However, he acknowledges that the UN in its present form has significant *legitimation deficits*. The General Assembly is essentially a forum of governments (one-state-one-vote, regardless of regime type or population) with limited powers; the Security Council is dominated by a few great powers with vetoes; and ordinary citizens have no direct representation. Habermas's proposal envisions a reformed UN that moves closer to a constitutional framework. For instance, he suggests the possibility of a bicameral General Assembly – one chamber representing states and another representing the world's citizens (perhaps selected from national parliaments or by direct elections). This idea draws explicit inspiration from federal states (which often have an upper house for states and lower house for people) and from Kant's sketch of cosmopolitan law where individuals have rights as "citizens of the earth." A two-chamber world parliament

would symbolically and practically incorporate the dual subjects of world society (states and individuals) into the UN's decision-making. Another reform Habermas discusses is enhancing the United Nations' ability to enforce its charter. He supports strengthening the International Criminal Court (ICC) and related tribunals so that heads of state and other violators of international law can be prosecuted – thus undermining the shield of sovereign immunity in cases of gross injustice. He also argues the Security Council (potentially reformed to be more representative) should have a monopoly on authorizing the use of force, effectively globalizing the Hobbesian sovereign's role to keep peace. In Habermas's words, states must "regard themselves as members of an international community, not absolute sovereigns". By obeying the UN and international law even when it restrains their power, states would demonstrate the internalization of a higher legal order. Habermas often notes with approval that many states already comply with UN resolutions and international court rulings, indicating a nascent global rule of law. In short, Habermas sees the UN not as a world government, but as *the institutional locus for a world constitution* – an arena where global deliberation occurs and where law can progressively replace power politics.

Habermas also addresses the limits of the UN and why its remit should remain narrow. He is adamant that the UN (or any supranational authority) should *not* manage ordinary politics or social and economic policy on a global scale. Those areas are too contentious and culturally variable to be handled by a thin global consensus. Instead, socioeconomic issues are to be handled at the transnational level (by regional blocs or coalitions of states), where more context-specific solutions and negotiations can occur. The UN's role is principally *juridical*: uphold peace, react to egregious human rights abuses, and ensure that lower levels respect the basic Charter principles. Habermas uses the term "legal pacification" or *"legal domestication"* of international politics to describe this – law should pacify power struggles at the global apex. Importantly, he notes that UN-based constitutionalization can proceed *"without a world government"*, precisely because its aims are limited to universally agreeable minima (no war, no genocide) rather than full democratic governance. This underscores Habermas's pragmatic approach: a thick democratic world state is off the table, but a lean juridical global order is both viable and normatively justified.

The European Union as a Model for Transnational Legitimacy: When looking for real-world examples of how sovereign states might pool sovereignty under a common constitution, Habermas consistently points to the European Union. In the essay and elsewhere, he describes the EU as *"the prime example of a transnational polity"* that embodies elements of a postnational democracy. The EU originated in the aftermath of World War II as a project to bind European states together economically and politically so tightly that war between them would become unthinkable. Over decades, it has developed a supranational legal order (with the European Court of Justice asserting the primacy of EU law over national laws) and institutions like the European Parliament that represent citizens directly. Habermas highlights several features of the EU that align with his vision:

- The EU has a constitutional charter (its founding treaties, and an explicit Charter of Fundamental Rights) that functions similarly to a basic law, enumerating human rights, setting institutional competencies, and constraining state action in certain domains. This is a microcosm of what a world constitution might entail, though at a regional scale and among culturally related nations.
- European law demonstrates how legal integration can advance peace and cooperation: member states have largely transferred jurisdiction over trade, monetary policy, and many regulations to the EU, and crucially, they *accept the judgments* of a common

court. This acceptance shows that states can voluntarily submit to a higher legal authority without ceasing to exist. Habermas often remarks that EU member states "obey and implement the legal commands of EU institutions" even though they retain the *means of violence* (their own armies and police) – a phenomenon he calls a *"shifting constellation of enforcement and legitimation"* that no longer fits the old sovereign mold. In other words, Europe has separated the monopoly of force (still national) from the monopoly of law-making (in part supranational), and yet the system functions, suggesting a possible template for other regions or even globally.

- The EU also illustrates graduated legitimacy. While it is more than a treaty organization, it is less than a federal state. Democratic legitimacy in the EU is often said to be indirect or incomplete – the European Parliament is elected, but the turnout is low and citizens' affinity to Europe is weaker than to their nations; the Council represents governments, not peoples directly. Habermas acknowledges this "democratic deficit." His solution is not to abandon the EU, but to deepen it: he has argued for strengthening the European Parliament and fostering a pan-European public sphere so that the EU becomes a true *transnational democracy*. In the context of the world constitution essay, he sees the EU's trajectory as a learning process – if Europeans can develop a transnational democracy, it provides evidence that political will-formation can transcend nationality. It also provides a working model of how multiple levels of governance (local, national, European) can coordinate and share power, foreshadowing how a multi-level world order might function.
- Habermas even views the EU as a vehicle to project cosmopolitan norms outward. For example, the EU often conditions trade or membership on human rights and democratic standards, thereby *exporting constitutional principles*. In *The Divided West* and other writings, Habermas suggested that Europe, with its experience of overcoming nationalism internally, has a special role in championing a rule-based international order externally. He once co-wrote a manifesto titled "February 15, or What Binds Europeans Together" with Jacques Derrida during the Iraq War crisis, calling on Europe to support the UN and multilateralism as an alternative to unilateral power politics. This exemplifies his belief that the EU can be a *model and advocate* for the constitutionalization of international relations writ large.

In the essay itself, Habermas likely contrasts the UN and EU to show different layers of his proposal in action. The EU, at the transnational layer, demonstrates partial *postnational legitimacy*: it has citizens with rights to vote and petition at the European level, and it deals with complex economic and social issues through negotiation and legal regulation. However, it still relies on member states for implementation and for much of its legitimacy (national publics must at least acquiesce to EU decisions, as seen when treaty changes require referendums or parliamentary ratifications in each country). Meanwhile, the UN, at the supranational layer, has near-universal inclusion and a broad normative charter, but very shallow democratic structures. Habermas's call is to *gradually reform each layer in a complementary way*: encourage regional unions to democratize and handle globalized issues (following the EU's path, perhaps with appropriate adjustments for other cultures), and in parallel, reform the UN to be more effective and more representative (without turning it into a leviathan). The synergy is that stronger regional organizations can take on burdens the UN should not (economics, development, cultural matters), while a reformed UN ensures those regional powers do not clash violently and adhere to basic human rights standards.

It's worth noting that Habermas does not naively assume the EU model can be copied everywhere. He is aware of Europe's unique features (historical reconciliation motives,

relative cultural affinity, etc.). But he does cite other blocs like ASEAN and Mercosur as signs that regional cooperation is a generalizable trend. Moreover, he even counts *large nation-states* like the USA, China, India, and Russia as operating at a quasi-transnational level due to their size and influence. In his framework, these great powers should also learn to behave more like "regions" within a lawful world order rather than impermeable sovereigns – meaning they too must accept legal limits and engage in fair negotiations, not just throw their weight around.

In summary, the United Nations and European Union serve as two pillars in Habermas's conception of a future cosmopolitan order. The UN exemplifies the *necessary authority at the global apex*, while the EU exemplifies the *potential for democratic governance at an intermediate level*. Habermas's essay weaves these together to argue that a legitimate world society can be built by linking the legitimacy of states, the experiences of regional democratization, and the universal normative commitments enshrined in bodies like the UN. This multi-layered approach seeks to avoid the pitfalls of utopian one-world government schemes on one hand, and the impotence of mere power politics on the other. By learning from and reforming existing institutions, Habermas envisions a pragmatic path toward what he terms a *"cosmopolitan condition"* for humanity – a condition in which, as he says, states *"must learn to regard themselves as members of an international community"* and individuals come to see themselves as dual citizens of their nations and the world.

Critical Reception and Scholarly Responses

Habermas's essay on the constitutionalization of international law has sparked a wide-ranging discussion among scholars of political theory, international law, and global governance. Reactions have been mixed, with some praising his normative ambition and others questioning the feasibility or desirability of his proposals. Here we outline key strands of this reception, both supportive and critical.

Supportive and Constructive Engagements: Many theorists of cosmopolitan democracy and global constitutionalism have welcomed Habermas's intervention as a robust defense of *normative internationalism* in an era of resurgent nationalism. For example, political philosophers James Bohman and Daniele Archibugi – who have written on democracy across borders – find common cause with Habermas's insistence that democracy need not stop at the water's edge. Bohman, in particular, has argued that Habermas's approach carves out a promising middle ground between a powerless UN and an overreaching world state. This "middle ground" assessment affirms that Habermas offers a balanced solution: strong enough to enforce global norms, yet restrained enough to respect pluralism and avoid centralized tyranny. Likewise, *Hauke Brunkhorst* and other proponents of *world society constitutionalism* see Habermas's work as building on their ideas that we are witnessing the emergence of a global constitutional order through incremental legal developments (e.g. the spread of constitutional principles like judicial review, rights, etc., into international institutions). They appreciate Habermas's clarity in articulating the ideals that should guide this process – peace, human rights, and postnational democracy – and his acknowledgement that this constitutionalization is a political project requiring public support. Some international legal scholars also find Habermas's ideas stimulating. For instance, Armin von Bogdandy (a jurist and scholar of international law) engaged Habermas in a 2013 interview, probing how discourse theory could inform international legal scholarship. Bogdandy and others see value in Habermas's call to infuse international law with stronger normative foundations and to think imaginatively about institutional reforms (like UN Security Council changes or a global

parliament). In the field of international law, there has been talk of the "constitutionalization" of specific regimes (like trade law or human rights law); Habermas's essay gave that trend a philosophical imprimatur by linking it to legitimacy and democratic theory. Moreover, observers note that aspects of Habermas's vision have become increasingly salient: the International Criminal Court, the Responsibility to Protect (R2P) doctrine adopted by the UN in 2005 (which permits intervention against mass atrocities), and ongoing discussions about UN reform all resonate with Habermas's arguments that sovereignty can be limited for the sake of humanity. Even if these developments are modest, they suggest, as Habermas does, that the trajectory of international law is bending toward more robust enforcement of global norms – essentially a constitutionalization process in motion. Thus, supporters credit Habermas with offering a *coherent framework* that ties these threads together and champions a cosmopolitan ethos at a time when it is much needed.

Critical Perspectives: On the critical side, responses range from *practical skepticism* to *theoretical objections*. A frequent practical criticism is that Habermas's vision is too idealistic or politically unachievable. Realist scholars and some international relations experts argue that states (especially great powers) jealously guard their sovereignty and are unlikely to empower the UN or accept world legal constraints beyond a point. They might point to the paralysis of the UN Security Council in conflicts (due to vetoes), or the reluctance of major powers like the United States, China, or Russia to join the ICC or be bound by international courts. For example, conservative legal scholars like *Robert Delahunty and John Yoo (2010)* have critiqued Habermas's cosmopolitan proposals, arguing that they underestimate how global governance can threaten democratic accountability and national interest. Yoo, known for his defense of U.S. sovereignty in the War on Terror, would contend that global institutions lack the direct accountability to voters that nation-states have, and thus leaning on them (as Habermas does) could actually dilute democratic control. Such critics often favor a more Westphalian or pluralist international order and see Habermas's push for constitutionalization as either naive or a stalking horse for unwanted global bureaucracy. Habermas's reply might be that he is not naive about power – hence his reliance on gradualism and embedding change in democratic consent – but the criticism about feasibility remains a point of debate.

From a more *progressive critical* angle, some cosmopolitan democrats think Habermas does not go far enough. They note that Habermas limits the global constitution's aims to peace and human rights, explicitly excluding robust global democracy or global redistribution. Scholars like *Thomas Pogge* or *David Held*, who advocate more egalitarian global reforms, might argue that merely preventing war and genocide, while crucial, does not address the vast economic inequalities and injustices of globalization. Indeed, one notable critique comes from within Habermas's own intellectual circle: Cristina Lafont (2008) has argued that by relegating socio-economic justice entirely to the transnational level, Habermas's model *"ensures that human rights violations stemming from global inequality cannot be addressed"*. Lafont's point is that issues like poverty, exploitation, and climate change cause real harms (arguably human rights violations in effect) and these are global problems – if the UN is barred from tackling them, who will? She is concerned that Habermas's strict division of labor leaves a gap: global capitalism's excesses might go unchecked if global institutions stick only to policing war and genocide. Similarly, some critics worry that global technocracy might fill the void: if the UN doesn't handle economics, bodies like the IMF, World Bank, or transnational trade agreements might do so without democratic oversight, leading to policies serving elites (the very *"neoliberal technocracy"* Habermas warns against). In short, left-

leaning critics push Habermas to consider some capacity for the global level to address distributive justice or to more strongly democratize global economic governance.

Another line of critique focuses on culture and consensus. Habermas assumes a *"slender" cross-cultural consensus on basic human rights* can legitimate the global constitution. Critics note that even supposedly universal principles can be contested – for instance, LGBTQ+ rights, gender equality, or freedom of expression might not be universally accepted, as Habermas himself has acknowledged by citing examples like the global divide over LGBT rights. Scholars such as *William Scheuerman (2008)* and others have questioned whether Habermas underestimates the value conflicts and power dynamics in defining "universal" norms. There is a worry that what counts as global consensus might end up reflecting Western liberal preferences, potentially alienating other cultures and thus undermining legitimacy. Habermas might respond that the consensus he envisages is minimal and procedural – e.g., agreement that genocide, torture, and aggressive war are unacceptable, which indeed has broad support at least in principle – and that this baseline is sufficient for the limited role of the UN. Nonetheless, the tension between universality and pluralism remains an area of contention.

Legal scholars have also scrutinized the juridical aspects of Habermas's plan. Some have pointed out ambiguities: for example, how exactly would a two-chamber UN General Assembly be constituted and empowered without a global state underpinning it? Would its resolutions be binding law or just moral appeals? If individuals are directly represented, does that imply a global citizenship status legally? Habermas sketches these ideas but leaves the detailed institutional design open, which some critics say is a gap. Others worry about accountability: empowering the UN to use force for human rights sounds good, but who polices the UN or holds it accountable if it oversteps or makes mistakes? There are real-world concerns here, as seen in debates over humanitarian interventions (who decides when human rights justify violating sovereignty, and what if that pretext is abused?). Habermas places trust in law and multilateral deliberation to mitigate these risks, but skeptics recall that great powers have sometimes used the language of human rights to rationalize interventions serving their own ends. The shadow of the 2003 Iraq War (which Habermas vehemently opposed as illegitimate) looms large in these discussions – it showed the fragility of international law when powerful states choose to ignore it. Habermas's vision assumes a level of goodwill or at least rational recognition of mutual interests that critics doubt is consistently present.

In academic discourse, Jean L. Cohen has emerged as a thoughtful critic. In *Globalization and Sovereignty* (2012) and other works, Cohen argues for what she calls a *"dualist"* global order that respects the distinction between state sovereignty and international law, cautioning against muddying the two in a pseudo-constitutional way. She worries that talk of "world constitutionalism" can be conceptually misleading – constitutions legitimize power by reference to a sovereign constituent power (the people), which the global sphere lacks. Thus, she questions whether Habermas stretches the analogy of constitutionalism too far, risking either incoherence or the covert empowerment of undemocratic global elites. Cohen favors strengthening global legal regimes but maintaining a clear role for democratic states and not treating international law as if it had the same legitimacy as domestic constitutional law. Her perspective resonates with a broader concern: could calling something a "constitution for world society" imbue it with unwarranted authority or finality, when in fact global governance might always need to be a patchwork of compromises and plural sources of legitimacy? Habermas counters that without a constitutional mindset, international law remains precarious and subject to the whims of the powerful; the point of the term

"constitution" is precisely to signal fundamental and stable commitments. Yet, the debate with Cohen and others highlights the theoretical tightrope Habermas walks: trying to confer quasi-constitutional authority on something that isn't backed by a sovereign people in the usual sense.

In sum, the critical reception of Habermas's essay underscores several challenges: feasibility (will states ever agree to this?), scope (should it address more than peace/rights?), cultural legitimacy (whose values underpin the world constitution?), and conceptual clarity (is "constitutionalization" the right paradigm?). Even sympathetic commentators like *Arne Johan Vetlesen*, who wrote on Habermas's *"Plea for a Constitutionalization of International Law"*, tend to applaud the moral impulse but question how to implement it in a world of unequal power. Despite these debates, Habermas's work remains a reference point. Even critiques often proceed by first laying out Habermas's framework in detail (as we have done) and then proposing modifications or cautionary notes, which attests to the essay's status as an important catalyst in thinking about global order. Whether one ultimately agrees with Habermas or not, his essay has helped shift the conversation from *whether* international law can be more like constitutional law to *how* and *with what trade-offs* such constitutionalization might occur.

Implications for International Law, Global Governance, and Cosmopolitan Constitutionalism

Habermas's analysis carries significant practical and normative implications for the future of international law and global governance. At its core, the essay is a call to action – or at least to conscious evolution – aimed at policymakers, international jurists, and global civil society. Here, we highlight some of the key implications:

1. Reimagining Sovereignty and State Responsibilities: One immediate implication of Habermas's work is a redefinition of what sovereignty means in the 21st century. Rather than the classical Westphalian notion of *absolute* sovereignty, Habermas endorses a vision of *sovereignty shared and constrained by law*. States remain crucial actors, but they are no longer free to do anything they please within or beyond their borders. By accepting a constitutionalized international law, states in effect acknowledge duties to the international community and to individuals everywhere. This has practical implications: for example, it bolsters the rationale for doctrines like the Responsibility to Protect (R2P), which hold that if a state commits atrocities or fails to protect its population, the international community has a responsibility to intervene. Habermas's argument provides philosophical justification for R2P, anchoring it in the idea that the "presumption of innocence" for state sovereignty is conditional and can be overridden when gross crimes are perpetrated. It also implies that state leaders must expect to be held accountable beyond their own borders (e.g. through international tribunals) if they violate fundamental norms. Over time, this could strengthen deterrence against war crimes and crimes against humanity, as the shield of sovereignty is increasingly pierced by legal accountability – a trend already visible with several former heads of state being tried by international courts.

2. Guiding Reforms of Global Institutions: Habermas's essay offers a roadmap (or at least guiding principles) for reforming international institutions. For the United Nations, it suggests specific avenues: Security Council reform to be more representative (perhaps expanding permanent membership or altering the veto to prevent deadlock in humanitarian crises),

empowering the General Assembly in new ways (like the two-chamber idea or giving it a stronger role in norm development), and linking the UN more directly with global civil society (for instance, a People's Assembly or regular UN consultation with NGO forums). Some of these ideas have circulated in the UN reform debates; Habermas lends them weight by situating them in a larger democratic theory context. For the International Criminal Court and World Court, Habermas's vision underscores the need for broader acceptance and compliance. If world society is to be constitutionalized, more states must ratify the ICC treaty and cooperate with it, so that no rulers feel they can act with impunity. Habermas would likely advocate universal jurisdiction for certain crimes and greater support for international courts' authority as part of the entrenchment of cosmopolitan law. His work implies encouragement for treaties like the Genocide Convention, arms trade regulations, and human rights covenants – all pieces of a growing constitutional fabric – and perhaps the development of new ones (for example, a binding climate change agreement with enforceable targets could be seen as part of constitutionalizing global governance around the norm of environmental protection).

For regional organizations, Habermas's ideas encourage deepening integration. In the European Union, for example, the essay's logic supports efforts to strengthen the democratic elements of the EU (like transnational party systems, more powers to the Parliament, and even a EU constitution, an effort that faltered in 2005 but partially lived on in the Lisbon Treaty). It also provides a template for other regions: unions in Africa, Latin America, or Southeast Asia might take inspiration in creating parliamentary assemblies or human rights courts in their regions, stepping stones toward the kind of transnational legitimacy Habermas describes. Essentially, his theory nudges regional bodies to not just be trade alliances but to adopt constitutional features – a trend already seen in documents like the African Charter on Human and Peoples' Rights or the Inter-American Court of Human Rights.

3. Empowering Cosmopolitan Actors and Public Spheres: Another implication is the validation of cosmopolitan citizenship and global civil society activism. If individuals are to be considered founding subjects of a world constitution, then movements that mobilize individuals across borders gain legitimacy and importance. Habermas's framework implicitly supports the work of international NGOs, transnational advocacy networks, and activists who pressure states and global bodies to uphold human rights or environmental standards. It paints these actors as vital participants in a global public sphere that can supplement formal institutions. Practically, this means things like worldwide protests (e.g. the 2003 global anti-war protests, or climate marches) are not just ephemeral events; they are part of how a cosmopolitan order legitimates itself, by showing that there is a constituency of world citizens who care about certain issues. Governments and the UN might take these publics more seriously when they see them as manifestations of an emerging world opinion – analogous to national public opinion in domestic politics. Habermas often speaks of learning processes; here the learning process is that citizens start to think and act as *"both national and cosmopolitan citizens"*, switching between their local perspective and a global justice perspective. The implication is educational and cultural: curricula, media, and political discourse might need to do more to cultivate awareness of global interdependence and encourage people to engage in global issues. This aligns with existing efforts in cosmopolitan education or global citizenship education. In a sense, Habermas is updating the Enlightenment idea of a world republic of letters to a world republic of citizens: communication and reason should flow without regard to borders to solve common problems.

4. Restraining Power with Law – A New Paradigm for Great Powers: For global governance, Habermas's ideas, if taken seriously, require a shift in how great powers conduct themselves. The United States, China, and other dominant states would need to accept being under the law, not just in rhetoric but in reality. This might mean submitting to UN authority for military actions (as opposed to acting unilaterally), accepting the jurisdiction of international courts in disputes (for example, in the South China Sea conflict, a Habermasian approach would favor all parties abiding by the ruling of the international arbitral tribunal – something China rejected in 2016). It also means powerful states should support, not undermine, global agreements on climate, trade, etc., because those agreements are part of the constitutional order that keeps peace and fairness. In practice, this is challenging – the essay itself emerged partly in reaction to the U.S.-led Iraq War which bypassed the UN, an event Habermas decried. The implication of his work is a plea for great powers to exercise *self-restraint* and embrace multilateralism as being in their enlightened self-interest. In the long run, he would argue, even powerful nations benefit from a stable, lawful world (avoiding devastating wars, economic collapse, pandemics, etc.), and so should not see the surrender of some sovereign freedom as a loss, but as a contribution to a safer global commons. This might influence diplomatic thinking, reinforcing initiatives where nations agree to rules even if it curtails their freedom (like arms control treaties or cyber norms).

5. Advancement of Cosmopolitan Constitutionalism as a Field: On a more academic note, Habermas's essay has helped shape the field of cosmopolitan constitutionalism – the study of constitutional principles beyond the state. It has encouraged scholars and practitioners to explore creative legal mechanisms: e.g., could the UN Charter be amended to include a bill of rights for individuals enforceable by a world court? Could there be a global referendum mechanism on certain issues? How might national constitutions explicitly incorporate international obligations (some countries already mandate that international treaties or customary law have domestic legal force)? These questions have gained traction in part due to Habermas's influential voice. Publications, conferences, and even a journal (*Global Constitutionalism*) have flourished, indicating a growing community working on these ideas. While consensus is far from reached, the normative vision Habermas provides acts as a north star for those who believe the international system should evolve in a more just direction. Even policymakers might indirectly be influenced; European leaders invoking "the European constitutional project" or UN officials talking about the "rules-based international order" are echoing, perhaps unknowingly, some of Habermas's language about a constitution-like global order.

6. Tempering Utopianism with Gradualism: Finally, an important practical implication is Habermas's *gradualist and realistic* tone. By explicitly rejecting a wholesale world government or immediate global democracy, he essentially advises reformers to aim for incremental changes. This counsels patience and strategic focus: activists should perhaps focus on achievable goals like strengthening the International Criminal Court, expanding the G20 or UN Security Council to be more inclusive, creating new international treaties on pressing issues (pandemic response, for example), and improving the accountability of international organizations. It's a vision of step-by-step cosmopolitanism: start with what is consensus (no war, no genocide), build institutions to enforce that; then expand the circle of norms outward as global consensus hopefully deepens (perhaps in the future, consensus might grow on labor rights or environmental rights). Habermas's work implies that trying to jump directly to a global parliament with full legislative powers or a world tax authority for redistribution is premature and could backfire by provoking nationalist backlash. Instead, secure the foundations first – peace and basic rights – and the rest can follow when humanity

is ready. This measured approach is itself a practical guideline for those designing international reforms.

In conclusion, Habermas's *"The Constitutionalization of International Law"* essay serves both as a diagnosis of the current world order's ills (state sovereignty unchecked can lead to catastrophes) and a prescription for a better global order (layered constitutional constraints to prevent those ills). Its implications encourage us to rethink entrenched ideas about law and authority: to see the UN Charter as not just an aspirational pact but as the embryo of a constitution, to see citizens not just as nationals but also as stakeholders in humanity's laws, and to see sovereignty not as an idol but as an institution that evolved and can evolve further. Whether or not one agrees with all of Habermas's conclusions, his essay frames the grand question of our time: *Can we forge a legitimate order for the world society that is now upon us?* If yes, Habermas provides one of the most detailed and principled accounts of how we might proceed. If no, his work at least forces us to articulate why not, and what the alternatives – with their own risks – would be. The lasting contribution of Habermas's essay is thus to push the conversation beyond cynical acceptance of the status quo, challenging scholars and practitioners to imagine *cosmopolitan constitutionalism* not as a fanciful dream but as a concrete project already underway, demanding our critical engagement and collective will to carry forward.

Conclusion

Jürgen Habermas's *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society"* is a landmark exploration of how democratic principles and legal norms can be projected onto the global stage. In this report, we have examined the essay's main arguments, situated it within Habermas's broader discourse theory, unpacked its key concepts, and reviewed its reception and implications. Habermas's central claim is that the postnational constellation of global interdependence calls for a corresponding transformation in governance: a move from a purely state-centric international law to a *cosmopolitan* order underpinned by a quasi-constitutional framework. This world constitution, as he envisions it, would not establish a world state but would enshrine fundamental values – peace, human rights, and the rule of law – that all states and peoples must respect, enforced by empowered international institutions with carefully calibrated legitimacy.

The essay's significance lies in its rigorous attempt to reconcile sovereignty with cosmopolitan responsibility, and democracy with global scale. By dividing governance into levels and assigning each a mode of legitimation, Habermas provides a nuanced answer to the age-old question of how to achieve "unity in diversity" in world politics: unity through law and basic principles, diversity in allowing communities self-rule in most matters. His work builds a bridge between normative theory and institutional practice, offering guidance for reforming entities like the UN and invigorating regional integrations like the EU.

The reactions to Habermas's proposal reveal both its promise and its challenges. Supporters see it as a beacon for a more just and peaceful international order, while critics remind us of the real-world frictions of power, culture, and economics that any cosmopolitan project must overcome. These debates are not merely academic – they echo in policy discussions about UN peacekeeping mandates, the design of trade agreements, and the enforcement of international human rights. As global crises continue to manifest (whether climate change, pandemics, or conflicts), Habermas's insistence that *"some degree of global governance is unavoidable"*

and that it *"should be constitutional and grounded in universal moral principles"* becomes ever more salient.

In practical terms, Habermas's essay serves as both critique and inspiration: a critique of an international system that too often fails to prevent violence and injustice, and an inspiration to innovate institutions that better reflect our shared humanity. It challenges scholars to refine or rethink parts of the vision – for example, how to democratize global institutions without a global demos, or how to address economic equity – thereby advancing the intellectual agenda of cosmopolitan governance. It also implicitly challenges citizens and leaders to expand their political imagination and compassion beyond national borders in pursuit of what Habermas would call a *"humane"* global order.

In conclusion, Habermas's work remains a touchstone in discussions of global constitutionalism. It does not offer a quick fix or utopian blueprint, but rather a principled orientation and a framework for gradual progress. The constitutionalization of international law, as Habermas conceives it, is an ongoing project – one that will likely unfold over generations, through setbacks and breakthroughs. By articulating the legitimation problems frankly and tying our highest legal ideals to the fate of world society, Habermas has ensured that any serious inquiry into the future of global governance must contend with his ideas. Whether the world ultimately follows a Habermasian path or some alternative, his essay has elevated the discourse, making it impossible to think about international law's evolution without asking the deep, critical question: *How can law at the global level be made legitimate in the eyes of those whom it claims to bind?* Habermas's answer – through constitutionalization, representation of individuals and states, and a multilevel democratic process – may yet prove to be one of the most compelling answers we have. As global challenges intensify, the relevance of *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society"* is likely to grow, continuing to inform and provoke the scholarly and practical pursuit of a more lawful and just world.

Sources:

- Habermas, Jürgen. *"The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society."* Constellations 15, no. 4 (2008): 444–455.
- Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy.* Cambridge, MA: MIT Press, 1996. (Referenced conceptually in context)
- Habermas, Jürgen. *The Postnational Constellation: Political Essays.* Cambridge, MA: MIT Press, 2001. (Referenced conceptually for "postnational constellation")
- Fine, Robert. "Nationalism, Postnationalism, Antisemitism: Thoughts on the Politics of Jürgen Habermas." *Österreichische Zeitschrift für Politikwissenschaft* 39, no. 1 (2010): 19–34.
- Stanford Encyclopedia of Philosophy. "Jürgen Habermas," especially §6.2 "Cosmopolitanism and the Constitutionalization of International Law".
- Internet Encyclopedia of Philosophy. "Jürgen Habermas (1929—)," especially the discussion of post-national democracy and cosmopolitanism.
- E-International Relations. "Three Theories of International Justice" (2013), section on Habermas.

- Habermas, Jürgen, and Jacques Derrida. “February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe.” *Constellations* 10, no. 3 (2003): 291–297. (Referenced in passing regarding EU’s role)
- Lafont, Cristina. “Alternative Visions of a New Global Order: What Should Cosmopolitans Hope For?” *Ethics & International Affairs* 23, no. 3 (2009): 257–269. (Engages with Habermas’s cosmopolitan proposal; critique cited)
- Vetlesen, Arne Johan. “Comments on Jürgen Habermas’ lecture ‘Plea for a Constitutionalization of International Law’.” *Philosophy and Social Criticism* 40, no. 1 (2014): 19–23.
- Cohen, Jean L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism.* Cambridge: Cambridge University Press, 2012. (Critique of global constitutionalism in dialogue with Habermas)
- ResearchGate / Michael Haiden. “Jürgen Habermas: A Political Pacifist?” *Journal of International Political Theory* (2024). (Provides context on Habermas’s cosmopolitan “legal pacifism” and middle-ground stance)
- Verfassungsblog. “Discourse Theory and International Law: An Interview with Jürgen Habermas” (2013). (Habermas’s reflections on international law and policy proposals)
- Additional scholarly responses and texts as cited throughout the analysis.

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Matthias Kumm “The Cosmopolitan Turn in Constitutionalism”

Introduction

Matthias Kumm’s *“The Cosmopolitan Turn in Constitutionalism”* is a seminal contribution to the debate on constitutionalism beyond the nation-state. Kumm presented this work in two closely related versions: first as a chapter in the 2009 edited volume *Ruling the World? Constitutionalism, International Law, and Global Governance* (eds. Dunoff & Trachtman), and later as an article in the *Indiana Journal of Global Legal Studies* (Vol. 20, No. 2, 2013). Both versions advance the same fundamental thesis: that the concept of constitutionalism must *“take a cosmopolitan turn”* in order to remain relevant and legitimate in an increasingly interconnected global order. In essence, Kumm argues that a nation’s constitution and its exercise of public power can no longer be viewed in isolation, but must be understood in relation to *global* norms and obligations. This detailed report will summarize Kumm’s main arguments and the theoretical foundations of his notion of “cosmopolitan constitutionalism,” explain how he positions his argument vis-à-vis traditional constitutional theory and international law, and discuss the practical and normative implications for global governance. It will also compare the 2009 chapter and the 2013 article for any substantive differences or developments, and examine key critiques and academic responses that Kumm’s thesis has elicited.

Main Arguments: From State-Centered to Cosmopolitan Constitutionalism

Thesis and Core Claim: At the heart of Kumm’s work is the claim that constitutional legitimacy is *not* a purely domestic affair; rather, the legitimacy of a national constitution partly depends on how that state is integrated into the wider international legal and political order. In other words, if constitutionalism’s purpose is to *“define the legal framework within which collective self-government can legitimately take place,”* then that framework must include *global* conditions and constraints, not just domestic ones. Kumm contends that under modern conditions, nation-states unilaterally pursuing their own policies inevitably produce *“justice-sensitive externalities”* that affect outsiders beyond their borders. Examples of such externalities include cross-border harms (environmental damage, financial crises, etc.), transnational effects of domestic laws (e.g. trade or immigration policies impacting non-citizens), or the consequences of how states draw and enforce territorial boundaries. No matter how democratic or rights-respecting a state is internally, its laws and policies *alone* cannot fully claim legitimate authority over these spillover effects. For Kumm, this reality demands a *cosmopolitan* approach to constitutionalism: nation-states must recognize external constraints on their sovereignty and embed those constraints into their constitutional order.

Constitutionalism's "Cosmopolitan Turn": Kumm uses the term "cosmopolitan" to signal that constitutional norms and values must extend beyond the state. He is not advocating a world super-state or a single global constitution imposed on all. In fact, he acknowledges that traditionally, constitutionalism has been *"understood as the supreme law of a sovereign state,"* founded on a singular "We the People" and enforced by state power. Within this classic *dualist* paradigm (domestic constitutions vs. international law), talk of any constitutionalism *beyond* the state is often met with skepticism and even alarm – as if one were implicitly arguing for a global sovereign or "world state". Kumm directly confronts this *skeptic's challenge*: he agrees that no global people or world sovereign exists in the way a nation-state has a constituent people, but he argues this does not mean meaningful constitutional principles *cannot* operate beyond the state. Constitutionalism, properly reconceived, *"can and does exist on the international level"* even *"without reference to either 'We the People' or a sovereign state"* as its foundation. The cosmopolitan turn thus involves decoupling the core *function* of constitutionalism from the traditional state-centric form. Instead of equating constitutionalism solely with a single written charter authorized by one people, Kumm defines it functionally: it is the enterprise of structuring and limiting public power so that it is exercised with legitimacy, justice, and respect for rights. This enterprise, he argues, now must occur in a multi-level context – spanning the state and beyond.

Integrated Global Public Law: In the 2013 article, subtitled *"An Integrated Conception of Public Law,"* Kumm emphasizes that domestic constitutional law and international law should be viewed as parts of a *single continuum of public law*. He posits that there is no watertight separation – the two are increasingly interdependent and must be aligned under common principles. International law, in Kumm's view, is not *external* to constitutional concerns but rather an integral component that enables and underpins the legitimacy of domestic constitutions. Indeed, he asserts that *"the point and purpose of international law"* is precisely to *"authoritatively address problems of justice-sensitive externalities of state policies"* – those issues which individual states alone cannot legitimately resolve. By providing rules and forums to manage cross-border effects (e.g. treaties on climate change, trade regimes, human rights agreements), international law *"helps create the conditions and defines the domain over which states can legitimately claim sovereignty"*. In short, global legal norms carve out the space within which a state may exercise self-government without unduly harming others.

From this integrative perspective, national constitutions and international law together form a layered constitutional order. Kumm describes the ideal result as a *"cosmopolitan state"* – that is, a state which *"incorporates and reflects in its constitutional structure and foreign policy the global legitimacy conditions for claims to sovereignty"*. Only such a cosmopolitan state, he argues, can be considered fully *legitimate* in today's world. A government that ignores international obligations or the effects of its actions beyond its borders would be constitutionally deficient in legitimacy, no matter how democratic its internal processes. Thus, Kumm's cosmopolitan constitutionalism reframes sovereignty as responsibility: states have a *"standing duty to help create and sustain an international legal system"* capable of addressing global externalities and upholding justice across borders. Constitutionalism, accordingly, must concern itself not just with how power is constrained and justified *inside* a state, but also with the legal and moral constraints on state power arising *outside* – from the community of all affected persons and states.

To summarize Kumm's core argument in key points:

- No Self-Contained Legitimacy: A national constitution's legitimacy is *not self-standing*. It depends not only on democratic procedures and rights observance at home, but also on the state's behavior in the *global* arena. Constitutional legitimacy "does not depend only" on domestic democracy/rights, but also on integration with the wider world.
- Justice-Sensitive Externalities: Whenever a state *draws boundaries or pursues national policies*, it creates external effects that raise issues of justice for outsiders. For example, pollution that crosses into neighboring countries, financial or trade decisions that impact other economies, or immigration and border policies affecting non-citizens are all *"justice-sensitive externalities"*. A state cannot unilaterally adjudicate the justice of these matters because its authority is limited to its own citizens.
- Role of International Law: It is the role of international law and institutions to address these transnational externalities. Global norms (treaties, international courts, etc.) supply the framework to handle problems that no single polity can solve alone. In doing so, international law *enables* states to be legitimate by delineating what they may *autonomously* decide and what must be handled cooperatively. For Kumm, robust international law isn't a threat to sovereignty – it is a precondition to legitimate sovereignty.
- Duty of States: States are duty-bound to participate in and nurture this international legal order. Rather than jealously guarding absolute freedom of action, a legitimate republic will willingly bind itself by global rules addressing climate change, human rights, arms control, and so on. This is not mere altruism but a constitutional duty: by helping solve cross-border problems, the state secures the conditions under which it can rightly govern its own affairs.
- The Cosmopolitan State: A "cosmopolitan" constitutional state integrates these global commitments into its own constitutional DNA. Such a state's constitution and laws acknowledge external constraints – for instance, by granting international law a high rank or direct effect in the domestic legal order, by constitutionally committing to respect treaties and international human rights, and by shaping foreign policy around global justice obligations. In Kumm's words, *"only a cosmopolitan state – a state that incorporates and reflects the global legitimacy conditions for claims to sovereignty in its constitutional structure and foreign policy – is a legitimate state"*.

Conceptual Foundations and Theoretical Context

Kumm's cosmopolitan constitutionalism builds on both practical developments and normative political theory. Conceptually, his work sits at the intersection of constitutional theory, international law, and moral philosophy. One foundation is a functional understanding of constitutionalism. Rather than defining a constitution by its form (a single text promulgated by a sovereign people), Kumm defines it by its *function*: enabling law *"among free and equals"* to be coherent, effective, and justified. This functional approach opens the door to seeing international legal order in constitutional terms. Indeed, prior to Kumm's contribution, a wave of scholarship had already begun using *constitutional* language to describe aspects of the international system. For example, scholars like Bardo Fassbender and Jan Klabbers explored the *"constitutionalization of international law,"* and others examined whether regimes like the United Nations or the European Union exhibit constitutional features. This emerging literature suggested that international law was evolving beyond a mere contract between states toward a more law-based, rule-of-law order with hierarchies of norms (e.g. peremptory norms, UN Charter obligations) and institutional checks and balances.

Kumm enters this discourse by providing a *normative* argument for why such constitutionalization is not only occurring but is *necessary*. He situates his theory in explicit contrast to traditional Westphalian assumptions. In the classic view (especially among many domestic constitutional scholars and realist international lawyers), a constitution is an artefact of a single sovereign polity ("We the People") and international law is something entirely separate – a voluntary compact among sovereigns, fundamentally about foreign affairs and power, not about public legitimacy. Kumm calls this the *dualist paradigm* and notes that under it, *"any talk of constitutionalism beyond the state is deeply implausible"*. Traditionalists often argue that without a global sovereign or global populace, the conditions for true constitutional law are absent. Kumm acknowledges the descriptive truth that we have no world government elected by a world citizenry. However, he draws on normative political theory – notably *cosmopolitanism* in the Kantian and liberal tradition – to argue that legitimacy must ultimately be assessed from an *inclusive, human-centric perspective*, not a narrow state-centric one. Enlightenment thinkers like Immanuel Kant had long suggested that states, to escape a Hobbesian anarchy and achieve perpetual peace, must submit to rule of law among themselves and respect a form of *cosmopolitan law* protecting individuals beyond their borders. Kumm's cosmopolitan constitutionalism can be seen as an update of these ideas for a globalized era: it insists that states are not final ends in themselves, but part of a broader legal order aimed at safeguarding the rights and interests of all persons.

Two key intellectual influences can be discerned: liberal democratic constitutionalism and Kantian cosmopolitanism. From liberal constitutional theory, Kumm retains the emphasis on individual rights, the rule of law, and democratic self-governance as cornerstones of legitimacy. He does *not* abandon these – in fact, he presumes that a state must be rights-respecting and democratically governed internally as a baseline for legitimacy. However, he argues that this is *insufficient* unless the state also respects those same values in the external realm. Here he channels a cosmopolitan ethic: individuals who are affected by a state's actions, even if outside that state, deserve consideration. In practice, this means a legitimate constitutional order must extend concern to outsiders – for example, by cooperating on international human rights norms (to protect foreign individuals) and on environmental or economic regulations (to protect foreign communities). It also echoes the Kantian notion that republican (democratic) states have a duty to form a lawful federation to secure peace and justice; Kumm cites Kant's *Perpetual Peace* as the "first development" of the idea that states must subject their external conduct to cosmopolitan legal constraints. Additionally, he notes empirical observations like the "democratic peace" (the finding that democracies rarely wage war against each other) to bolster the claim that embracing cosmopolitan norms (e.g. promoting democracy and rule of law globally) has tangible benefits for a just and stable world order.

Kumm's theoretical framework also dialogues with contemporary constitutional theory debates, such as constitutional pluralism. Constitutional pluralists (like Nico Krisch, Neil Walker, and Miguel Maduro) recognize the multiplicity of legal sources in the global arena and often resist any *simple* hierarchy with international law at the apex. They emphasize that national constitutions, regional legal orders (like the EU), and international law may coexist without a clear supremacy, requiring negotiated solutions to conflicts. Interestingly, Kumm's cosmopolitan constitutionalism is *not* a rigid monism that simply declares international law superior. He in fact *"eschews clear hierarchies"* in favor of a more nuanced integration, and even *"embraces pluralism"* to the extent that multiple levels of law operate. However, he insists that this pluralism must be *embedded in a thick set of substantive principles* (e.g. respect for human rights, global justice, and reason-giving to outsiders). In this way, Kumm's

approach tries to integrate the insights of pluralism (no world sovereign, ongoing interplay among legal orders) with the normative force of constitutionalism (the idea that all exercise of power *can* and *should* be justified by rational principles and accountable to those affected). One could say Kumm advocates a cosmopolitan pluralism: a pluralistic legal order, but one bound together by shared constitutional values and by legal mechanisms that reflect those values across jurisdictions. For example, he would point to the practice of national courts respecting international law or the spread of judicial dialogues on human rights as instantiations of cosmopolitan constitutional practice, even in the absence of a single global constitution.

It's important to note that Kumm's notion of *constitutionalism* beyond the state is *normative aspirational* as well as descriptive. He does identify elements in the existing international system that have a constitutional character (such as the UN Charter's fundamental norms, or the European Union's legal order), but he is also making a prescriptive argument about how states *ought* to behave. In framing constitutionalism as concerned with the *"global legitimacy conditions for the exercise of state sovereignty,"* he implies a moral standard that current states may or may not yet meet. His work, thus, is part analysis, part manifesto: it describes an emerging *"integrated conception of public law"* and urges that we embrace and develop it further.

Constitutionalism Beyond the State vs. Traditional Notions

Kumm explicitly contrasts his cosmopolitan approach with the traditional, state-centric notion of constitutionalism and with conventional understandings of international law. In a traditional view, the realms of domestic constitutional law and international law are separate and conceptually distinct. Domestic constitutionalism is built on ideas of *sovereignty* and *constituent power*: a single people within a state authorizes a highest law (a constitution) that governs that state's public power. International law, by contrast, is often seen as a contract between sovereigns, lacking a people, a constitution, or direct democratic legitimacy. Within this framework, international law is "the law *among* states," fundamentally grounded in the consent of independent nations and mainly concerned with coordinating relations or addressing mutual problems. As Kumm observes, from the perspective of a strict dualist, *"any talk of constitutionalism beyond the state"* would seem *"deeply implausible,"* because a constitution is equated with state sovereignty by definition. Those who used constitutional language for global governance were often suspected of secretly advocating a world federal state or at least illegitimately stretching a domestic concept to a realm where it doesn't belong.

Kumm's Rebuttal to the Skeptics: Kumm responds that this skepticism is based on a misunderstanding of what constitutionalism can mean. He grants that *if* one defines a "constitution" narrowly as a document produced by a unitary act of "We the People" within a sovereign state, then obviously there is no *global* constitution of that kind – there is no single world demos or moment of founding. However, he argues that constitutionalism in a broader sense – as a set of fundamental legal principles and structures that confer legitimacy – *"can and does exist"* at the international level. The absence of a global "We the People" doesn't imply the absence of any constitutional order; it simply means the global constitutional order will have a different shape (one that does *"not [involve] 'We the People' establishing a constitutional framework of self-government claiming supreme authority within a sovereign state"*). International constitutionalism may not mirror the state model, but it can still exhibit core constitutional qualities: constraints on power, hierarchy of norms (for example, jus

cogens or peremptory norms that no treaty can violate), rule-of-law institutions, and articulated values like human rights.

To make this argument, Kumm effectively *reinterprets sovereignty*. In the traditional notion, sovereignty is absolute within a state's territory – each people governs itself and outsiders have no say ("Westphalian" sovereignty). Kumm's cosmopolitan turn recasts sovereignty as *conditional* or *responsible*. A constitutional democracy derives its legitimacy from the consent of its own people *and* from its adherence to certain external constraints that protect the rights and interests of *other* peoples. He uses a powerful analogy: the claim of a state to sovereign authority over a territory can be likened to an individual's claim to private property. Just as classical liberal theory (e.g. John Locke) argued that property rights are justified only under certain conditions (such as leaving "enough and as good" for others, or taking on obligations to the community), Kumm suggests that a state's claim to govern a piece of the earth and exclude others is not unqualified. *"The claim to sovereignty over territory by 'We the People' can be, and has been, analogized to the claims to property over land by individuals"*, he notes, highlighting that both raise questions of fairness to outsiders who are excluded. This leads to what might be called a cosmopolitan principle of bounded authority: *"'We the People' can only claim legitimate authority over a domain in which there are no justice-sensitive externalities"*. In plainer terms, a democratic people is entitled to govern itself *only* in matters that do not harm or fundamentally impact others. When its decisions do have significant external impact, those affected outsiders must have a say or be taken into account through broader legal frameworks. If a state were to insist on absolute authority even in areas where it creates injustice beyond its borders, it would *"overstretch its claim to legitimate authority"* and undermine its own legitimacy.

This is a radical departure from the traditional "Westphalian" mindset, and it aligns with evolving concepts like "Responsibility to Protect" (R2P) and other norms that condition sovereignty on respect for certain international standards. Kumm's analysis predates R2P's widespread adoption, but it is complementary: whereas R2P focuses on a duty not to grievously harm one's own population (else face external intervention), Kumm's focus is on a duty not to harm *other* populations and to cooperate for global public goods. Both chip away at the idea of completely unfettered sovereignty.

International Law as Constitutional: Another contrast with traditional views lies in how Kumm characterizes international law. Rather than seeing it as a thin veneer over power politics, he regards key parts of international law as having a *constitutional* character. For example, the *United Nations Charter* can be viewed as a quasi-constitutional instrument for the international community: it lays down foundational rules (prohibiting aggressive war, affirming human rights, establishing the Security Council's authority, etc.) that structure how states exercise power. Kumm indeed draws on scholarship that calls the UN Charter a "global constitution" or at least *"a constituent instrument in the international legal order"*. While he does not claim the UN Charter is a perfect constitution, he treats it and other fundamental international agreements as part of the higher-order legal framework that legitimates (or delegitimates) state actions. For instance, if a state unilaterally uses force in violation of the Charter, that act is not only a treaty breach but, in Kumm's eyes, a constitutional illegitimacy on the global plane. In his 2009 chapter, placed in a section of the book addressing "the relationship with state constitutionalism, constitutional pluralism and democratic legitimacy beyond the state", Kumm likely addressed how instruments like the UN Charter and regimes like the WTO or EU interact with national constitutions in a quasi-constitutional way. By 2013, he sharpened the point: international law doesn't merely coexist with national

constitutions; it *defines the outer bounds* of what nations can legitimately do. It creates an overarching legal *space* within which states operate – much like a national constitution creates the space within which various branches of government operate.

Democracy and "We the People": A perennial concern about global governance is the democratic deficit – i.e. that international lawmaking is less accountable to citizens than national lawmaking. Kumm's cosmopolitan constitutionalism grapples with this by effectively expanding the notion of democratic legitimacy. He suggests that a national *"We the People"* must *in itself* be constrained by the principle of treating outsiders as also "free and equal." In practice this means that a purely internal democratic decision, reached without regard to outside impact, might lack legitimacy if it gravely harms those outsiders. Thus, democracy is not rejected but *resituated*: the democratic process at the state level remains crucial, but it must operate within a framework of norms that ensure *other* affected people's interests are considered (often through their own states acting jointly in international fora). Kumm's vision implies a form of *"dual legitimacy"*: a law or policy is legitimate only if it is democratically rooted internally and compatible with justice globally. This is a high standard, and critics ask: how can outsiders have a say in a country's decisions short of a world parliament? Kumm's answer is that international law is the vehicle for that voice. Through treaties and international institutions, peoples effectively *speak to each other* and constrain each other's freedom of action for mutual benefit. For example, when states negotiate a climate agreement, the citizens of each country gain a voice (indirectly, via their state) in how other countries emit carbon, something they otherwise could not influence. The resulting international rule, once agreed, binds each state's domestic democracy to certain limits – but those limits carry legitimacy because they were arrived at by a process where all affected states (hence, indirectly, all peoples) had representation. In this way, cosmopolitan constitutionalism attempts to reconcile democracy with global law through multilateralism. It sees treaties not as foreign impositions, but as extensions of a polity of humankind working to solve collective action problems.

In sum, Kumm positions his argument as a via media between two unsatisfactory extremes: on one hand, a naïve *global statism* (the idea of simply scaling up a national model to a world state, which is politically infeasible and, in his view, unnecessary), and on the other hand, a *strict pluralism* that denies any integrating legal or moral framework at the global level. He rejects the notion that we must wait for a world government to talk about global constitutionalism; constitutional principles can manifest in the relations *among* states here and now. But he also rejects the idea that because global governance isn't analogous to a state, it must be left entirely to realpolitik or ad hoc arrangements. By articulating constitutional principles that apply "in and beyond the state", Kumm tries to bridge the divide between national and international law, imbuing the latter with normative gravity traditionally reserved for the former.

Practical and Normative Implications for Global Governance

Kumm's thesis carries significant implications for how we think about and organize global governance. Normatively, it challenges every state to measure its laws and policies against *external* as well as internal criteria of justice. Practically, it suggests a roadmap for strengthening international institutions and norms to fulfill constitutional functions. Some key implications include:

- States' Responsibilities in International Law: Perhaps the most direct implication is that states should approach international law not as a mere option or instrument of convenience, but as a *constitutional duty*. Kumm asserts that states have a *"standing duty to help create and sustain"* an international legal system capable of addressing global externalities. In practice, this means states should proactively participate in multilateral treaty regimes, support international organizations (like the UN, WTO, WHO, etc.), and comply with international norms even when inconvenient. A cosmopolitan constitutionally-minded state would, for example, incorporate international treaties into its domestic law, empower its courts to apply international law, and refrain from claiming absolute exemptions (such as invoking broad "sovereignty" exceptions) when faced with transnational justice issues.
- Conditional Sovereignty and Intervention: Another implication is that the international community gains a more robust basis to hold states accountable. If we accept that a state's legitimacy is contingent on cosmopolitan criteria, then gross failures to respect those criteria (such as committing atrocities at home or causing massive harm abroad) can justify external intervention or sanction. This aligns with doctrines like the Responsibility to Protect. It also provides a constitutionalist rationale for things like universal jurisdiction for certain crimes or international oversight of elections and human rights. While Kumm does not focus on military intervention, his framework morally delegitimizes regimes that violate fundamental international norms, thus supporting a more intrusive global stance on issues once deemed strictly domestic (e.g. humanitarian crises or systemic injustices).
- Global Public Goods and Justice: Kumm's focus on "justice-sensitive externalities" highlights global public goods and burdens – climate stability, financial stability, public health, etc. The implication is that providing these public goods (or preventing public bads) is part of constitutional governance. It's not enough for constitutions to set up democratic procedures domestically; they should also commit the state to cooperate internationally in achieving justice and welfare beyond its borders. For instance, a cosmopolitan constitution might oblige the government to pursue sustainable environmental policies not only for its own citizens but out of duty to humanity. We see shades of this in some national constitutions that explicitly reference international law or global solidarity, but Kumm's work suggests this should become the norm.
- Reforming International Institutions: If international law is to carry out constitutional functions, its institutions should themselves embody constitutional principles like accountability, rule of law, and reason-giving. Kumm's argument implies support for reforms to make global governance more transparent and participatory. For example, strengthening the parliamentary dimension of organizations like the UN (giving more voice to peoples, not just executives), or ensuring judicial review of international acts (through mechanisms like the International Court of Justice or new courts) aligns with the idea of global constitutionalism. Kumm does not detail specific reforms in these works, but the general trajectory is clear: global institutions should be developed to the point that they can effectively constrain states when needed and channel state action towards common aims.
- Foreign Policy and Constitutional Design: On the domestic front, Kumm's thesis encourages states to constitutionalize their engagement with international law. This could mean designing constitutional provisions that mandate respect for international law or limit the state's freedom to withdraw from international commitments. It could also mean that courts and other domestic actors treat international law as part of the "supreme law of the land." In many countries, debates about the status of international

treaties or the authority of international human rights courts (e.g. the European Court of Human Rights or the Inter-American Court) have a constitutional dimension. A cosmopolitan constitutionalist would argue that giving effect to such external legal obligations is not a threat to the constitution, but an expression of its highest principles. Practically, this might involve, say, striking down a domestic law that violates a climate treaty on the grounds that the treaty embodies global justice requirements that the constitution, properly understood, embraces.

- Legitimacy of Global Governance: Perhaps most broadly, Kumm's work offers a response to the legitimacy crisis of global governance. Many scholars and citizens worry that international rule-making lacks democratic legitimacy. Kumm flips the script: the legitimacy of *national* rule-making itself now partly hinges on global criteria. By that logic, embedding national decision-making within a web of international norms actually *enhances* overall legitimacy, rather than undermining it. For example, when a country follows WTO rules in trade policy, it might seem like ceding sovereignty, but Kumm would say it's upholding a legitimate constitutional order for the global economy that prevents beggar-thy-neighbor policies. Global governance, then, is not an alien imposition but an extension of constitutional governance to new contexts. The normative payoff is a more just world: ideally, no community's fundamental interests are ignored simply because they fall outside another community's borders.

Of course, implementing cosmopolitan constitutionalism faces real challenges. It relies on states' willingness to bind themselves and on the development of fairly sophisticated international mechanisms. Kumm's argument is ultimately normative and idealistic – it assumes states *ought* to act in these ways if they wish to be legitimate. In practice, we often see tensions: powerful states sometimes flout international law, and populist movements resist external constraints. Nonetheless, Kumm provides intellectual justification for those who push back against pure nationalism. His theory legitimates global governance initiatives as being in the service of constitutional democracy and justice, rather than hostile to them.

One concrete example of cosmopolitan constitutional principles in action can be found in Europe's legal order. The member states of the European Union and parties to the European Convention on Human Rights have, in their national constitutions or jurisprudence, accepted the authority of supranational courts and norms to an unprecedented degree. As scholar Alexander Somek observes, this reflects an *"emerging cosmopolitan constitutionalism"* based on three ideas: (1) *"the exercise of state authority must also be legitimate from the perspective of those who are not citizens; (2) a constitution must embrace fundamental rights and the representation of insiders in order to facilitate the representation of all, including outsiders; (3) the authority of the constitution doesn't just depend on endorsement by an independent people but also on recognition by other peoples who pursue the same type of political project."*. These ideas are highly resonant with Kumm's thesis. In the European context, for instance, national authorities accept that the European Court of Human Rights can hold them to account for rights violations against anyone under their jurisdiction (outsiders as well as citizens), and they recognize each other's constitutional commitments as part of a shared project of liberal democracy. Kumm's work provides the normative backbone for understanding such developments as more than mere diplomacy – instead, as steps toward a cosmopolitan constitutional order. The implication is that similar principles should guide global governance in other areas and regions, gradually constructing a cosmopolitan framework at the worldwide scale.

Comparison of the 2009 Chapter and the 2013 Article

Both the 2009 chapter and the 2013 journal article present Kumm's cosmopolitan constitutionalism thesis, and in substance their arguments are consistent. However, there are differences in emphasis, context, and presentation between the two versions:

- Title and Framing: The 2009 chapter is titled *"The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State."* This title highlights the *relationship* between domestic (in the state) and international (beyond the state) constitutionalism. It signals that the chapter will explore how constitutional principles operate at both levels and how they interact. The 2013 article, by contrast, is titled *"The Cosmopolitan Turn in Constitutionalism: An Integrated Conception of Public Law."* This wording underscores *integration* – Kumm's proposal that we should conceive of all public law (national and international) in a unified framework. The shift in phrasing reflects a development in how Kumm packages his idea. In 2009, speaking to an international law audience in a book about global governance, he focused on bridging two realms; by 2013, in a symposium on "Transnational Societal Constitutionalism," he emphasized a holistic conception of public law. The substance is similar, but the 2013 title makes more explicit that Kumm is offering a general theory of public law rooted in cosmopolitan values.
- Length and Depth: The chapter (pages 258–324 in the book) is a lengthy, in-depth treatment (around 66 pages). It likely contains a more detailed background, extensive engagement with literature, and perhaps case studies or examples. The article (approximately 24 pages in the journal, pp. 605–628) is more condensed. As a result, the chapter provides a *more elaborate argumentation*, possibly including additional sections on topics like constitutional pluralism, democratic theory, or specific international regimes. For instance, the chapter appears in the book's part on "crosscutting issues" alongside essays on constitutional conflict and pluralism, suggesting Kumm addressed those themes in depth. The 2013 article, being shorter, focuses tightly on articulating the core thesis and its justification. For example, the article lays out the abstract and main points succinctly (as evidenced by the clear abstract we have), and then zeroes in on conceptual clarifications (the nature of the debate, types of externalities, duties of states, etc.) without as much extended commentary on others' positions.
- Context and Audience: In 2009, Kumm's chapter was part of one of the early comprehensive explorations of global constitutionalism. It was likely written with the aim of convincing skeptics that talking about "constitutionalism beyond the state" makes sense. Thus, the chapter's introduction (as glimpsed in an online preview) starts by acknowledging how many national constitutional lawyers, especially in the U.S., are skeptical of applying constitutional language to international law. Kumm then methodically dismantles the skeptic's view. The 2013 article, on the other hand, was published in a symposium issue on *"Transnational Societal Constitutionalism,"* where the readership was already immersed in global constitutionalism debates (including more exotic notions like "societal constitutionalism" advanced by others). In that context, Kumm's tone is perhaps less defensive and more assertive in presenting his integrated conception as one approach among many. By 2013, the discourse had evolved – a dedicated journal (*Global Constitutionalism*) had been founded in 2012, and Kumm himself was a co-author of its inaugural article defining global constitutionalism's scope. So the article may reflect and reference these developments,

positioning cosmopolitan constitutionalism in relation to other currents (e.g. contrasting it with Gunther Teubner's "societal constitutionalism" which focuses on global private orders rather than states).

- Terminology and Nuances: Between 2009 and 2013, Kumm refined certain concepts. For instance, the term *"justice-sensitive externalities"* is prominent in the 2013 abstract and argument. While the basic idea was surely present in 2009, the specific terminology and typology of externalities might have been elaborated later. The 2013 article spells out that there are different kinds of externalities for which international law is needed, and Kumm even distinguishes *three kinds* of externalities in the text (though we did not list them in detail here, they likely include things like transboundary harm, global commons problems, and cross-border rights violations). The 2009 chapter certainly discussed external impacts as well (it cites Lockean ideas on territorial rights, etc.), but the polished classification and the catchy term "justice-sensitive externalities" may have become a centerpiece of the later presentation. Similarly, the phrase *"cosmopolitan state"* as the ideal may have been given more prominence by 2013, whereas the 2009 chapter might have spoken more generally about states incorporating international law without using that specific label. The concept is the same, but the 2013 version packages it in a slightly more accessible way. In fact, the 2013 article's subtitle *"An Integrated Conception of Public Law"* suggests Kumm was intentionally framing his thesis as a general theory to unite public law scholars across subfields, likely a response to feedback or gaps he perceived after the 2009 publication.
- Substantive Expansions: The core normative thesis did not change from 2009 to 2013 – Kumm consistently held that national constitutional legitimacy depends on cosmopolitan parameters. However, the later article might include *updates or expansions* in light of events or critiques between 2009–2013. For example, Kumm references in 2013 the works of critics and alternative theorists up to 2012, ensuring the article is in dialogue with the latest literature. It's possible the 2013 article engages more with the notion of *constituent power* at the global level or the lack thereof (since we see references to Kumm's own work on "constituent power" and responses to it in other sources). The chapter, being earlier, may not have addressed that angle as explicitly. Additionally, by 2013 Kumm had the benefit of reacting to works like Nico Krisch's *Beyond Constitutionalism (2010)* and Peter Lindseth's *Power and Legitimacy (2010)*, which came out shortly after his 2009 chapter. Indeed, in the article he cites Krisch 2010 and Lindseth 2010 as representative skeptics. In the 2009 chapter, those references would have been absent or preliminary. Thus the article could sharpen its arguments against those critiques (for example, reinforcing why a pluralist like Krisch is wrong to think postnational law lacks any unifying legal framework).
- Examples and Scope: The 2009 chapter might have drawn on specific regimes as examples (given the book's structure, possibly a comparison with EU or WTO cases, etc.), whereas the 2013 article being shorter might be more abstract and principle-driven. The article was part of a symposium with many theoretical papers, so it likely stayed at a high level of generality, leaving detailed examples to others. The chapter's placement in *Ruling the World?* suggests it may have referenced the contributions of that volume (for instance, Andreas Paulus's chapter on the UN, Miguel Maduro on courts and pluralism, Besson on democracy). Kumm's writing there could be more intertextual, engaging those specific discussions. The 2013 article stands alone more and is written for an academic journal audience who may or may not have read the 2009 book.

In sum, the two versions are complementary. The 2009 chapter can be seen as the comprehensive, foundational exposition of Kumm's cosmopolitan turn, emerging at a time when the idea was still novel to many lawyers. The 2013 article distills and reinforces that exposition, positioning it as part of a broader scholarly conversation and using slightly updated terminology. Importantly, there is no contradiction between the two; rather, the later article confirms and clarifies the earlier work. A reader of both would notice the continuity of the central thesis alongside a maturation in prose and context. For instance, both the chapter and article begin by addressing the skepticism of equating international law with constitutionalism, and both arrive at the conclusion that only a cosmopolitan-oriented state can be fully legitimate. The article, however, states that conclusion in especially crisp terms and ties it neatly to the notion of *public law integration*.

Reception and Critiques of Kumm's Thesis

Kumm's cosmopolitan constitutionalism has spurred considerable discussion in academic circles. Supporters credit it with articulating a persuasive normative vision for global law, while critics have challenged it on various grounds. Below are key critiques and responses that have emerged:

- The Pluralist Critique (Nico Krisch): One of the most prominent responses came from Nico Krisch, whose book *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (2010) was in many ways a counterpoint to Kumm. Krisch argues that the global legal order is and will remain *pluralist* – meaning it consists of multiple overlapping authorities (national, regional, international) without a single hierarchical framework or common constitutional ethos. From Krisch's perspective, attempts to impose a unified constitutional approach beyond the state are *premature* and potentially perilous, because in the absence of a global sovereign or demos, any claimed constitutional order lacks a solid source of authority. He envisions a heterarchical global system where conflicts between legal orders are managed pragmatically, not resolved by appeal to overarching norms. In an EJIL:Talk! blog debate, Krisch dubbed Kumm's cosmopolitan vision *"the dream of reason,"* suggesting it was a rationalist ideal that underestimates the depth of political disagreement and diversity in the international realm. He cautioned that Kumm's approach might *overstate* the coherence of international law and underplay the necessity of flexibility and contestation. Kumm, for his part, responded to Krisch in the blog forum, defending his thesis by clarifying that embracing cosmopolitan constitutionalism *does not* mean denying pluralism – rather, it means guiding pluralism with shared principles and moral constraints. He contended that pluralism without constitutional principles could devolve into mere power politics, whereas a cosmopolitan framework provides a compass for navigating pluralism legitimately. The exchange was rich: Krisch essentially asked "who decides" in a cosmopolitan order (without world government), and Kumm answered that no single entity decides – instead, all actors are *responsibilized* to reason and act in accordance with cosmopolitan norms, an approach he believes can gradually gain acceptance and force. Still, Krisch's critique remains influential, highlighting the practical challenge: global constitutionalism might be normatively desirable, but the reality of no ultimate arbiter means we often get legal fragmentation. In academic literature, Krisch's pluralist model is frequently contrasted with Kumm's constitutionalist model, representing two poles in postnational legal theory.

- Democratic Legitimacy and the "Global Demos" Problem: Another line of critique involves democracy and popular sovereignty. Scholars like Dieter Grimm and Peter Lindseth have argued that legitimacy in law comes from democratic authorization, which is fundamentally linked to the nation-state. They worry that what Kumm proposes – global constraints on domestic democracy – could dilute democratic control and give power to technocratic or judicial bodies unaccountable to any people. Lindseth, for example, in *Power and Legitimacy* (2010) contends that supranational governance (he focuses on the EU) ultimately relies on *"borrowed"* legitimacy from nation-states because it lacks its own direct democratic foundation. Applying that argument globally, one might say: international law can guide states, but it cannot *legitimately bind* them in core matters without some expression of a global popular will, which doesn't exist. Kumm's rejoinder is built into his theory: he effectively redefines democratic legitimacy to include the interests of all affected, not just the local majority. He would argue that a state that refuses to cooperate internationally is in fact less democratic in a deeper sense, because it is disregarding the equal worth of individuals outside its borders. Nevertheless, critics maintain that without formal mechanisms for global electoral participation or accountability, cosmopolitan constitutionalism may create a gap. International lawmakers (e.g. diplomats, judges, bureaucrats) are not elected by the world's people; if they constrain democratic legislatures at home, is that truly legitimate? Kumm addresses this by emphasizing that states *themselves* consent to and internalize global norms (so the chain of legitimacy still runs through national consent, at least initially). Moreover, he suggests that the legitimacy of *national* democratic processes is itself compromised if those processes produce unjust external effects. This debate continues: it's essentially a clash between a communitarian view of democracy (legitimacy comes from bounded communities governing themselves) and a cosmopolitan view (legitimacy comes from adherence to universal principles and inclusion of all affected). Neither side denies the importance of democracy; they differ on its scope and requirements. Kumm's work has pushed scholars to wrestle with this question: can we imagine democratic legitimacy at a transnational scale (through states acting collectively, if not through a world ballot box)? His critics say the link between the individual global citizen and global decisions is too tenuous in the current system to call it genuinely constitutional.
- Methodological Skepticism (Realism and Pragmatism): Some commentators approach Kumm's thesis from a more *realist or pragmatic* angle. International lawyer and scholar David Kennedy, for instance, has expressed caution about the use of constitutional rhetoric in global governance. He warns that speaking of a "global constitution" or treating international law like constitutional law might imbue international institutions with unwarranted moral authority and obscure the pluralism of values worldwide. Kennedy points out the risk that *"the 'metaphor' of constitutionalism runs the risk of offering an institutional platform leading to the spread of universal ethics, when ethical pluralism is what is required"*. In plainer terms, critics like Kennedy fear that cosmopolitan constitutionalism could become an ideological project that imposes *one-size-fits-all* liberal norms (often Western-derived) on diverse cultures, under the banner of universal validity. They question whether there is truly a global consensus on the values Kumm takes as fundamental (democracy, human rights, etc.), or whether this is just the view of a transnational elite. Furthermore, realists argue that states follow international law when it suits their interests, and that constitutionalist language might mask power dynamics rather than overcome them. Kumm's response to this would be that *all* law, even national constitutional law, has elements of morality and ideology – yet we still find

constitutionalism valuable as a way to tame power with principle. He would likely agree that international constitutionalism is a project "developing in stages" and not an accomplished fact. In one reply to critics, Kumm noted that cosmopolitan constitutionalism *"is best not seen as an account of law as it is. It is a project… developing not simply in academic discourse but in practice"*. In other words, he concedes that the world isn't fully there yet, but he sees trends in practice moving that way (e.g. the spread of human rights norms, international courts gaining influence, etc.), and he believes scholarly frameworks can help shape and bolster those trends. To the charge of ideological bias, Kumm would argue that the values he espouses – basic justice, equality of individuals, rule of law – are not parochial but have cosmopolitan pedigree (though the debate on universalism vs relativism is endless).

- "Constitutionalization" vs. Reality of International Law: Some public law scholars have engaged in a technical debate on whether international law is actually becoming *constitutional*. For example, is there a hierarchy of norms (with something akin to constitutional supremacy and entrenchment) in international law? Are institutions like the UN Security Council or the International Court of Justice behaving like constitutional organs (legislative or judicial bodies)? Skeptics like Jan Klabbers have noted that while one can identify quasi-constitutional aspects (e.g. the UN Charter as foundational law), international law still lacks many features of a domestic constitution: there is no central enforcement, amendments are intergovernmental, state consent remains primary, etc. Kumm's thesis answers this by shifting focus from *structures* to *principles*. He might concede that the *structure* of global governance is not (yet) constitutional in form, but insist that the *principles guiding* it can and should be constitutional in nature. For instance, he places great weight on *jus cogens* norms (peremptory norms of international law like the prohibitions of genocide, torture, etc.) as embodying a kind of higher law. He also implicitly views the *U.N. Charter* as a constitutional framework for international peace and security (subjecting the use of force to collective decision). Academic responses here revolve around whether one believes constitutionalism requires a single source of authority (which international law lacks), or whether having fundamental norms and shared values is enough. Kumm is in the latter camp, alongside scholars like Bardo Fassbender or Anne Peters who have argued that we are witnessing the emergence of a global constitutional order by *"revelation or rediscovery"* rather than creation from scratch. Opponents like Martti Koskenniemi or David Kennedy, however, often view the *claim* of a global constitution as either utopian or as a smokescreen for power (the strong dictating terms but dressing them in universal language).
- Academic Dialogue and Refinement: Kumm's thesis has also been the subject of more detailed analytical critique in legal philosophy venues. For example, in 2018, philosopher Maximilian Fenner published *"Revisiting Kumm's Cosmopolitan Constitutionalism,"* examining the logical consistency of Kumm's argument. Fenner acknowledged that Kumm's framework can resist some criticisms, but he identified certain *methodological flaws*. In particular, Fenner argued that Kumm's reliance on liberal principles of justice and reasonableness might obscure deep disagreements about those principles in the world. He also challenged how Kumm reads specific legal texts like the UN Charter through a constitutionalist lens. Fenner claims that under close scrutiny, treating the UN Charter as a *de facto* global constitution is problematic and that Kumm's theory struggles when applied to such concrete instruments. Essentially, if the UN Charter is interpreted in Kumm's way (as reflecting global public reason), one has to overlook the political compromises and power imbalances that actually shaped it. Kumm might respond that his theory is aspirational

– he interprets the Charter for what it *could* represent normatively, not necessarily what every state intended. This exchange highlights a broader academic discussion: how much should constitutionalism beyond the state base itself on *moral reasoning* versus on the *empirical practice* of international law? Kumm leans toward a moral-philosophical approach (with a dash of doctrinal analysis), whereas critics like Fenner press for alignment with positive legal methodology and state behavior. The debate remains open, but it has led Kumm and others to clarify their positions. For instance, Kumm has further written on concepts like *subsidiarity and the right to be left alone*, exploring how to distinguish matters that can stay national from those that must be globally governed. This shows an ongoing refinement: cosmopolitan constitutionalism doesn't mean everything is decided globally – a principle like subsidiarity (solving problems at the most local level possible) must work in tandem with addressing externalities at the global level.

- Influence and Extensions: It's worth noting that Kumm's work has not only drawn criticism but also influenced other scholars who have extended or applied his ideas. The excerpt above from Alexander Somek's 2020 article on the European Convention on Human Rights essentially takes Kumm's cosmopolitan premises and examines how they manifest in Europe's transnational constitutional order. Somek discusses the need for recognition by "other peoples" and the inclusion of outsiders' perspectives – ideas directly traceable to Kumm's thesis. Additionally, academics writing on topics like global constitutional pluralism, the legitimacy of international courts, or the idea of a "cosmopolitan legal order" (as in recent work by Alec Stone Sweet and others) often cite Kumm as a foundational voice. Even where they critique him, they are engaging with the problems he has helpfully framed: the external effects of state action, the duties of states in a global realm, and the normative unity (or disunity) of law across levels. In this sense, Kumm's cosmopolitan turn has become an essential reference point in global constitutionalism debates. As one scholar put it, Kumm's approach "is developing not simply in academic discourse but in practice", capturing how his ideas resonate with and propel real-world legal evolution.

Conclusion

Matthias Kumm's *"cosmopolitan turn"* in constitutional thought represents a bold effort to re-imagine the foundations of public law in an age of globalization. Summarizing his contribution: Kumm asserts that to preserve the legitimacy of *collective self-government*, constitutionalism must broaden its scope and vision – it must concern itself with the global context in which states operate, not just the internal arrangements of states. He provides a framework in which national constitutions and international law are seen as interlocking parts of a normative order oriented towards justice for all affected persons. The 2009 chapter laid down this vision in detail, confronting skepticism head-on and weaving together legal theory and moral philosophy. The 2013 article reaffirmed and sharpened the argument, emphasizing an integrated approach to public law and coining resonant terms like the "cosmopolitan state" and "justice-sensitive externalities."

Kumm's work stands in an ongoing dialogue with other leading theories. It contrasts with strictly statist views that deny any constitutional quality to international norms, and with pluralist views that accept multiplicity at the expense of unity. It seeks a principled middle ground, asserting that even without a world government, the international legal system can embody constitutional principles – and indeed must do so to address global challenges. The practical import of this thinking encourages states to be more responsible globally and

suggests that international institutions be strengthened and reformed to carry out quasi-constitutional functions.

The academic reception of Kumm's thesis has been rich and at times critical. Skeptics question its feasibility and warn of democratic or cultural pitfalls. These critiques have prompted clarifications: for example, Kumm underscores that constitutionalism beyond the state is a *gradual project* and that it complements, rather than overrides, national democracy by embedding it in a just external order. Meanwhile, the fact that his ideas are taken seriously by both supporters and critics attests to their significance. The notion that *"national constitutional legitimacy depends, in part, on how the national constitution is integrated into and relates to the wider legal and political world"* is now a central tenet in global constitutionalism discourse, one that cannot be ignored in analyses of globalization and law.

In conclusion, Kumm's cosmopolitan constitutionalism challenges us to rethink sovereignty and democracy not as parochial concepts bounded by territory, but as principles that entail *reciprocal obligations among all polities*. It is an invitation to *"constitutionalize"* global governance in the best sense – to subject power, wherever it is exercised, to the discipline of reason, rights, and mutual respect. Whether one ultimately agrees or disagrees with Kumm's prescriptions, his work has undeniably elevated the conversation about the future of constitutionalism in a world where the fates of nations are increasingly interconnected. As global governance faces new tests (climate change, pandemics, digital privacy, etc.), the cosmopolitan turn provides a vital lens, asking at each step: how can we ensure that the exercise of public power, at *any* level, is legitimate not just for *some*, but for *all* who live under its shadow?

Sources: Mattias Kumm's chapter and article on *"The Cosmopolitan Turn in Constitutionalism"*; discussion in *Ruling the World? Constitutionalism, International Law, and Global Governance* (2009); Kumm's 2013 symposium abstract and draft; Nico Krisch, *Beyond Constitutionalism* (2010) and EJIL:Talk debate; Peter L. Lindseth (2010); Alexander Somek (2020); David Kennedy (2006); Maximilian Fenner (2018); and others as cited above. Each of these sources has contributed to understanding and evaluating Kumm's cosmopolitan constitutionalism, either by reinforcing its claims or by highlighting its challenges, thereby enriching the global constitutionalism discourse as a whole.

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Jeffrey Dunoff & Trachtman, Joel (eds.) „Ruling the World?: Constitutionalism, International Law, and Global Governance”

Objectives, Themes, and Conceptual Framework of the Book

Ruling the World? (2009), edited by Jeffrey L. Dunoff and Joel P. Trachtman, is an interdisciplinary examination of whether and how constitutionalist ideas apply beyond the nation-state. The volume's primary objective is to analyze the major developments and debates in "international constitutionalism" across multiple sites of global governance. It emerged from a three-year research project that convened twelve leading scholars to develop a comprehensive, integrated framework for understanding "global constitutionalization". The book explicitly asks, *"Why constitutionalize" international institutions?*, reflecting a central question posed in Thomas M. Franck's preface. In addressing this, the editors and contributors explore whether the erosion of state-centric governance (due to globalization, the spread of human rights norms, demands for democracy, etc.) creates a need to supplement or transform traditional international law into a more constitutional order.

Three broad themes animate the book: (1) *Empirical and structural questions* about the extent to which international regimes exhibit "constitutional" features (such as foundational rules, hierarchies of norms, or rights guarantees); (2) *Normative issues* concerning the desirability and legitimacy of constitutionalizing global governance; and (3) *Institutional design and theory*, examining how international organizations could be (or are) structured in constitutional terms. The conceptual framework is introduced in Chapter 1 by Dunoff and Trachtman, who propose a "functional" approach to global constitutionalization rather than a purely definitional or ideological one. They focus on the functions that a constitution-like framework can serve beyond the state – for example, enabling collective action, constraining power, and filling governance gaps left by diminished state authority. This functional methodology is "largely taxonomic, rather than normative," meaning it classifies the roles constitutional norms play (e.g. allocating authority, ensuring accountability, protecting rights) without presupposing that more constitutionalization is inherently good or bad. By avoiding semantic debates over whether international law *is or is not* a "constitution," the editors instead ask what *purposes* constitutional norms might fulfill in the international legal system. In sum, the book's framework is one of open inquiry: it maps out the emerging discourse of global constitutionalism across different fields and asks under what conditions, and with what consequences, thinking of international law in constitutional terms is useful or justified.

Contributions by Individual Chapters and Authors

The volume is organized into three parts, each containing chapters by different experts that together provide a panoramic view of constitutionalism beyond the state. Below is a breakdown of the chapters and their key contributions:

- Preface – *"International Institutions: Why Constitutionalize?"* (Thomas M. Franck): In the preface, Franck frames the overarching inquiry by asking why international institutions might need constitutions. He suggests that globalization has eroded the capacity of national constitutions to address global problems, thereby creating a *normative impetus* to constitutionalize international public order. Factors like the diffusion of state power to international regimes, the push for "good governance," and global concern for democracy and human rights drive new "constituent impulses" beyond the state. Franck's question sets the stage for the volume's exploration of whether a *"constitutionalized global public order"* is emerging or required as a matter of reason and justice.
- Chapter 1 – *"A Functional Approach to International Constitutionalization"* (Jeffrey L. Dunoff & Joel P. Trachtman): This introductory chapter by the editors establishes the analytical framework. Dunoff and Trachtman propose examining international constitutionalism through the *functions* it serves rather than fighting over definitions. They identify three functional dimensions of international constitutional norms: enabling (provisions that empower collective decision-making and lawmaking beyond the state), constraining (rules that limit and channel the exercise of power, analogous to constitutional checks and rights protections), and supplemental (mechanisms that fill gaps left by weakened national constitutions in an age of globalization). The chapter discusses how features associated with constitutions – e.g. allocation of authority (horizontal and vertical), supremacy of certain norms, stability of rules, fundamental rights, judicial review, and accountability/democracy mechanisms – can be observed to varying degrees in international regimes. Dunoff and Trachtman even construct a "constitutional matrix" comparing which constitutional mechanisms appear in different global institutions. Notably, they take no position yet on whether global constitutionalization is normatively desirable, but rather set up an empirical and conceptual toolkit for the rest of the book. This functional approach yields a nuanced view: constitutionalism beyond the state is not all-or-nothing, but a spectrum of attributes and functions that different international systems may partially fulfill.
- Chapter 2 – *"The Mystery of Global Governance"* (David Kennedy): Kennedy provides a critical and skeptical perspective on the idea of global constitutionalism. He interrogates the very concept of "global governance" and questions whether analogies to constitutional order actually illuminate or obscure reality. In this chapter, Kennedy warns that thinking of the sprawling global order as a "constitutional" system may be more metaphor than fact, and this metaphor carries risks. He argues that invoking constitutional discourse could create an *"institutional platform"* for imposing supposedly universal values or homogenizing ethics at the global level, which he believes is problematic in a pluralistic world. Kennedy's contribution is "ultra-skeptical" of the trend to label international arrangements as constitutional. He emphasizes that ethical and cultural pluralism might be better respected by not hastily framing diverse international norms under a single constitutional logic. In fact, Kennedy suggests that *if* a global constitutional order is emerging, it is *"yet to be created"* – implying that current global governance lacks the cohesive, democratically legitimate structure of a true constitution. His chapter stands in contrast to many others by questioning whether the search for a global constitution is either meaningful or desirable at all, thereby injecting a healthy dose of skepticism into the volume's dialogue.
- Chapter 3 – *"The International Legal System as a Constitution"* (Andreas L. Paulus): Paulus's chapter takes a more affirmative stance by examining how the international legal system *already functions akin to a constitution*. He explores the idea that the UN

Charter and fundamental principles of international law could be seen as the "constitution of the international community," an idea he and others (like Bardo Fassbender) have advocated. Paulus acknowledges the *potential of global constitutionalism to restrain power with law*, suggesting that moving the world toward governance by legal rules (rather than raw power politics) is a key promise of constitutional thinking. In other words, constitutionalizing international law offers a way to inject the rule of law and stability into international relations, countering anarchy or domination. His analysis likely evaluates how far existing international norms (such as jus cogens principles, the UN Charter framework, or the World Court's statute) resemble constitutional structures that allocate authority and protect basic values. By treating the *international legal order itself as a constitutional order*, Paulus provides a descriptive and partly normative case that international law has a constitutional quality that can be recognized and built upon. This view implicitly contrasts with Kennedy's skepticism, highlighting an internal debate: Paulus sees an *emerging universal legal system*, whereas Kennedy doubts its coherence or beneficence.

- Chapter 4 – *"The UN Charter – A Global Constitution?"* (Michael W. Doyle): Doyle's chapter investigates the United Nations Charter as a candidate for a world constitution. Adopting a *formally comparative approach*, Doyle considers how the UN Charter might fulfill roles analogous to a state constitution (for example, serving as the foundational document of an international community). Both Doyle and Fassbender (in the next chapter) focus on the UN Charter because it establishes an overarching framework for international order post-1945. Doyle examines whether the Charter's provisions – such as the allocation of competences to UN organs, the principles of peace and security, and human rights references – qualify it as the *"matrix of international public order"*. He likely discusses the extent to which the UN, under the Charter, acts as a central *organ of global governance* with quasi-constitutional authority (e.g. the Security Council's binding resolutions, or the amendment procedure of the Charter). Doyle's analysis underscores that *if* any document approaches a global constitution, the UN Charter is a prime contender, but it also probes the limits of that analogy (for instance, the Charter's basis in state consent and the veto power might depart from constitutional ideals). Overall, this chapter illuminates how the UN Charter embodies many structural features of a constitution for the international community – a controversial but influential idea in the literature.
- Chapter 5 – *"Rediscovering a Forgotten Constitution: Notes on the Place of the UN Charter in the International Legal Order"* (Bardo Fassbender): Fassbender's contribution complements Doyle's by also focusing on the UN Charter, characterizing it as a "forgotten" or overlooked constitution of the world. Fassbender, known for advocating a constitutional interpretation of the Charter, argues that treating the Charter as the constitution of international society is not about inventing something new, but rather *"a revelation or rediscovery"* of an existing reality. He likely traces how early UN thinkers and the Charter's text itself envisioned a legal order with constitutional traits (e.g. a general supremacy of Charter obligations over other treaties, as stated in Article 103, or the quasi-legislative power of the Security Council in maintaining peace). By comparing the Charter's content to elements of national constitutions (the "constitution-type"), Fassbender underscores the structural role of the UN in providing a foundational legal framework. His chapter likely calls for the international community to recognize and reinforce the Charter's constitutional status, arguing that doing so would strengthen international law's coherence and authority. In essence, Fassbender sees global constitutionalism not as utopian futurism, but as

grounded in the Charter's existing legal order – one that needs to be remembered and consciously upheld.

- Chapter 6 – *"Reframing EU Constitutionalism"* (Neil Walker): Walker shifts the focus to the European Union as a model of constitutionalism beyond the state. Given that the EU has a well-developed legal order often described as "constitutional" (with a founding treaty functioning as a de facto constitution and a court asserting the supremacy of European law), Walker's chapter examines what lessons the EU experience holds for global constitutionalism. He likely *"reframes"* EU constitutionalism by analyzing its unique features – e.g. a regional scope, a hybrid legal character between international treaty and constitutional charter, and a requirement of broad political consensus among diverse nations. Walker addresses a crucial question: *Can the EU be a template for a worldwide constitution, or is it sui generis?* The chapter notes that the EU is frequently cited as "a model of constitutionalism beyond the state", but it also emphasizes the EU's specificities and limits. The European project is regionally bounded and rests on shared political and cultural understandings that may not translate globally. Indeed, Walker (possibly echoed by Halberstam's observations) argues that the EU cannot serve straightforwardly as a global model *"due to its specificities and unique characteristics"*. The ongoing political strains in the EU – Walker alludes to an *integration crisis* the EU has faced – illustrate how difficult it is to constitutionalize even at regional level, let alone universally. Thus, Walker's chapter provides a nuanced view of supranational constitutionalism: it celebrates the EU's advances (like transnational rule of law and rights protection), but cautions against any simple extrapolation of the EU experience to the entire world.
- Chapter 7 – *"The Politics of International Constitutions: The Curious Case of the World Trade Organization"* (Jeffrey L. Dunoff): Dunoff examines the World Trade Organization (WTO) as an international regime often discussed in constitutional terms. His chapter highlights the political dimensions and contestation surrounding the idea of a "constitution" for the WTO. Dunoff takes a cautious stance: he questions whether the WTO can truly be considered a constitutionalized entity in its current form. The WTO does have some quasi-constitutional features (a founding charter with foundational rules, a compulsory dispute system, etc.), but Dunoff points out its deficits in openness, transparency, and democratic participation. He argues that *only under certain conditions* – specifically, greater openness and stakeholder participation in the WTO's processes – might the Organization be seen as a constitution-like order. In the absence of such reforms, calling the WTO a constitution could be premature. Dunoff's analysis also delves into the *politics* of using constitutional language in trade governance: who benefits from framing the WTO in constitutional terms, and who might be marginalized by it? By calling this the "curious case" of the WTO, Dunoff draws attention to how constitutional discourse in trade can be a double-edged sword: it might legitimize the WTO's authority and constrain member states, but it also raises questions of democratic legitimacy and equity in global economic rule-making. This chapter thus provides an insightful case study of constitutional rhetoric versus reality in an important global institution.
- Chapter 8 – *"Constitutional Economics of the World Trade Organization"* (Joel P. Trachtman): Trachtman's chapter also focuses on the WTO, but from an economic and theoretical perspective. He applies a "constitutional economics" lens, analyzing the causes and consequences of constitutionalization at the WTO. Trachtman essentially asks: what drives WTO members to embed constitutional-type norms in the trade regime (such as strong dispute resolution, or rules that bind future legislation), and

what effects does this have on international cooperation? In line with the book's functional approach, Trachtman finds that globalization and market integration create demand for more "constitutional" rules to manage interdependence. As cross-border commerce and regulation intensify, states seek deeper legal commitments and stable frameworks – in other words, *global economic integration produces pressures for constitutionalization to secure its benefits*. Trachtman acknowledges the WTO as "part of the international constitutional matrix", meaning it contributes to an emerging higher-level order of trade law within international law. He highlights how WTO rules can serve *constitutional functions* by constraining protectionist policies and enabling predictable trade relations (which parallels how domestic constitutions constrain arbitrary economic regulation). At the same time, Trachtman notes that WTO constitutionalization is tied to a particular ideological project – *"market liberalization"* – reflecting the influence of liberal economic theory on global rulemaking. His chapter likely uses economic theory to discuss trade-offs: e.g. how constitutional rules at the WTO balance gains from cooperation against sovereignty costs. In sum, Trachtman's contribution provides a theoretical and positive political economy analysis of why international economic governance has adopted constitutional features, complementing Dunoff's more political critique. Together, the WTO chapters (7 and 8) illustrate an internal debate: Trachtman sees constitutionalization as a functional response to globalization's demands, whereas Dunoff emphasizes the normative and political conditions under which calling the WTO "constitutional" is convincing.

- Chapter 9 – *"Human Rights and International Constitutionalism"* (Stephen Gardbaum): Gardbaum's chapter addresses the role of human rights in the global constitutionalism debate. He examines whether the burgeoning international human rights regime functions as a kind of constitutional component in world order. Importantly, Gardbaum concludes that the international human rights system is not simply a mirror of domestic constitutional rights. Unlike national constitutions, which grant rights to citizens within a particular polity, international human rights law grants rights to *individuals as human beings*, regardless of citizenship. This means the structure and purpose of rights "above" the state differ from those "within" the state. Gardbaum likely discusses how international human rights treaties and institutions (e.g. the UN human rights conventions, regional courts like the European Court of Human Rights, etc.) contribute to a constitutionalization of international law by embedding fundamental rights as higher-order norms that constrain state actions. He may also explore tensions: for example, human rights norms often require implementation through domestic law – so how does this multilevel interaction reflect constitutional principles? The chapter's key point is that global constitutionalism in the human rights domain involves a pluralistic order, where individuals' rights derive from international authority even as enforcement still depends on states. This *partial constitutionalization* of human rights illuminates both the progress and the limits of constitutionalism beyond the state: rights are recognized globally (suggesting an emergent global constitutional value system), yet the guarantees and remedies vary, and they do not exactly replicate any single nation's constitution.
- Chapter 10 – *"The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism in and beyond the State"* (Mattias Kumm): Kumm's chapter provides a theoretical bridge between domestic and international constitutional theory via a "cosmopolitan" paradigm. He argues that traditional theories – monism (which posits a unified legal order) and dualism (which separates national and international law) – are insufficient to explain the evolving relationship between state

constitutions and emerging supranational norms. The "cosmopolitan turn" means conceiving constitutionalism in a way that is neither exclusively state-based nor purely international, but integrative across levels. Kumm introduces a model of constitutionalism that operates in a "cosmopolitan dimension", which envisions a *pluralist global public order* linking domestic and international law. In practical terms, this could imply principles like subsidiarity or global constitutional principles that guide both national and international legal development. By advocating cosmopolitan constitutionalism, Kumm paves the way for reconciling the values and constraints of national constitutions with those of international governance. His paradigm acknowledges that sovereignty is increasingly shared and that constitutional authority can be distributed among multiple sites (e.g. national parliaments, international courts, global regulatory regimes). This chapter is thus pivotal in articulating a normative and conceptual framework for how constitutionalism can "turn cosmopolitan," meaning that it *transcends the state* while still respecting the need for legitimacy and accountability at all levels. Kumm's ideas also feed into the broader theme of constitutional pluralism, which appears elsewhere in the volume – the notion that we may have multiple overlapping constitutional orders (national, regional, global) rather than one singular world constitution.

- Chapter 11 – *"Constitutional Heterarchy: The Centrality of Conflict in the European Union and the United States"* (Daniel Halberstam): Halberstam's chapter examines how constitutional systems manage conflicting authority, comparing the experience of the EU and the U.S. He introduces the concept of "constitutional heterarchy", in contrast to hierarchy. In a heterarchical constitutional order, no single authority has absolute supremacy in every instance; instead, multiple actors or levels (for example, state vs. federal in the U.S., or EU institutions vs. member states) engage in ongoing negotiations and even conflicts over competence. Halberstam argues that conflict is not an aberration but a central feature of such plural constitutional orders. By drawing lessons from the U.S. (a federal system with a written constitution) and the EU (an evolving supranational constitutional order), he sheds light on how diversity of power centers can be reconciled with an overall constitutional structure. This analysis is highly relevant to global constitutionalism: if a world constitutional order emerges, it may well be *heterarchical* – involving states, international organizations, and possibly non-state actors in a web of shared and disputed authority, rather than a single global sovereign. Halberstam likely discusses instances such as the clashes between the European Court of Justice and national constitutional courts, or between U.S. federal and state authorities, to illustrate how productive tension can uphold fundamental constitutional principles while allowing pluralism. The chapter reinforces the book's theme of constitutional pluralism, showing that unity under a constitution does not necessarily mean uniformity or a strict legal hierarchy at the global level. Indeed, Halberstam's insight is that maintaining multiple sources of constitutional authority (a heterarchy) might be key to legitimacy and resilience in both the EU and any future global constitutional arrangement.
- Chapter 12 – *"Courts and Pluralism: Essay on a Theory of Judicial Adjudication in the Context of Legal and Constitutional Pluralism"* (Miguel Poiares Maduro): Maduro's chapter focuses on the role of courts in a pluralist constitutional landscape. Building on his experience as a former Advocate General of the European Court of Justice, Maduro theorizes how judges should reason and decide cases when faced with overlapping legal sources (national constitutions, EU law, international law). He contends that courts need to adapt their reasoning and institutional role to the new context of plural constitutionalism. In practical terms, this might involve judges being

dialogical – engaging with the jurisprudence of other jurisdictions – and being conscious of multiple levels of authority. Maduro likely proposes a framework for *judicial adjudication in a multi-layered legal order*: for example, principles of comity or mutual respect between courts, and methodologies to manage conflicts of laws or rights across jurisdictions. By viewing courts as pivotal actors in knitting together a plural constitutional order, the chapter illustrates an institutional dimension of global constitutionalism. It acknowledges that no single "world court" has comprehensive jurisdiction, yet *collectively* a network of courts (national, regional, international) contributes to upholding constitutional principles (like rule of law and rights) across the globe. Maduro's essay is thus both descriptive – noting the pluralist reality – and prescriptive, suggesting how judicial practice can ensure coherence without a formal hierarchy. It complements the theoretical discussions by Kumm and Halberstam: while Kumm provides the cosmopolitan normative vision, and Halberstam the structural insight of heterarchy, Maduro gives a pragmatic account of how legal actors (judges) navigate constitutional pluralism in daily practice.

- Chapter 13 – *"Whose Constitution(s)? International Law, Constitutionalism, and Democracy"* (Samantha Besson): Besson's closing chapter tackles the critical issue of democratic legitimacy in international constitutionalism. She asks the question implicit in the title "Whose Constitution(s)?" – essentially, *who are the people or entities that can claim ownership or authorship of any emerging global constitutional norms?* Bessor explores the tension between constitutionalism and democracy when taken beyond the nation-state. One key argument she offers is that a pluralist approach to legitimacy may be advantageous in global constitutionalism. Rather than seeking a single global demos or world state (which is often criticized as undemocratic or utopian), Besson suggests that legitimacy can be aggregated from multiple levels. International constitutionalism, in her view, requires implementing *democratic and constitutional requirements at national, regional, and international levels* simultaneously. This implies that no one level perfectly embodies all democratic legitimacy, but together they can satisfy it: e.g. national parliaments legitimize treaties, international institutions add value by enforcing constitutional principles that states alone might not, and regional bodies can bridge gaps. Besson also likely addresses representation and accountability deficits in global governance and how constitutionalist reforms (like strengthening international parliamentary assemblies or enhancing transparency) might mitigate them. Her chapter is a normative endeavor, grappling with how "constitutionalization beyond the state" can be reconciled with democratic principles – a long-running debate in global governance scholarship. By pluralizing the concept of constitution and linking it to multiple demoi (peoples) and multiple sites of governance, Besson provides a thought-provoking answer to *whose* constitution is being (or ought to be) constructed at the global level. It highlights that the legitimacy of any global constitutional order will hinge on input from and accountability to the world's diverse populations, not just states.

This rich set of contributions – spanning functional theory, case studies of the UN/EU/WTO, and cross-cutting issues like human rights, pluralism, and democracy – fulfills the editors' aim of examining "constitutional discourse across international regimes, constitutional pluralism, and relations between transnational and domestic constitutions". Each author brings a distinctive lens, but together they address the volume's central themes: Is international law acquiring constitutional characteristics? Should it? If so, how and for whose benefit? The chapters collectively map the landscape of global constitutionalism as it stood in the late

2000s, combining descriptive accounts of legal developments with normative and theoretical analysis.

Engaging Global Constitutionalism: Normative, Descriptive, and Institutional Dimensions

A core strength of *Ruling the World?* is its multifaceted engagement with global constitutionalism, covering normative, descriptive, and institutional dimensions of the idea:

- Normative Perspectives: Many chapters grapple with the *normative question* of whether constitutionalizing global governance is desirable, and what values it should serve. The Franck preface and several authors identify normative motivations for global constitutionalism: the diffusion of democratic ideals, the protection of human rights globally, the pursuit of rule-of-law and "good governance" standards in international affairs. For instance, Franck notes that as issues like human rights and environmental protection extend beyond states, there is a *"demand for the globalization of democracy, development, and respect for human rights"*, which constitutional mechanisms might help fulfill. Andreas Paulus likewise emphasizes the potential moral imperative behind global constitutionalism – to ensure the world is "governed by rules of law that go beyond the logic of power," injecting fairness and legality into international politics. On the other hand, the book does not presume that constitutionalization is an unquestioned good; it includes reflections on possible downsides. Jeffrey Dunoff warns that the rise of *"constitutional discourse"* in international law might partly be a "defensive reaction" by international lawyers – perhaps a response to anxieties about the fragility or legitimacy of international law. In other words, there is a self-reflective normative critique: is global constitutionalism a principled project to improve global governance, or is it sometimes a rhetorical move to buttress the authority of international law itself? David Kennedy's chapter sharpens this critique by arguing that pushing a universal constitutional agenda could impose a single ethical framework where *"ethical pluralism is required"*, risking cultural imperialism. Thus, normatively, the book presents a debate between optimism and caution: Optimists (like Franck, Paulus, Fassbender) see global constitutionalism as a needed "normative compensation" for globalization's democracy deficit, whereas skeptics (like Kennedy, and echoed by references to critical scholars such as Martti Koskenniemi or Danilo Zolo) worry that it could be a "hegemonic project" serving powerful actors or an illegitimate Leviathan cloaked in legality. The volume engages these normative dimensions explicitly – for example, Samantha Besson addresses the normative legitimacy of international constitutionalism, advocating a pluralistic democratic justification spread across governance levels. In sum, *Ruling the World?* does not take the normative value of global constitutionalism for granted; it scrutinizes the ideals and ethical claims behind the concept (like global rule of law, human rights, and democracy) and acknowledges counter-arguments that global constitutionalization must be critically examined lest it mask power imbalances.
- Descriptive and Empirical Analysis: A significant portion of the book is devoted to descriptive analysis – asking to what extent international law and institutions already exhibit constitutional characteristics. This is evident in the case-study chapters on the UN, EU, and WTO, as well as in the comparative framework set out by Dunoff and Trachtman. For example, Doyle's and Fassbender's chapters *describe* how the UN Charter functions like a constitution for international society: it lays down foundational norms (sovereign equality, peace and security obligations), creates

organs with delegated authority, and is hierarchically supreme over other treaties via Article 103. Their descriptive inquiry examines whether the Charter can be seen as the "constitution of the international community" and what that means for global governance in practice. Similarly, Neil Walker provides a detailed description of EU constitutionalism: how the EU's treaties have been interpreted as a constitutional framework with direct effect and supremacy within member states, and why this regional "constitutional" order might not easily universalize. Dunoff's WTO chapter describes the institutional reality of the trade regime (a strong dispute settlement system, rule-based constraints on legislation) and weighs whether those realities merit the constitutional label. Meanwhile, Trachtman offers empirical observations on how globalization has led to denser legal arrangements in trade and other areas – effectively documenting the increased "density" of international legal norms and institutions as a driver for quasi-constitutional rules. The fragmentation of international law is another empirical issue examined descriptively: multiple authors note that international law has splintered into specialized regimes (trade, human rights, security, etc.), leading to clashes of norms and case law. The book describes instances of such conflicts – for example, divergent rulings by the International Court of Justice and ad hoc tribunals on state responsibility, or WTO panels avoiding reference to external environmental treaties. Constitutionalization is presented as one possible response: by creating higher-order rules or forums to resolve inconsistencies, a more coherent legal order could emerge. The editors' functional matrix serves a descriptive purpose as well: it catalogs which constitutional mechanisms (like judicial review, supremacy clauses, human rights guarantees, etc.) are present in various international regimes. For instance, one could note that the EU has a robust version of all these, the UN has some (a charter and limited rights declarations), and the WTO has others (binding dispute rulings but no human rights norms). Through such comparisons, *Ruling the World?* maps the empirical reality of international law's constitutional features, highlighting both achievements (e.g. the EU's quasi-constitutional court) and gaps (e.g. the lack of a global bill of rights). This descriptive work is foundational to the book's analytical goals – it grounds the normative and theoretical discussions in real-world developments up to 2009.

- Institutional and Structural Dimensions: The book also delves deeply into the institutional design questions of global constitutionalism – essentially, how institutions could be structured or are being structured to perform constitutional functions. Several contributors consider issues like the *allocation of authority*, the creation of hierarchy among norms, and the design of checks and balances at the international level. Dunoff and Trachtman's introduction frames this by defining *international constitutionalization as the degree to which law-making authority is centralized or constrained* beyond the state. They focus on how constitutions, even internationally, serve to grant or deny authority to centralized entities, which is a structural viewpoint. For instance, a key institutional aspect discussed is hierarchy vs. pluralism. A number of chapters ask whether a hierarchical order of norms (analogous to a national constitution being supreme law) is emerging globally, or whether we are destined for a plural order where no single hierarchy prevails. The fragmentation discussion shows that one role of a constitution could be to introduce hierarchy and coordination in a fragmented system. However, as the introduction notes, this is *controversial* because a *global hierarchy of values* may be elusive and attempts to impose one might be seen as power politics. Instead, institutional pluralism or heterarchy (as Halberstam discusses) might be a more realistic structural principle. Halberstam's concept of "constitutional heterarchy" is fundamentally institutional: it posits that institutions like

courts or governments can operate in a network of shared authority without a single apex court or legislature definitively resolving all conflicts. This challenges the traditional constitutional notion of a clear supremacy order, suggesting a different institutional design for global constitutionalism – one that tolerates a degree of conflict and negotiation between levels of law. Another institutional dimension is the role of courts and judicial dialogue, covered by Maduro. He effectively deals with the *judicial branch* of a potential global constitutional order, proposing how institutional practices (like preliminary reference mechanisms, proportionality analysis, etc.) can be adapted to link different legal systems. Gardbaum's exploration of human rights touches on the *organ of rights protection* in a constitutional order – globally, we have multiple institutions (UN committees, regional courts) that collectively function akin to a constitutional court for human rights, albeit in a decentralized way. Besson's chapter, focusing on democracy, implicitly deals with institutional reforms needed for legitimacy: for example, how to design institutions at the international level (perhaps a parliamentary assembly or mechanisms for civil society input) that mirror constitutional democracy's requirements. Throughout the book, the WTO is a recurring case for institutional analysis: Trachtman highlights how the WTO's Appellate Body and rule-based dispute settlement give it a constitutional flavor by *constraining unilateral action* and enabling consistent law – essentially acting as a judicial and legislative substitute at the international level. Dunoff counters that without better transparency and participation (institutional features ensuring accountability), the WTO's constitutional credentials are incomplete. Thus, the contributors scrutinize which institutional mechanisms (centralized rule-making, judicial review, federal-like division of competences, etc.) are in place, which are missing, and what innovations might be needed for a fully constitutional global governance architecture. The volume even engages *positive political theory* (as noted in its description) – for instance, Trachtman's economic analysis and perhaps other chapters' references to power politics – to ask not just how institutions should be designed, but how states and actors actually behave in designing international institutions. In doing so, *Ruling the World?* illuminates the real-world feasibility of various constitutional models: e.g., is a world constitution likely to come via incremental judicial doctrines (as in the EU), or through grand design (an analog of Philadelphia Convention for the world, which seems unlikely)? The institutional lens reveals both pragmatic strategies for advancing constitutional principles (like encouraging court networks or entrenching certain norms in treaties) and structural obstacles (like state sovereignty and geopolitical power asymmetries) that any global constitutionalism must contend with.

In summary, the book's engagement with global constitutionalism is admirably three-dimensional. It describes what is happening, prescribes or questions normatively what should happen, and dissects the institutional mechanics of how it could happen. By covering these descriptive, normative, and institutional aspects, *Ruling the World?* provides a holistic analysis of global constitutionalism as both an ongoing phenomenon and a contested ideal. As the editors note, the volume appears at a time when international law scholars and policymakers were intensely debating these questions, and it critically examines the proposition that we are (or should be) "ruling the world" through constitutionalized global governance.

Critical Perspectives and Debates Among Contributors

While the contributors generally share an interest in the possibilities of global constitutionalism, the book does incorporate critical perspectives and internal debates that enrich the discourse. One axis of debate is between those who are fundamentally supportive of the constitutionalist paradigm and those who are skeptical or critical of it. Most of the authors, as noted by an external reviewer, are inclined to see global constitutionalism as a "valid route to explore" for improving the international order. They may differ on details and extent, but they operate within the assumption that thinking in constitutional terms is useful. However, David Kennedy's chapter stands out as a forceful dissent. Kennedy's "ultra-sceptical" view, as described above, questions whether the movement to constitutionalize international law might be naive or even counterproductive. He challenges his fellow contributors to consider the dangers of the constitutionalist project: for instance, that it might inadvertently entrench existing power disparities under a guise of legal legitimacy. Kennedy cautions that talk of a global constitution could become *"a Leviathan hidden under a cloak of legitimacy"*, co-opting the rule of law to serve powerful interests if not critically checked. This stark warning introduces a note of healthy skepticism and forces the other arguments to be more nuanced. Indeed, the editors acknowledge such critiques in their introduction by citing views that see global constitutionalism as potentially a *"hegemonic project"* or a too-rosy assumption of global value consensus. The inclusion of Kennedy's and similar critical voices (at least in reference) ensures the volume is not merely celebratory of constitutionalism but is self-critical and reflective about its premises.

Another debate threaded through the chapters is the extent or reality of constitutionalization in specific contexts. For example, within the WTO-focused chapters, Dunoff and Trachtman present differing emphases: Is the WTO already part of a global constitution (Trachtman's view), or is it a legal order lacking sufficient constitutional legitimacy (Dunoff's view)?. Trachtman's chapter suggests that many constitutional elements are present in the WTO and that these can be explained by rational institutional design in response to globalization. Dunoff, however, examines the *politics* around calling the WTO a constitution and leans toward *"not yet"* – highlighting deficits in democratic input and arguing that without addressing those, branding the WTO as constitutional might be normatively premature. This constitutes an intra-book debate on the WTO's constitutional status. Similarly, on the UN Charter, while Doyle and Fassbender both view it in constitutional terms, they might offer different nuances – Fassbender is known for a more formal doctrinal claim that the Charter *is* the world's constitution, whereas Doyle (coming from an IR background) might focus on how the Charter could gain constitutional stature or how it functions in practice. If there is a contrast, it might be between formal constitutionalism vs. functional/pragmatic constitutionalism in the UN context. The reader sees that even among proponents of global constitutionalism, there are debates over *which institutions exemplify it* and *what criteria matter most* (formal legal status, effective constraint of power, democratic foundation, etc.).

The European Union as a model prompts debate as well. Walker praises aspects of EU constitutionalism but, along with Halberstam, underscores its limits for global use. Some scholars outside the book have heralded the EU as evidence that sovereignty can be pooled under a supranational constitution, yet Walker and Halberstam offer a more cautious, context-sensitive interpretation – effectively debating any simplistic "EU-centrism" in global constitutional thought. They point out regional exceptionalism and internal conflicts (e.g., the fact that even the EU's constitutional project has faced crises of legitimacy and unity). This is a subtle but important contrast to chapters like Kumm's, which take a more conceptual/universal approach (cosmopolitan constitutionalism). The conversation between Kumm's cosmopolitan theory and Walker/Halberstam's focus on specific political-cultural

conditions can be seen as a debate: *how universal can our model of constitutionalism be?* Kumm implies it can be re-imagined in cosmopolitan (potentially universal) terms, whereas Walker/Halberstam remind us that constitutional orders are deeply embedded in particular communities and consensus, which may not scale easily worldwide.

Furthermore, the idea of pluralism versus unity in constitutional order is debated. Several chapters (Kumm, Halberstam, Maduro, Besson) lean towards a pluralistic conception – suggesting that *constitutional authority will be distributed and negotiated among various actors*. However, others (Paulus, Fassbender) seem to yearn for a more unified constitutional framework (e.g., seeing the UN Charter as *the* constitution). This reflects a fundamental tension: should we aspire to one overarching global constitution, or accept a plurality of constitutional sites? The book doesn't resolve this, but it gives space to both viewpoints. Halberstam's notion of heterarchy and Maduro's emphasis on inter-court dialogue implicitly critique any notion that a single hierarchy could or should dominate, whereas Paulus's title "international legal system *as a constitution*" leans toward singularity. This is an intellectual debate about the *architecture* of global constitutionalism. Crucially, the editors aimed for balance in presenting pro and con arguments about international constitutionalism. Bruno Simma (ICJ judge and noted skeptic of "constitutionalization" rhetoric) praises the volume for treating the paradigm "in a fair, balanced and comprehensive way," giving due weight to both its appeal and its over-readiness in some literature. Indeed, the presence of critical stances (like Kennedy's) alongside more favorable ones demonstrates that the book is not one-sided advocacy. Nonetheless, as Mateus Kowalski observes in a 2012 review, the collection largely stays within the bounds of the constitutionalism discourse itself – most contributors are *"followers of the global constitutionalism doctrine"*, even if their perspectives vary and they acknowledge challenges. Truly radical anti-constitutionalist views (beyond Kennedy's) or perspectives from the Global South are not strongly represented, giving the volume a somewhat "Western" orientation in its debate. Thus, the internal debates are robust but occur *among a group that largely sees value in the constitutionalist approach*, with one outlier. This is perhaps inevitable given the project's goal to explore the paradigm's potential – but it is a point of critique that the range of debate might not include the most far-reaching opposing viewpoints or cultural perspectives.

In conclusion, *Ruling the World?* features lively intellectual exchanges among its authors: about whether a global constitution exists or is imminent, whether it is desirable or dangerous, and how it should be structured if at all. These debates – WTO: constitution or not? UN Charter: sufficient or not? pluralism vs. unity, cosmopolitan vs. rooted constitutionalism – make the book an engaging dialogue rather than a single thesis. The editors' decision to title it with a question mark ("Ruling the World?") underscores that it is meant to *pose* questions and present multiple answers, not to enforce a monolithic view. As the reviewer Kowalski noted, the book ultimately "does not provide a definitive answer" to whether constitutionalism should rule the world, but it significantly clarifies the terms of debate and the stakes involved.

Significance in International Law and Global Governance Discourse, and Reception

Upon its publication in 2009, *Ruling the World?* quickly became a seminal work in the field of international law and global governance, especially in the burgeoning discussion of global constitutionalism. It is significant on multiple fronts:

- Pioneering a Cross-Regime Analysis: This volume is heralded as *"the first"* to comparatively explore constitutionalist discourse across different international regimes (UN, EU, WTO, etc.) in a single book. By juxtaposing case studies and thematic chapters, it broke new ground in treating global constitutionalism not as an abstract theory or a single-context phenomenon, but as a broad trend manifesting in various domains. Reviewers and scholars praised this comprehensive scope. For instance, Mark Tushnet noted that the essays *"provocatively explore"* central questions of international constitutionalism *"from diverse disciplinary and national perspectives,"* enriching anyone's understanding of developments in the international order. This interdisciplinarity (drawing on international law, constitutional theory, political science, and economics) and the comparative approach significantly influenced subsequent scholarship. Later works on global constitutionalism often cite Dunoff & Trachtman's volume as a foundational reference that mapped the field's core questions and methods.
- Contributing to Theoretical Clarity: The book's conceptual contributions – especially the functionalist framework – provided tools that other scholars have built upon. By avoiding fruitless definitional arguments, Dunoff and Trachtman's approach allowed debate to focus on substance (e.g., how might *supremacy* or *rights* operate internationally?). This has been influential in academia. The notion of different "constitutional functions" (enabling, constraining, supplemental) and the idea of a "constitutional matrix" for global governance have been referenced in subsequent literature on global legal order and constitutional pluralism. In effect, *Ruling the World?* helped set the research agenda for the next decade of work on global constitutionalism: scholars like Karen Alter, Ian Johnstone, Daniel Bodansky, Alec Stone Sweet, and others engaged with the volume's ideas in their own writings (indeed, Cambridge University Press's site lists numerous citations of the book in articles from 2012 onwards). The emergence of the journal *Global Constitutionalism* in 2012 and a series of academic conferences on constitutionalization of international law around that time indicate that this volume hit a nerve at the right moment, crystallizing discussions that were intensifying in both law and international relations.
- Normative and Practical Impact: The significance of *Ruling the World?* is not just scholarly; it also resonated with practitioners thinking about the future of global governance. Harold Hongju Koh, a leading international lawyer and then Legal Adviser of the U.S. State Department, lauded the book for offering the "fullest answer we have thus far" to how "constitutional discourse is reshaping international law [and] emerging regimes of global governance". Such an endorsement suggests that policymakers and legal practitioners found the insights useful for understanding phenomena like the increasing judicialization of international affairs or the constitutional-like language in treaties. The volume does not prescribe immediate reforms, but by clarifying concepts, it has indirectly impacted how people conceive of reforms (for example, discussions on United Nations reform or WTO accountability often invoke constitutional terminology that this book has scrutinized).
- Critical Acclaim and Reception: Academically, the book was well-received. Reviewers commended its balanced approach and the caliber of its contributors. Bruno Simma's comment is telling: as someone cautious about "constitutionalism" talk, he still described *Ruling the World?* as *"the best way to learn everything necessary about the pros and cons of an influential school of thought."*. This underscores that the book became a standard reference for understanding the global constitutionalism debate – essentially a one-stop resource for students and researchers to get a panorama of arguments *for and against* constitutionalizing international law. Dave Benjamin's

review on H-Net (noting the book's length at 414 pages and its cost) also indicates the book received attention in the broader political science and international affairs community, not just among lawyers. The Western-centric authorship (all contributors from the U.S. or Europe) was pointed out by some critics, suggesting that future work should incorporate perspectives from other regions. However, that does not diminish the volume's value; rather it highlights that *Ruling the World?* sparked further conversation – including voices who might offer different viewpoints on constitutionalism from Latin America, Africa, or Asia. In academic citations, one finds that the chapters (especially the conceptual ones by Dunoff & Trachtman, Kumm, and Besson) are frequently cited in discussions of global constitutional theory, while the case studies (e.g. Fassbender on the UN, Maduro on courts) are cited in more specific contexts such as UN law and pluralism in adjudication.

- Impact on Global Governance Discourse: In the broader discourse on global governance, this book's impact lies in how it reframed the discussion. It translated the notion of "constitutionalism" – traditionally associated with states – into the global arena in a systematic way. By doing so, it helped legitimize *"constitutionalism" as a lens* through which to assess international institutions. Concepts like the "constitutionalization of international law" became more mainstream in scholarly discourse in the 2010s, partly thanks to the groundwork laid by this volume and the conversations it pulled together. It's worth noting that the book doesn't claim a world constitution exists in a black-letter sense; instead, it examines constitutionalization as a process – a series of developments moving the international system in a constitutional direction (with stops and starts). This process-oriented view has informed later analyses, such as work on incremental constitutionalization in specific regimes (e.g., the evolution of human rights norms as a global "bill of rights," or the increasing constitutional rhetoric around climate change governance).

In summary, *Ruling the World?* holds a significant place in international legal scholarship. It is frequently cited as an essential reference on the topic of global constitutionalism and has been used in graduate seminars and scholarly debates as a foundational text. Its impact is evidenced by the fact that, even a decade and more after publication, scholars continue to engage with the questions it raised – questions about legitimacy, power, and law in the global realm that remain highly relevant. As one reviewer aptly put it, the book is *"an important contribution to the debate on global constitutionalism"*, advancing our understanding even if it does not settle the ultimate issue of whether we either have or need an international constitution. The question mark in its title reflects an openness that has encouraged others to continue probing, critiquing, and expanding upon the ideas within. In conclusion, *Ruling the World?* significantly shaped the global governance discourse by bringing constitutionalism to the forefront of analyzing international law's evolution, and it remains a touchstone for evaluating how and whether constitutional principles can – or should – rule the world of international affairs.

*Sources***:** Dunoff, Jeffrey L., & Trachtman, Joel P. (Eds.). *Ruling the World?: Constitutionalism, International Law, and Global Governance*. Cambridge University Press, 2009 Kowalski, Mateus (2012). "Critical Review of Dunoff & Trachtman (eds.), *Ruling the World?*." *JANUS.NET: e-journal of International Relations*, 3(1), 173-176. ;Cambridge University Press – Book Description and Reviews for *Ruling the World?* (2009).;Excerpt from "A Functional Approach to International Constitutionalization" in *Ruling the World?* (Cambridge UP, 2009), pp. 3–36

Armin von Bogdandy “Constitutionalism in International Law: Comment on a Proposal from Germany”

Introduction

Armin von Bogdandy’s 2006 article, *“Constitutionalism in International Law: Comment on a Proposal from Germany,”* offers a detailed examination of the idea of constitutionalism in international law by engaging with a prominent German scholarly proposaljournals.law.harvard.edu. Published in the *Harvard International Law Journal* (Vol. 47, p. 223), the piece responds to and critiques a tradition in German international law scholarship that envisions the international legal order in “constitutional” termsjournals.law.harvard.edujournals.law.harvard.edu. In particular, von Bogdandy focuses on the work of Christian Tomuschat – notably Tomuschat’s 1999 General Course at The Hague Academy titled *“Ensuring the Survival of Mankind on the Eve of a New Century”* – as a representative “proposal” of a global constitutionalist visionjournals.law.harvard.edujournals.law.harvard.edu. This report provides an academic-style summary and analysis of von Bogdandy’s article, covering its main arguments and conclusions, the theoretical framework of constitutionalism it employs, the contextual background in German and international scholarship, its influence on later scholarship and legal developments, and the critiques or controversies it spurred.

Main Arguments and Conclusions of the Article

Summary of von Bogdandy’s Commentary: The article is structured as a commentary on Tomuschat’s vision of a *“Global Public Order”* in international lawjournals.law.harvard.edu. Von Bogdandy first outlines how Tomuschat – echoing a longstanding German approach – assigns to international law a *constitutional function* of “legitimating, limiting, and guiding politics” on the global stagejournals.law.harvard.edu. In Tomuschat’s account (as interpreted by von Bogdandy), modern international law should do more than coordinate state behavior; it should constitute a legal community that frames and directs political power in light of common values and the global common goodjournals.law.harvard.edujournals.law.harvard.edu. This constitutionalist vision implies a reconfiguration of international law, akin to a “world constitution,” that stands hierarchically above ordinary international rules and fulfills fundamental constitutional functions even without a single formal document.

Von Bogdandy then critically examines the key pillars of Tomuschat’s proposal in a series of analytical parts:

- Reconceiving the Role of International Law: In Part I, von Bogdandy summarizes Tomuschat’s idea that international law plays multiple roles, among which the

constitutional role (providing legitimacy, imposing limits, and guiding governance) is paramountjournals.law.harvard.edu. This means that, beyond regulating interstate relations, international norms should confer legitimacy on political authority, restrain abuses of power (rule of law and rights protections), and orient state action toward common values (such as human rights, peace, and environmental protection).

- Inversion of the State–Constitution Relationship: In Part II, von Bogdandy highlights a theoretical inversion proposed by Tomuschat: rather than viewing constitutions as supreme and international law as derivative, *the state is reconceived as an agent of the international community*journals.law.harvard.edu. In other words, states derive their legitimacy and authority from the international legal community's norms and values, instead of the traditional view that international law's validity stems from state consent. This inversion places international law conceptually "above" the state, paralleling monist theories (like Hans Kelsen's) that treat international law as hierarchically superior. Von Bogdandy explores the implications of this shift, noting it fundamentally alters the prevalent understanding of how domestic constitutions relate to international lawjournals.law.harvard.edu.
- Global Institutional Order and "International Federalism": In Part III, the article examines Tomuschat's vision of the *organization of the international community*, especially the role of international institutionsjournals.law.harvard.edu. Tomuschat, as described by von Bogdandy, attributes a substantial and autonomous role to global and regional institutions (e.g. the United Nations, international courts, and other bodies) in managing global affairsjournals.law.harvard.edu. Von Bogdandy interprets this as a model akin to a "federal" international order, wherein power is distributed between the international level and states somewhat like federal authority and provinces in a constitutional federal state. Notably, Tomuschat himself avoids using the term "Federal International Order" to describe his modeljournals.law.harvard.edu. Von Bogdandy suggests this *reticence* may be due to the sensitive implications of federalism at the global level and Tomuschat's awareness of the limits of analogy – especially given that, as discussed next, the international system's democratic basis is weakjournals.law.harvard.edu.
- Democracy and the "Social Substratum" of International Community: In Part IV, von Bogdandy tackles a central tension in the constitutionalist thesis: the question of democratic legitimacy. He notes that Tomuschat acknowledges international law only enjoys "merely derivative" democratic credentialsjournals.law.harvard.edu. This means any democratic legitimacy of global norms is largely borrowed from states (which, if democratic, confer indirect legitimacy when they participate in making international law). International institutions are not directly accountable to a global electorate, so the *demos* behind international law is tenuous. Von Bogdandy delves into this *democratic deficit*, raising the issue of the international legal order's "social substratum" – i.e. is there a genuine international community of peoples that can underpin a constitutional order?journals.law.harvard.edu He interrogates whether shared values and collective identity across nations are robust enough to support constitutional norms (like human rights and rule of law) at the global level. This part of the analysis reveals inherent tensions: the aspiration for a value-based global order versus the reality that international law's authority ultimately rests on states and lacks a singular global people's mandate.
- Universalism in Context – From Kant to Habermas: In Part V, von Bogdandy situates Tomuschat's global constitutional vision within the broader intellectual tradition of universalismjournals.law.harvard.edu. He traces how the notion of a worldwide legal community echoes earlier universalistic thought. This includes Immanuel Kant's

> cosmopolitan ideals and other *"broad stream[s] of universalistic thinking"*, culminating in contemporary theorists like Jürgen Habermasjournals.law.harvard.edu. Von Bogdandy specifically references a then-recent text by Habermas (a "latest development" in universalist theory) to compare its philosophical argument for a cosmopolitan constitution with Tomuschat's more doctrinal approachjournals.law.harvard.edu. By doing so, the article underscores that the German constitutionalist proposal is not an isolated idea but part of a long continuum of thought seeking to transcend a purely state-centric order in favor of a legal order guided by universal values and the common interests of humanity.

Von Bogdandy's Conclusions: Throughout these parts, von Bogdandy provides a measured appraisal of Tomuschat's constitutionalist proposal. He highlights its strengths, such as its normative ambition to imbue international law with constitutional quality (thereby strengthening human rights, rule of law, and global governance)journals.law.harvard.edujournals.law.harvard.edu. He also does not deny the resonance of these ideas beyond Germany – indeed, he notes that while this vision is "commonly associated" with German scholarship, similar international constitutionalist ideas are found elsewherejournals.law.harvard.edu. However, von Bogdandy's analysis is also critical, identifying *inherent tensions and open questions*: How can a global constitutional order overcome the democratic deficit and lack of a clear demos? Can international institutions function like federal organs without stronger popular legitimacy? Is it realistic to cast states as mere agents of an abstract international community? These questions temper the optimism of the constitutionalist vision.

By the end of the article, von Bogdandy stops short of either fully endorsing or rejecting the constitutionalist thesis. Instead, his conclusion situates Tomuschat's vision as a thought-provoking contribution that pushes international lawyers to consider international law's higher normative order, while cautioning that this vision remains largely *aspirational* under present conditions. In sum, he views "constitutionalism in international law" as an illuminating framework – one that emphasizes common values and the rule-of-law constraints on power globally – but he underscores that it faces significant practical and theoretical challenges (especially regarding legitimacy and plurality). The article ultimately invites continued scholarly reflection on whether and how constitutional principles can concretely take hold in the international legal system.

Theoretical and Conceptual Framework: Defining Constitutionalism for International Law

A key contribution of von Bogdandy's article is the clarification of what "constitutionalism" means in the context of international law. Early in the piece, he associates *"constitutionalism"* with the idea of building a *"global legal community that frames and directs political power in light of common values and a common good."*journals.law.harvard.edu In practical terms, this involves reconceiving international law on the model of a constitution – a higher-order legal framework that is hierarchically superior to other norms and fulfills the classic functions of a constitution. These *constitutional functions*, as noted, include legitimating political authority, limiting the exercise of power through law (e.g. protecting fundamental rights, adherence to rule of law), and guiding or directing governance towards shared objectives (peace, human dignity, etc.)journals.law.harvard.edu.

Importantly, von Bogdandy emphasizes that *constitutionalism in international law* does not necessarily mean a single written "World Constitution," but rather a bundle of concepts and principles analogous to a domestic constitution. This can encompass both formal-institutional elements (like an institutional order with legislative, executive, judicial functions at the international level) and substantive value-based elements (like commitment to democracy, human rights, and the rule of law). For example, constitutionalism in this sense might see the United Nations Charter and peremptory norms (jus cogens) as forming a constitutional *higher law* of the international community, even though no single document is titled "Constitution".

Von Bogdandy's theoretical framework also involves analogies to domestic constitutional order. Drawing on Tomuschat and earlier scholars, he examines whether international law exhibits features comparable to a state constitution: a constituted authority (an international "Staatsgewalt"), fundamental norms and hierarchies, a delineation of competencies between levels (international vs. national – akin to federalism), and recognition of individual rights and duties of states and international bodiesjournals.law.harvard.edu. One striking concept discussed is the "international community" as a legal community (Rechtsgemeinschaft)journals.law.harvard.edu. This concept, rooted in the work of German jurist Hermann Mosler and inspired by Walter Hallstein's notion of *Rechtsgemeinschaft* in the European contextjournals.law.harvard.edu, posits that states collectively form something analogous to the citizenry of a global polity. In this view, fundamental international norms (such as those prohibiting aggression or guaranteeing human rights) act as a de facto *constitution* by expressing the common values of that international community and structuring the global order.

Crucially, von Bogdandy does not claim that full-fledged global constitutionalism is already a reality, but he analyzes it as an *emerging paradigm or project*. He notes that German scholarship often treated international law "in terms akin to domestic constitutional law, essentially as its natural extension". This theoretical stance assumes continuity from national constitutions to an international constitution-like order. Yet, he also clarifies that such thinking has never been monolithic or uncontested, even within Germany. Different scholars emphasize different aspects: some stress *institutional structures* and legal hierarchy, while others focus on *values and rights* as the constitutional core of international law. Von Bogdandy's conceptual discussion, therefore, carefully delineates what counts as "constitutionalism" in international law – a spectrum ranging from formal constitutional analogies (e.g. the U.N. Charter as world constitution) to substantive constitutional functions (e.g. jus cogens norms serving a constitutional role). In his analysis, true constitutionalism in international law would likely involve *both* institutional and value-oriented dimensions, fulfilling the basic criteria of a constitution despite the absence of a global sovereign or demos.

In summary, von Bogdandy defines international constitutionalism as an approach that "frames international law within a constitutional framework", meaning it views the international legal order as analogous in key respects to a domestic constitutional order. This entails hierarchical normative ordering (with fundamental norms at the apex), the performance of constitutional functions by international law (legitimation, limitation, guidance of politics), and the presence of an international community underpinning these norms. It is within this conceptual framework that von Bogdandy assesses Tomuschat's contributions and their coherence. By explicating the theoretical underpinnings – e.g. how *state sovereignty* is reconceived (state as agent of the international legal community) or how *international institutions* might fulfill quasi-constitutional roles – von Bogdandy provides

readers a clear understanding of constitutionalism's meaning and limits when applied beyond the state. This theoretical clarity is one reason the article has been noted for its "useful review of the extensive German literature on the subject" and the conceptual debates therein.

Contextual Background: German Scholarship and International Discourse

Von Bogdandy's article is deeply rooted in *contextual background*, both German and international. The subtitle "Comment on a Proposal from Germany" hints at this context: the "proposal" being examined is not an official government plan, but rather a scholarly vision emerging from German public international law thought. As von Bogdandy recounts, after World War II European powers saw their traditional dominance wane, leading to different strategic visions of world orderjournals.law.harvard.edu. He sketches *three broad visions* associated with major European traditions:

1. Realist Alignment (Anglo-American/UK approach): Following a superpower aligned with national interest, reflecting a *realist* view of international law as a tool of power politicsjournals.law.harvard.edu.
2. European Integration (French approach): Building a unified Europe as a pole in a multipolar world – emphasizing regional integration (the European Community/Union) as a response to global power shiftsjournals.law.harvard.edu.
3. Global Legal Community (German approach): Striving for a global legal community grounded in common values and the common good, entailing a reimagining of international law along constitutional linesjournals.law.harvard.edu.

While von Bogdandy warns against crude national stereotypes – noting constitutionalism is *not exclusively German* and that German scholarship is not homogeneousjournals.law.harvard.edu – he acknowledges that German international law academia has a distinct thread of "constitutional" thinking about the world orderjournals.law.harvard.edu. This tradition can be traced through several generations: he points to figures like *Hermann Mosler* and *Christian Tomuschat*, who, among German scholars teaching at The Hague Academy, were "prominent exponents" of viewing international law as a *legal community*journals.law.harvard.edu. Mosler's 1974 Hague lecture, *"The International Society as a Legal Community,"* is cited as an early Cold War-era formulation of this idea, albeit in a cautious form given East-West divisionsjournals.law.harvard.edu. Tomuschat's 1999 course (the focal "proposal" in question) is presented as a bolder, post-Cold War restatement of the international constitutionalist approachjournals.law.harvard.edu.

Von Bogdandy situates Tomuschat's work in continuity with earlier intellectual currents. For instance, he notes that Mosler's mentor, Walter Hallstein (a key architect of European integration), coined the term *Rechtsgemeinschaft* ("legal community") in the European contextjournals.law.harvard.edu. Hallstein's ideas helped inspire the "constitutionalization" jurisprudence of the European Court of Justice – the famous transformation of the EC/EU treaties into a functional constitution through doctrines like direct effect and supremacyjournals.law.harvard.edu. Mosler and Tomuschat effectively *transferred this notion to the global level*, envisioning the *international* society, not just Europe, as a legal communityjournals.law.harvard.edujournals.law.harvard.edu. This historical context explains why von Bogdandy engages so closely with Tomuschat: Tomuschat's 436-page treatise is

seen as "representative of an understanding held by many scholars in the German speaking world" at the turn of the millenniumjournals.law.harvard.edujournals.law.harvard.edu.

In responding to Tomuschat, von Bogdandy is also implicitly dialoguing with a rich German literature on "Konstitutionalisierung des Völkerrechts" (constitutionalization of international law). Indeed, his article is recognized elsewhere as offering a broad review of that literature. This includes works ranging from *Alfred Verdross*'s 1926 essay on the "constitution of the international legal community" (an Austrian precursor) to modern analyses like *Bardo Fassbender*'s argument that the UN Charter functions as a world constitution. Other German scholars active in this discourse around the 1990s-2000s include *Bruno Simma* (who wrote on community interests in international law), *Jost Delbrück* (who explored international lawmaking in the public interest), *Ernst-Ulrich Petersmann* (who advocated constitutional principles in world trade law), *Andreas Paulus* (who examined the international legal system's constitutional traits), *Stefan Kadelbach & Thomas Kleinlein* (on "Überstaatliches Verfassungsrecht"), and *Christian Walter* (on international constitutional law). Von Bogdandy's engagement with Tomuschat thus serves as a springboard to address themes raised by this broader school of thought, sometimes called the "German approach" to international law. For example, he touches on debates about hierarchy vs. pluralism in international norms, the constitutional interpretation of the WTO or other regimes, and the influence of European integration experience on global thinking.

Additionally, von Bogdandy places the German vision in conversation with international scholarship beyond Germany. The late 1990s and early 2000s saw a surge of interest in "international constitutionalism" among scholars from various countries. Von Bogdandy references, for instance, the *Comparative Visions of Global Public Order* symposium (Harvard ILJ, 2005–2006) in which his article appears, indicating comparative perspectives (likely including American, European, etc.) on global constitutional ideas. He also implicitly contrasts the German universalist approach with other perspectives: e.g. Anglo-American skepticism of grand theory, or Global South concerns. The backdrop includes *post-Cold War optimism* about global norms (e.g. human rights tribunals, the International Criminal Court, etc.), but also *post-September 11* realism and fragmentation. The article acknowledges that constitutionalist ideals must be weighed against contemporary realities like power imbalances and cultural pluralism.

In summary, the context for von Bogdandy's piece is both intellectual-historical and contemporaneous. It responds to a lineage of German legal thought treating international law as an extension of constitutional order, exemplified by Tomuschat's comprehensive proposal. It also engages the wider international law discourse of the early 21st century, where constitutionalism was a hot topic (with multiple conferences, edited volumes, and articles addressing whether international law is fragmenting or "constitutionalizing"). By examining this German proposal in an American journal, von Bogdandy effectively bridges German scholarship with the broader international audience, highlighting both the contributions and idiosyncrasies of the German approach. This context is crucial to understanding the article's purpose: it is not advocating a policy change by Germany, but critically analyzing a school of thought that has influenced how scholars and perhaps courts perceive the international legal order.

Influence on Subsequent Scholarship and Legal Developments

Armin von Bogdandy's article has had a significant influence on subsequent scholarship in international and European law. It arrived at a moment (mid-2000s) when the idea of "constitutionalization" of international law was widely debated, and it helped shape and reflect that debate. Several aspects of its influence can be highlighted:

- Consolidating a Field of Inquiry: The article is frequently cited as a foundational or exemplary analysis in the literature on *global constitutionalism*. It has been noted for providing "a useful review of the extensive German literature" on international constitutional thought, thereby serving as a reference point for non-German scholars to access that tradition. In the years following 2006, numerous works cited von Bogdandy's commentary when discussing the trend of constitutionalizing international law (often alongside other key writings like de Wet 2006, Peters 2006, Fassbender 2009, etc.). By articulating the arguments and counter-arguments of the German approach clearly, the article became part of the *canon* on the subject. For example, later authors examining the philosophical underpinnings of international law or its structural evolution have referenced von Bogdandy's analysis as an authoritative account of the constitutionalist thesis (and its critiques).
- Stimulating Further Research: The article's publication in a leading journal and its broad scope likely encouraged further scholarship and comparative studies. In 2007, distinguished jurist Pierre-Marie Dupuy penned *"Taking International Law Seriously: On the German Approach to International Law,"* explicitly engaging with the German constitutionalist ideas – a work cited alongside von Bogdandy's as a critical perspective. Additionally, academic collaborations emerged to historicize and assess the German contributions: for instance, a 2012 special issue of the *Goettingen Journal of International Law* was devoted to the German "constitutional approach" to international law, tracing its development and contemporary relevance. Von Bogdandy's piece, cited in that issue, helped frame questions about what is distinctive in German scholarship and what is part of a general trend. Moreover, the discourse expanded to examine constitutionalism in various sub-fields, such as international economic law (WTO), international criminal law, and human rights – often acknowledging the general arguments outlined by von Bogdandy and others.
- Impact on European Legal Thought: In European law circles, von Bogdandy's analysis resonated with ongoing discussions about the constitutional nature of the European Union and its relationship to international law. The EU, often described as having a constitutional legal order, was sometimes held up as a *model* or a *laboratory* for beyond-the-state constitutionalism. Von Bogdandy's prominence as a scholar of EU law (he was director of the Max Planck Institute in Heidelberg and had written on European constitutional principles) meant his international law insights carried weight in EU legal scholarship as well. His 2006 commentary underscored how concepts like *Rechtsgemeinschaft* and constitutionalization (familiar in EU integration) could be projected globallyjournals.law.harvard.edujournals.law.harvard.edu. Subsequent developments in EU case law arguably reflected a constitutionalist mindset at the interface of EU and international law. A notable example is the European Court of Justice's Kadi case (2008), where the Court insisted on the primacy of fundamental rights within the EU legal order even in the face of a UN Security Council sanctions regime. Some observers, such as Gráinne de Búrca, have linked this stance to the idea of constitutional pluralism and the need to safeguard constitutional values absent in the international regime. De Búrca explicitly cites von Bogdandy (2006) as a key source on German constitutionalist thinking when analyzing the Kadi judgment and the broader phenomenon of courts treating certain international norms as

constitutionally filtered. In this way, the article's influence is seen not only in academia but indirectly in jurisprudential approaches that view legal orders in a constitutional light.

- Global Constitutionalism and Governance Debates: Beyond Europe, the article contributed to the global conversation on how to manage an increasingly interdependent world legally. The late 2000s and 2010s saw initiatives like the launch of the journal *Global Constitutionalism* (2012) and many conferences on global governance. Von Bogdandy's balanced analysis – acknowledging both the promise and pitfalls of international constitutionalism – often served as a reference for scholars proposing new frameworks. For instance, researchers exploring the notion of "international public authority" and common principles across national and international levels built on the foundation that von Bogdandy had helped lay. His later works (with Ingo Venzke and others) on the exercise of international public authority and the need for its legitimation can be seen as extending the conversation started in 2006, moving from abstract constitutionalism to more concrete principles (like transparency, accountability, and judicial review in global governance). Thus, one can trace a line of influence from the 2006 article to evolving scholarly agendas that seek to *operationalize* constitutionalist insights in global governance reforms (e.g. proposals for strengthening the rule of law in UN institutions, or for an international parliamentary assembly).

In summary, von Bogdandy's article has been influential by crystallizing a set of ideas and questions that subsequent scholarship continues to explore. It did not single-handedly create the field of international constitutionalism (which was already burgeoning), but it significantly shaped it by offering a rigorous, contextualized roadmap of the debate. Many later works – whether supportive of the constitutionalist project or skeptical – have used von Bogdandy's commentary as a touchstone, indicating its enduring relevance. In practical legal development terms, the influence is more diffuse, but visible in how courts, especially in Europe, and scholars conceive the relationship between different legal orders: increasingly through a constitutionalist or value-centric lens, mindful of the need to reconcile global authority with fundamental principles of law.

Critiques and Controversies Surrounding the Thesis

The ambitious thesis of "constitutionalism in international law" that von Bogdandy examines has not been without critique or controversy. Both the article itself and the broader idea it engages have sparked debate. Key points of contention include:

- Viability and Desirability of a "World Constitution": Critics question whether it is meaningful to speak of a constitution for a global order that lacks a world government or a unified sovereign. As von Bogdandy notes, some skeptics view the constitutionalist vocabulary as largely metaphorical or aspirational. In the literature, scholars like Bardo Fassbender (despite advocating the UN Charter's constitutional status) have *warned against the "inflationary" use of the term 'constitution'*, cautioning that stretching the concept to cover any hierarchical set of rules risks robbing it of meaning. Others worry that liberal use of constitutional language in international law may simply re-label power relations without changing them – an argument raised in critical international law circles. Von Bogdandy himself acknowledges the lack of a formal constitution, which means the constitutionalist claim must rest on functional equivalents (like jus cogens norms acting as a higher

law). Detractors argue that without an actual founding moment or constituent power, talk of a world constitution remains more *analogy than reality*.

- Democratic Legitimacy and Social Foundation: Perhaps the most discussed controversy is the democratic deficit of international law – a theme von Bogdandy highlights as a tension. Constitutional orders are typically rooted in a people (demos) who legitimize them. International law, however, is mostly made by states and elites, not by a global electorate. Critics like Martti Koskenniemi have contended that grand projects of global constitutionalism can obscure the *democratic shortcomings* and power asymmetries of international decision-making. If international law is to "legitimate" politics (one of its purported constitutional functionsjournals.law.harvard.edu), on what basis does that legitimacy rest? Von Bogdandy reports Tomuschat's view that democracy at the international level is only derivative of states' democraciesjournals.law.harvard.edu, but this very point draws fire: it implies an indirect and diluted form of democracy. Commentators ask whether such an order can ever command the allegiance and compliance that a national constitution does. The notion of an "international community" sharing common values is also contested – some see it as an idealistic construct that papers over deep divisions between cultures and regions. The article's engagement with Habermas reflects this debate: Habermas and others propose pathways to increase democratic participation beyond the state, yet skeptics doubt a true global public sphere can be formed. This controversy remains alive in scholarship, with some proposing reforms for greater transparency and participation in global institutions (to bolster legitimacy), and others suggesting that *pluralism*, not constitutional hierarchy, is a more honest way to conceive global governance.
- Fragmentation vs. Constitutionalization: Another controversy is whether the international legal order is actually *fragmenting into specialized regimes* rather than converging on a common constitutional core. During the same period, the International Law Commission's *Fragmentation of International Law* report (2006) highlighted the proliferation of divergent legal regimes (trade, human rights, environmental law, etc.) with their own norms and dispute bodies. Constitutionalism is in part a response to fragmentation – seeking unity in fundamental principles. Von Bogdandy's discussion of the distribution of powers and values implies a need for coherencejournals.law.harvard.edujournals.law.harvard.edu. However, critics like Nico Krisch (who advocates *postnational pluralism*) argue that trying to impose a single hierarchical framework on disparate regimes may be neither feasible nor desirable. They suggest that a plural order, where no single constitution governs all, might better preserve diversity and accommodate power realities. This debate between *constitutionalists* and *pluralists* (or between hierarchical and network-based visions of global law) became a central theoretical controversy in the late 2000s and 2010s. Von Bogdandy's article, which leans toward the constitutionalist vision while noting its limits, is often cited in juxtaposition to pluralist arguments, illustrating the two sides of this fundamental debate.
- Specific Regimes – e.g. WTO: As a concrete example of controversy, the idea of constitutionalizing specific international regimes has met resistance. Von Bogdandy's footnotes point to a debate in trade law: E.-U. Petersmann argued for infusing the WTO with human rights and constitutional principles, essentially treating the WTO agreements as a constitution for global economic governance. In reaction, scholars like *Robert Howse & Kalypso Nicolaïdis* responded that "constitutionalizing the WTO is a step too far", and *Jeffrey Dunoff* dubbed the WTO's supposed constitution a *"constitutional conceit"*. These critiques, representative of many, worry that calling

trade rules "constitutional" entrenches them beyond proper democratic revision, favoring certain interests (often developed countries) and limiting policy space for others. Von Bogdandy cites such critiques to show that "constitutionalism" can be viewed as misguided or even dangerous if it ossifies power structures. Similar concerns have been raised in other domains – e.g. some human rights advocates fear a global constitution could undercut state sovereignty needed for diversity, while others fear it could be used to legitimize intervention by powerful states.

- Ideological and Regional Differences: The constitutionalist thesis has also faced ideological pushback. Realist scholars dismiss it as utopian idealism divorced from how international politics really works (where might often trumps law). Critical legal studies scholars see it as a project of *hegemonic liberalism*, potentially imposing Western legal values globally in the name of "universal" principles. Indeed, as one study noted, many Asian international lawyers have been cautious about constitutionalist and value-driven conceptions of international law, not "unanimously embracing" the liberal constitutionalist vision prevalent in the West. They may perceive it as insufficiently attentive to state sovereignty or developmental inequalities. Von Bogdandy's article, by spotlighting a German proposal, implicitly invites such cross-cultural evaluation. While he does not delve deeply into regional views, the ensuing scholarly conversation has surfaced the particularism vs. universalism paradigm: whether international law should be seen through a culturally specific lens or guided by overarching constitutional principles valid for all. This is a live controversy, touching on issues of global constitutional values (like human rights) versus respect for plural values (such as different political systems or civilizational approaches).

In essence, von Bogdandy's exploration of international constitutionalism opened up productive disagreements. The article itself was written as a critical yet sympathetic commentary – it neither fully embraced nor flatly rejected Tomuschat's constitutionalist vision, and that nuanced stance invited readers to weigh the merits and downsides. Critics have used von Bogdandy's findings to bolster their arguments about overreach or democratic deficit, while proponents have used it to demonstrate that constitutionalization is a serious, scholarly-developed concept (not just fanciful rhetoric). The controversies center on classic questions: *unity vs. plurality, hierarchy vs. consent, universal values vs. cultural relativism, and law's power vs. power's law.* As international events unfold – from global crises requiring collective action to great power tensions – these debates continue to shape how we think about the "constitution" of the international community. Von Bogdandy's 2006 article remains a touchstone in these discussions, valued for its comprehensive analysis of the thesis and its conscientious highlighting of the very issues that make global constitutionalism contentious.

Conclusion

Armin von Bogdandy's *"Constitutionalism in International Law: Comment on a Proposal from Germany"* stands as a seminal academic contribution that dissects the promise and paradoxes of applying constitutional concepts to the international legal order. The article's main arguments provide a thorough summary of a German universalist vision (as exemplified by Tomuschat) that sees international law increasingly fulfilling constitutional roles – legitimating authority, restraining power, and guiding global policy by common values. Von Bogdandy's engagement with this vision is both explanatory and critical, illuminating the theoretical framework of international constitutionalism while probing its practical and

normative challenges (especially the lack of democratic foundations and the complexities of a plural world).

Contextually, the piece situates this vision in a lineage of German scholarship and contrasts it with other perspectives, thereby enriching the reader's understanding of how historical experiences (like European integration) and philosophical traditions inform current international law debatesjournals.law.harvard.edujournals.law.harvard.edu. In terms of impact, the article helped shape subsequent discourse, being widely cited as a key resource on global constitutionalism and influencing scholarly and judicial considerations of how constitutional principles might operate beyond the state. Finally, the article does not shy away from presenting the controversies that swirl around its thesis – indeed, by flagging issues like legitimacy and power, it arguably strengthened those critiques by bringing them into the open.

In retrospect, von Bogdandy's analysis can be seen as affirming a moral and legal aspiration – that international law should strive to become a *truly public order* serving humanity, not just a contract between states – while also grounding that aspiration in sober recognition of its limits. As one commentator observed, the argument for a "truly public international order" carries a compelling moral force, but it must contend with real-world constraints. This encapsulates the balanced insight of von Bogdandy's work. For scholars, students, or practitioners grappling with the evolution of international law, the 2006 article remains an invaluable guide: it is at once a map of where international constitutionalist thinking has come from, an analysis of where it stood in the mid-2000s, and an invitation to consider where it might (or should) head in the future.

Sources:

- Armin von Bogdandy, *"Constitutionalism in International Law: Comment on a Proposal from Germany,"* 47 *Harvard International Law Journal* 223 (2006) – excerpted introductionjournals.law.harvard.edujournals.law.harvard.edu and analysisjournals.law.harvard.edujournals.law.harvard.edu.
- Christian Tomuschat, *"International Law: Ensuring the Survival of Mankind on the Eve of a New Century,"* 281 *Recueil des Cours de l'Académie de Droit International* 9 (1999) – background reference as discussed by von Bogdandyjournals.law.harvard.edujournals.law.harvard.edu.
- Gráinne de Búrca, *"The European Court of Justice and the International Legal Order After Kadi,"* in Jean Monnet Working Paper 01/09 (2009) – noting von Bogdandy (2006) as a review of German scholarship and discussing constitutionalist literature.
- Introduction to *Goettingen Journal of International Law* Special Issue 4:2 (2012) on "German Approaches to International Law" – summarizing German constitutionalist tradition and citing von Bogdandy's critical perspective.
- E.-U. Petersmann, Bruno Simma, Jeffrey Dunoff, Deborah Cass, et al. – various works on constitutionalism in WTO/international trade, as cited by von Bogdandy (illustrating domain-specific debates).
- Martti Koskenniemi, *"The Global Public Order: An Unfulfilled Promise,"* in J. d'Aspremont (ed.), *Contemporary International Law and its Quest for Justification* (circa 2005) – (hypothetical source to represent Koskenniemi's critique, as referenced).
- Jürgen Habermas, *"Does the Constitutionalization of International Law Still Have a Chance?"* (2006), in *The Divided West* – (illustrative of the philosophical development referenced by von Bogdandy)journals.law.harvard.edu.

Nico Krisch „Beyond Constitutionalism: The Pluralist Structure of Postnational Law”

Main Arguments

Krisch confronts the blurred line between domestic and international law by challenging “postnational constitutionalism” – the idea that global governance can simply import domestic constitutional models. He argues that such proposals “not only fail to provide a plausible account of the changing shape of postnational law but also fall short as a normative vision”. In practice they tend to “either dilute constitutionalism’s origins and appeal to ‘fit’ the postnational space; or … create tensions with the radical diversity of postnational society”. Instead Krisch develops a pluralist alternative: a model in which no single, overarching constitution rules the globe. Rather, law beyond the state consists of multiple *suborders* (domestic, regional, international) that interact *heterarchically* – i.e. without a clear hierarchy – via a “multiplicity of conflict rules”. This pluralist vision, Krisch contends, better fits the “fragmented structure of the European and global legal orders”. Crucially, he also argues that pluralism can be normatively justified by safeguarding the public autonomy of individuals across overlapping jurisdictions. Although pluralism raises concerns (e.g. stability, power concentration, rule-of-law deficits), Krisch uses theory and case studies to show these can be managed. His empirical research – on Europe’s human rights regime, UN sanctions law, and global risk regulation – suggests pluralist structures are ubiquitous and offer some advantages over rigid constitutional schemes. In summary, Krisch claims cautious optimism: pluralist governance can achieve stable, fair cooperation without a single world constitution.

Theoretical Framework: Pluralism vs. Global Constitutionalism

Krisch situates his work in debates over *legal pluralism* and *global constitutionalism*. The prevailing (constitutional) view seeks to impose hierarchical legal order on international affairs (e.g. “world constitutions”, global separation of powers). Instead, Krisch draws on pluralist theory (cf. Tamanaha, Michaels) to describe a heterarchical law-of-the-world. In his words, pluralism “does not rely on an overarching legal framework but is characterised by the heterarchical interaction of various suborders of different levels”. In other words, international law, regional law, and national law coexist as partially autonomous orders linked through numerous (and often open-ended) conflict-of-law mechanisms. As one analyst notes, “what we see emerging is … a pluralist order in which the different parts (of domestic, regional, and global origin) are not linked by overarching legal rules, but interact in a largely political fashion”. Krisch’s framework emphasizes multiple centers of authority (e.g. EU institutions, UN agencies, national courts) negotiating power.

By contrast, *global constitutionalism* (propounded by scholars like Dunoff/Trachtman, Weiler, Habermas, etc.) envisions a top-down structure where fundamental rights and democratic norms are imposed universally. Krisch critiques this: extensions of domestic constitutional concepts beyond the state “fail to account for the reality of law beyond the state” and “fall short of a normative vision”. He argues constitutionalism either must be so diluted as to lose meaning or else clashes fatally with the pluralistic diversity of actors and

societies. In place of this, his pluralist model posits that authority disputes are resolved through negotiated rules rather than a single supreme charter. In practice, pluralism can better accommodate competing claims without insisting on a uniform constitution. (For example, in global risk governance, Krisch shows that pluralist dispute-settlement – keeping diverse regulatory positions open – can act as a "safety valve" that avoids the frictions a rigid hierarchy might create.)

Chapter-by-Chapter Analysis

Krisch's book has a clear, three-part structure:

- Chapter 1: *Postnational Legal Reality.* Krisch opens by mapping the complex, multi-layered postnational order – the "reality of post-national law". Here he documents the institutional density and jurisdictional overlaps emerging in areas like trade, security, environment and human rights, setting the stage for why new paradigms are needed. He highlights, for example, how states, international organizations, regional blocs (like the EU), and private actors now share governance in many domains, making the Westphalian model obsolete. This empirical portrait motivates seeking a theory beyond state-centric constitutionalism.
- Chapter 2: *The Constitutional Vision.* This chapter reviews global constitutionalism as a normative and conceptual project. Krisch shows how theorists (often borrowing from domestic constitutionalism) propose hierarchical solutions – e.g. world constitutions, global bills of rights, or federalization of governance. He argues these visions assume a single, unitary legal order, like domestic constitutionalism scaled up. Key here is the critical claim (summarized by reviewers) that such visions "not only fail to provide a plausible account of the changing shape of postnational law but also fall short as a normative vision". In other words, Chapter 2 identifies constitutionalism's promises (order, rights) and inherent problems (overreach, lack of legitimacy, clash with pluralism).
- Chapter 3: *The Pluralist Vision.* Krisch then articulates his alternative model. He defines pluralism as the condition where authority is dispersed. In his words, pluralism involves the "heterarchical interaction of various suborders of different levels". He explains how conflict-of-law rules, political bargaining, and open-ended norms regulate overlaps. Importantly, he argues this model isn't just descriptive but can be normatively defended: for example, it may better secure individuals' *public autonomy* (by allowing them to choose among legal forums). Chapter 3 also addresses initial objections: Krisch suggests that although pluralism lacks a supreme court or global legislature, it can still support basic rule-of-law requirements through mutual checks.
- Chapter 4: *The European Human Rights Regime (Case Study).* Part Two turns to empirical cases. Chapter 4 examines Europe's multilayered human rights system. Krisch analyzes how instruments like the EU Charter of Fundamental Rights, the European Convention on Human Rights, and national constitutions intersect. He shows examples of jurisdictional overlap: for instance, a citizen's rights claims might be heard in domestic constitutional courts, the European Court of Human Rights (ECtHR), or the EU Court of Justice (CJEU). The chapter illustrates pluralism: no single court has total supremacy, but multiple forums check each other. (The Google Books overview notes "the European human rights regime" as one example.) Krisch likely discusses landmark cases (e.g. how the CJEU and ECtHR have interacted on fundamental rights) to show the "competing (and often equally legitimate) claims for control" in Europe.

- Chapter 5: *UN Sanctions and Human Rights (Case Study).* Here Krisch studies how United Nations sanctions (e.g. blacklist regimes) have clashed with human rights norms, especially as enforced in Europe. The classic example is the *Kadi* litigation: individuals listed by the UN Security Council sought protection of their fundamental rights in EU courts. Krisch uses this case to show pluralism: the EU judiciary asserted some autonomy from the UN regime, effectively creating a hybrid ordering. No single authority had absolute primacy; instead, courts negotiated rights protection through interaction with international law. This conflict exemplifies how global sanctions and regional rights law interlock without a unitary constitution.
- Chapter 6: *Global Risk Regulation (Case Study).* This chapter draws on Krisch's work on international trade and environmental disputes, notably the GMO (genetically modified organisms) controversy. He traces the "regime complex" of WTO trade law, the UN Convention on Biological Diversity (the Cartagena Protocol), and the EU's own regulations on GMOs. The GMO trade dispute (between the US and EU) involved parallel institutions: the WTO adjudicated trade complaints, while the EU also negotiated within the UN environmental forum. Krisch shows that outcomes hinged on interaction rather than supreme rules. His analysis (from an earlier paper) finds that the pluralist arrangement did *not* spiral into chaos. Instead, despite high politicization, states found partial cooperation: e.g. some EU bans were upheld, and further rules were developed. Significantly, he argues this case reveals a "safety valve" effect: by leaving scientific and ethical issues partly unresolved, pluralism diffused confrontation that a rigid hierarchy might have intensified. Thus Chapter 6 concludes that in global risk governance, pluralist structures allow flexibility and incremental progress that constitutional ordering might block.
- Chapter 7: *Stability and Power.* Part Three tackles the major challenges to pluralism. In Chapter 7 Krisch examines concerns about stability and power. Critics worry that without a single rulebook, international order could be unstable or dominated by the powerful. Krisch argues against these fears by showing how conflict rules and institutions can maintain order. For example, he points to informal coordination among courts and the gradual emergence of "auto-corrective" mechanisms (as others have noted in EU law) that contain disputes. He suggests that pluralist orders do not necessarily mean anarchy; rather, stability is achieved through decentralized checks and balances. (As one reviewer paraphrases, Krisch "puts to rest concerns … about stability [and] power".)
- Chapter 8: *Democracy and Rule of Law.* This chapter responds to critiques that pluralism undermines democracy and the rule of law. Krisch acknowledges that no global demos elects a world government, so pluralism must find democratic legitimacy in other ways (e.g. through transnational networks of representative bodies, global civil society, or market mechanisms). He shows how elements of democratic decision-making and the rule of law can still emerge: for instance, through public participation in UN processes or through the way international bureaucracies follow legal procedures. Ultimately Krisch argues that pluralism can even *foster* democratic governance beyond the state, by allowing multiple sites of law-making and rights-enforcement. As Besson summarizes, he claims pluralism "helps provide some of the basic elements of democratic governance beyond the state".
- Conclusion (Chapter 9): Krisch wraps up by summarizing these findings. He reiterates that while pluralist orders have problems, his study "reveals how prevalent pluralist structures are in postnational law and what advantages they possess over constitutionalist models". He offers "cautious optimism" that stable, fair cooperation is possible in pluralist settings. The conclusion also outlines open questions (e.g. how

crises might be handled) and stresses that the book aims to clarify challenges, not to offer a final blueprint for world order.

Context in Debates on Constitutionalism and Pluralism

Krisch's book engages several strands of scholarship. It is a foundational text in the legal pluralism literature, synthesizing strands from sociology, comparative law and international relations (as Besson notes, it is a "tour de force" survey of legal pluralism scholarship). It also speaks to the "fragmentation" debate in international law (e.g. ILC's work on fragmentation) by showing how different legal regimes can coexist. Importantly, it positions itself against global constitutionalist theories. Such theories have gained prominence with calls for cosmopolitan democracy and transnational constitutions. Krisch responds by highlighting their limits – empirically and normatively – and instead aligning with pluralist thinkers like H.L.A. Hart or Ernst-Walter Böckenförde who accept multiple coexisting authorities.

In doing so, *Beyond Constitutionalism* contributes to the concept of constitutional pluralism (the idea that multiple constitutional sources coexist without a single hierarchy). However, reviewers like Stone Sweet warn that Krisch's strict "constitutional vs. pluralist" binary may be too sharp. Indeed, Stone Sweet argues that European law already exhibits "constitutional pluralism" within itself, blurring the dichotomy. Nevertheless, Krisch's clear articulation of pluralism has influenced scholars who study multi-level governance (e.g. in the EU) and global administrative law. His thesis – that global law is heterarchical rather than unified – has become a reference point in debates over world order.

Relevance and Impact

Beyond Constitutionalism has had significant impact in legal and political theory. It won the 2012 ASIL Certificate of Merit for "Preeminent Contribution to Creative Scholarship". Leading reviewers proclaim it essential reading. Samantha Besson wrote that it "provides a very complete and detailed mapping of the literature" and will become "priority reading" and "an inescapable reference" for future scholarship. Alec Stone Sweet likewise deemed it a "major contribution" with "nuanced" analysis and detailed case studies. The book's pluralist framework has been cited in subsequent work on global governance, EU integration, and human rights. It has particularly influenced how scholars think about the *European Union* itself: rather than viewing the EU as a simple constitution-building project, many now see EU law as an instance of constitutional pluralism (a hybrid of EU treaties, national constitutions, and international norms).

Scholarly Critiques and Reception

Academics have vigorously debated Krisch's model. Reviews and symposia have appeared in journals like *I·CON*, *EJIL*, and the *Leiden Journal of International Law*. Critics generally praise the book's ambition and clarity but raise questions. Stone Sweet (International Journal of Constitutional Law) lauded its richness but criticized its rigid dichotomy between constitutionalism and pluralism. De Boer (Leiden J. Int'l L.) similarly examines the "limits of legal pluralism" implied by Krisch's account. Greg Shaffer (EJIL) offers a "transnational take" that explores how Krisch's pluralism plays out in trade law. Notably, Krisch has engaged in published exchanges (e.g. on the Opinio Juris blog and an *I·CON* symposium) addressing reviewers' points.

Overall, the reception has been positive. It is frequently cited and continues to shape debates about postnational law. Its central claim – that pluralism undergirds today's international order – remains influential. As Stone Sweet observed, even critics find it essential reading for understanding legal pluralism in global regimes. In sum, *Beyond Constitutionalism* is widely regarded as a seminal work on global law, significantly impacting legal and political theory discussions of how order is constructed beyond the nation-state.

Sources

Krisch's own arguments are summarized from the book (as cited) and its publisher's description. Scholarly commentary is drawn from reviews and discussions, notably Besson and Stone Sweet, and from Krisch's own related analyses. Reception and critique details come from Krisch's publication list and award citations. (All citations refer to the indicated line ranges of the sources.)

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Neil Walker "The Idea of Constitutional Pluralism" and „Intimations of Global Law"

Summary of Central Arguments

Walker's 2002 article introduced constitutional pluralism as a novel way to understand the EU's multi-layered legal order. He observes that the EU and its Member States now constitute multiple overlapping constitutional "sites" (EU law vs each national constitution), each claiming ultimate authority. Unlike earlier visions of supremacy (EU primacy) or strict hierarchy, Walker argues that no single legal order has undisputed primacy. Instead, a properly "constitutional" EU necessarily tolerates *multiple* claims to authority. This new pluralism means that conflicts between EU law and national constitutions cannot always be resolved by a single overriding rule. As one analysis notes, "overlap becomes endemic" in the post-Westphalian context, raising the question "can you have and acknowledge that overlap and somehow still retain the virtues associated with constitutionalism". In other words, the central thesis is that the EU constitutional order is best seen not as a unitary pyramid but as a complex constellation of coexisting legal orders, whose members must engage in mutual accommodation rather than one obeying the other. Walker sums up this challenge by asking whether the "deep forms of constitutionalism" at national and European levels can truly coexist given their overlap.

Theoretical Framework and Key Concepts

The core concept is *constitutional pluralism* (CP) itself. Walker defines CP (in its original EU context) through three interrelated propositions: (1) the EU legal system consists of multiple

sites of constitutional law (the EU and each Member State), each with its own claim to ultimate authority; (2) there is *no* single meta-legal standard or hierarchy that definitively orders these claims – no one constitution to which all others defer; and (3) accordingly each site must *acknowledge* and accommodate the others as co-equal constitutional authorities, thereby ensuring "the continuing absence of a single dominant authoritative framework". Walker contrasts this with alternative theories (e.g. federalism, monism, or nationalist particularism) that posit a final arbiter; he argues CP should not be seen as a mere variant of those but as an original stance that insists on plurality. He later describes this approach as "awkwardly indispensable" – unfamiliar and incongruous, yet unavoidable. Notably, Walker distinguishes constitutional pluralism from other "legal pluralisms": the term here is applied narrowly to the complex political-constitutional order of the EU, not to any generic non-state legal systems.

Intellectual and Academic Context

Walker's pluralism concept built on earlier work by MacCormick and others on EU constitutional theory. In 2002 debates it entered scholarly dialogue alongside notions like "multilevel constitutionalism," "constitutional identity," and debates over national constitutions versus EU law (e.g. the German *Maastricht* and *Lisbon* decisions). His article catalyzed a series of symposia and critiques. For example, at a 2008 European Journal of Legal Studies forum, Walker and peers (Maduro, Baquero Cruz, Kumm, etc.) debated whether pluralism could preserve constitutional virtues despite overlapping jurisdictions. This reflects the intellectual context of post-nationalism: as one commentator explains, "mutual exclusivity of peoples, territories and jurisdictions" no longer holds, making overlap "endemic" and challenging traditional constitutionalism. Walker framed constitutional pluralism as a response to this new reality.

Contributions to Legal and Constitutional Theory

Walker's article made several key contributions. Analytically, it offered a framework for describing the EU's "constitutional complex" without forcing a binary choice between supremacy and sovereignty. Normatively, it argued that CP could be a *constitutionally optimal* arrangement by accommodating diversity. Walker's work shifted the focus from absolute legal hierarchy to constitutional dialogue – recognizing that EU law and national constitutions each rely on one another for legitimacy and must exercise mutual restraint. Conceptually, the article coined "constitutional pluralism" as a term and clarified its meaning (e.g. in 2002 he warned that his view should be distinguished from all other forms of pluralism). The piece helped inaugurate a literature on *post-national constitutionalism* and influenced how scholars think about multi-level legal orders. Its analytical model also implicitly suggested that the EU's development might lack a single "final arbiter," a point that provoked much discussion about legal certainty and ultimate authority.

Examples or Case Studies

While largely theoretical, Walker's argument draws on EU case law to illustrate pluralism in action. He notes that the European Court of Justice (ECJ) has long asserted the sui generis authority of EU law (direct effect, supremacy doctrines), whereas some national courts reserve ultimate competence (e.g. by protecting constitutional identity or fundamental rights). For instance, he refers to the German Constitutional Court's responses to EU jurisprudence (as in the *Maastricht* and later *Gauweiler* cases). In effect, the "standard version of CP" in

2002 corresponded to a brush-stroke picture: ECJ claims EU primacy except where, under ex post safeguards, national courts may invoke constitutional identity to limit EU measures. These dynamics (ECJ supremacy vs national identity clauses) serve as implicit illustrations of the pluralist phenomenon. Walker also considered the failed attempt to "thicken" Europe's constitution (the 2004 EU Constitutional Treaty) as evidence of a tension between thin and thick constitutional visions, underscoring the unsettled nature of EU constitutionalism.

Reception and Critiques by Other Scholars

Walker's plurality thesis was *widely discussed*. He and MacCormick's pluralism framework saw "immense success" in explaining EU/national court relations, but it also attracted skepticism. Critics pointed out that constitutional pluralism offered descriptive insight but few normative rules for resolving clashes. For example, Gráinne de Búrca and others noted the approach's "lack of normative prescriptions and legal certainty" on who is final arbiter. Nicola Lacey and Martin Loughlin (in a 2014 Global Constitutionalism article titled "An Oxymoron?") challenged whether the concept coherently combines two opposed ideas. Peers like Miguel Poiares Maduro argued that pluralism requires a "thicker" normative core – mutual engagement rules – otherwise it risks collapse: if no conflict occurs CP seems irrelevant, but if conflict occurs CP may be dismissed for disobeying EU law. Some have even termed it a "false promise" when it fails to guide courts or secure constitutional order. Others, however, embraced it and worked out its implications: e.g. debates on an "auto-correct" mechanism in EU law have sought to operationalize pluralism as flexible conflict management. In short, scholars have both extended Walker's ideas (e.g. by elaborating practical dialogue mechanisms) and critiqued its vagueness. This rich engagement demonstrates how the article sparked sustained debate in EU constitutional studies.

Influence and Legacy

Walker's 2002 article has had lasting impact on constitutional theory. It has been *heavily cited* and helped legitimize constitutional pluralism as a key paradigm in EU legal scholarship. The phrase "constitutional pluralism" became standard in discussions of multi-level sovereignty and was applied beyond the EU (e.g. to global or comparative contexts, as Walker himself later does). In the EU arena it encouraged thinking of judicial authority as inherently pluralistic, influencing case-law analysis and doctrinal development (e.g. the notion of dialogue between courts). The concept also bridged EU law with broader themes in postnational constitutionalism, inspiring chapters in books and special issues on pluralism (including a 2008 EUI symposium and a 2014 debate in *Global Constitutionalism*). As one scholar observed, Walker and MacCormick's pluralism succeeded in explaining the EU context; while some dismissed it, many have integrated it into the fabric of constitutional discourse. Overall, "The Idea of Constitutional Pluralism" is regarded as a seminal contribution that reframed how jurists and political theorists conceptualize authority in a multi-layered constitutional order.

Intimations of Global Law (Cambridge University Press 2015)

Summary of Central Arguments

Intimations of Global Law explores what Walker calls a new "strain" of global law – tendencies in international legal order that move beyond state-centric (Westphalian) bounds. The book's core thesis is that in the 21st century we see legal developments that imply a planetary reach of law: for example, international norms claiming global jurisdiction without explicit state consent, emerging threads of *global constitutional and administrative law*, revivals of ideas like *ius gentium* or the *global rule of law*, and the pursuit of global public goods (e.g. human rights, environmental protection) that require trans-state governance. Walker argues that these developments form a "diverse, unsettled and sometimes conflicted" category – global law – which reshapes how law works and challenges traditional ideas of authority. The book does not try to reduce all these phenomena to one definition; instead it maps them, revealing their complexity and offering a conceptual framework ("species" and "visions") to understand global law's multiple forms.

Theoretical Framework and Key Concepts

Walker introduces several key concepts. He defines global law as a "practical endorsement" of the idea that certain norms have universal or global validity. In practice, any invocation of global law comes with "double normativity": it always remains connected to particular state laws or institutions while also claiming general authority. Crucially, the book posits two overarching visions of global law: a *convergence-promoting* vision (emphasizing hierarchy and unity) and a *divergence-accommodating* vision (emphasizing heterarchy and plurality). Under these are seven "species" or approaches to global law (chapters 3–4):

- Convergence-promoting species (aiming at unified norms) include structural (institution-based global order, e.g. the United Nations), formal (universal legal forms like *jus cogens*), and abstract-normative (transnational ideals like human rights) approaches.
- Divergence-accommodating species (managing pluralism) include laterally coordinate (resolving conflicts between coexisting regimes, e.g. conflicts-of-laws), functionally specific (sector-based regimes, e.g. global climate change law), and new hybrids (novel legal constructions, e.g. Christine Bell's "law of peace" for post-conflict governance).
- A seventh historical-discursive species (chapter 5) involves transferring or adapting domestic concepts globally (e.g. projecting constitutional or administrative law ideas onto the international plane).

Walker shows these are not mutually exclusive; they are "partial visions" of the global legal phenomenon. He also identifies key qualities of global law – its "intimated" character: it is largely projected (forward-looking), oblique, fluid and inexorable. These concepts together form Walker's framework for analyzing the global legal field.

Intellectual and Academic Context

Walker's book enters a growing literature on globalization's legal dimensions. It builds on and critiques prior scholarship on transnational law, global constitutionalism, and legal pluralism. At the time of writing, debates raged over whether law "beyond the state" is converging or fragmenting, and what terms best describe it (e.g. "non-state" law, "global administrative law," etc.). Walker frames his project as responding to deficiencies in the literature: most previous work was either purely analytic (dissecting concepts) or static (cataloguing rules), whereas he seeks a *reconceptualization* that captures dynamics and diversity. His "seven species" classification is partly a response to this lack of dynamic synthesis. Intellectually, the book resonates with scholars like Robert Keohane, Martti Koskenniemi, and others concerned with norm development in a global context, but it stakes out its own path by insisting on a pluralistic and historical perspective. The book also ties into Walker's own earlier interest in pluralism (linking EU-style pluralism to globalization) and to current concerns about the legitimacy and accountability of global governance.

Contributions to Global Legal Theory

Intimations of Global Law makes several important contributions. First, it offers a conceptual map of global law's "state of the art," categorizing disparate phenomena into two visions and seven species. This taxonomy provides scholars a vocabulary to discuss cross-border legal orders (e.g. classifying something as a "functionally specific" global law). Second, by emphasizing pluralism at the global level, Walker extends constitutional pluralism beyond the EU; he shows that global legalism is similarly irreducible to a unitary system and is characterized by structural tensions. Third, the book problematizes the notion of global law: Walker warns that it is "diverse, unsettled, and sometimes conflicted", challenging simpler narratives of globalization. Finally, he links global law to ethical and normative questions: by questioning the "rudiments of legal authority", Walker invites theorists to consider how legitimacy and normativity function in a world of multiple regulators. In sum, the work recasts global law as an object of analysis in its own right and suggests principles (e.g. complementarity of approaches) for engaging its complexity.

Examples and Case Studies

Walker illustrates his ideas with concrete instances. For convergence-promoting species, he cites bodies like the UN (structural) or norms like jus cogens (formal) and human rights regimes (abstract-normative). For divergence-accommodating species, examples include the conflict-of-laws framework (laterally coordinate), the UNFCCC/climate regime (functionally specific), and novel constructs like Bell's Law of Peace in post-war settings (new hybrid). The "historical-discursive" category points to evolving concepts of global constitutionalism or global administrative law as transplanted ideas. Walker also discusses specific legal episodes to show clashes: for instance, the Kadi litigation (ECJ upholding UN sanctions) exemplifies tension between convergence and divergence. He analyzes such cases to show how different species intersect or conflict, though no single resolution is guaranteed. These examples ground the theory: they show what it means in practice that, for example, climate change law doesn't neatly fit under traditional inter-state law, and global norms sometimes derive their force from moral authority (e.g. rights) rather than constitutions.

Reception and Critiques by Other Scholars

Critical commentary on *Intimations* has been extensive. Psygkas's review praises it as an "impressively broad, analytically robust, and densely-argued" work that is a "necessary

resource" for understanding global law. He highlights Walker's successful introduction of the species/visions framework. Others have welcomed its pluralistic perspective. However, some critics question whether "global law" as conceived is too nebulous. Richard Collins, in the *Oxford Journal of Legal Studies*, acknowledges Walker's useful mapping but contends that his attempt to synthesize these species into a single theory is "far less convincing" – global law risks being so "open," "intimated," and "adjectival" that it becomes "slippery and malleable". Collins worries the concept lacks substance to "guide law's direction" or resolve disputes. In general, the reception notes the book's originality but also the challenge it poses: many scholars recognize the value of pluralizing global law, even if they differ on how coherent that notion is.

Influence and Legacy

Intimations has influenced global legal scholarship by providing new conceptual tools and stimulating further debate. Its species framework has been taken up in discussions of transnational law, global governance, and international legal theory. It has been cited in analyses of diverse issues (environmental law, human rights, regulatory integration, etc.) as attested by numerous scholarly references. As one reviewer notes, Walker asserts that "global law is here to stay," and indeed the book has become a touchstone for thinking about law beyond borders. By expanding the pluralist approach from the EU to the international plane, Walker's work encourages scholars to see constitutional dimensions in global institutions and norms. It has inspired explorations of how "global law" interacts with democracy, legitimacy, and the rule of law internationally. In sum, *Intimations of Global Law* has carved out a place for the term "global law" in academic discourse and challenged researchers to grapple with legal authority in an era of complex interdependence.

Sources

The above analysis draws on Walker's texts and expert commentary. For *Constitutional Pluralism*, see Walker's own follow-up work and symposia discussions, as well as secondary analyses. For *Intimations of Global Law*, we rely on Walker's book summary and reviews by Akis Psygkas and Richard Collins.

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Please describe and analyze the works of Martti Koskenniemi *"Constitutionalism as Mindset: Reflections on Kantian Themes."* 8 Theor. Inq. L. 9 (2007) *in detail.*

Martti Koskenniemi “Constitutionalism as Mindset: Reflections on Kantian Themes”

Introduction

Martti Koskenniemi’s article “Constitutionalism as Mindset: Reflections on Kantian Themes” (Theoretical Inquiries in Law, 2007) examines the contemporary turn to “global constitutionalism” in international law through a critical, Kantian lens. Written against the backdrop of post-Cold War globalization, the piece responds to international lawyers’ anxieties about fragmentation of law, the deformalization of legal norms, and the resurgence of great-power hegemony (what he terms “empire”). In this context, many international lawyers have adopted a constitutional vocabulary – invoking concepts like a “global constitution” or hierarchy of norms, often with references to Immanuel Kant – as a way to *reimagine* international law and avoid its marginalization in global governance. Koskenniemi’s central thesis is that while one can always *view* world order in constitutional terms, doing so does not automatically yield determinate solutions to international problems. Instead of treating constitutionalism as a fixed legal architecture or formal blueprint, he argues it is “best seen as a mindset – a tradition and a sensibility about how to act in a political world”. In other words, constitutionalism is portrayed as an ethos or attitude guiding how legal actors approach governance, rather than a set of codified rules. Koskenniemi further contends that a proper understanding of Kant’s political writings supports this view: contrary to the common assumption that Kant prescribed a concrete global constitution or world state, his philosophy can be read as emphasizing moral orientation and judgment. Thus, meaningful change in international law might require not only new treaties or institutions, but a “professional and perhaps spiritual regeneration” – a transformation in the mindset of international lawyers and officials.

This report provides a structured analysis of Koskenniemi’s article. It first breaks down the main arguments he advances, then explains how he engages with Kantian philosophical themes throughout his discussion. Next, it examines what Koskenniemi means by treating constitutionalism as a *legal and political mindset*, and how this contrasts with other views of global constitutionalism. The report then explores the implications of his arguments for international law and the project of global constitutionalism, highlighting how adopting a “constitutional mindset” might address contemporary challenges. Finally, it incorporates critiques and commentaries from other scholars, situating Koskenniemi’s contribution in the wider debate on international constitutionalism. Throughout, emphasis is placed on clarity and academic rigor, with citations to Koskenniemi’s text and relevant scholarly discussions.

Main Arguments of the Article

Koskenniemi’s article unfolds as a critical examination of two prevailing responses to globalization in international legal thought: (1) the “managerial” approach, which treats international law in pragmatic, technocratic terms, and (2) the “constitutional” approach,

which uses the language of constitutionalism to frame global governance. He observes that the fluid dynamics of globalization – including the proliferation of specialized regulatory regimes (fragmentation), the softening or informalization of legal norms (deformalization), and the emergence of hegemonic power structures ("empire") – have undermined traditional state-centric rules and institutions. In reaction, some scholars and practitioners have shifted toward a *managerial mindset*, seeking to make international law more "efficient" or policy-oriented. This managerial vision eschews classical legal formalism in favor of treating law as a flexible tool of global governance. However, Koskenniemi finds such an approach "intellectually shallow and politically objectionable". Stripping international law of its normative character and reducing it to technical management risks instrumentalizing law in service of dominant interests. On the other hand, a growing number of international lawyers have gravitated towards constitutionalism as an alternative framework, hoping to counter fragmentation and power politics by asserting overarching legal principles (like *jus cogens* or human rights) and hierarchical order reminiscent of a constitution. This constitutionalist turn often invokes Kant as an inspiration, given Kant's Enlightenment vision of a lawful world order.

Koskenniemi's stance is both critical and nuanced. He argues that merely superimposing a constitutional *vocabulary* onto international affairs – speaking of a "world constitution" or a global rule-of-law hierarchy – does not automatically resolve the indeterminacy and conflicts that plague international relations. International problems are not solved simply by *naming* them constitutional; the language itself "does not provide determinate answers". This reflects a broader theme in Koskenniemi's work (notably his earlier book *From Apology to Utopia*): legal concepts are inherently indeterminate and require interpretation and judgment. In the article, he emphasizes that rules and institutional designs never dictate their own application – echoing Kant's observation in the *Critique of Pure Reason* that applying any rule requires judgment external to the rule itself. No matter how elaborate a legal framework is, it cannot mechanicaly decide hard cases or ensure compliance; much depends on the mindset and decisions of those who operate the system.

Accordingly, the article posits that constitutionalism should be understood as an orientation or mindset rather than a concrete institutional blueprint. By *mindset*, Koskenniemi means a habitual way of thinking and a commitment to certain values (rooted in the constitutional tradition) when confronting international issues. He describes constitutionalism as *"a tradition and a sensibility about how to act in a political world"*. This tradition draws from the legacy of liberal political thought and the rule of law: it carries an expectation that power should be constrained by legal principle and oriented towards the common good of a political community. Importantly, viewing constitutionalism as a sensibility shifts focus from blueprint to praxis – from designing global institutions on paper to cultivating the practical judgment and ethos of actors who would implement international norms.

To illustrate this point, Koskenniemi contrasts the constitutionalist mindset with its foil, the managerial mindset. The *managerial* approach is characterized by a technocratic, ends-oriented logic. It replaces the language of law and rights with a jargon of "guidelines, standards, and best practices" dictated by experts and agencies. This mindset prides itself on efficient problem-solving, but in Koskenniemi's view it sets up an "ersatz normativity" – a pseudo-ethical framework that treats legal norms as mere instruments to achieve predefined objectives. For example, the managerial discourse often speaks of "legitimate governance" or "effective regulation," framing questions of justice or rights as technical policy trade-offs. Koskenniemi argues that this approach ends up being just as formalistic as the old legal

formalism it replaced, if not more so. It assumes *clear, unitary goals* (such as maximizing "security" or "free trade") and imagines that rules can be applied with "absolute determinacy" to achieve those goals. In fact, he calls this faith in fully determinate rules a "caricature of formalism". It ignores the reality that legal norms often conflict and require balancing, and that social actors have diverse interests. Moreover, when managerial thinking dominates, it introduces a structural bias: experts will, perhaps unconsciously, always tilt decisions in favor of the dominant values of their field (trade experts privileging free trade, environmental experts privileging precaution, etc.). This undermines the neutrality of law. Ultimately, a thoroughly managerial regime descends into *"rule by experts"*, sidelining democratic contestation and moral reflection.

In light of these flaws, Koskenniemi does not advocate a simple return to classical legal formalism either. He acknowledges that 19th–20th century formalism – the strict adherence to diplomatic forms and state consent – had its own shortcomings, such as rigidity and inability to adapt to change. Instead, he uses the constitutionalist mindset as a way to address "mistakes made by legal formalism and its current substitute, the managerial mindset" alike. In other words, his approach seeks a path between *naïve formalism* and *instrumental managerialism*. A constitutional sensibility imbued with critical judgment can recognize the indeterminacy in law (avoiding rigid formalism) while still insisting that law serve as a principled framework for freedom and justice (resisting pure instrumentalism). The rule of law, in the Kantian image that Koskenniemi invokes, is not a set of static commands but a way that officials and lawyers *approach the task of judgment* – navigating "the narrow space" between positivist rigidity and arbitrary policy expediency. This requires practical wisdom and ethical commitment on the part of the law-applier.

In sum, Koskenniemi's main arguments can be distilled as follows:

- Global constitutionalism as response to fragmentation: International lawyers have turned to constitutional idioms (citing Kant and liberal constitutional theory) to counter the fragmentation and power-politics of globalization. However, this turn, by itself, does not produce clear answers or enforceable solutions.
- Constitutionalism as *mindset*, not blueprint: We should understand constitutionalism chiefly as an *intellectual and moral orientation* – a tradition of thinking about how power ought to be organized and constrained – rather than as a concrete institutional design. Constitutionalism lives in the commitments and judgment of practitioners, not just in texts.
- Critique of managerialism: The prevalent managerial mindset, which treats law as a toolkit for governance, departs from the rule-of-law tradition and carries hidden biases and democratic deficits. It reduces individuals to targets of regulation or "cogs" in a machine, undermining human freedom and agency (a point elaborated through Kantian ethics, as discussed below).
- Need for professional ethos: To genuinely address global problems, international lawyers must undergo a change in ethos – a "professional and spiritual regeneration" that revives the moral purpose of law. Legal reforms or new institutions (while helpful) will not succeed without a corresponding shift in how lawyers and officials conceive of their role and responsibility in the international community.

Engagement with Kantian Themes

A distinctive feature of Koskenniemi's article is its rich engagement with the philosophy of Immanuel Kant. The subtitle "Reflections on Kantian Themes" is apt: throughout the piece, Koskenniemi draws on Kant's legal and moral philosophy to both critique contemporary trends and to ground his vision of constitutionalism-as-mindset. He challenges superficial invocations of Kant – for example, merely citing Kant's name to bolster the idea of a world federation or global rule of law – and instead delves deeper into Kantian concepts that illuminate the role of judgment, autonomy, and moral progress in law.

One major Kantian theme in the article is the idea that rules by themselves are indeterminate and require judgment for their application. Koskenniemi opens with Kant's observation from the *Critique of Pure Reason* (1781) that *"rules do not spell out the conditions of their own application"*. Kant noted that no matter how precise a rule is, one must exercise practical judgment (what Kant famously called *"mother-wit"*) to apply it to concrete circumstances. This insight underpins Koskenniemi's claim that a constitutional "mindset" is essential: even a perfectly designed legal constitution cannot function just mechanically; it needs jurists who can interpret and apply norms in line with constitutional principles. By citing Kant's *Critique of Pure Reason*, Koskenniemi aligns with the Kantian epistemological "Copernican turn," which emphasizes the active role of the subject (here, the legal decision-maker) in imparting meaning to rules. In legal terms, this means law is not self-executing – the values and judgment of the practitioners determine how effective and just it will be.

Next, Koskenniemi examines Kant's political theory of law and peace. He recounts Kant's argument that leaving the "state of nature" and entering a juridical condition (a condition of *Recht*, or legal right) is a *moral obligation* for both individuals and states. In Kant's *Metaphysics of Morals* (1797), it is asserted that the civil condition is required to reconcile each person's freedom with the freedom of others under universal laws. By extension, Kant held that states, too, have an obligation to form a lawful federation to escape the international state of nature (which is characterized by the constant threat of war). Koskenniemi highlights that Kant consistently advocated an "international condition of public right" – some form of legal order among nations – as a *moral imperative*, even if Kant's writings varied on whether this should be a loose federation or a stronger union. This Kantian injunction underlies the modern impulse toward global constitutionalism: the desire to subject power politics to legal constraints and to realize a cosmopolitan order of peace.

However, Koskenniemi warns against a simplistic reading of Kant as merely offering a blueprint for global government. Contrary to a widespread assumption, Kant was not providing a detailed constitutional architecture for the world; rather, Koskenniemi suggests that Kant's writings can be read as endorsing a mindset or attitude about politics and law. For instance, Kant's essay *"Perpetual Peace"* proposed preliminary articles for peace and a federation of free republics – but Kant was careful to oppose a world state that might become despotic. What he sought was a framework where states, through their own moral development and enlightenment, would gradually commit to lawful relations. In this sense, Kant's emphasis is on the *ethical commitment* to lawful conduct (a matter of mindset) as much as on institutional form. Koskenniemi echoes this by arguing that Kant's "political writings may also be read" as focusing on the *tradition and sensibility* behind constitutional order. Indeed, if we interpret Kant this way, global constitutionalism becomes less about erecting a single world constitution and more about fostering a cosmopolitan ethic among statesmen and lawyers.

Another Kantian theme Koskenniemi engages with is the concept of autonomy and freedom under law. Drawing on Kant's moral philosophy, he contrasts the ideal of law as a vehicle for freedom with the managerialist view of law as a tool for regulating behavior. Kant famously defined freedom not as doing whatever one pleases, but as obedience to self-given moral law (*autonomy*). Koskenniemi invokes this idea to criticize how the managerial mindset "renders human beings as unfree animals" driven only by impulses or utilitarian calculations. If individuals (or states) act purely out of strategic interest and pursuit of pleasure or utility, then "there is really no 'I' acting at all, only a replaceable cog in the functional machine", he observes. This is a direct application of Kant's view: a person governed solely by natural inclinations or external incentives is heteronomous (other-ruled) and lacks true agency. The managerial paradigm in international governance, by focusing on outcome optimization (e.g. maximize security or wealth) and treating norms as contingent means, risks depriving global actors of their sense of moral agency. By contrast, a Kantian constitutional perspective treats law as an expression of our collective autonomy – a realm where we bind ourselves to higher principles in the name of freedom. Koskenniemi notes that for Kant (and similarly for jurist Hans Kelsen, whom he cites in this context), the move from a "realm of nature" to a "realm of freedom" is achieved *through law*, but crucially this transition depends not on coercive force alone but on an internalization of legal-moral principles. It is a change in mindset from seeing law as external imposition to seeing law as self-imposed duty.

Koskenniemi also references Kant's philosophy of history. Kant held an "optimistic trajectory" in his 1784 essay *Idea for a Universal History*, suggesting that history shows a progression (albeit through conflict and struggle) toward greater legality and freedom as humanity matures. International law, since its inception, has often been imbued with this Enlightenment optimism – the 19th-century jurists portrayed their discipline as a civilizing force guiding nations towards peace and progress. Koskenniemi recognizes this heritage: international law has "been embedded" in Kant's optimistic narrative of progress. However, by the late 20th century, that optimism was faltering under harsh realities (world wars, Cold War, new power asymmetries). Part of Koskenniemi's project is to recover the *critical* Kantian spirit that does not naively assume progress, but still *strives* for it. He cites Kant's Critique of Early Modern Natural Law (Kant's critique of thinkers like Grotius or Pufendorf) to show how Kant opposed reducing law to a mere calculus of advantage. In Kant's view, as Koskenniemi emphasizes, law must carry a *normative vision* – it is tied to the hope of a "kingdom of ends" where rational beings co-legislate universal laws. This gives constitutionalism a teleological aspect (aimed at human freedom and dignity), but not in the crude sense of an inevitable linear progress. Rather, it is an ethical project that each generation of practitioners must take up, conscious of history's lessons.

Finally, an implicit Kantian motif in the article is the call for a "Copernican turn" in legal theory. Just as Kant's Copernican revolution in philosophy shifted the locus of certainty from the objective world to the perceiving subject, Koskenniemi suggests that legal theory should shift from viewing constitutions as external, objective structures to viewing constitutionalism as a quality of the legal subject's mindset. He explicitly uses this analogy: *"Thinking of constitutionalism as a mindset instead of as architecture implies a kind of Copernican turn in legal theory."* The implication is that what ultimately guarantees the rule of law is not the text of a constitution alone, but the interpretive community's commitment to certain values and practices. In support, Koskenniemi invokes the figure of Hans Kelsen, a 20th-century legal theorist influenced by Kant. Kelsen attempted to construct a pure, formal theory of law (and even helped draft national and international constitutional documents), yet *"mere constitutional architectonics, as Kelsen was to experience personally, provides a poor*

guarantee for freedom". This poignant remark alludes to historical experience – Kelsen's own Austrian Constitution did not prevent the rise of authoritarianism in the 1930s, teaching that liberal constitutional forms can be hollowed out if the political culture does not sustain them. Kant, too, was aware that written laws and institutions could be co-opted or undermined unless anchored in a moral-political culture. Thus, the Kantian lesson Koskenniemi draws is that a constitution on paper must be complemented by a constitutional mindset in practice, if the ideal of a free and lawful global order is to be realized.

Constitutionalism as a Legal and Political Mindset

What exactly does Koskenniemi mean by describing constitutionalism as a *"mindset"*? In this section of the analysis, we unpack this notion and contrast it with more conventional understandings of constitutionalism in international law. Traditionally, when scholars speak of "global constitutionalism," they might refer to the emergence of formal hierarchical norms (e.g. the United Nations Charter or jus cogens as a de facto constitution of the international community), or to proposals for new global institutions (such as a World Parliament or a strengthened International Court of Justice). This is a vision of constitutionalism as institutional architecture – emphasizing documents, legal hierarchies, and organizational blueprints akin to a domestic constitution on a global scale. By contrast, Koskenniemi's formulation shifts the focus to the subjective and inter-subjective dimension of constitutionalism: the mindset is about *how we think and act* in the legal-political domain.

He defines constitutionalism as *"a tradition and a sensibility about how to act in a political world"*. Several elements are worth noting in this definition:

- Tradition: Constitutionalism is rooted in a historical tradition – the liberal-democratic rule-of-law tradition emerging from Enlightenment and post-Enlightenment political thought. It carries with it the ideals of limited government, separation of powers, fundamental rights, and accountability. As a tradition, it provides narratives, symbols, and vocabularies (e.g. invoking "checks and balances" or the notion of a higher law) that lawyers draw upon. Koskenniemi acknowledges the power of this constitutionalist vocabulary, noting its "universalizing focus" and moral appeal. The tradition supplies a common language ("one vocabulary") that can be used across different legal systems to articulate shared values. In his view, this is the "virtue of constitutionalism": it invites us to think in terms of universal principles and the common interests of "everyone," not just narrow self-interest. Thus, adopting the mindset means situating oneself within this broad, inclusive narrative of global public law.
- Sensibility: By sensibility, Koskenniemi refers to an ingrained attitude or temperament. A constitutionalist sensibility would include a commitment to reasoned argument, respect for legal procedure, and a principled (rather than purely expedient) approach to solving problems. It suggests a certain *ethical disposition* – for example, a reluctance to resort to might-makes-right or emergency exceptions without justification, and a preference for solutions that uphold human dignity and fairness. One might say it's a *rule-of-law ethos*: believing that even in international affairs, actors should be bound by and answer to law, and that law must embody ethical values like justice and freedom. Koskenniemi contrasts this with the "managerial" sensibility, which is more outcome-driven and often cynical about moral absolutes. For instance, a managerial thinker might say, "If torture of one prevents a terrorist attack, then torture is justified" – treating it as a technical cost-benefit decision. The constitutionalist mindset, with its sensibility, would resist such reasoning and uphold certain non-

negotiable principles (e.g. the absolute prohibition of torture as a matter of human right), thereby preserving the moral core of law. Koskenniemi dramatizes this by criticizing how the managerial outlook accuses principled lawyers of being "unredeemed metaphysicians" when they refuse to bend fundamental norms for the sake of expediency. The constitutional sensibility accepts being 'metaphysical' in the sense of standing on principle – it is willing to invoke morality and universal rights even when they are inconvenient.

- Action in a Political World: The phrase "how to act in a political world" underscores that constitutionalism-as-mindset is about *practice* and *agency*. It asks: how should international lawyers, judges, diplomats, and officials conduct themselves amidst the power struggles, crises, and complexities of global politics? For Koskenniemi, having a constitutionalist mindset means these actors approach problems *politically aware but principled*. They recognize that law and politics are intertwined (he is not naïve; he knows that law can serve power), yet they consciously strive to use law to *discipline and guide* politics rather than simply reflect political expediency. This implies a degree of courage and "spirit" on the part of professionals – hence his call for professional/spiritual renewal. Lawyers with a constitutional mindset would, for example, be more ready to question immoral policies even if they are popular, or to insist on due process even when it's inconvenient for governments. In effect, they serve as the conscience of the international community, keeping the *ideals* of the constitutional tradition alive in day-to-day decision-making.

In practical terms, constitutionalism as mindset could manifest in numerous ways in international affairs. Koskenniemi does not give an exhaustive list, but we can extrapolate: it might mean framing international issues in terms of rights and justice rather than only national interest; it could mean interpreting ambiguous treaties in light of general constitutional principles (like good faith, equity, or human rights); it could mean lawyers from different countries finding common ground in cosmopolitan values even when their governments clash. It certainly means seeing international law not just as *contractual commitments* between states (the old positivist view) but as reflecting a *community of humanity* with shared norms. This mindset is inherently cosmopolitan – Kantian in that it regards every human being (and every state) as part of a potential universal community governed by law.

Notably, Koskenniemi identifies an important tension: the constitutionalist mindset must resist both the allure of false certainty and the paralysis of cynicism. He acknowledges that some proponents of global constitutionalism indulge in a "nostalgic attachment to traditional diplomatic institutions" or a romanticized vision of a world constitution. He labels that tendency hegemonic or idealizing, implying it might mask power imbalances (for example, imposing Western constitutional models globally). He is wary of constitutionalism being used as a *hegemonic project* – a critique he levels at certain "constitutionalist writings" that assume their model is universally applicable without regard for pluralism or regional differences. Indeed, in a later writing he posed the question: how do we know that what some call global constitutionalism isn't in fact "the constitution of a new empire" – a scheme by dominant powers to entrench their preferences as global norms?. This critical reflex is part of the mindset too: a true constitutionalist sensibility must be self-aware and avoid becoming an ideology of domination. It should focus on empowering *everyone* under a universally just framework, not just elevating the rules that the powerful find convenient.

At the same time, Koskenniemi "commits himself to the constitutionalist tradition" in its better sense. He *embraces the "moral rectitude"* of that tradition – meaning he affirms the core ethical ideals (freedom, equality, rule of law) that constitutionalism strives for. In his concluding pages, he speaks of the "virtue of constitutionalism" as lying in its universalizing ethic and its potential to give us a common moral language. Thus, far from rejecting global constitutionalism, he is refining it: urging that it be understood as a moral-political project that lives through the convictions and practices of individuals, rather than a technical legal schema imposed from above.

To capture the essence: *constitutionalism as mindset* is about internalizing the values of constitutional governance in the global arena. It suggests that if enough actors think and act in constitutionalist terms, the international system will gradually exhibit constitutional characteristics (e.g. rule-governed behavior, respect for fundamental norms, principled constraint of power). Conversely, without that mindset, even formal constitutional structures (like the UN Charter, or International Courts) can be subverted or remain ineffective. Koskenniemi's approach thus places a certain faith in professional ethics and collective political consciousness as the engine of constitutionalization, rather than in formal amendments or new supranational institutions. It's a call for an intellectual and ethical shift—analogous to an enlightenment of the practitioners of international law.

Implications for International Law and Global Constitutionalism

Koskenniemi's arguments carry significant implications for how we understand international law's evolution and the prospects of global constitutionalism. By reinterpreting constitutionalism as a mindset, he provides both a critique of existing global constitutionalism theories and a normative vision for the future of the international legal order.

1. Reorienting the Constitutionalism Debate: One immediate implication is a shift in focus from structure to process and culture. Much of the global constitutionalism literature has been preoccupied with questions like: "Is there a hierarchy of norms in international law with the UN Charter (or jus cogens) at the apex? Is the International Court of Justice a sort of constitutional court? Do we need a written World Constitution?" Koskenniemi suggests these questions, while interesting, might be putting the cart before the horse. A "constitutionalized" global order is not achieved simply by declaring certain texts or institutions to have constitutional status; it emerges from how states and international actors behave and justify their actions. In other words, constitutionalization is as much a mindset shift as a legal-structural one. If key actors continue to operate with a narrow, power-based or utilitarian mindset, no amount of formal constitutional rhetoric will create a truly rule-bound international community. Therefore, Koskenniemi's perspective implies that scholars and policymakers should pay more attention to education, professional ethics, and discourse in international law. Fostering a constitutional mindset could involve, for example, training diplomats and international civil servants to think in cosmopolitan terms, encouraging public reason-giving in global institutions, and nurturing transnational networks of jurists devoted to rule-of-law values.

2. The Role of International Lawyers: A notable implication of Koskenniemi's analysis is the elevated role it gives to the community of international lawyers in advancing or hindering global constitutionalism. He explicitly points to international lawyers as key figures in the

origin and evolution of international law's normative structure. Their mindset matters: if they collectively internalize constitutionalist sensibilities, they can push the system towards a more coherent and principled order. Koskenniemi himself, as a former diplomat and member of the International Law Commission, is acutely aware of how legal advisers and scholars shape state practice and doctrines. His call for "professional and spiritual regeneration" suggests that the *ethos* of this community needs revival. Should international lawyers adopt what one commentator called a "*shift of mindset from managerialism to constitutionalism*," the debate about global governance could be redefined "in terms of politics instead of techniques". This means lawyers would openly address the value choices and power dynamics in international law (the *politics*), rather than hiding behind technical jargon or claiming neutral expertise. The implication is a more transparent and democratically accountable international legal process, driven by conscious commitment to universal values.

3. Preserving the Rule of Law and Freedom: Koskenniemi's Kantian outlook underscores that the ultimate stake of international constitutionalism is human freedom – understood not as license, but as self-determination under a common law. The managerial-technocratic trend in global governance, by contrast, might achieve short-term efficiency but at the cost of legitimacy and liberty. The article implies that international law must resist becoming merely an instrument of global administration; it should remain a *project of emancipation*. This has practical implications: for example, in global economic governance, a constitutional mindset would caution against empowering expert bodies (trade panels, financial regulators) to the point where individuals and communities have no say. It would insist on checks and balances at the international level – not necessarily identical to domestic ones, but functionally similar in ensuring that power is accountable and rights are protected. In areas like security (the "war on terror" context), a constitutional mindset would push back against permanent states of emergency or unchecked executive powers by invoking global standards (like human rights law) that must guide even security efforts. Indeed, Koskenniemi's critique of how managerial thinking justifies torture or surveillance in crises implies that a constitutional approach would uphold *rule-of-law even in emergencies*, echoing Kant's insistence that law should never be instrumentalized for expedience.

4. Caution Against Hegemony: Another implication for global constitutionalism as a field is a cautionary note: efforts to constitutionalize international law should be vigilant about *whose values and interests* are being advanced. Koskenniemi's skepticism towards the "hegemonic" potential of constitutionalist discourse serves as a reminder that not all uses of constitutional language are benign. For instance, if powerful states champion a "constitutional" international order that conveniently aligns with their preferences (claiming universality for what is actually parochial), that could entrench inequalities under the guise of legality. Some proponents like Bardo Fassbender or Matthias Kumm have argued that elements of a world constitution are already emerging (e.g., the UN Charter's principles, or a cosmopolitan constitution of human rights). Koskenniemi's intervention implies that we should ask: *Does this purported constitutional order truly reflect a global consensus and protect the weak, or is it an ideological overlay on current power structures?* The historical analogy he invokes – 19th-century international law being complicit in colonial "civilizing missions" (what he elsewhere called *The Gentle Civilizer of Nations*) – warns that lofty constitutional ideals have been used before to justify imperial agendas. Thus, the implication is that any move toward global constitutionalism must be accompanied by critical self-reflection and inclusion of diverse voices (from the Global South, for example) to avoid becoming a new form of empire or "hegemonic international law".

5. Incremental Change vs. Grand Design: Koskenniemi's mindset approach leans toward incremental and bottom-up change in the international legal order, as opposed to radical top-down redesign. If constitutionalism is a mindset, then global constitutionalism will likely materialize gradually as more actors adopt constitutionalist reasoning in various spheres (trade, environment, human rights, etc.), rather than through a single moment of constitutional founding. This perspective might prioritize practical measures: encouraging courts to engage in dialogue (tribunalization and cross-referencing of human rights, for example), fostering general principles of law, and reinforcing *jus cogens* norms, all as part of strengthening a constitutional culture. It de-emphasizes the pursuit of a singular "world constitution" document. The implication for scholars and reformers is to focus on normative coherence and principled practice in existing institutions. For example, instead of drafting a new charter, one might work on constitutionalist interpretation of the UN Charter or WTO rules (reading them in conformity with fundamental rights and purposes). Koskenniemi's own involvement in the International Law Commission's study on *fragmentation of international law* (2006) can be seen in this light: rather than propose a new global code, that project identified tools (like conflict-of-law rules, hierarchies, interpretive techniques) to manage plural regimes within a common legal mindset.

In summary, Koskenniemi's analysis suggests that global constitutionalism is as much an ethical-political project as a legal-institutional one. The implications for international law are that progress will depend on cultivating a cosmopolitan legal consciousness and maintaining the normative integrity of the law against pressures of expediency. If his advice is heeded, the future of global constitutionalism would not be a single world constitution imposed from above, but rather a world polity that gradually thinks and acts constitutionally – i.e., according to rule-of-law values – across various domains. This has the potential to improve international law's legitimacy and effectiveness, but it also faces the challenge that it demands a widespread change in mindset, which is difficult to achieve and measure. Koskenniemi is essentially optimistic that the "universalizing focus" of the constitutionalist tradition can guide us, but he remains aware that in a "fundamentally unfree and unequal world," this ideal remains something to strive for, not to assume as already given.

Scholarly Critiques and Commentary

Koskenniemi's article has sparked considerable discussion among international law scholars, fitting into a broader debate in the 2000s about the merits and perils of "constitutionalizing" international law. Reactions to his thesis – that constitutionalism is a mindset underpinned by Kantian ethics – range from enthusiastic agreement to critical questioning. Here we outline a few representative critiques and commentaries:

- Balancing Skepticism and Commitment: Some commentators note that Koskenniemi occupies an interesting middle-ground in the constitutionalism debate. On one side, writers like Matthias Kumm and Bardo Fassbender are more sanguine about global constitutionalism, arguing that it provides the best explanatory framework for current international law and even that quasi-constitutional structures are already in place (e.g., the UN Charter as a global constitution). On the other side, skeptics like Andreas Paulus question whether describing international law in constitutional terms is anything more than idealistic "re-description" of reality. Paulus warns against excessive idealization but nevertheless believes in pursuing a "constitutional development" of international law by strengthening its principles. Koskenniemi, as observed by a 2012 review of the debate, shares Paulus's skepticism of simply

declaring a global constitution, yet he *"commits himself to the constitutionalist tradition"* in a normative sense. The review notes that while Koskenniemi criticizes strands of global constitutionalist writing for their *"nostalgic attachment to traditional diplomatic institutions"* (essentially, for being conservative or hegemonic), he still embraces the *"moral rectitude"* and *"virtue of constitutionalism"* as guiding ideals. This balanced stance has been commended as a nuanced approach: he is neither abandoning the constitutionalist project nor accepting it uncritically, but reframing it on ethical grounds. Some scholars, like Neil Walker, have resonated with this idea by suggesting that the *language* of constitutionalism can serve as a valuable "normative standpoint" or discourse for assessing global governance. In essence, Koskenniemi provides a philosophical justification for why we should talk about international law in constitutional terms (to foreground universal values), even if we remain aware of the practical and ideological pitfalls.

- Questions of Unity and Consensus: A point of critique has been whether Koskenniemi's Kantian mindset vision inadvertently assumes a greater degree of global moral consensus than actually exists. By invoking Kant's universalism and urging a single "constitutional vocabulary" for humanity, Koskenniemi lays a normative foundation that some find too monolithic. As one critical analysis put it, his reliance on the Kantian tradition "introduces visions of unity ('universalizing focus', one 'vocabulary') and of moral consensus ('everyone') as a normative" baseline. The worry here is that this downplays deep pluralism in values and the reality of political contestation. If constitutionalism requires a shared mindset and shared values, what do we do in a world where fundamental disagreements persist (for example, between liberal and authoritarian regimes, or secular and religious worldviews)? Koskenniemi might respond that constitutionalism as a mindset does *not* presume full agreement on all values, only a commitment to engage through law and reason. Nevertheless, critics caution that any global constitutional ethos could risk imposing a false universalism – potentially marginalizing alternative perspectives or serving as a cover for Western liberal norms. This echoes a long-running tension in international law between universalist aspirations and cultural relativism. Koskenniemi's work is sensitive to imperial tendencies, yet some say even Kantian cosmopolitanism carries Eurocentric baggage. For instance, in discussing a "community of humanity" governed by law, non-Western scholars might ask, whose conception of humanity and whose notion of justice are being universalized?
- Practical Efficacy: Another line of commentary questions how Koskenniemi's mindset transformation would occur and whether it is sufficient. His call for *"professional and spiritual regeneration"* can sound abstract – how, skeptics ask, do we instill this mindset widely? Does it rely on a kind of moral enlightenment among global elites? If so, is that any more likely than achieving formal constitutional agreements? Some critics point out that changing the "mindset" of thousands of diverse actors (politicians, diplomats, business leaders, etc.) is an enormous undertaking. As one might paraphrase their concern: *constitutionalism in practice may need institutional incentives and enforcement, not just good intentions*. For example, without formal checks, why would powerful states suddenly start restraining themselves because of a mindset? Koskenniemi might answer that his approach is complementary to institutional development, not a replacement – institutions will work better if people believe in them. Still, commentators like Howse and Teitel have engaged with Koskenniemi's broader oeuvre to ask whether his critique of legalism and emphasis on mindset leaves us with clear guidance for reform. In a 2015 article, Howse and Teitel interrogate Koskenniemi's skepticism of "progressive history" in international law.

They note that Koskenniemi often critiques the notion that history inevitably moves toward liberal cosmopolitan law (a notion present in Kant and 19th-century jurists). They question, however, if rejecting any teleology of progress might lead to cynicism about *any* improvement in international law. In relation to the 2007 article, one could extend their question: If constitutionalism is just a mindset, how do we measure progress? Koskenniemi counters that progress is measured in the practice of freedom – whenever international actors choose principled legal solutions over brute power or technical expediency, that is progress, even if incremental.

- Historical and Sociological Depth: Some scholars have complimented Koskenniemi's historical awareness while expanding on it. For instance, his discussion of the Weimar Republic's jurisprudence (invoking Carl Schmitt and others) as an example of managerial mindsets competing – one technocratic, one authoritarian populist – adds depth by connecting current global governance debates to past struggles between rule-of-law and executive discretion. Commentators like David Kennedy (whom Koskenniemi cites) also explore how modern governance oscillates between legalism and managerialism. Kennedy's work *"The Mystery of Global Governance"* similarly critiques the technocratic illusions in global institutions. Such scholarly conversations position Koskenniemi's article within a critical international law tradition that includes himself, Kennedy, and others who emphasize the indeterminacy of law and the importance of rhetoric and mindset. This tradition sometimes faces critique from more positivist scholars who prefer concrete solutions to what they see as abstract critiques. But even they have taken note: Bruno Simma and Andreas Paulus, for example, while advocating for an "international community" approach in law, acknowledged Koskenniemi's caution that any claimed international community could mask power and ought to be scrutinized.
- Influence on Subsequent Work: Finally, it's worth noting that Koskenniemi's idea of constitutionalism as mindset has influenced later scholarship, often in creative ways. For example, legal theorist Ming-Sung Kuo drew on Koskenniemi when discussing how domestic constitutional orders handle emergency powers. Kuo argued that instead of purely formal emergency provisions, what's needed is a "constitutional mindset" of judges and officials to safeguard liberty even under crisis conditions. This kind of application shows the versatility of Koskenniemi's concept: it has been used to argue for the importance of *judgment and responsibility* (a Kantian theme) in contexts beyond international law strictly. Such developments in the literature serve as a sort of validation that focusing on mindset/judgment resonates with practical concerns (like the tendency of governments to abuse emergency powers). However, these scholars also grapple with *how to cultivate* that mindset – often returning to educational or discursive recommendations.

In conclusion, scholarly responses to Koskenniemi's "Constitutionalism as Mindset" recognize it as a thought-provoking contribution that bridges legal theory, philosophy, and practice. Many appreciate its call to restore normative vision and ethical commitment in international law. The critiques largely center on feasibility and universality: can a mindset approach truly change the international system, and does it risk imposing a single moral viewpoint? Koskenniemi doesn't provide easy answers to those, but his work succeeds in reframing the debate. By steering the conversation to *how we think about law*, he challenges both utopian and cynical perspectives. The article has thus become a reference point for anyone contending with the promise and pitfalls of global constitutionalism in the 21st century.

Conclusion

Martti Koskenniemi's 2007 article offers a profound re-imagination of what "constitutionalism" means in the realm of international law. Rather than a concrete blueprint for world government or a mere academic metaphor, constitutionalism emerges in Koskenniemi's analysis as a state of mind – a commitment to certain foundational principles and a way of exercising judgment in global affairs. Engaging deeply with Kantian philosophy, he reminds us that law's capacity to civilize power depends ultimately on the moral-political culture that sustains it. Rules and institutions, no matter how elegantly designed, are insufficient if unaccompanied by a cosmopolitan ethos among those who interpret and enforce them. In a time when international law is pulled between fragmentation and technocratic management, Koskenniemi's call is to rediscover the *animating spirit* of constitutionalism: the ideal of a world where might is subordinated to right, and where freedom is realized through law and mutual restraint.

The article's main arguments – critical of managerial pragmatism yet hopeful about a renewed constitutional mindset – have significant implications. They suggest that the evolution of international law will not be secured by a single constitutional moment, but by incremental changes in how international actors conceive of their roles and responsibilities. Koskenniemi's work serves as both a critique (warning against superficial or hegemonic uses of constitutional rhetoric) and a guiding vision (encouraging a return to first principles of justice and reason in global governance). As subsequent scholars have noted, this perspective helps "redefine the debate in terms of politics instead of techniques", injecting much-needed normative inquiry into questions of global order.

In practical terms, *"Constitutionalism as Mindset"* invites international lawyers, judges, and policymakers to reflect on their own biases and commitments. It urges a kind of professional self-examination: Are we approaching international legal problems with only short-term fixes and power calculations, or are we also asking the larger questions of principle and purpose? For Koskenniemi, embracing the constitutionalist mindset means continually asking "what is the law for?" and "who does it serve?", in line with Kantian universalism. It is about keeping alive the "ideal of a free and self-determining humanity" through the practice of international law.

Critics rightly challenge how universal or attainable this mindset is, and whether it might gloss over pluralism or require a heroic change in human behavior. These critiques ensure that the discussion remains honest and grounded. Koskenniemi does not claim that a constitutionalist mindset alone will *solve* global crises – rather, he claims it is a precondition for any solution that aspires to legitimacy and justice. The mindset does not replace the need for better institutions, but it makes those institutions work in the service of humanity rather than in the service of power or bureaucracy.

In the final analysis, Koskenniemi's article stands as a significant academic contribution that bridges theory and practice. It revives Kantian political ethics at the heart of international legal discourse and challenges scholars and practitioners alike to reconceive their approach to global governance. By viewing constitutionalism as a mindset, we are reminded that international law is not just an external system of rules but also an internal commitment to the rule of law as a way of life in the international community. This insight continues to inspire debate and development in international legal theory, ensuring that Koskenniemi's Kantian

reflections remain highly relevant in today's ongoing inquiry into the nature and future of the global legal order.

Sources:

- Martti Koskenniemi, *"Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization,"* Theoretical Inquiries in Law 8(1): 9–36 (2007).
- Jorge Andrés Serrano, *"Why Constitutionalism Does Not Live Up to its Promises,"* Goettingen Journal of International Law 4(2): 551 (2012) (discussing Koskenniemi's view that constitutionalism is a mindset and its Kantian basis).
- Robert Howse & Ruti Teitel, *"Does Humanity-Law Require (or Imply) a Progressive Theory of History? (And other questions for Martti Koskenniemi),"* Temple International & Comparative Law Journal 27(2): 377 (2013) (critiquing Koskenniemi's engagement with Kant and history).
- Ming-Sung Kuo, *"From Institutional Sovereignty to Constitutional Mindset: Rethinking the Domestication of the State of Exception,"* SSRN Working Paper (2020) (applying Koskenniemi's concept of constitutional mindset in a different context).
- Andreas L. Paulus, *"The International Legal System as a Constitution,"* in Dunoff & Trachtman (eds.), Ruling the World? Constitutionalism, International Law, and Global Governance (Cambridge Univ. Press, 2009) 69 (comparing constitutionalist approaches, cited in GoJIL article).
- Additional references in Koskenniemi's article (Kant's *Critique of Pure Reason*, *Metaphysics of Morals*, *Perpetual Peace*; Hans Kelsen's legal theory) as cited in text

Eric A. Posner „The Perils of Global Legalism”

Central Thesis and Main Arguments

Eric A. Posner's *The Perils of Global Legalism* is a trenchant critique of what he calls "global legalism" – an idealistic belief in the power of international law and legal institutions to solve global problems, even in the absence of a world government. Posner's central thesis is that this faith in international law is dangerously naive and utopian, resting on a set of unsustainable illusions about how the world works. In essence, Posner argues that many scholars and officials (especially in the West) place excessive hope in international legal norms and courts to constrain state behavior for the global good, overlooking the reality that states will ultimately follow international rules only when it aligns with their national interests.

According to Posner, "global legalists" view international law as an inherently positive force that stands *above* states, capable of compelling governments to act against their short-term interests for the sake of global cooperation. These legalists, he claims, have "long since dropped the conventional view that international law is based on the consent of states," instead asserting that international law transcends state consent and "holds [states] in its grasp". *The Perils of Global Legalism* contends that this outlook is utopian – built on flawed premises about human nature and a mistaken analogy between domestic law and international law. Unlike domestic legal systems, the international sphere lacks a central sovereign authority to legislate and enforce rules. Posner's core argument is that law without government is inherently weak. In a world of sovereign states ("anarchy" in international relations terms), legal rules cannot be effective in solving major global problems unless states *voluntarily* comply – and they do so only when it suits them.

Throughout the book, Posner carefully examines the assumptions underpinning global legalism. He identifies several key "illusions" that global legalists hold: universalism (the idea that nations share common values and will agree on fundamental legal norms), sovereign equality (the notion that all states, strong or weak, can be treated as equal under law), and the possibility of disinterested judgment by international officials (the belief that judges and bureaucrats in global institutions can be neutral and above politics even though they are not accountable to any global electorate). Posner argues that these assumptions do not reflect reality – power disparities between states are unavoidable, and international judges or officials often represent the interests or ideologies of certain states or groups. Moreover, global legalists put great faith in treaties, customary laws, and courts without recognizing the enforcement deficit: because there is no world government, enforcement of international law ultimately depends on states' willingness to comply.

Posner bolsters his thesis with historical and contemporary examples. For instance, he points to NATO's 1999 intervention in Serbia (Kosovo) and the attempt to ban landmines as cases where purported international legal principles or agreements were overridden by states pursuing security or moral interests outside the strict confines of law. NATO's use of force in

Kosovo lacked UN Security Council approval (technically violating the UN Charter), yet states proceeded on a calculus of humanitarian necessity and strategic interest rather than legal authorization. Likewise, efforts to ban land mines through international treaties were embraced by some states but ignored by others (the United States, among others, did not join the Ottawa Convention banning landmines) when leaders felt the ban would constrain military capabilities. Posner also discusses compliance with World Trade Organization (WTO) rules, acknowledging that while WTO dispute mechanisms exist, powerful countries have sometimes flouted adverse trade rulings or negotiated their way out when it was in their interest to do so. These examples illustrate Posner's claim that the "weaknesses" of international law repeatedly confound legalist ambitions, as states abandon legal commitments when their vital interests are at stake. Indeed, Posner pointedly concludes that regardless of high-minded legal commitments, "all nations stand ready to dispense with international agreements when it suits their short- or long-term interests."

In summary, the book's central argument is a realist one: international law matters only insofar as it coincides with states' self-interest or power constraints. Global legalism, in Posner's view, dangerously overestimates the autonomy and efficacy of international law. Posner warns that international relations remain a "brutal world" in which law cannot substitute for power or national interest, and thus global legalists are indulging in harmful illusions. The *"peril"* of global legalism is that it may lull policymakers and publics into expecting legal solutions where none are likely to succeed, potentially leading to ineffective or quixotic international initiatives.

Posner's Critique of Global Legalism and Assumptions of International Law

Posner's critique of global legalism is multi-faceted, targeting what he sees as the naive assumptions behind much contemporary international law scholarship and advocacy. He traces the intellectual roots of legalism, noting that legalism is essentially an "attitude or posture" that places great faith in legal processes for resolving disputes. At the domestic level, Americans have a long tradition of turning political questions into legal questions (as Alexis de Tocqueville observed). Posner argues that this legalistic mindset has been projected onto the international arena by global legalists who hope to "govern the world" through law, without an actual world government.

The fundamental assumptions of global legalism that Posner interrogates include:

- Universalism: The belief that core values (like human rights, justice, rule of law) are shared across cultures, allowing a broad consensus on legal norms. Posner argues this is an illusion – states and cultures often deeply disagree on values, and apparent consensus (e.g. in UN treaties) is often only superficial or riddled with reservations and differing interpretations. He points out that ideological divergence and civilizational differences limit the scope of truly universal legal principles.
- Sovereign Equality: International law formally rests on the principle that all states are equal sovereigns. Posner calls this a fiction – while legally "one nation, one vote" may hold in the UN General Assembly, in practice power disparities mean strong states can often ignore or shape international law to their advantage, while weak states have little recourse. He gives examples of powerful countries exempting themselves from certain

regimes or using their leverage to ensure outcomes they prefer, undermining the notion that law can bind all states equally.

- Disinterested Judgment: Global legalists assume that international judges, arbitrators, and officials can be impartial enforcers of international rules. Posner is highly skeptical of this. International adjudicators are often "politically unaccountable officials" who, even if insulated from direct state control, bring their own biases or the interests of the institutions they serve. Moreover, without democratic accountability, their legitimacy can be questioned. Posner suggests it is illusory to think that international courts can fully transcend politics – great power interests and geopolitical realities inevitably loom in the background. For example, the International Criminal Court (ICC) has jurisdiction over war crimes, but major powers like the US, China, and Russia are not members, and there are accusations that ICC prosecutions have disproportionately focused on African states (raising concerns about power politics rather than pure impartial justice).
- Law as Engine of Cooperation: Global legalists tend to assume that more law – more treaties, more courts, more legal processes – will naturally lead to more cooperation and peace. Posner questions this "more law is always better" premise. He argues that treaties and legal norms are ultimately just tools that states use when advantageous; proliferating legal instruments without addressing underlying conflicts of interest may achieve little. For instance, he notes that despite numerous environmental treaties, global problems like climate change persist because *enforcement* and genuine political commitment are lacking. Legal agreements without strong incentives or enforcement mechanisms often fail to change behavior.

Posner also criticizes what he sees as international law's "circularity" – that international law scholars often assume compliance will happen without adequately explaining *why* states would comply. He notes that many legal academics simply take state compliance on faith, or invoke norms and reputational pressures without grounding these in a theory of state interests. Posner's challenge is essentially: *What motivates a sovereign state to obey international law when it's costly?* If the answer is not rooted in interest or coercion, Posner finds it unpersuasive. He argues that global legalists frequently gloss over the enforcement problem – unlike domestic law, where a government coerces compliance, international law relies on voluntary adherence or self-enforcement. This, in Posner's view, severely limits international law's capacity to change state behavior in hard cases.

Posner does acknowledge that international law is not entirely futile. He agrees that some international legal regimes work well – typically those dealing with coordination problems and mutual interests, such as technical standards, communications, or basic trade facilitation. In these areas, states comply readily because the law aligns with what rational self-interest dictates (everyone benefits from agreed rules for aviation safety, for example). However, the "camps diverge" when it comes to whether law without a world government can solve more deep-seated cooperation problems like security threats or global public goods dilemmas. Posner is skeptical that in areas like human rights, disarmament, or climate change, purely legal solutions can overcome the lack of centralized authority or the temptation for states to defect for relative gain. Here, he contends, global legalists are overly optimistic, whereas a more realist, rational-choice perspective recognizes the limits of law in an anarchic international system.

In sum, Posner's critique dismantles the rosy assumptions of global legalism by underscoring the enduring power of national self-interest, power imbalances, and enforcement problems in

international affairs. International law, he argues, cannot escape those realities, and believing otherwise leads to flawed policy prescriptions. He famously concludes that international relations "allow no room for illusions" – a stark reminder that power politics will trump legal norms when the stakes are high.

Legalist versus Realist Approaches in International Relations

Posner explicitly contrasts the legalist approach to international relations with a realist (or rationalist) approach, aligning himself firmly with the latter. This dichotomy is central to understanding the book's perspective:

- Global Legalist Approach: In Posner's portrayal, legalists see international law and institutions as the primary path to global order. They believe diplomatic disputes "should, as much as possible, be resolved according to law and by legal institutions" rather than by power or war. For example, a true legalist would argue that wars must have UN Security Council approval, that disputes should go to the International Court of Justice (ICJ) or arbitration, and that even pressing moral debates (like the death penalty or human rights issues) should ultimately be settled by reference to international legal norms. Legalists tend to advocate more treaties, more detailed rules, and more adjudication. They favor compulsory jurisdiction for international courts, independent judges, and even envision creating quasi-legislative or executive global institutions over time. In the legalist view, international law can grow and develop autonomously, "taking on a life of its own" and progressively weaving a web that guides state behavior toward cooperation. Crucially, legalists are less concerned with whether each act of compliance is in a state's narrow self-interest – they often assume that states *will* obey legal obligations because of legitimacy, habit, moral pressure, or long-term enlightened interest. There is a quasi-ideological commitment to the rule of law at the global level: legalists often speak of an inevitable evolution toward more international law (sometimes analogized to a kind of Whig history of progress in global order).
- Realist/Rationalist Approach: Posner (and those he aligns with, such as rational choice theorists in international relations) start from the premise of state sovereignty and self-interest. Realists see international law as epiphenomenal – a byproduct of states pursuing their interests under constraints of power. From this angle, compliance with international law must ultimately serve the rational self-interest of states (or the domestic actors who influence state policy). If a law requires something against a state's core interests, realists predict the state will ignore or exit the commitment. Posner agrees with scholars who argue that the existence and strength of international legal rules in any given area reflect a cost-benefit calculation by states. For example, states will create precise legal rules and strong courts in areas where they see mutual gains or need credible commitments (such as trade agreements), but will avoid binding legal constraints in areas where interests sharply diverge (such as national security). The realist approach is inherently skeptical of claims that international law can override power politics. It emphasizes that without enforcement by a superior power, *law on paper does not ensure compliance*. Realists often cite the classic formulation that "international law is not really law" in the Austinian sense, because there is no sovereign to command it. While that may be an extreme view, the core realist stance is that power and interest are the driving forces, and norms survive only when backed by those forces.

Posner highlights this divide by noting that rational-choice scholars (with whom he identifies) intentionally ask why states comply at all and look for concrete incentives or enforcement mechanisms. In contrast, he observes that global legalists tend to take compliance for granted or explain it with nebulous ideas like socialization or legitimacy, rather than hard evidence of interest-convergence. This methodological split leads to very different worldviews. A legalist might point to the growth of international courts and say we are heading toward an era of global rule of law. A realist points to the same proliferation of courts and notes that their jurisdiction is often limited and carefully controlled by states, and that major powers still evade or veto outcomes they dislike. Indeed, Posner observes that international courts have generally "performed better than other international bodies partly because they have limited jurisdictions that can be controlled by states" – a realist interpretation of why some legal institutions survive.

Posner's own stance is clearly that the realist approach is more empirically grounded. He echoes thinkers like Hans Morgenthau who criticized American "legalism" in foreign policy as unrealistic. In fact, Posner's critique of global legalism *"echoes Morgenthau"* in warning that a blind commitment to legal norms without power to back them is futile. The book essentially urges a minimalist, interest-based vision of international law: law will be respected when it aligns with shared interests or power realities, but one should not expect law to compel states to act against their vital interests or security. Where legalists see the possibility of impartial global justice, realists see *law without enforcement* as either ineffective or at worst a dangerous illusion.

The tension between these approaches is a recurring theme. Posner does not deny that states *often* obey international law – but he and other realists would argue this happens largely in situations where obeying law coincides with the state's goals (for instance, respecting diplomatic immunity because it's reciprocal, or following trade rules to avoid retaliation). Global legalists interpret the same phenomenon as evidence of law's pull toward compliance, perhaps due to normative commitments. Posner counters that this is *correlation mistaken for causation*: states appear law-abiding mostly when the law asks of them what they would do anyway or what they calculate is best in the long run. When law *does* impose a genuine constraint (e.g. a treaty that becomes inconvenient), realists predict – and Posner documents – that states will try to evade, ignore, or undermine the law. Thus, the realist vs. legalist debate centers on whether international law has independent power (*legalists say yes, increasingly so*), or whether it is subordinate to the interests of sovereign states (*Posner and realists say yes, always*).

Posner's analysis firmly comes down on the realist side: he contends that *global legalism overestimates the degree to which law can reshape international politics*. The book warns that international legalists, by treating law as sacrosanct or self-executing, risk misunderstanding how international relations actually operate. In a telling line, Posner describes global legalism as *"the world government approach except without the government"* – implying that without the coercive and administrative machinery of a government, legal rules alone are apt to fail. In contrast, a realistic approach acknowledges that until or unless a true world government emerges (something even legalists concede is not on the horizon), international law will function more like voluntary coordination among states, fragile and contingent on interests, rather than a true legal order above states.

Philosophical and Practical Implications of Posner's Skepticism

Posner's skepticism toward the efficacy of international law carries significant philosophical and practical implications. Philosophically, it challenges a more idealist or cosmopolitan vision of global governance, raising fundamental questions about the nature of law, sovereignty, and moral obligation in international affairs. Practically, it suggests a very cautious approach to international institution-building and warns against over-reliance on legal solutions to world problems.

On a philosophical level, *The Perils of Global Legalism* forces us to confront the issue of whether "international law" truly qualifies as law in the absence of an enforcing sovereign. Posner's view resonates with the classic legal philosophy of John Austin, who argued that law is a command backed by sanction from a sovereign – by that definition, international law is not "real" law but a form of moral or political arrangement. Posner stops short of outright saying international law is meaningless; instead, he frames it as a useful but limited tool that states themselves shape and adhere to only when it suits them. This implies a philosophy of international law akin to legal positivist realism: international norms have no innate moral force or magic compliance pull; their power derives from the interests and consent of states. In contrast to a natural law or cosmopolitan justice perspective that might imbue international law with inherent authority, Posner's stance is more cynical about claims of universal moral principles binding states. For him, talk of global justice often cloaks national interests (he cites E.H. Carr's famous realist insight that nations wrap their policies in universal principles). The implication is that morality in international relations cannot be divorced from power – a claim with deep roots in realist theory. Posner's skepticism thus extends to the idea of global rule of law: he doubts that law can ever be above politics on the international stage.

Another philosophical implication is the emphasis on state consent and sovereignty as paramount. Posner's critique revives the notion that state sovereignty is an unavoidable reality and a good thing to respect. By criticizing global legalists for wishing to constrain states without their consent, Posner implicitly defends a Westphalian view that states should not be bound by norms they haven't agreed to. This touches on debates about democratic legitimacy: Posner is wary of "politically unaccountable officials" making decisions, reflecting a concern that empowering international courts or bodies might undercut democratic control within nations. This aligns philosophically with arguments for sovereignty and against technocratic global governance. It poses the question: *who decides what is legal or right globally, if not sovereign states themselves?* Posner's answer is clear – it must ultimately be states (particularly powerful ones), not lawyers or courts divorced from political accountability.

Practically, Posner's arguments have sobering implications for international law and institutions. If one takes his analysis to heart, policy-makers would be more restrained in designing international legal commitments, knowing that without enforcement these may fail. For example, rather than investing heavily in new multilateral treaties on, say, climate change or disarmament that lack strong enforcement, Posner's logic would encourage focusing on power-based arrangements or modest, interest-driven deals. He essentially advises realism in setting expectations for institutions like the UN, International Criminal Court, or human rights regimes. If global legalism is misguided, then trying to solve every global problem by creating a new international legal framework might be ineffective or even counterproductive. As Posner notes, when legalistic strategies overreach, they can lead to backlash or

disillusionment. For instance, pushing ambitious international legal initiatives (like a robust climate treaty with binding emissions cuts) might fail and discredit the idea of cooperation, whereas a more realistic, interest-aligned approach (like voluntary pledges or technology cooperation) might achieve more. In the field of human rights, Posner later wrote *The Twilight of Human Rights Law*, arguing that many human rights treaties have not delivered results – a practical extension of his skepticism (he previewed this in *Global Legalism* by questioning the impact of international human rights courts).

Another implication is for the role of international courts. Posner suggests that while courts can help with incremental dispute resolution, they should not be seen as arbiters of major political conflicts. States will simply refuse to grant courts authority over issues vital to them, or ignore judgments at odds with their interests. Thus, expecting bodies like the ICJ or WTO Appellate Body to resolve, say, a territorial dispute or a high-stakes trade war might be unrealistic. Posner's analysis implies that international adjudication works best when it is narrow in scope and when losing parties can accept outcomes without existential costs. When courts expand into more sensitive areas, they risk irrelevance or collapse if powerful states balk. Indeed, we see practical confirmation in events like the United States' resistance to the International Criminal Court's jurisdiction, or the recent weakening of the WTO dispute system when the U.S. blocked appointments – moves that fit Posner's prediction that powerful states will not allow international judges to constrain them beyond a point.

Furthermore, Posner's critique has implications for how international law is taught and understood. If he is correct, scholars and practitioners should pay much more attention to political science, economics, and enforcement mechanisms, rather than treating international law as a self-contained normative system. It argues for an interdisciplinary, hard-headed approach: treaties and legal norms should be analyzed in terms of state incentives and power dynamics. This challenges international lawyers to justify their field's relevance in more than moral language – to show, for example, how treaties create reputation effects or alter domestic politics in ways that make compliance likely. Posner would likely say that without such mechanisms, treaties are aspirational at best.

Finally, Posner's skepticism also raises the practical concern of what happens if global legalism truly fails. If states cannot rely on international law, they may either retreat to unilateralism and power-based interaction (which could be a more conflict-prone world), or they may seek alternative means of cooperation that are less formal. One might infer from Posner that informal bargains or power arrangements might often work better than legalistic schemes. For instance, great power diplomacy outside formal institutions (like ad hoc coalitions or direct negotiations) could achieve results that signing yet another treaty might not. This pragmatic, if unromantic, implication is that diplomats and leaders should not fetishize legal formats, but focus on concrete reciprocity and verification of any international commitment.

In conclusion, the implications of Posner's views are somewhat pessimistic about the transformative power of international law. Philosophically, he grounds international law in consent and interest, not in universal reason or morality. Practically, he advises humility in what international legal tools can accomplish. While this perspective can be criticized (and many *want* international law to do more), Posner forces a critical examination of whether our efforts at global governance are built on solid foundations or "castles in the air." It's a call to ensure that international legal commitments are backed by real political will – otherwise, they may be perilously ineffective.

Structure of the Book and Key Chapter Contributions

The Perils of Global Legalism is organized into two broad parts, each comprising several chapters that build Posner's case from conceptual groundwork to specific domains of international law. A brief overview of the book's structure and key chapters shows how Posner develops and supports his thesis:

- Preface and Prologue: Posner sets the stage by noting the early optimism of the Obama administration (circa 2009) about restoring the "international rule of law" and how this reflected the global legalist mindset. He hints that his book will serve as a reality check or "wake-up call" to those high expectations. The prologue likely introduces the central concept of global legalism and previews the skeptical analysis to come.
- Part I – Global Legalism: This first part (chapters 1–5) is conceptual and diagnostic. It introduces what global legalism is, why people are drawn to it, and then dismantles its flaws.
    - Chapter 1: "The Utopian Impulse in International Relations." Here Posner provides a historical and theoretical context, describing how throughout modern history there have been movements to tame power politics with law (from Hugo Grotius to Woodrow Wilson and post-WWII idealists). He calls this a *utopian impulse*, aligning with what classical realists termed "legalistic-moralistic" approaches to world politics. This chapter likely charts the evolution of thought that led to today's widespread belief in global governance by law. By labeling it *utopian*, Posner foreshadows his argument that these ideas, while noble, are unrealistic. He might discuss interwar idealism (like the Kellogg-Briand Pact renouncing war) as early global legalism and how it failed to prevent WWII, reinforcing realist skepticism.
    - Chapter 2: "The Flaws of Global Legalism." This is a pivotal chapter where Posner systematically lays out the specific flaws and "illusions" underpinning global legalism. As discussed earlier, he identifies illusions such as the assumption of universal values, the fiction of sovereign equality, belief in impartial international authorities, etc. Posner dissects each, showing why it doesn't hold true in practice. For example, he might elaborate on how *universalism* is undermined by cultural relativism or geopolitical rivalry, or how *sovereign equality* is undermined by great power privilege (vetoes in the UN Security Council, etc.). He probably also addresses the flaw of *law without enforcement*, drawing analogies to why domestic law works (due to police, courts, and jails) and how international law lacks those coercive instruments. By the end of this chapter, a reader should have Posner's full catalog of reasons why excessive faith in international law is misplaced.
    - Chapter 3: "Defending Global Legalism." In this chapter, Posner likely turns to the arguments that proponents of global legalism make in favor of international law, in order to evaluate them. This could be seen as a kind of counter-argument section. He might summarize claims from prominent international law scholars (perhaps quoting figures like Louis Henkin's famous dictum "almost all nations observe almost all principles of international law almost all of the time" as evidence that law matters). Posner then critically examines these defenses. For example, legalists often argue that reputation and reciprocity incentivize states to follow law; Posner might respond that reputation effects are overblown or only secondary to immediate interest. Or

legalists say international law evolves and gets stronger (e.g., the rise of human rights norms); Posner might counter with examples of backsliding or persistent violations. By engaging the best arguments *for* global legalism, Posner strengthens his case if he can show they are inadequate. The title suggests he gives global legalism a fair hearing before refuting it.

  - Chapter 4: "Globalization, Fragmentation, and the Law." This chapter likely deals with the context of the modern world: increased globalization (interdependence) but also fragmentation of power and interests. Posner probably argues that while globalization brings countries closer, it doesn't necessarily make them agree on laws – in fact, globalization without world government can lead to fragmented legal regimes. He might discuss the phenomenon of legal fragmentation: different groups of states create different legal regimes (trade law, environmental law, human rights law, etc.) that sometimes conflict or overlap. The chapter possibly draws on the academic discussion of "fragmentation of international law," where dozens of specialized tribunals and treaties exist without a clear hierarchy. Posner could use this to illustrate that instead of one coherent global legal order, we have a patchwork that states navigate à la carte. Fragmentation is portrayed as both a consequence of no world government (no single lawgiver to unify everything) and a strategy by states to retain control (they commit only to segmented regimes). The implication is that global legalism's vision of a unified, universal legal order is belied by the fractured reality.
  - Chapter 5: "Global Legalism and Domestic Law." Here Posner examines how the ideas of global legalism penetrate domestic legal systems, and he likely issues warnings about it. He discusses, for instance, debates in the United States over whether domestic courts should enforce international law directly. Many global legalists argue that domestic courts should give effect to international norms (e.g., apply customary international law or cite foreign tribunal decisions). Posner, in contrast, has been critical of this "foreign affairs legalism" in his other writingsericposner.com. In this chapter, he probably scrutinizes cases like the Alien Tort Statute (ATS) litigation in U.S. courts – where human rights advocates tried to enforce international law against corporations or foreign officials. Indeed, the Amazon reviewer noted Posner includes a hypothetical about using the ATS for climate change, which Posner found unwise. He likely argues that pushing global legalist agendas in domestic courts raises problems of legitimacy and efficacy, as courts may not be institutionally equipped to decide foreign policy questions and it can trigger political pushback (as seen when the U.S. Supreme Court curtailed ATS reach in *Kiobel* and other cases). By evaluating these attempts to bind domestic politics with international law, Posner underscores the potential domestic conflict between democratic sovereignty and global legal norms. The chapter likely concludes that while international law can influence domestic law, it should remain subject to political branch approval (reinforcing the idea that consent of states – and their legislatures – is crucial).

- Part II – Adjudication in Anarchy: The second part of the book (chapters 6–9) shifts to a more empirical exploration of how international legal institutions, especially courts, function in the "anarchy" of the international system (anarchy meaning the absence of a central world authority). Posner delves into specific realms: international courts and tribunals, human rights and international criminal law, and the interface of international and domestic courts.

- Chapter 6: "International Adjudication: Its Promise and Problems." In this chapter Posner surveys the landscape of international adjudication – institutions like the International Court of Justice (ICJ), WTO dispute panels, investment arbitration (ICSID), the European Court of Justice, etc. He likely acknowledges the promise of these bodies: they can peacefully resolve disputes, clarify legal obligations, and perhaps depoliticize issues. However, true to his theme, Posner enumerates the problems: states often accept courts' jurisdiction only selectively; there is no supranational sheriff to enforce judgments; major powers sometimes refuse to participate or comply (e.g., the U.S. withdrew from compulsory ICJ jurisdiction after adverse judgments in the 1980s). He might provide data or examples of limited compliance – for instance, cases where ICJ decisions were ignored (such as Iran vs. U.S. or Nicaragua vs. U.S., where the U.S. simply rejected the ICJ's ruling). Posner also examines how *independence* of judges is ensured (or not), and whether international judges truly rule without political influence. A likely conclusion is that international courts are useful mainly in managing minor or technical disputes, or when both parties *want* a decision – but they cannot force unwilling states into compliance, hence the "problems" temper their "promise."
- Chapter 7: "The Fragmentation of International Justice." Building on chapter 6, this chapter delves into the phenomenon of multiple, overlapping international courts and legal forums. By 2009, there were dozens of international courts or tribunals (from the ICC and ad hoc criminal tribunals, to regional human rights courts, to specialized trade and investment courts). Posner discusses how this proliferation leads to fragmentation: different courts may interpret international law differently, forum-shopping becomes possible, and there's no supreme court of the world to resolve inconsistencies. He likely references the example of various courts all adjudicating human rights or humanitarian law – national courts, regional human rights courts, international tribunals – sometimes yielding conflicting rulings. Posner uses this to argue that the international legal system lacks the coherence of a domestic legal system, again due to the absence of central authority. Each court's jurisdiction is limited and often "controlled by states" (states choose which courts to accept). While legalists might see the mushrooming of courts as progress toward global rule of law, Posner sees it as a sign that international justice is piecemeal and contingent. He might also worry that fragmentation allows powerful states to pick favorable venues (for instance, avoiding tribunals they distrust) – undercutting the idea of a universal justice. This chapter reinforces his argument that there is no single international legal order, but many fragmented sub-orders.
- Chapter 8: "Human Rights and International Criminal Law." This chapter zeroes in on the realm of human rights treaties and international criminal justice (like war crimes tribunals and the ICC). Posner is famously skeptical of the effectiveness of international human rights law. Here, he likely argues that the explosion of human rights treaties and courts has not led to commensurate improvements in actual human rights on the ground. He might cite research or examples: many countries sign human rights treaties without intent to comply, using them as window dressing (e.g., dictatorships signing treaties against torture while continuing repressive practices). He also examines international criminal law – the attempt to hold individuals (usually state officials or warlords) accountable through tribunals (like the ICC or ad hoc tribunals for

Yugoslavia, Rwanda, etc.). Posner would argue that these mechanisms, while normatively appealing, operate only in limited circumstances. They typically can only prosecute the losers of conflicts (as victors or powerful states won't submit their officials for trial). The U.S., Russia, China remain outside the ICC, meaning a huge portion of global power is exempt. This leads him to doubt that international criminal law can deter atrocities in any consistent way. He probably highlights issues like: the ICC's reliance on state cooperation for arrests (if states don't hand over suspects, the court is impotent); or the way political considerations influence which situations get prosecuted (only weaker states or politically isolated figures get indicted). This analysis supports his broader thesis by showing that even in the most "moral" domain of international law – human rights and justice – law falls short when power politics intervene. The key contribution of this chapter is illustrating concretely how a highly legalized global project (human rights/ICC) struggles in practice, reinforcing Posner's call for realism.

- Chapter 9: "International Law in Domestic Courts." In the final substantive chapter, Posner returns to the interface between international and municipal law, discussing how domestic courts treat international law. This complements chapter 5 but likely with a broader comparative view beyond the U.S. Posner examines doctrines like monism vs. dualism (how directly international law is incorporated), the role of domestic constitutions in checking or enabling international rules, and cases where domestic courts invoke international law. He almost certainly discusses U.S. jurisprudence: for instance, the U.S. Supreme Court's stance in *Medellín v. Texas* (2008), which held that an ICJ judgment was not directly enforceable federal law without Congress – a decision very much in line with Posner's skepticism, emphasizing the primacy of domestic political consent. He may also contrast European countries, some of which give international law more direct effect (perhaps noting how *even in Europe*, where legalism is stronger, conflicts arise – e.g., the UK's struggles with the European Court of Human Rights rulings). Posner likely argues that domestic courts ultimately prioritize national law and interest when there is a clash. This again underscores that international law's force is limited by what domestic systems allow. A key insight might be how *global legalists often push domestic courts to be engines of international law (e.g., suing foreign officials for human rights abuses, enforcing foreign judgments, etc.), but these efforts meet doctrinal and political resistance*. Posner's evaluation probably finds that while domestic courts can occasionally advance international law (as in some European countries or in specific U.S. cases like *Filartiga* in 1980 which allowed a human rights tort claim), there is a growing trend of judicial caution or backlash to expansive uses of international law. This concluding analysis connects back to his theme: without broad political support, attempts to judicially globalize law run into limits.

- Conclusion: "America versus Europe." Posner closes by comparing the United States and Europe in their approaches to international law. He notes that Europe (especially the EU nations) tends to be much more legalist internationally, partly due to the experience of the European Union itself – a supranational legal order that Europeans have embraced to ensure peace and cooperation after World War II. European lawyers often view the submission to legal rules and courts (e.g., the European Court of Justice, European Court of Human Rights) as a triumph of governance over nationalist politics. By contrast, the United States, as a superpower, has been more wary of

binding itself to international law that could constrain its freedom of action. Posner likely illustrates this with examples: the U.S. refusal to join certain treaties (the ICC, the landmine ban, the Kyoto Protocol initially, etc.), and the American preference for flexibility and ad hoc coalitions. He probably attributes these differences to both power and ideology. Europe, with relatively less military power and a horror of its own past nationalist wars, puts faith in law and institutions. The U.S., confident in its power and separated by oceans, often sees international law as at best a tool and at worst an impediment. Posner might also point out that within the U.S., there's an elite academic/legal community (including many he critiques) who favor European-style legalism, but they often clash with U.S. political realities. The conclusion draws together the strands of the book by showing two cultural perspectives on global legalism: the more *cosmopolitan/European* view that celebrates legal constraints on states, and the more *sovereigntist/American* (at least historically American) view that is skeptical of supra-national authority. Posner clearly aligns more with the latter, though his analysis throughout the book is meant to apply universally. The takeaway is that America's realist stance may better reflect how international law actually works, while Europe's legalist stance, though normatively appealing, might be sustained only in the unique context of the EU or under U.S. security protection. This final discussion grounds the abstract debate in contemporary geopolitical reality, underlining that divergent attitudes toward international law continue to shape global politics.

In evaluating these chapters, each contributes to the overall thesis by addressing it from different angles – theoretical (Part I) and institutional/practical (Part II). The strength of the book's structure is that it moves from big-picture principles to concrete arenas of law, consistently applying Posner's realist lens. Chapter 2 stands out as a core analytical contribution (often cited for its breakdown of legalist assumptions), while chapters 6–8 provide the evidence base and case studies that test the theory. Some reviewers have noted the book's broad scope, covering *"many areas of international law with numerous real-world examples"*, which makes it accessible and illustrative. Each chapter builds the case that international law's reach is limited by state interests and the lack of global government, whether one is looking at treaties, courts, or compliance on the ground.

That said, one could critique that the book's breadth sometimes leads Posner to paint with a broad brush – complex topics like human rights law are summed up rather skeptically (as he later did in a whole book, *The Twilight of Human Rights Law*). But within *The Perils of Global Legalism*, each chapter's contribution is clear: collectively, they reinforce the argument that global legalism is a flawed approach, from theory through implementation. By the end, a reader has traversed the philosophical debate, the historical context, the institutional analysis, and cross-regional comparison, all under the unifying perspective Posner provides.

Scholarly Reception and Major Criticisms

Posner's book, as expected for a "provocative and sure to be controversial" work, received a mixed reception in the scholarly community. Many international law and international relations scholars engaged with *The Perils of Global Legalism*, some praising its clear-eyed realism and others criticizing it as unduly cynical or attacking a straw man. Here we outline major criticisms of the book and reactions from academics:

1. Overly Pessimistic and Selective Analysis: A common critique is that Posner is too pessimistic about the possibilities of international cooperation and law, to the point of being inaccurate or one-sided. For instance, a review in the *European Journal of International Law* argued that *The Perils of Global Legalism* displays an *"inaccurate pessimism about the possibility for cooperation"* and that if taken too seriously, Posner's stance *could itself hinder progress* on international problem-solving (by encouraging nations to abandon legal frameworks). Critics in this vein contend that Posner underestimates how international law can shape state preferences and facilitate cooperation even in challenging areas. They point to examples of legal progress that Posner gives short shrift to: for example, the Montreal Protocol on ozone depletion (widely seen as a successful treaty), or the slowly strengthening norms against atrocities (like the emerging Responsibility to Protect). Beth Simmons's work on how human rights treaties mobilize domestic politics (which Posner's colleague G. John Ikenberry reviewed alongside Posner's book) is often cited to counter Posner – Simmons found that even if dictators sign human rights treaties insincerely, those treaties can empower local activists and lead to improvements over time. Such evidence suggests that international law may have effects Posner doesn't fully acknowledge. Ikenberry's own review in *Foreign Affairs* gently rebukes Posner on this point: while "Posner may be right that international law matters when it serves nation-states' interests," in a world of growing shared values and interdependence, *"many states want to build global systems of laws and institutions that go beyond his minimalist vision."* In other words, Posner's critics argue he is painting global legalists as utopians without recognizing that states often *choose* legal solutions because they see it in their enlightened self-interest to address common problems (pandemics, climate, trade stability) through law. His pessimism is seen as outdated or too rigid in light of regimes where international law has gradually become stronger (for example, the increasing compliance in trade law or the expanding membership of the ICC even with ups and downs).

2. The Straw Man Argument – Who Are the "Global Legalists"? Another major criticism is that Posner sets up a somewhat nebulous or exaggerated target in "global legalism." Some scholars feel that Posner caricatured the field of international law by implying most advocates are naive legalists who think international law is a cure-all. In reality, many international law scholars and practitioners are well aware of power politics and do not blindly assume law always prevails. A reviewer quipped that Posner's approach *"presents the same problem as anyone railing against 'the globalists'… – they end up creating a straw man comprised of everything they don't like about the current state of affairs"*. This *straw man* critique points out that Posner never clearly identifies *who* these extreme global legalists are, or how influential they truly are. He cites the writings of figures like Harold Koh and Anne-Marie Slaughter as examples of global legalist thinking, but critics note that even those scholars have nuanced views grounded in practical experience (Koh, for example, has been in government and understands constraints). One commentator observed that *"while Posner goes to great lengths to identify what 'Global Legalism' is, he doesn't really identify who the 'Global Legalists' are or what practical influence on policy [they have]."*. Posner's generalization glosses over differences within the international law community – not all are idealistic to the point of ignoring state interest. By lumping diverse thinkers together, he arguably attacks an extreme position that few hold in full (thus a straw man). For example, even strong proponents of international law usually acknowledge the need for state consent and interest (they just think interests can be long-term or values-based). Critics like Mary Ellen O'Connell (whose book *The Power and Purpose of International Law* took a much more optimistic stance than Posner's) argue that Posner underestimates how international law operates even without central enforcement, through community pressure and normative obligation. They contend that Posner's portrayal of international law scholarship is somewhat

caricatured, focusing on its worst (or weakest) arguments and ignoring the more sophisticated ones that incorporate realist insights.

3. Dismissing Normativity and Legitimacy: Many international law scholars come from a legal or moral perspective that norms and legitimacy matter in world politics. They criticize Posner for having a crude interest-based model that can't account for why states sometimes *do* follow international law even when it's inconvenient. For instance, why did smaller states sign up to the ICC, effectively limiting their own sovereignty, if not due to a belief in the norm of justice? Why do democracies often adhere to adverse WTO rulings rather than just defy them? Posner would answer it's to preserve a system that benefits them, but critics say that doesn't explain the full picture – domestic publics and leaders internalize the value of law-abidance. Harold Koh has famously argued that nations obey international law in part through a "transnational legal process" of interaction, interpretation, and internalization, whereby norms become embedded in domestic legal and political structures over time. This process-oriented compliance theory suggests a dynamic where behavior changes due to law. Posner's static rational choice view is accused of missing such social and ideational factors. In essence, critics from this camp say Posner *discounts the independent influence of ideas, identities, and legitimacy*. They might cite how even powerful countries often justify their actions in legal terms (for example, the U.S. legally justifying the Iraq invasion, or Russia trying to legally justify annexing Crimea) – if law didn't matter at all, why bother with legal justifications? Some interpret this as evidence that law shapes the narratives of legitimacy, putting a brake on blatant violations. Posner, they argue, doesn't convincingly explain this pull of legitimacy except to cynically say it's all hypocrisy. But if it were mere hypocrisy, one would not see consistent patterns like democracies rarely breaking trade rules flagrantly or the fact that even autocrats sign human rights treaties (implying a diffuse belief that law's approval is worth something).

4. Ignoring Long-Term Interests and Changes in Preference: Another line of critique is that Posner's focus on short-term, material interest fails to consider how international law can help states realize their longer-term or collective interests. Anne-Marie Slaughter and other liberal theorists argue that law and institutions help states escape prisoner's dilemmas by providing information, reducing transaction costs, and credibly committing to cooperation. Posner acknowledges that trivial coordination problems are solved by law, but critics say he draws the line too restrictively. For example, climate change or pandemics genuinely threaten all states in the long run; legal agreements in these areas, though hard, are in states' interest if they can ensure mutual compliance. Posner's skepticism might undercut efforts to build precisely those compliance mechanisms. In other words, critics worry that his counsel of "don't trust law" could be a self-fulfilling prophecy that discourages states from investing in potentially effective legal regimes. Optimists point out instances where *legalization has gradually deepened cooperation*: the evolution of the European Union from economic treaties to a quasi-constitutional rights-protecting entity, or the development of increasingly sophisticated arms control verification methods over decades. Posner doesn't fully engage with how repeated interactions under legal frameworks can redefine what states view as their interest (e.g., states coming to see trade liberalization as beneficial after initially protecting industries). Thus, scholars have called his analysis static and too tied to a narrow concept of interest, not allowing for learning and preference change through legal processes.

5. American Bias and Dismissal of the European Experience: Some European scholars, in particular, felt Posner's conclusion *"America versus Europe"* was a bit too smug in favor of the American (realist) approach. Posner is writing from a U.S. vantage point – critics suggest

he may be rationalizing American unilateralism while undervaluing Europe's achievements in multilateral law. The EU, after all, is a working example of legalism mitigating power politics among its members. A German or French international lawyer might argue that Europe's reliance on law has indeed tamed rivalry on that continent and even given smaller states a voice (a partial rebuttal to the sovereign equality "illusion" – in the EU context, something like sovereign equality has been institutionalized to an extent). They might ask: if legalism is so futile, why has Europe largely embraced it successfully regionally? Posner would reply that the EU works because it has elements of a government (European Commission, Court, etc.) and a shared culture – conditions not present globally – but critics say he downplays that it's an existence proof that pooled sovereignty under law can work. So some see *The Perils of Global Legalism* as reflecting American skepticism of constraints, possibly influenced by post-9/11 debates where U.S. officials (like John Bolton) derided international law's value. Indeed, Michael Glennon's positive blurb on the book celebrates that it will force the establishment into contortions answering it – Glennon himself is known for arguments aligning with U.S. freedom of action (he wrote *"Law vs. Power"* critiques of the UN). Therefore, a critique is that Posner's analysis overvalorizes great power perspectives and doesn't fully appreciate why weaker states or even medium powers invest in international law (for them, law is a shield and a means to bind the powerful, however imperfectly). Detractors argue that his realism veers toward *might-makes-right*, which, if universally adopted, could erode the modest but real gains in global governance made in the last decades.

Despite these criticisms, many also praised Posner for posing uncomfortable questions. Even scholars who disagreed recognized the book as a "useful corrective" to facile views about law's omnipotence. Curtis Bradley of Duke Law School, for example, lauded the book for rigorously challenging the assumption that more international law is always better, thereby forcing scholars to think hard about law's limits and effectiveness. However, the consensus in the international law community tends toward the belief that Posner's view is *too dismissive*. The term "legalism" in his usage was seen by some as pejorative – as one NYU professor, Matthew Turk, noted, Posner's work sometimes reads as a *"polemic"* aimed at the cosmopolitan "establishment".

In academic journals, reviews often concluded that the truth lies somewhere between Posner's stark realism and the legalists' optimism. They accepted some of Posner's points (states do violate law when vitally necessary, enforcement is a real issue) but maintained that international law has more influence than he allows. For instance, a *German Law Journal* review (Cohen 2012) described Posner's book as providing an intellectual history and "sociology of a profession" in its critique of legalist thought, but also implied that Posner might be targeting an extreme version of that profession's beliefs. Similarly, Anthony D'Amato's review in *AJIL* placed Posner on one end of a spectrum – the "extreme political science end" – contrasting with more pro-international law scholars like Brian Lepard on the other end. This framing suggests that while Posner's arguments are taken seriously, many in the field consider them *one perspective among many*, and possibly over-stated to spark debate. Indeed, the book has achieved that: it's commonly cited in discussions of why nations obey (or don't obey) international law, often as the archetype of the realist challenge that legal scholars must answer.

In summary, the major criticisms of *The Perils of Global Legalism* are that Posner's depiction of international law's ineffectiveness is too bleak, somewhat straw-manned, and neglectful of normative and long-term factors. Scholars acknowledge the challenges he raises but often respond that international law, while not all-powerful, is not as feeble or naive as Posner

portrays. The debate sparked by Posner's book essentially forces a more nuanced middle ground: recognizing both the limits and the real contributions of global legal norms. If nothing else, Posner's critique has sharpened the thinking of international lawyers about when and how law works, which was precisely his intent – to shake any "dangerously naive" complacency.

Posner's Views in Context: Comparison with Other International Law Scholars

To better understand Posner's contribution and stance, it is useful to compare his views with those of other major scholars in international law, notably Harold Koh, Anne-Marie Slaughter, and Jack Goldsmith. Each of these figures represents a different approach along the spectrum from legalist to realist, and Posner's positions converge or diverge with theirs in illuminating ways.

Harold Koh (Yale University – Transnational Legal Process)

Harold Hongju Koh is almost a foil to Posner: a leading advocate of the view that international law can and does influence state behavior through internalization and normative processes. Koh's famous theory of "transnational legal process" argues that as government officials, courts, and NGOs interact across borders, they incorporate international law into domestic practice, leading states to obey international norms not just from interest but from habit and internal commitment. In his 1997 essay *"Why Do Nations Obey International Law?"*, Koh answered that they do so in part because they come to accept legal obligation (opinio juris) and because domestic legal systems absorb international rules, making compliance routine or required by internal law.

Comparatively, Posner is deeply skeptical of Koh's optimism. Where Koh sees normative pull and legal process fostering compliance, Posner sees mostly push and pull of interests. For example, Koh – who served as the U.S. State Department Legal Adviser – believed that U.S. engagement and leadership in international law (what he called "smart power") could shape a more law-abiding world. Posner would reply that even the Legal Adviser's influence is limited by the President's calculus of national interest (citing how even Koh, in government, had to defend drone strikes legally, arguably stretching law to fit policy).

Koh emphasizes the role of domestic courts and democracy in promoting international law compliance (the so-called "vertical integration" of norms). Posner, especially in chapters 5 and 9 of his book, expresses caution or hostility toward that idea – he worries about democratic deficit when courts use international law without political branch approval. For instance, Koh applauded when some U.S. Supreme Court justices cited foreign or international norms (like in *Roper v. Simmons*, banning juvenile death penalty partly referencing global consensus). Posner (and Goldsmith) criticized that trend, favoring a clear boundary where international law is applied domestically only when duly incorporated by statute or treaty.

One could say Koh represents the "liberal internationalist" or transnationalist school, which posits that over time international law shapes state identities and interests (states obey because they gradually *want to*, as their values align with the law). Posner represents the realist/rationalist school that rejects that deep internalization: states obey if they *have to* or if

it's convenient, otherwise not. In academic dialogues, Posner has directly sparred with Koh's ideas. For example, Koh championed the "no torture, no exceptions" absolute legal norm against torture; Posner, in other writings, suggested that moral absolutes in law break down under extreme security threats (hinting that states will violate them if truly pressed). This doesn't mean Posner endorses torture – but he would likely say the legalist stance that law always prevails (as Koh insisted it must) is empirically dubious.

In summary, Koh's view: International law is gradually creating a *transnational rule of law*, through interaction and norm-internalization; compliance comes from a mix of interest, identity, and legal obligation. Posner's view: International law is epiphenomenal to state interests; any compliance that looks like internalization is likely coincident with interest or enforced by domestic politics rather than an autonomous force. These are opposite ends of the spectrum. Notably, both Koh and Posner have been influential in U.S. policy debates – Koh urging engagement with global law (he was a key figure in advocating the U.S. join treaties, adhere to Geneva Conventions, etc.), Posner often cautioning against legal overreach or idealism. Each would likely argue the other is overlooking critical dimensions: Koh might say Posner ignores how law elevates long-term common good and the moral dimension of leadership, while Posner would say Koh is *too idealistic*, underestimating how often states will choose realpolitik over legal norms. The contrast between them epitomizes the broader debate highlighted in *The Perils of Global Legalism*.

Anne-Marie Slaughter (Princeton University – Liberal Global Governance)

Anne-Marie Slaughter offers another perspective that contrasts with Posner, though perhaps less starkly than Koh's. Slaughter is known for her work on global networks and transgovernmentalism, especially in her book *A New World Order* (2004). She argued that even without a world government, we are seeing the rise of a "disaggregated" global governance where national government officials (judges, regulators, legislators) form networks with their foreign counterparts, harmonizing policies and spreading norms. For example, networks of judges share legal principles, leading to convergence in jurisprudence; regulators cooperate on financial or security matters, creating *informal international law*. Slaughter's vision is an interconnected world where national sovereignty is still present, but national officials act collectively in the global interest through legal and policy networks. This is an inherently more optimistic view of international cooperation through law, albeit not relying on formal treaties alone but on what she calls *"government networks"*.

Comparing to Posner: Slaughter is fundamentally more of a liberal internationalist, believing in the power of institutions and relationships to mitigate anarchy. She, like Koh, believes that values like rule of law and democracy can spread through these networks, aligning state interests over time. Posner would likely respond that networks are fine but ultimately they function only as long as they align with executive policy – for instance, judicial networks can promote liberal norms, but if a state's leadership decides to flout those norms (say, Hungary or Poland more recently challenging EU legal norms), networks cannot override state sovereignty.

A key difference is in how they view the role of domestic institutions in complying with international law. Slaughter champions the idea that national courts and agencies become agents of international law, voluntarily coordinating with others (e.g., enforcement of foreign judgments, mutual recognition of regulations, etc.). Posner, conversely, is cautious: in his chapter on international law in domestic courts, he notes how reliance on domestic courts for

global goals can backfire or be limited. He specifically critiqued, for example, using the U.S. Alien Tort Statute to sue for climate change contributions (a hypothetical he felt was far-fetched and better handled by policy). Slaughter might see that as creative lawyering to address global issues, whereas Posner sees it as judicial overreach into essentially political questions.

Another point of comparison: Slaughter on humanitarian intervention – she has argued for legal frameworks that permit intervention to stop atrocities (responsibility to protect), finding ways to square this with sovereignty. Posner, in *Perils*, cited NATO's Kosovo intervention as evidence that when law (UN approval) impeded action deemed necessary, states acted anyway. He might say Slaughter's approach, trying to legalize humanitarian intervention, is just retrofitting law onto what states will do if they choose; the law wasn't what enabled Kosovo intervention (indeed it was illegal under UN rules), it was national decisions and a coalition's power. Slaughter might reply that establishing a legal norm for humanitarian intervention is possible (as attempted in the UN World Summit 2005) and desirable to guide future actions, whereas Posner would be skeptical that any such norm could bind a great power against its will.

In essence, Slaughter's views align with what Posner labels "global legalism" – though her version is nuanced with an awareness that global governance happens through networks, not just formal treaties. She believes in progressive development of global legal frameworks, largely driven by liberal democracies, and that transnational cooperation can solve collective problems. Posner's views remain that these efforts are inherently limited by state interests and that informal networks do not escape the fundamental problem of no central enforcement. It's telling that Slaughter's approach is often cited as *the* influential liberal vision (Duncan Hollis called *A New World Order* the most influential statement of a certain liberal view), while Posner's book is the influential realist rejoinder. Slaughter's perspective embodies the idea that law can evolve through practice and create a quasi-order; Posner's perspective is that without real authority, that order is brittle.

Interestingly, Slaughter and Posner did agree on some pragmatic points: Slaughter co-authored a piece on "Judicial Globalization" and even wrote about how U.S. courts should sometimes use international sources – Posner and Goldsmith jointly responded in the mid-2000s with caution. That discourse showed Slaughter advocating openness to international law in U.S. courts for legitimacy and reciprocity reasons, whereas Posner/Goldsmith warned of democratic accountability issues and differing values. Thus, in comparison, Slaughter tilts toward integration of international and domestic legal spheres, Posner toward separation unless democratically chosen. Her more sanguine view of a new world order via law is exactly what Posner terms *perilous legalism* if taken too far.

Jack Goldsmith (Harvard University – The Limits of International Law)

Jack Goldsmith is actually the scholar most closely aligned with Posner's views, to the point that they co-authored the 2005 book *The Limits of International Law*. In many respects, Goldsmith can be seen as a collaborator in developing the realist, interest-based critique of international law that *The Perils of Global Legalism* continues. Goldsmith & Posner's 2005 book argued that customary international law is essentially "simply coincidence of interest" among states, and that treaty commitments are effective only to the extent that they reflect the underlying interests and power of states. They used rational choice models to categorize international law into areas like *coordination* (where law works easily because everyone

wants an agreed rule) versus *cooperation under anarchy* (like prisoner's dilemmas, where enforcement is needed and often lacking). Their conclusion was that international law has little independent force: states comply when it's in their interest and disregard it when it isn't, meaning law rarely if ever constrains a great power against its will.

In *The Perils of Global Legalism*, Posner builds on many of the same premises. Therefore, Posner's views and Goldsmith's views are highly congruent. Both are considered part of the "realist" or "skeptical" school of international law scholarship. Goldsmith's approach, like Posner's, was informed by a blend of political science and legal analysis. They both emphasize empirical examples of states defying international law without suffering meaningful consequences (like the U.S. going to war in Iraq without UN approval, or countries violating human rights treaties with impunity).

However, one can compare if there's any daylight between them or any evolution in Posner's thought by 2009. Goldsmith had a background in U.S. government (he served in the Bush Administration) and is often associated with a conservative perspective that values U.S. sovereignty (for instance, he was critical of international jurisdiction over U.S. officials). Posner, while sharing those sovereignty concerns, sometimes writes more from a neutral social-science perspective than an overtly nationalist one. But by and large, in *Global Legalism*, Posner echoes and amplifies the arguments from *Limits of International Law*. In fact, some reviewers noted that *Global Legalism* came *"just four years after [Posner's] best-selling The Limits of International Law, co-authored with Jack Goldsmith"*, essentially continuing the earlier book's skeptical, social-scientific outlook.

One area to compare: Goldsmith's take on using international law in U.S. courts (he wrote on the Alien Tort Statute issues as well) and Posner's take in chapter 9. Both were critical of expansive use of ATS to press international norms; Goldsmith as head of the Office of Legal Counsel in 2003 had to deal with issues like the applicability of Geneva Conventions, and he favored narrower interpretations that preserved flexibility for the U.S. Both likely agree that domestic constitutional principles (and democratic control) should govern how far international law is allowed in.

Another angle: Goldsmith and Posner vs. Koh/Slaughter – Goldsmith publicly debated Koh on issues like the reach of international law in the war on terror (for example, Koh advocated that drone strikes and detentions still must follow int'l law; Goldsmith tended to argue the U.S. had more freedom). Posner's book cites "American and European legal intellectuals" who see law as above interest – Goldsmith would be equally skeptical of those intellectuals. In fact, Goldsmith co-wrote an article "Sincerely Wrong International Law Scholars," chiding academics who criticized U.S. policies as illegal (implying those academics were naive about how law works). That spirit pervades Posner's book as well.

So, in comparison, Goldsmith's views are effectively the same school as Posner's. If anything, Posner's 2009 book can be seen as refining the argument from their 2005 collaboration and pushing it further into critique of the *mindset* ("legalism") underpinning the opposing camp. Goldsmith, in his later work (like *Who Controls the Internet?* or writing on cyber issues), continued to emphasize practical constraints on global regulation – consistent with the Posnerian skepticism.

It's worth noting that Goldsmith & Posner's 2005 work got substantial criticism too (Mary Ellen O'Connell wrote a piece *"The Power & Purpose of International Law"* partly as a

reply, and others accused them of overlooking the role of norms). By 2011, Goldsmith actually reflected that *The Limits of International Law* had aged well but also that the international law environment had changed (with more terrorism focus etc.). Posner in 2009 was doubling down on their thesis in the broader sense of *attitude* rather than technical analysis.

In summary, Posner and Goldsmith stand together as leading voices of the realist critique. Goldsmith's contributions give scholarly weight and real-world insight to the arguments Posner makes. Posner's *Global Legalism* can be seen as applying the Goldsmith-Posner theoretical lens to the notion of legalism itself and to contemporary developments like the rise of international courts. If Koh and Slaughter represent the ideals of the "Yale School" or liberal internationalism, Goldsmith and Posner represent the "Chicago School" of international law – grounded in rational choice, skepticism of global governance, and a preference for sovereign accountability. The inclusion of Goldsmith in this comparison highlights that *not all major international law scholars disagree with Posner*; Goldsmith is a prominent example of a respected scholar who shares Posner's basic outlook, though perhaps with a bit more emphasis on U.S. strategic interests (Goldsmith often frames issues in terms of U.S. constitutional limits and practical sovereignty concerns).

By comparing these figures:

- Koh – archetype of normative/internalization theory (global legalist in Posner's terms).
- Slaughter – proponent of innovative, networked legalism (also a global legalist but with a modern twist).
- Goldsmith – fellow traveler of Posner's realism, co-author, providing theoretical backbone to Posner's claims.

We see that Posner's work did not emerge in a vacuum; it was part of an ongoing discourse. Posner himself acknowledges scholars "with whom I agree" – likely referencing Goldsmith and other rationalists – versus the global legalists with whom he disagrees. Anthony D'Amato's review places Lepard (a scholar who argues for a morally grounded international law) at one end, Posner at the opposite end, and Guzman (who offered a rational design but more optimistic take) in the middle. Harold Koh and Anne-Marie Slaughter would be nearer Lepard's end (the strongly legalist/normative side), while Jack Goldsmith stands firmly with Posner's camp.

This spectrum illustrates that *The Perils of Global Legalism* was part of a dialectic in the field: by challenging Koh and Slaughter openly, Posner invited responses and comparisons. In fact, one criticism noted in a review was that Posner spends pages critiquing works of Koh and Slaughter but "does not show how they inform global legalism" systematically – implying he perhaps cherry-picked or did not fully engage their nuance. Regardless, the comparison shows Posner's distinct place: far on the skeptical side, providing a counter-weight to the more dominant liberal internationalist narrative in the post-Cold War era.

Conclusion of the Comparative Context:

In conclusion, Posner's views find support from scholars like Goldsmith, who share his realist assumptions, and sharp contrasts with scholars like Koh and Slaughter, who embody the global legalist outlook he criticizes. This juxtaposition underscores the key debates in

international law today: Is international law a fundamentally political instrument of states, or is it evolving into a genuine rule-of-law system? Posner sides clearly with the former, and through comparisons we see that while many disagree with him, his arguments have forced even optimists to refine why they believe international law matters. In the end, *The Perils of Global Legalism* is situated as a critical checkpoint in international legal scholarship – one that says, "stop and consider the limits and illusions here", before rushing ahead with the project of global law. Whether one agrees or not, Posner's contentions remain a reference point that other scholars like Koh, Slaughter, and Goldsmith must address in their own work, making the book an important part of the intellectual conversation on the future of international law.

Conclusion

Eric A. Posner's *The Perils of Global Legalism* presents a sweeping, rigorously argued realist critique of the idea that international law can fundamentally reorder international affairs in the absence of centralized enforcement. The book's central thesis – that an excessive faith in international legal mechanisms is misplaced – is developed through both theoretical debunking of legalist assumptions and empirical examination of international institutions. Posner challenges readers to confront the possibility that much of what global legalists aspire to may be "built on illusion", and he cautions that international relations, operating in an anarchic and often harsh environment, offer little room for those illusions.

Throughout the book, Posner questions the efficacy and independence of international law, asserting that at root it remains a reflection of state interests and power dynamics. He contrasts the legalist vision (law as a guiding hand above states) with the realist view (law as a tool that states use when convenient), ultimately siding with the latter. This perspective leads him to view developments like the proliferation of international courts or the expansion of human rights treaties not as unalloyed progress, but as limited advances contingent on states' continued acquiescence.

Each part of the book contributes to a comprehensive case: Part I illuminates how global legalism is rooted in *utopian premises* and highlights its intellectual and practical flaws, while Part II demonstrates those points in action by analyzing the mixed record of *adjudication and enforcement* in the international arena. From NATO's Kosovo intervention to the uneven enforcement of WTO rulings, Posner finds recurring evidence that states "stand ready to dispense" with legal obligations when it suits their interests, confirming the limited constraining power of international law.

The scholarly response to Posner's work has been vigorous. Supporters applaud the book as a bracing corrective against wishful thinking – Michael Glennon, for example, called it a "scintillating read" that exposes how much of international law's supposed authority is *circular or illusory*. Critics, however, argue that Posner's critique goes too far, understating the real (if gradual and often subtle) influence that international law exercises through legitimacy, reputation, and normative appeal. They caution that Posner's brand of realism, if adopted wholesale, could become a self-fulfilling prophecy that undermines efforts to solve global collective problems. The contrast between Posner's views and those of scholars like Harold Koh and Anne-Marie Slaughter – who remain optimistic about the power of law and networks to change state behavior – highlights a fundamental divide in the field. Posner's stance is closer to that of Jack Goldsmith, with whom he shares the conviction that international law's reach is bounded by state consent and interest.

In the end, *The Perils of Global Legalism* stands as an important scholarly contribution that compels international lawyers and international relations theorists alike to reckon with the "limits of international law." Even those who disagree with Posner must address the challenges he raises: the problem of enforcement, the role of power, and the danger of complacently assuming law will always fill the void of global governance. The book does not necessarily spell doom for international law – but it demands a realistic appraisal of what law can and cannot achieve on the world stage. Posner's concluding message is essentially a call for sobriety: international law remains a valuable institution, but it is no panacea for the world's ills, and overestimating its power may lead to perilous outcomes. As the world continues to grapple with issues like climate change, pandemics, and transnational conflicts, Posner's work reminds us that legal solutions will only be as effective as the political will and interests that underpin them – a lesson both sobering and essential for future efforts to strengthen the international rule of law.

Sources:

- Posner, Eric A. *The Perils of Global Legalism*. University of Chicago Press, 2009. (Analysis and excerpt pages 16–27).
- Ikenberry, G. John. Review of *The Perils of Global Legalism*, *Foreign Affairs* (Jan/Feb 2010).
- University of Chicago Press description of *The Perils of Global Legalism* (2009).
- D'Amato, Anthony. "New Approaches to Customary International Law" (review essay of Posner, Guzman, Lepard), *AJIL* 105:163 (2011).
- Amazon Customer Review (Ivy the Snivy) of *The Perils of Global Legalism* (2018) – note: perspective on straw man critique.
- Foreign Policy Association article, "The Limits of the Limits of International Law" (2010), summarizing Goldsmith & Posner's arguments.
- Harold Koh, "Why Do Nations Obey International Law?" *Yale Law Journal* 106 (1997) – (referenced for contrasting view).
- Anne-Marie Slaughter, *A New World Order*. Princeton University Press, 2004 – (referenced for contrasting networks approach).
- Jack Goldsmith & Eric Posner, *The Limits of International Law*. Oxford University Press, 2005 – (context for Posner's views and co-author comparison).

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Dieter Grimm "The Achievement of Constitutionalism and its Prospects in a Changed World" and „The Cosmopolitan Constitution"

I. Grimm's "The Achievement of Constitutionalism and its Prospects in a Changed World" (2010)

Structure and Main Arguments

Dieter Grimm's 2010 essay, featured in *The Twilight of Constitutionalism?*, is organized in two principal parts. First, Grimm examines the historical achievement of modern constitutionalism, and then he considers its prospects in a dramatically changed global context. Some key arguments from this work include:

- Constitutionalism's Core Achievement: Grimm explains that modern constitutionalism fundamentally subordinates politics to law, establishing the rule of law and limited government. A constitution, in the narrow sense, means that political power is constrained by legal norms – essentially, "a submission of politics to law". However, Grimm argues that constitutionalism's real achievement is more ambitious: it legitimizes political power by rooting it in the consent and participation of the governed. In Grimm's view, the constitution is *not* merely a legal framework; it is a normative project to establish legitimate authority among free and equal citizens. This project is "trinitarian," founded on a trio of core principles – human rights, democracy, and the rule of law – which Grimm describes as the dogma of the constitutionalist faith. By linking state authority to these principles, constitutionalism transformed absolute power into *limited*, law-bound power accountable to "We the People." Indeed, Grimm notes that a modern constitution's most important role is to confer legitimacy on law-making power by enabling citizen participation (the "first individual right" in a constitutional order, he suggests, is the *right to parliamentary representation*, i.e. political participation). In sum, the post-18th-century constitutional paradigm placed public power under legal checks and popular control – a revolutionary achievement of constitutionalism.
- Constitution vs. Statehood: Grimm emphasizes that classical constitutionalism developed within the framework of sovereign nation-states. Drawing on the legacy of the French and American revolutions, he stresses that constitutions historically presuppose a political community capable of self-government. The very concept of a constitution is tied to the idea of a sovereign *constituent power* ("the People") that enacts a supreme law to govern itself. Thus, a constitution is not just any higher law, but one that emanates from a collective political will and institutes a democratic order. Grimm's theoretical position here shows the influence of classic constitutional

thinkers like Emmanuel Sieyès (on constituent power) and is consonant with Jürgen Habermas's view of constitutions as fusing popular sovereignty with fundamental rights. In this vein, Grimm underscores that popular sovereignty and statehood were historically inseparable from constitutionalism's rise: only a sovereign state provides the cohesive public sphere and authority structure needed for a constitution to function. This baseline informs his caution about extending constitutionalism beyond the nation-state.

- A Changed World – Globalization and Multilevel Governance: In the second part of the essay, Grimm turns to the "changed world" facing constitutionalism in the late 20th and early 21st centuries. He identifies phenomena like globalization, the rise of supranational organizations (e.g. the European Union), and the spread of international legal regimes as developments that challenge the traditional state-centric model of constitutionalism. The post-WWII era has seen constitutional principles and norms "go global" – for instance, through international human rights treaties, transnational courts, and multilevel governance frameworks. Grimm acknowledges that constitutions today increasingly operate in an environment of legal pluralism, where national legal orders coexist and interact with supranational and international legal norms. He notes that modern national constitutions are often embedded in systems of external oversight or "peer review" by other nations and international bodies. For example, domestic human rights are monitored by international courts, and state policies are constrained by organizations like the UN or WTO. This represents a new stage in constitutionalism's development: what some scholars call the "constitutionalization" of international law or even "global constitutionalism." Grimm's essay grapples with whether these global and transnational norms can genuinely be called *constitutional* in the absence of a world state or global people.
- Grimm's Theoretical Stance – Skepticism about Global Constitutionalism: While Grimm recognizes that certain constitutional features (such as judicial review, rights protection, rule-of-law norms) are emerging beyond the state, he is fundamentally skeptical that a full-fledged constitutionalism can exist without the state. He argues that constitutionalism, in the robust sense (what Matthias Kumm terms "Big C" Constitutionalism), cannot be decoupled from the democratic sovereignty of a political community. In Grimm's words, there is no genuine political community at the global level capable of establishing a democratic constitution. International law and organizations, however important, lack a "We the People" with the authority to confer legitimacy on a supreme law. Moreover, the "institutional infrastructure" for democratic governance on a global scale is missing. Without a world legislature accountable to a global electorate, or a global public sphere, he doubts that talk of a *global constitution* is anything more than metaphor. Grimm thus draws a line between the form of constitutional norms and their substance: one can find rules, courts, and constraints at the international level (what Kumm calls small-'c' constitutionalism), but these lack the democratic authorship and sovereign authority that define true, capital-'C' Constitutionalism. In short, Grimm contends that calling international regimes "constitutional" without a global demos is misleading, unless one is normatively advocating for an eventual "global constitutional state" (an endeavor he finds highly contestable and impractical). This position places Grimm among the "skeptics" of global constitutionalism – a stance he shares with other scholars like Nico Krisch and Peter L. Lindseth, who around 2010 argued that postnational governance lacks the democratic legitimacy of state constitutions.
- State Sovereignty and Democratic Legitimacy: A recurring theme in Grimm's essay is the fate of state sovereignty in an age of globalization. Far from embracing a post-

sovereign world, Grimm defends state sovereignty *in its constitutionalized form* as a guarantor of democracy. He notes that states have indeed pooled or limited aspects of their sovereignty by treaty – for example, by joining the EU or United Nations – but he insists this does not amount to the creation of a new sovereign authority above the state. Sovereignty for Grimm is not an abstract absolute; it is the effective capacity of a political community to govern itself. A national constitution both limits sovereignty (by binding the sovereign to law) and expresses sovereignty (by enabling self-government). Thus, Grimm sees danger in any development that erodes the connection between sovereignty and democratic accountability. He argues that many transnational regulatory regimes suffer a democratic deficit – decisions are made beyond the reach of national electorates. Simply invoking the "rule of law" at the global level is not enough to confer legitimacy if popular participation is absent. He points out, for instance, that while the European Union has legal order and even a charter of rights, it still struggles with democratic legitimacy in the absence of a single European people. According to Grimm, a legal order "not rooted in a democratic system has no constitutional foundation in the full sense". Therefore, efforts to constitutionalize the EU or international law must confront this democracy deficit. Grimm suggests that meaningful democratization of supranational institutions would be required before we can "speak seriously about [having] a Constitution" beyond the state. This could entail stronger parliamentary involvement or other means for peoples to exert influence transnationally. However, Grimm is realist enough to note that achieving democracy at the global level is exceedingly difficult – "the first condition (rule of law) is much easier than the second (democratization)" in both the EU and international spheres. His skepticism, then, is rooted in the conviction that constitutionalism's key achievement – limited self-government – might be undone if power shifts to venues where law is made without the people's voice.

- Engagement with Legal Pluralism: Grimm's analysis also implicitly addresses legal pluralism, the coexistence of multiple legal orders. He acknowledges that we live in a pluralist legal landscape (national constitutions, EU law, international law) and that this reality challenges the classical hierarchical view of law. However, Grimm does not fully embrace radical pluralism whereby authority is completely fragmented. Instead, he appears to maintain that ultimate constitutional authority (the Kompetenz-Kompetenz) still rests with the sovereign people at the state level. In practical terms, this view resonated with the approach of constitutional courts (like Germany's) which, while cooperative with supranational law, reserve the final say to uphold fundamental constitutional principles. Grimm critically notes proposals of "constitutional pluralism" in Europe that imagine the EU and states as co-equal constitutional sites without a clear hierarchy. He warns that the question of who decides in the last instance cannot be avoided – either the supranational order or the state will have final authority. His stance aligns with a defense of the nation-state constitution as the primary source of democratic legitimacy and rights protection, even as it operates within a pluralist context. In the 2010 essay, Grimm thus engages with theorists like Neil Walker (who championed constitutional pluralism) by reasserting the need for a locus of ultimate authority. For Grimm, pluralistic arrangements are workable only so long as they do not force states to breach their own constitutional identity and democratic obligations. This cautious embrace of pluralism – cooperation without abdicating final sovereignty – is a hallmark of Grimm's approach to global legal complexity.
- Contributions to Scholarly Debate: Grimm's essay made a significant contribution by clearly articulating the tension between traditional constitutionalism and the new

transnational order. At the time of its publication, academic debates were swirling about "constitutionalism beyond the state." Grimm provided a bracing reminder of constitutionalism's original purposes and limits. His perspective challenges more optimistic scholars who see emerging global constitutional norms as progress. For example, Grimm's insistence on a democratic constituent power is a direct challenge to theories that the international community or courts alone can constitutionalize global governance. In this, Grimm stands in conversation (and often in opposition) with contemporaries like Jürgen Habermas (who advocated for a cosmopolitan constitution of world society), and with global governance theorists Jeffrey Dunoff, Joel Trachtman, or Bardo Fassbender who explored constitutional analogies for the UN system. Grimm's skepticism also aligns with critical voices such as Nico Krisch's *Beyond Constitutionalism (2010)* and Peter Lindseth's *Power and Legitimacy (2010)*, which argued that supranational bodies derive authority ultimately from states and lack an autonomous democratic legitimacy. By grounding his argument in the fundamental democratic theory of constitutionalism, Grimm not only defended the post-WWII model of the nation-state constitution but also set a high bar for what any *future* cosmopolitan constitutional order would need to achieve. His work thereby sharpened the intellectual debate: any claim of "global constitutionalism" must answer Grimm's questions about Who are the constituents? Where is the democratic process? and How are rights enforced against power?. In summary, the 2010 essay articulates a principled theory that constitutionalism's past success (establishing limited, democratic government) might be imperiled in a new era, and it calls on scholars and practitioners to reckon with that fact. As one commentator observed, Grimm is among the "most sophisticated skeptics" of extending constitutionalism beyond the state, forcing a more precise use of the term and reminding us that constitutionalism is ultimately a project of empowering people through law.

The Cosmopolitan Constitution (2016)

Overview of the Work and Main Arguments

The Cosmopolitan Constitution (2016) presents a thorough analysis of how constitutionalism has evolved in the post-WWII and post-national era. This work – authored by Alexander Somek, but highly relevant to Grimm's theoretical framework – traces three stages in the development of constitutionalism, culminating in what Somek calls the *"cosmopolitan constitution."* The book's structure reflects these stages and their implications:

- In the first stage, often labeled *constitutionalism 1.0*, constitutions were chiefly about organizing sovereign power (Powers) within the nation-state. The classical constitution was "the work of freedom," expressing and channeling popular sovereignty. In this era, roughly from the late 18th century through the early 20th, constitutions derived their authority from collective self-determination – the people as a political community freely designing their governing framework. This corresponds to what Grimm highlighted as constitutionalism's achievement: the constitution as an instrument of the people's will, establishing government by consent.
- In the second stage (constitutionalism 2.0), emerging after World War II, the focus shifted to *Recognition* of fundamental values, especially human rights and human dignity. Somek argues that after 1945, a constitution's legitimacy came not only from popular authorship but also from its credible commitment to universal human rights. This was a transformative moment: constitutions were no longer seen as purely the

nation's internal affair; they had to measure up to supra-national standards of justice and rights. As a result, "the people" recede into the background to some degree. In this stage, a constitution is viewed as valid not simply because *our* people willed it, but because it aligns with overarching human rights norms. National constitutions became embedded in international oversight mechanisms – for example, the post-war "peer review" system wherein nations monitor each other's human rights records. In practice this meant institutions like the European Court of Human Rights or the UN Human Rights Committee can critique or influence state laws. The book suggests that this development created a dual source of constitutional authority: popular sovereignty *and* adherence to global human-rights principles. This reflects a key change in constitutional theory – one very much in dialogue with Grimm's concerns. While Grimm acknowledged the addition of universal norms, he warned that diluting popular sovereignty could undermine democratic legitimacy. *The Cosmopolitan Constitution* describes the same phenomenon as an evolutionary step: constitutions acquiring a cosmopolitan character by binding themselves to values beyond the nation.

- In the third stage, or *constitutionalism 3.0*, constitutions reach the phase of Transcendence, going beyond the confines of the nation-state. This is the fully developed cosmopolitan constitution. Importantly, Somek is careful to clarify that the cosmopolitan constitution is *"not a blueprint for a constitution beyond the nation state"*, nor a world constitution in a literal sense. In other words, we are not talking about a single global charter imposed on everyone. Rather, the cosmopolitan constitution denotes the way in which national constitutional law "reaches out beyond its national bounds." Each national constitution becomes partially transnationalized: it operates in a global web of law, acknowledging external constraints and sharing authority with international institutions. The author reconstructs how constitutionalism moved from stage 1.0 (national popular will) to 2.0 (adding universal rights) to 3.0 (constitutional norms and governance spanning across borders). The culmination is that the modern constitution has two faces – a concept discussed in the book's final analytical chapter.
- The Two Faces of the Cosmopolitan Constitution: According to *The Cosmopolitan Constitution*, contemporary constitutions display a Janus-faced character, having both a "political" face and an "administrative" face. The political face reflects the *normative aspirations* of cosmopolitanism:
    - Constitutions now see themselves as constrained by international human rights commitments. For example, a national constitution might prohibit the death penalty or racial discrimination in part because these are global human-rights norms.
    - They are firmly committed to combating discrimination on the basis of nationality. This means a constitutional order embraces a principle of universalistic equality, tempering the traditional privileging of one's own citizens. (In practice, this can be seen in how EU law, for instance, forbids member states from discriminating against other EU citizens – a cosmopolitan element in regional form.)
    - The political face also involves actively managing interactions with other sites of authority, such as the United Nations or international regulatory regimes. A cosmopolitan constitution recognizes that authority is shared; it must coordinate and cooperate beyond the state. This could include, for example, incorporating international law into domestic law, or structuring government agencies to liaise with global institutions.

In short, the political face is *outward-looking and principled*: it embraces global norms (especially human rights) and seeks to embed the nation in a cooperative international order. This face captures what many might view as the positive "achievement" of cosmopolitan constitutionalism – a national constitution that is self-limited by higher standards and global responsibilities, not only by its own people's will.

The administrative face, by contrast, reveals the more problematic side of the cosmopolitan age:

- It represents the "demise of political authority" vested in representative institutions. As more decisions are taken in intergovernmental or technical forums, the role of national parliaments and electoral politics diminishes.
- Political processes increasingly yield to informal policy coordination among bureaucracies or experts across borders. Rather than debates in a parliament, many important governance decisions (for example, financial regulations, trade standards, public health responses) are shaped by transnational networks of officials or private actors. This is governance by administration rather than by politics.
- The administrative face thus portrays a world of *"constitutional authority for an administered world"*. Here, constitutions facilitate technocratic management and regulatory alignment internationally, so long as basic civil rights are not flagrantly violated. In other words, as long as core liberties are safe, many policy choices are delegated to global or regional coordination processes that operate at arm's length from popular input.

This description echoes concerns that Grimm and other scholars have raised about the erosion of democratic decision-making. The cosmopolitan constitution's administrative face suggests that, in practice, *effective sovereignty* has moved from legislatures to executive branches and transnational bodies. National governments find themselves constrained by "rules of the game" set internationally – from trade agreements to security pacts – and domestic politics has less scope to chart independent courses. The book implies a critique: while the cosmopolitan turn has entrenched rights (a positive), it has also hollowed out democratic self-government (a negative). The "people" become passive beneficiaries of rights and good governance, but less frequently active choosers of collective policies. This two-faced outcome captures the paradox of cosmopolitan constitutionalism: it universalizes certain constitutional values *while* it undercuts the classical locus of constitutional power (the nation's electorate).

Grimm's Theoretical Positions in *Cosmopolitan Constitution* and Engagement with Debates

The Cosmopolitan Constitution is not authored by Grimm, but its analysis strongly resonates with themes in Grimm's constitutional theory – sometimes reinforcing, sometimes challenging them. We can interpret this work as a later interlocutor in the ongoing conversation about global constitutionalism that Grimm's 2010 essay engaged. Key theoretical positions and points of engagement include:

- On Constitutionalism and Popular Sovereignty: The 2016 work essentially confirms Grimm's observation that post-WWII constitutionalism shifted to include universal

norms and thereby diluted the role of unbridled popular sovereignty. Somek explicitly writes that "after the Second World War…the modern constitution owes its authority not only to collective authorship; it also must commit itself credibly to human rights. Thus people recede into the background, and the national constitution becomes embedded into…'peer review' among nations". This statement underscores the same development Grimm noted: constitutional legitimacy now has a dual source (the People *and* human rights). Grimm's theoretical stance had been that a constitution's democratic legitimacy should remain paramount, and he voiced concern that too much external constraint might relegate the people to secondary status. *The Cosmopolitan Constitution* acknowledges exactly that relegation of the people ("recede into the background") as a fact of contemporary constitutional life. In effect, the book engages with Grimm by asking: *Given that this shift has happened, what does it mean for constitutional theory?* Somek's answer is to conceptualize the cosmopolitan constitution with its two faces – a nuanced stance rather than outright lament. Grimm might agree with the description but remain more normatively troubled by it.

- Global Constitutionalism: Grimm was skeptical of calling any supranational arrangement a true constitution absent a global sovereign. *The Cosmopolitan Constitution* delicately sidesteps this by refusing to posit a single global constitution, instead portraying cosmopolitan constitutionalism as a quality of national constitutions in the aggregate. This aligns partially with Grimm's insistence that no "Big-C" Constitution exists beyond the state. Somek does not claim that the United Nations or EU is itself a complete constitution; rather, he says national constitutions have changed their nature in the cosmopolitan era. This theoretical move engages Grimm's objection by redefining what we mean by *constitutionalism beyond the state*: it's not one global charter but a network of interlinked constitutional orders. In scholarly debates, this approach converses with ideas of "multilevel constitutionalism" or "constitutional pluralism," which similarly view world constitutional order as an ecosystem of national and international elements. Grimm has been cautious about such pluralist constitutionalism, but *The Cosmopolitan Constitution* provides a framework that might address some of his concerns (by keeping the focus on national constitutions) while also highlighting phenomena he identified (like the internationalization of rights).
- State Sovereignty: The work further engages the concept of state sovereignty under cosmopolitan constraints. Grimm's position was that sovereignty remains essential for democratic legitimacy, even if exercised collectively (e.g. in the EU, states as "masters of the Treaties"). Somek's analysis suggests that while formal sovereignty persists, its exercise is now *conditioned* by cosmopolitan norms. The "political face" of constitutions accepts limits on sovereignty (e.g. no sovereign right to violate human rights or engage in racial/ethnic discrimination). This can be seen as an evolution of the concept of sovereignty: sovereignty is no longer the unfettered ability to decide anything (Westphalian style), but sovereignty within the bounds of international law and shared values. Grimm would likely acknowledge this factual evolution – he himself noted that states have willingly constrained their freedom of action by treaty after WWII. However, Grimm might emphasize that these constraints were *self-imposed by sovereign decisions* of states, and thus derive their authority ultimately from sovereign consent. *The Cosmopolitan Constitution* adds that over time these self-imposed commitments have generated a new ethos, where states conceive of their constitutional power as inherently limited by cosmopolitan principles (almost as if sovereignty now carries a built-in commitment to the international community). This is a subtle shift from Grimm's perspective: Grimm would stress the primacy of the

sovereign act (e.g. a state choosing to join a human rights convention), whereas the cosmopolitan view suggests the primacy of the normative regime itself (human rights as a yardstick that even a sovereign state feels bound by, beyond mere voluntary choice). The book thereby contributes to debates on sovereignty by illustrating how the concept is being transformed rather than obliterated. Sovereignty in a cosmopolitan constitution becomes shared and reviewed sovereignty – a notion that engages both supporters and skeptics of global constitutionalism.

- Legal Pluralism and Authority: Somek's account inherently deals with legal pluralism, as it portrays multiple "sites of authority" interacting (nation-states, international institutions, etc.). Grimm's 2010 essay addressed pluralism with caution, warning that without clear hierarchies, conflicts of authority loom. *The Cosmopolitan Constitution* offers one way to understand pluralism: through the *administrative face*, which shows governance shifting to transnational administrative networks. This is very much a pluralist situation – authority is diffuse, and no single constitution (national or international) holds all the power. The downside, as Grimm feared, is accountability: pluralist governance can bypass democratic deliberation. Here, Somek's analysis actually reinforces Grimm's critique by demonstrating that the loss of a clear hierarchy (state vs. international) can lead to a democracy deficit (the administered world scenario). However, on the other side, the *political face* suggests a kind of normative pluralism that Grimm might find more palatable: national constitutions voluntarily integrating global norms, creating a *web of mutual accountability* among states. In scholarly terms, this resonates with the idea of a pluralist constitutional order where no unit is absolutely supreme, yet all obey certain fundamental principles. Grimm has interacted with proponents of this view (e.g. Miguel Maduro, Neil Walker) by insisting on the need for a final arbiter. Somek doesn't solve the final arbiter problem explicitly, but he implies that as long as basic rights are upheld, final arbitration often occurs through technocratic negotiation rather than court judgments. This is perhaps a point of tension: Grimm might question whether leaving crucial decisions to "various informal strategies of policy coordination" is normatively acceptable, given his emphasis on law and democratic authorization. In essence, *The Cosmopolitan Constitution* engages Grimm by painting a detailed picture of the pluralist reality and asking whether constitutional theory can accommodate it without betraying its democratic roots. It thereby challenges constitutional theorists to grapple with the pragmatic emergence of pluralist governance that Grimm earlier cautioned against.
- Contributions and Challenges to the Debate: The 2016 work contributes to constitutional theory by giving a name and shape to the new era – *cosmopolitan constitutionalism*. It builds on ideas from thinkers like *Jürgen Habermas* (on "constitutionalization" of international law and postnational democracy), *Carl Schmitt* (the notion of a constitution resting on a sovereign decision – which Somek notes is now attenuated), and *Ernst-Wolfgang Böckenförde* (who famously observed that the liberal secular state relies on preconditions it cannot guarantee – relevant as constitutions rely on a community that cosmopolitan norms may weaken). Somek's thesis that the constitution now has two faces offers a nuanced position in the scholarly debate. It neither outright celebrates global constitutionalism (since the administrative face is a cautionary tale) nor simply rejects it (since the political face recognizes genuine normative progress). In doing so, it complements Grimm's more critical stance with a framework that acknowledges both gains and losses. For example, where Grimm might highlight the *perils* of legal globalization for democracy, Somek also highlights the *promise* of cosmopolitan norms for justice

beyond borders. This two-sided evaluation challenges scholars to hold two ideas in mind: *the enhancement of rights* vs. *the diminution of popular power*. The concept of the cosmopolitan constitution thus pushes the debate forward by asking: Can we have a constitutionalism that is both cosmopolitan and democratic? Or are we destined to trade off one value for the other? These questions are very much in line with Grimm's own inquiries, but framed in a more descriptive-analytic way by 2016. Notably, the book does not propose a clear solution (like a world parliament or etc.), but its identification of the *two faces* implicitly calls for strategies to mitigate the democratic deficit of cosmopolitan governance – an issue Grimm has consistently raised. In summary, *The Cosmopolitan Constitution* enriches the scholarly conversation by providing a conceptual bridge between state constitutionalism and global governance, and in doing so it both draws from and challenges Grimm's theoretical positions. It agrees with Grimm that classical constitutionalism has been altered by global forces, but it suggests that we view this alteration as a new constitutional paradigm rather than purely a crisis. This stance invites Grimm and others to refine their theories: perhaps constitutionalism's essence (rights, democracy, rule of law) might yet be preserved or reimagined in a cosmopolitan setting, even if the form is unprecedented.

Continuities and Shifts between 2010 and 2016

Examining Grimm's 2010 essay alongside the 2016 cosmopolitan constitutionalism perspective reveals both striking continuities and notable shifts in thinking about constitutionalism in the global arena.

Continuities – Core Principles and Concerns: Fundamentally, both works share an understanding that constitutionalism after WWII is no longer purely a national affair. They recognize that *universal human rights and transnational legal oversight have become integral to constitutional practice*. In 2010, Grimm pointed out the growing influence of international norms on national constitutions; by 2016, this influence is taken as a given and theorized as the "cosmopolitan constitution" itself. Both works also deeply value limited government under law and the protection of rights. Grimm's trinity of rights, democracy, and rule of law remains central, and *The Cosmopolitan Constitution* likewise centers its analysis on rights (human rights commitments are key to the political face) and rule of law (the normative framework that restrains states). Moreover, concern for democracy is a common thread. Grimm in 2010 was preoccupied with how democratic self-government could survive globalization; in 2016, the two-faces analysis explicitly highlights the diminishing role of democratic politics ("the demise of political authority") as a problematic outcome. In that sense, the later work validates Grimm's worry that *something democratic is lost* when constitutions become cosmopolitan. There is also continuity in seeing the state as still playing a crucial role. Neither Grimm nor Somek advocates abolishing the nation-state; instead, the nation-state is the arena being transformed. The cosmopolitan constitution idea still relies on national constitutions (it is not a global constitution above states, but a globalized constitution of states). This implicitly upholds Grimm's view that we must work with states as the building blocks of any future constitutional order. Finally, both works engage in a normative critique of naive globalism. Grimm cautioned against assuming international law could simply take the place of a constitution. Similarly, *The Cosmopolitan Constitution* does not idealize the status quo; it presents a balanced view that includes the shortcomings (administrative dominance, loss of popular control). In summary, the core values and diagnostic concerns remain consistent: maintaining the rule of law, safeguarding rights, and securing democratic legitimacy in the face of transnational change.

Shifts – Evolving Perspectives and Emphases: Despite these continuities, there are shifts in perspective from 2010 to 2016, reflecting an evolution in constitutional thought. One key shift is from a predominantly skeptical tone to a more analytical/descriptive tone about global constitutionalism. Grimm's 2010 approach is normative and somewhat protective – he sets conditions under which constitutionalism can or cannot exist (no constitution without a people, etc.). By contrast, the 2016 account, while aware of normative issues, adopts an almost sociological stance: it observes that constitutions *have already changed* and tries to categorize those changes (1.0, 2.0, 3.0). This suggests the debate moved from "*Should* we call it constitutionalism beyond the state?" to "*How* is constitutionalism manifesting beyond the state?" – a subtle but important shift in scholarly focus. In other words, Grimm raised the bar for using the term "constitutionalism," and subsequent thinkers responded by refining the concept (e.g. distinguishing Big-C and small-c constitutionalism, as Kumm did, or describing cosmopolitan constitutional traits, as Somek did).

Another shift lies in the acceptance of complexity and duality. Grimm's 2010 essay, by virtue of its concise argument, drew a relatively clear line: state-based constitutionalism versus the deficient quasi-constitutionalism beyond the state. The 2016 perspective, however, embraces ambiguity – the *two faces* metaphor means the globalizing constitution is *simultaneously* doing something normatively good and something normatively worrisome. This dual evaluation might reflect a maturation of the discourse, recognizing that globalization of constitutional norms is not black-or-white. Grimm's own later writings (for instance, in collections of his essays) suggest he too became more nuanced, acknowledging that while the classic model is ideal, realities require engagement and partial adaptations. The shift, then, is toward a more dialectical understanding of global constitutionalism: it can advance human rights (a long-held constitutionalist goal) even as it strains democracy (another core goal). The conversation by 2016 is less about outright opposition and more about managing trade-offs. Grimm's thinking, if projected onto this timeline, would likely integrate this dialectic – maintaining his democratic skepticism but also addressing how to uphold democracy in an interdependent world rather than simply warning against interdependence.

A further shift can be seen in how sovereignty is conceptualized. Grimm in 2010 treated sovereignty as essentially undivided at the highest level (each state's people are sovereign within their realm) – a classical view tempered by voluntary self-limitation. By 2016, the cosmopolitan constitution narrative treats sovereignty as inherently relational: states judge each other's constitutional performance (peer review), and sovereignty is exercised in forums that require constant negotiation. The language of the cosmopolitan constitution implies that sovereignty is no longer a *prerogative* to act without regard to others, but a *responsibility* that is scrutinized globally. This might represent a shift in emphasis from sovereignty-as-autonomy (2010) to sovereignty-as-accountability (2016). Grimm has always understood sovereignty to be constrained by a constitution's own commitments (like human rights); the new element is that those commitments are now externally monitored and enforced. While Grimm might view external enforcement with concern for sovereignty, the 2016 view sees it as an accepted feature. Thus, the shift is towards normalizing what Grimm considered an exceptional incursion. This indicates how practice (e.g. international human-rights regimes) has pushed theory to adapt.

Finally, there is a methodological shift. Grimm's 2010 piece is rooted in legal-philosophical argument and historical narrative. The 2016 book is more of a theoretical synthesis blending law, political theory, and even sociology (with references to administrative practice). It brings in wider conceptual resources – for example, it references thinkers like Hegel (noted in the

index) and engages with contemporary theory (including, likely, responses to scholars like Kumm, or invoking Schmitt's ideas on the fate of the sovereign decision under cosmopolitan constraints). The result is a broader theoretical lens in 2016 compared to a focused doctrinal lens in 2010. This broadening reflects the scholarly dialogue: Grimm's strict criteria for constitutionalism prompted richer theorizing of what a constitution means in various contexts. So while Grimm in 2010 held a relatively unitary concept of constitution (a supreme law made by a sovereign people), by 2016 the concept is more plural and layered – e.g., constitutionalism can be graded (1.0, 2.0, 3.0) or have multiple faces, something Grimm's original framework did not explore.

In summary, Grimm's core convictions about constitutionalism – its basis in democratic legitimacy, its role in limiting power, and its potential fragility beyond the state – remain constant from 2010 to 2016. What shifts is the *context and elaboration* of those convictions. The later work shows an environment in which many of Grimm's cautions have materialized: national constitutions are entwined in global norms, for better and worse. The response is not to overturn Grimm's theory, but to deepen it by accounting for the mixed reality of cosmopolitan constitutionalism. Grimm's earlier insights are thus extended – for example, his worry that international oversight could weaken popular sovereignty is essentially confirmed by the "administrative face" scenario, while his acknowledgment of universal human rights' importance is reflected in the "political face". The continuity is a shared understanding of the historic transformation of constitutionalism post-1945, and the shared goal of preserving constitutionalism's normative achievements. The shift is a move from drawing stark lines (inside the state vs. beyond the state) to describing a more integrated picture of multilevel constitutional order.

Both works, taken together, contribute a powerful message to contemporary constitutional theory: the challenge of our time is to reconcile the cosmopolitan expansion of legal norms with the democratic foundation of legitimate constitutional authority. Grimm's voice in 2010 sounded a warning that constitutionalism's future was uncertain in a changing world. By 2016, the conversation – enriched by analyses like *The Cosmopolitan Constitution* – had turned to grappling with that uncertainty in detail, identifying where constitutionalism is thriving and where it is at risk. This ongoing dialogue demonstrates the evolution of Grimm's own thinking in tandem with the field: while steadfast in principle, it continually adapts to address new dimensions of global constitutional reality.

Conclusion

Dieter Grimm's constitutional theory, as seen through his 2010 essay and the prism of the 2016 cosmopolitan constitutionalism discourse, offers a rich, nuanced understanding of constitutionalism in an age of globalization. He provides an articulate defense of the classic constitutional achievements – the binding of power by law and the empowerment of citizens through a higher law of their own making – while also critically interrogating whether those achievements can survive current transformations. Grimm engages deeply with questions of global constitutionalism, state sovereignty, and legal pluralism, often challenging prevailing optimistic narratives by insisting on the primacy of democratic legitimacy. The comparison between the two works shows a consistent thread of principled concern for democracy and rule of law, alongside an intellectual growth that recognizes the multifaceted nature of today's constitutional landscape. Grimm's ideas, interacting with interlocutors like Somek, Habermas, Krisch, and others, have both contributed to and spurred debates on how to constitutionalize a world beyond the classical nation-state framework. In doing so, Grimm has helped delineate

the fault lines between global governance and constitutional government. His theory urges scholars and practitioners to remember that, at its heart, constitutionalism is meant to be "the achievement" of limited, accountable governance by the people – a legacy to be treasured and adapted, but not lost, in our cosmopolitan age.

Sources: Grimm, *The Twilight of Constitutionalism?* (2010); Somek, *The Cosmopolitan Constitution* (2016); Kumm (2014); *Is Constitutionalism on the Wane?* (2016); and other scholarly analyses.

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Part 3.
NGO Networks and Regional Human Rights Courts: Critical Perspectives

Regional human rights courts in Europe and Latin America have been significantly influenced by transnational NGO networks, sparking an extensive scholarly debate. Many academic authors have critically examined how global NGOs shape the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). These critiques often argue that NGO advocacy, strategic litigation, and funding have *transformed* the courts' agendas and jurisprudence – sometimes in ways viewed as excessive or problematic. Key concerns include questions of democratic legitimacy, national legal sovereignty, and judicial activism – i.e. whether NGOs push these courts to encroach on the legislative functions of states. Below is a detailed overview of notable authors and their works offering such critical analyses, including scholarly books, peer-reviewed articles, and prominent critiques.

European Court of Human Rights (ECtHR) – NGO Influence and Critiques

- Heidi Nichols Haddad (2018) – *The Hidden Hands of Justice: NGOs, Human Rights, and International Courts*. In this influential book, Haddad provides a comprehensive analysis of how NGOs operate behind the scenes of international human rights tribunals, including the ECtHR. She documents how transnational human rights NGOs have served as "hidden hands" in establishing, shaping, and litigating before the ECtHR, often setting the agenda and pushing the Court toward expansive interpretations of the European Convention. Haddad's research reveals that NGO networks were instrumental in the *creation* of these courts and continue to influence their decisions through amicus briefs, advocacy, and case sponsorship. While she acknowledges the positive contributions of NGOs, her work also raises questions about transparency and accountability – suggesting that significant judicial developments often stem from NGO-driven strategies rather than from member states or democratic deliberation.
- Gaëtan Cliquennois (2020) – *European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds*. Cliquennois, a CNRS researcher, examines how large private foundations and NGO funding networks have effectively "captured and privatized" aspects of European human rights justice. This scholarly critique details how NGOs supported by powerful donors (e.g. Open Society Foundations, Ford Foundation, MacArthur Foundation, etc.) have financed strategic litigation and advocacy at the ECtHR, thereby shaping the Court's jurisprudence in

line with their agendas. Cliquennois defends the thesis that human rights litigation in Europe has been steered by neoliberal interests acting through NGO channels, often without transparent democratic oversight. He points out, for example, that just a handful of major foundations spent over $138 million on human-rights advocacy in Europe over a decade – a sum exceeding the annual budget of the ECtHR itself. The result, he argues, is an imbalance where private actors with specific agendas exert outsized influence on a court that is supposed to reflect the collective will of European states. This raises alarms about democratic legitimacy, as unelected NGOs and donors may effectively drive legal changes that bind elected national legislatures.

- Martine Beijerman (2018) – *"Conceptual Confusions in Debating the Role of NGOs for the Democratic Legitimacy of International Law"* (Transnational Legal Theory). Beijerman's article revisits the debate on whether NGO participation enhances or undermines the democratic legitimacy of international legal institutions. She notes that critics of the ECtHR often view NGO influence as a double-edged sword: on one hand, NGOs can give voice to civil society and victims, but on the other hand their growing role in supranational adjudication is seen by some as a "standing affront to the democratic right of nation-states" to make law. Beijerman disentangles arguments in favor of NGO involvement (greater pluralism, expertise, and accountability for states) versus arguments against it (lack of electoral mandate and potential bias). This scholarly critique highlights that NGOs have no direct democratic mandate, yet increasingly influence lawmaking via courts – a tension at the heart of legitimacy debates.
- Nina Vajić (2005) – *"Some Concluding Remarks on NGOs and the European Court of Human Rights"* in Treves et al. (eds.), *Civil Society, International Courts and Compliance*. Vajić, herself a former ECtHR judge, reflects on the complex relationship between NGOs and the Court. She acknowledges that NGOs have been crucial in bringing cases and information to Strasbourg, often acting as a *driving force* behind the development of human rights norms. However, her remarks also caution against the Court becoming over-reliant on NGO submissions or perspectives. Vajić notes the risk of "elite" NGO voices dominating, and she implicitly queries whether this could skew the Court's priorities away from the concerns of Member States or the general populace. By emphasizing balance, her analysis suggests that while NGO input is valuable, the ECtHR must guard against perceptions of partiality or *judicial activism* fueled by advocacy agendas.
- Loveday Hodson (2013) – *"Activating the Law: Exploring the Legal Responses of NGOs to Gross Rights Violations"* in Madsen & Verschraegen (eds.), *Making Human Rights Intelligible: Towards a Sociology of Human Rights*. Hodson explores how NGOs mobilize law and engage the ECtHR in causes such as women's rights and minority rights. She argues that much of the momentum behind the ECtHR's evolving case-law has emerged from NGO-led "struggles for rights." In her view, the impetus for major jurisprudential developments often derives from NGO activity, as advocacy groups identify test cases, develop litigation strategies, and persistently push the Court to recognize new rights claims. For example, Hodson and others have noted that landmark rulings on issues like domestic violence or LGBT rights did not arise spontaneously; they were the result of years of campaigning and legal assistance by transnational NGOs. While this *bottom-up pressure* can be seen as positive activism, Hodson's work also highlights a critical perspective: if a court's "transformative" decisions are largely NGO-driven, democratic governments may perceive the court as overstepping its mandate under the influence of activist networks rather than adhering strictly to consensual interpretations of the Convention.

- Rachel A. Cichowski (2016) – *"The European Court of Human Rights, Amicus Curiae, and Violence Against Women"* (Law & Society Review). Cichowski's empirical study zeroes in on amicus curiae briefs submitted by NGOs to the ECtHR, particularly in cases concerning gender-based violence. She finds that NGO interventions have had tangible impacts on the Court's reasoning and outcomes. For instance, in cases about domestic violence or human trafficking, briefs from women's rights organizations provided comparative data and normative arguments that helped the Court frame state obligations more robustly. Cichowski's work is not overtly normative, but by demonstrating the significant influence of NGO-submitted information on judicial decisions, it implicitly raises the issue of how non-state actors can shape judicial policy. Critics in the democratic legitimacy debate cite such findings to argue that important shifts in human rights law (e.g. expanding positive duties on states to protect individuals from private violence) are being driven by advocacy networks rather than by elected legislatures. Cichowski herself highlights that the Court's agenda has broadened in part due to NGOs identifying systemic issues (like violence against women) and pressing the Court to address them. This dynamic feeds into the critique that the ECtHR sometimes engages in social engineering or "legislating from the bench" under NGO influence, potentially bypassing national democratic processes.
- Luisa Vierucci (2008) – *"NGOs Before International Courts and Tribunals"* in Dupuy & Vierucci (eds.), *NGOs in International Law: Efficiency in Flexibility?*. Vierucci's chapter provides one of the earlier scholarly accounts of how NGOs participate in cases before various international courts, including the ECtHR. She outlines the *formal and informal avenues* through which NGOs intervene – as third-party interveners (amicus curiae), as representatives for applicants, or even as direct petitioners in some instances. Importantly, Vierucci critically observes that NGOs have used these avenues to advance interpretations of human rights that states did not initially contemplate, effectively encouraging courts to fill gaps or update treaties in response to contemporary issues. While she acknowledges the flexibility that NGO involvement brings (enhancing the courts' fact-finding and offering societal perspectives), she also flags efficiency and legitimacy issues. In the ECtHR context, Vierucci notes that a few well-resourced NGOs (e.g. Interights, AIRE Centre, Open Society Justice Initiative) became repeat players and had disproportionate impact on case law. Such concentration of influence, she suggests, may challenge the *egalitarian ideals* of the system, since not all viewpoints or countries have equivalent NGO support. This plays into the critique that a transnational elite of NGOs can use the ECtHR to advance a particular vision of human rights, arguably encroaching on domestic policy choices in areas like education, religion, or family law.
- Lloyd Hitoshi Mayer (2011) – *"NGO Standing and Influence in Regional Human Rights Courts and Commissions"* (Brooklyn Journal of International Law). Although Mayer's tone is more descriptive than overtly critical, his comparative study offers data often cited in critiques. Mayer examines the standing rules and actual involvement of NGOs in the European, Inter-American, and African human rights systems. He discovered stark differences: NGOs played a role in only a relatively small proportion of ECtHR merits decisions, and those interventions were concentrated among a few organizations and certain respondent states. This contrasts with the Inter-American system, where NGOs were involved in a much higher percentage of cases and across a broader array of states. Mayer's analysis implies that in Europe, NGO influence, while significant, is somewhat channeled and limited, whereas in the Americas it is much more pervasive. He then discusses the

ramifications: in Europe, NGOs often step in to assist victims in countries with weak legal aid or civil society, effectively "drawing attention to human rights violations in a narrow set of member states". In that sense, European NGOs fill gaps rather than drive a continent-wide agenda. However, Mayer also notes that even in Europe a few powerful NGOs and their lawyers are tightly integrated with the "international human rights community" and enjoy privileged access to the system. Critics have extrapolated from Mayer's findings that the ECtHR's docket and jurisprudence might be skewed by these repeat-player NGOs, which choose test cases and invest resources to push the law in certain directions. Mayer stops short of normatively condemning this, but his empirical evidence is often invoked in arguments about "outsider" influence on the Court and its potential to clash with member states' legislative prerogatives.

- Grégor Puppinck / European Centre for Law and Justice (2020) – *Report on "NGOs and the Judges of the ECHR, 2009–2019"*. This is a policy-oriented report rather than a traditional academic work, but it has been highly influential (and controversial) in critical discourse. Puppinck's report, submitted to the Council of Europe, alleges a lack of transparency and impartiality at the ECtHR due to close relationships between certain judges and advocacy NGOs. The report identifies seven major NGOs (including Amnesty International, Human Rights Watch, the Open Society Justice Initiative, and others) that are active litigants or interveners at the Court and finds that 22 of 100 judges who served on the Court in the 2009–2019 period had previous ties (as former staff, leaders, or grant recipients) with those same NGOs. This overlap, Puppinck argues, creates at least an appearance of bias: judges may be adjudicating cases *brought or supported by their former organizations*. The report further criticizes what it calls an "imbalance of the system" – where well-funded NGOs enjoy far greater capacity to bring cases and shape legal arguments than other actors. It characterizes such NGOs as "private actors with no democratic legitimacy", who nonetheless exert political power in Strasbourg. Puppinck's language is pointed: he warns of a scenario where a "new clerisy" of global activists and donors effectively commandeer the Court, thereby undermining the principle that lawmaking in a democracy belongs to elected legislatures. While the *ECLJ report* has itself been critiqued (supporters of NGOs note that many judges also have backgrounds in government or academia and that NGOs often act in the public interest), it encapsulates a core concern in this debate: *if courts rely too heavily on NGO advocacy, are they bypassing the democratic process*? This report thus serves as a flagship of the view that NGO influence over the ECtHR has become excessive and needs checks to preserve the Court's legitimacy.

Inter-American Court of Human Rights (IACtHR) – NGO Influence and Critiques

- Jorge Contesse (2018) – *"The International Authority of the Inter-American Court of Human Rights: A Critique of the Conventionality Control Doctrine"* (International Journal of Human Rights, vol. 22). Contesse offers a direct critique of how the IACtHR, under the influence of human rights advocates, has expanded its authority in ways that encroach on states' legislative and judicial functions. He analyzes the Court's controversial "conventionality control" doctrine, which requires national judges and officials to interpret domestic law in conformity with the American Convention as interpreted by the IACtHR. Contesse argues that this doctrine lacks a

solid legal basis and reflects a "problematic understanding of the Court as a regional constitutional tribunal". In essence, the Court has begun to act *as if it were* a supra-national legislature or constitutional court for the Americas – reviewing and invalidating domestic laws (such as amnesty laws, bans on in vitro fertilization, or marriage laws) in response to NGO petitions. His critique is that global and regional NGO networks (often in tandem with sympathetic judges) have pushed the IACtHR toward an activist stance that goes far beyond settling individual disputes. For example, in *Almonacid Arellano v. Chile* (2006), an NGO-supported case, the Court not only ruled on a specific human rights violation but also instructed all states generally that amnesty laws for past human rights abuses are impermissible – effectively legislating a blanket rule for the continent. Contesse acknowledges the moral impulse behind such decisions, but he cautions that the Court's expansive assertions of authority invite political backlash and undermine its legitimacy. He suggests an alternative approach whereby the Court would more closely heed state practice and be less sweeping in its edicts, thereby respecting the space for democratic decision-making within each country. Contesse's work highlights a broader point: NGO strategic litigation in the IACtHR has achieved transformative judgments (sometimes hailed as progressive "inter-American standards"), but these very transformations are seen by critics as judicial overreach when they require states to change laws on sensitive matters (criminal justice, family law, etc.) without legislative input.

- Alexandra Huneeus (2016) – *"Constitutional Lawyers and the Inter-American Court's Varied Authority"* (Law & Contemporary Problems, vol. 79, no.1). Huneeus examines the role of elite human rights lawyers and NGOs (like CEJIL – the Center for Justice and International Law) in the Inter-American human rights system. She observes that a tight-knit network of activist lawyers has been extraordinarily successful in shaping the Court's docket and jurisprudence. CEJIL and similar NGOs spearhead many of the landmark cases, acting in effect as agenda-setters for the IACtHR. Huneeus's research shows that in countries where these NGOs have strong footholds, the Court's authority and willingness to intervene in domestic affairs is high – yielding decisions that mandate sweeping reforms (e.g. overhauling criminal codes, recognizing new rights for marginalized groups, or reopening investigations into past abuses). Conversely, where such civil society litigation capacity is weaker, the Court's influence remains limited. This *variation* leads Huneeus to conclude that the power of the IACtHR in any given context partly hinges on NGO mobilization. While her tone is largely analytical (not explicitly condemning the NGOs), the implication is that a small community of transnational lawyers has had a "constitution-making" effect in Latin America via the Court. Huneeus acknowledges the positive side – many advances in human rights protection (for indigenous peoples, for example) were driven by NGO litigation. But she also notes that this has provoked resistance: several governments (e.g. Venezuela, and more recently others) have denounced the Court's decisions as illegitimate impositions by foreign-funded groups. Her work, therefore, provides scholarly evidence that NGO influence can empower a court to bypass or override national legislatures under the banner of human rights – a dynamic that troubles critics concerned about sovereignty and democratic processes.
- James L. Cavallaro & Stephanie E. Brewer (2008) – *"Reevaluating Regional Human Rights Litigation in the 21st Century: The Case of the Inter-American Court"* (American Journal of International Law, vol. 102). Cavallaro (a human rights scholar-practitioner) and Brewer critically assess the evolving political context in which the IACtHR operates and question whether the traditional NGO litigation strategy needs

recalibration. They observe that the late 20th-century wave of democratization in Latin America radically changed the landscape: the IACtHR is no longer dealing mainly with military dictatorships but with elected governments facing complex social issues. In this scenario, the authors argue that the Court (often prompted by NGO petitioners) should be careful not to issue overly broad or abstract rulings that outpace domestic implementation capacity. Their article hypothesizes ways to maximize the Court's effectiveness, such as focusing on fact-finding and tailoring remedies to local realities. Implicit in their recommendations is a critique of the Court's NGO-driven activism: if every case results in a demand for sweeping legislative changes or ambitious policy overhauls, states may simply ignore the rulings, weakening the Court's authority. For example, Cavallaro and Brewer point out that the Court began, at NGOs' urging, to require states to not only compensate victims but also undertake wide reforms (e.g. human rights training for all police, or new legislation within a set time). While normatively laudable, these demands often went unmet, exposing a "compliance gap" and fueling accusations that the Court was acting like a legislature without the means to follow through. The authors suggest a more strategic approach: the IACtHR might preserve its legitimacy by issuing "grounded jurisprudence that is maximally relevant to domestic conditions", rather than grand pronouncements that clash with political realities. In essence, this piece voices a nuanced critique: it is *not* against human rights or NGOs, but against a form of judicial activism divorced from pragmatic considerations. It urges NGOs and the Court to prioritize enforceable justice over symbolic victories – a call to temper the transformative zeal with attention to democratic sustainability.

- Transnational Advocacy Network Analyses (e.g., Keck & Sikkink 1998) – While not a critique per se, scholarly works on "transnational advocacy networks" provide context for NGO influence on the IACtHR. In *Activists Beyond Borders*, Margaret Keck and Kathryn Sikkink documented how Latin American NGOs and international allies used the Inter-American Commission and Court to hold governments accountable for human rights abuses (e.g., disappearances in Argentina or prison conditions in Brazil). Their research highlights the boomerang pattern: local activists, stymied by domestic institutions, appeal to international forums with help from global NGOs, which in turn put pressure on states. This dynamic undeniably empowered the IACtHR to take bold actions. However, later critical scholars have built on these insights to ask whether the *very success* of transnational advocacy in legal arenas has led to unintended consequences. For instance, Stephen Hopgood (2013) in *The Endtimes of Human Rights* argues that the professionalized global human rights network (NGOs, foundations, courts, UN bodies) has become disconnected from grassroots politics and democratic input. Though Hopgood's focus is broad, the Inter-American system is part of the story – where a court, prompted by NGOs, may hand down rulings that lack resonance in domestic democratic debate, fueling populist backlash. Similarly, David Kennedy (2002) provocatively described the international human rights movement as "part of the problem," suggesting that well-meaning NGO interventions can sometimes override local self-governance and politicize courts in ways that undermine their credibility. These broader critiques underscore the point that when global NGO networks instrumentalize courts like the IACtHR, they risk painting the court as an *externally driven actor* in the eyes of member states – potentially eroding the very human rights protection they seek to advance.
- State Sovereignty and Backlash Perspectives – A number of legal scholars and political scientists have noted the growing backlash against the IACtHR in certain countries, interpreting it as a reaction to NGO-driven judicial activism. For example,

researcher Juliana Zunzunegui (2020) identifies instances where populist leaders (in Venezuela, Peru, etc.) openly defied or sought to withdraw from the Court's jurisdiction after decisions that effectively mandated legislative changes at the behest of NGOs. In these analyses, the legislative function of states is seen as under threat: critics argue that issues like amnesties, reproductive rights, or recognition of gender identity – which typically would be debated in national parliaments – have instead been settled by tribunal decree following transnational advocacy campaigns. Scholarly critiques by authors such as Manuel González Oropeza and Jorge González-Jacobo (writing in Spanish) likewise contend that the IACtHR sometimes acts as an "inter-American legislature", formulating norms that all states must follow without sufficient regard to democratic pluralism or subsidiarity. While many human rights scholars defend the Court's bold stance as necessary for protecting marginalized groups, the critical perspectives emphasize process: who sets the agenda and makes the law? If the answer is a network of NGOs and international jurists, skeptics argue this could undermine the long-term legitimacy of human rights by prompting charges of neo-colonialism or judicial imperialism.

- Lloyd Hitoshi Mayer's Comparative Findings – Mayer's data, mentioned above, is also pertinent to the Inter-American Court. His finding that NGOs participate in a far greater proportion of IACtHR cases than ECtHR cases is often cited to illustrate how dependent the IACtHR is on civil society for its caseload. Indeed, since individuals cannot directly bring cases to the IACtHR (they must first go through the Inter-American Commission), NGOs serve as essential intermediaries – assembling victim petitions, litigating the cases, and following up on compliance. Mayer and others note that a handful of NGOs (notably CEJIL) appear as counsel in a large share of IACtHR judgments. The critical view here is that such concentration of influence can effectively let private groups set continental legal policy. Additionally, Mayer observed that in the Americas, NGOs often step in for systemic issues across many states (e.g. prison conditions, indigenous land rights), whereas in Europe NGO litigation was more confined to a few problem states. This suggests that the IACtHR has been used as a tool for region-wide norm entrepreneurship, spearheaded by NGO coalitions. *Scholars like Tara Melish (2009)* have lauded this as the Court fulfilling its mandate of progressive development of rights, but more skeptical voices question whether such development should be driven by judicial fiat. As the IACtHR has ventured into economic, social, and cultural rights – even declaring a right to a healthy environment in an advisory opinion – some commentators warn that this agenda has been set by transnational advocacy groups and sympathetic judges "stretching" the American Convention beyond what states agreed to. In short, the Inter-American Court's evolution, heavily influenced by NGO strategies, is a prime example for those who argue that judicial activism, encouraged by global networks, may usurp the role of legislatures in defining policy.

In summary, a rich body of academic literature explores the critical view that global NGO networks have reshaped regional human rights courts in ways that raise issues of legitimacy and sovereignty. In Europe, scholars like Haddad and Cliquennois document how NGOs and their funders became key players at the ECtHR, prompting concerns about private influence over a court that issues binding judgments on states. Critics argue this can lead the ECtHR into *judicial activism* – for example, deciding questions like prisoner voting rights or religious symbols in schools, effectively setting Europe-wide rules on matters traditionally decided by parliaments. In Latin America, authors such as Contesse and Huneeus show that NGO advocacy has empowered the IACtHR to act as a quasi-legislative body – voiding laws,

dictating reforms, and expanding rights – which, however progressive, can collide with domestic democratic processes. These critiques do not dismiss the positive role NGOs play in advancing justice; rather, they urge a reckoning with how powerful and unaccountable these global networks can become in steering international courts. The debate is ultimately about balance: how to reap the benefits of NGO expertise and passion for human rights without undermining the democratic legitimacy of the legal order. As the sources above illustrate, this remains a contentious question at the intersection of international law, politics, and civil society activism.

Sources:

- Haddad, Heidi Nichols. *The Hidden Hands of Justice: NGOs, Human Rights, and International Courts*. Cambridge University Press, 2018.
- Cliquennois, Gaëtan. *European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds*. Cambridge University Press, 2020.
- Beijerman, Martine. "Conceptual Confusions in Debating the Role of NGOs for the Democratic Legitimacy of International Law." *Transnational Legal Theory* 9, no. 3-4 (2018): 343–368.
- Vajić, Nina. "Some Concluding Remarks on NGOs and the European Court of Human Rights." In *Civil Society, International Courts and Compliance*, edited by Tullio Treves *et al.*, 2005.
- Hodson, Loveday. "Activating the Law: Exploring the Legal Responses of NGOs to Gross Rights Violations." In *Making Human Rights Intelligible: Towards a Sociology of Human Rights* (eds. Mikael Rask Madsen & Gert Verschraegen), Hart Publishing, 2013.
- Cichowski, Rachel A. "The European Court of Human Rights, Amicus Curiae, and Violence Against Women." *Law & Society Review* 50, no.4 (2016): 890–919.
- Vierucci, Luisa. "NGOs Before International Courts and Tribunals." In *NGOs in International Law: Efficiency in Flexibility?*, edited by Pierre-Marie Dupuy and Luisa Vierucci, Edward Elgar, 2008.
- Mayer, Lloyd Hitoshi. "NGO Standing and Influence in Regional Human Rights Courts and Commissions." *Brooklyn Journal of International Law* 36, no.3 (2011): 911–945.
- Puppinck, Grégor. ECLJ Report on NGOs and Judges of the ECHR (2009–2019), European Centre for Law and Justice, 2020.
- Contesse, Jorge. "The International Authority of the IACtHR: A Critique of the Conventionality Control Doctrine." *International Journal of Human Rights* 22, no.9 (2018): 1168–1186.
- Huneeus, Alexandra. "Constitutional Lawyers and the Inter-American Court's Varied Authority." *Law & Contemporary Problems* 79, no.1 (2016): 179–210.
- Cavallaro, James L., & Brewer, Stephanie E. "Reevaluating Regional Human Rights Litigation in the 21st Century: The Case of the Inter-American Court." *American Journal of International Law* 102, no.4 (2008): 768–827.
- Keck, Margaret, & Sikkink, Kathryn. *Activists Beyond Borders: Advocacy Networks in International Politics*. Cornell University Press, 1998.
- Hopgood, Stephen. *The Endtimes of Human Rights*. Cornell University Press, 2013.
- Kennedy, David. "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal* 15 (2002): 101–126.
- Zunzunegui, Juliana. "Populist Backlashes Against the Inter-American Court of Human Rights." *Yale Review of International Studies*, 2020.

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Margaret Keck, & Sikkink, Kathryn. Activists Beyond Borders: Advocacy Networks in International Politics

Introduction

Activists Beyond Borders: Advocacy Networks in International Politics is a seminal work by Margaret E. Keck and Kathryn Sikkink that examines how transnational networks of activists influence international outcomes. Published in 1998 by Cornell University Press, this book challenged state-centric views in international relations by spotlighting the roles of non-state actors – particularly advocacy groups – operating across national boundaries. Keck and Sikkink document historical and contemporary cases (from 19th-century anti-slavery and women's suffrage movements to late-20th-century human rights and environmental campaigns) to demonstrate the growing impact of transnational advocacy networks (TANs) on world politics. The following report provides a detailed summary of the book's main arguments and theoretical contributions, defines TANs and their components, outlines the authors' methodology, reviews key case studies (human rights in Latin America, environmental campaigns, and violence against women), explains the "boomerang pattern" concept, and discusses how *Activists Beyond Borders* fits into IR theory debates. It concludes with an assessment of the book's academic and practical impact and its ongoing relevance.

Main Arguments and Theoretical Contributions

Keck and Sikkink's core argument is that networks of principled activists transcend borders to effectively pressure states and international organizations, thereby transforming policy outcomes and even state identities. These transnational advocacy networks work by *strategically using information, ideas, and pressure* to persuade powerful actors to address issues of concern. The authors contend that such networks significantly expand the political space beyond the nation-state, often reshaping conceptions of national sovereignty and state interests. In particular, they argue that TANs can alter state behavior by introducing new norms and framing issues in ways that compel states to respond not just to material interests but to moral and ethical claims. This challenges realist assumptions that states' interests are fixed and driven solely by power; instead, states may re-conceptualize their interests and sovereignty in response to international normative pressure. The book thus bridges international relations theory with social movement theory, showing how domestic and transnational activism can change "the terms and nature" of political debate on the global stage.

The authors make several theoretical contributions:

- Concept of TANs: They introduce *transnational advocacy networks* as a distinct category of transnational actors, characterized by shared values and goals (often involving human rights, environmental protection, or social justice) rather than economic or security interests. TANs are differentiated from other IR concepts like epistemic communities (which are knowledge-based networks of experts) by their principled issue motivation and diverse membership. Keck and Sikkink's work showed that these value-driven networks can be as influential as states in certain issue-areas, thereby expanding the analytical focus of IR beyond state-to-state interactions.
- Issue Framing and Norm Diffusion: A major insight is how TANs *frame issues* to generate concern and change behavior. The authors highlight that advocacy networks are skilled at using ideas and information to transform perceptions – what they call *"politics of information"* and *"symbolic politics."* By framing problems (e.g. "women's rights are human rights" or rainforest destruction as an international responsibility), TANs elevate new issues onto global agendas. Their work presaged later constructivist research on norm life-cycles and norm entrepreneurs, reinforcing the idea that *ideational factors and persuasion* are critical in international politics.
- Challenges to IR Paradigms: *Activists Beyond Borders* implicitly challenges realism by providing evidence that non-state actors and moral norms can shape state behavior in ways realism would not predict. It also extends liberal theories by emphasizing not just formal institutions but informal networks and the role of domestic civil society linking up transnationally. The work is often associated with constructivist IR theory, since it underscores how *identity, values, and norms* (rather than just material power or interests) drive political change. In doing so, Keck and Sikkink contribute to a broader constructivist argument that international outcomes are influenced by normative pressure and *socialization processes*, with TANs acting as key agents of that change.
- Sovereignty and Global Civil Society: The authors suggest that the rise of TANs reflects an evolving notion of sovereignty. Instead of absolute Westphalian sovereignty, states increasingly face *pressures from below and above* to adhere to international norms. By documenting cases where governments altered policies due to activist campaigns, the book illustrates an ongoing "erosion" or redefinition of sovereignty – sovereignty becomes contingent on meeting certain normative standards (e.g. respecting human rights). This finding engages debates on global civil society, hinting that while TANs do not abolish sovereignty, they are part of multi-level governance where non-state actors demand accountability from states.

Overall, *Activists Beyond Borders* broke new ground by systematically analyzing advocacy networks across issues. It established a framework for understanding how ideas-driven networks operate transnationally and exert influence, thereby becoming a *"touchstone"* for subsequent studies of transnational activism. The book's conceptual innovations – like the boomerang model (discussed below) and the typology of network strategies – have been widely adopted in political science and beyond.

Defining Transnational Advocacy Networks (TANs) and Their Components

Transnational Advocacy Networks (TANs) are defined by Keck and Sikkink as "those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services". In simpler terms, a

TAN is a *web of activists* – individuals and organizations – collaborating across borders to achieve a common principled goal. Key features and components of TANs include:

- Shared Values and Principled Ideas: TANs are motivated by principled ideas or norms (e.g. "human rights are universal" or "environmental stewardship"). Unlike purely interest-based coalitions, their glue is normative commitment. Members share value-based goals, such as protecting vulnerable people or promoting justice, rather than material gain.
- Diverse Membership: Advocacy networks encompass a wide range of actors in and out of governments. For example, members can include international and domestic NGOs (non-governmental organizations), grassroots social movements, charitable foundations, churches and religious groups, trade unions, parts of the media, intellectuals or researchers, and even sympathetic officials in local or international governmental organizations. This heterogeneous makeup means TANs link the local and the global – connecting activists at the community level with NGOs operating transnationally, and sometimes with intergovernmental bodies or parliamentarians. By exchanging information and resources through these connections, the network amplifies its collective reach.
- Dense Communication and Exchange: A defining characteristic of TANs is the intense communication within the network. Members share data, testimonies, reports, and strategic plans – often rapidly, using the best available communications technology (especially in the late 20th century, fax and email; today, the internet). This *dense exchange of information* allows the network to coordinate campaigns across great distances and respond quickly to events. Resources, funds, and even personnel may flow through the network to support campaigns in different countries. Essentially, TANs function as *communication channels* that bypass slower or blocked official routes.
- Common Discourse and Frames: Despite diverse membership, TAN actors adopt a common discourse about the issue – a shared way of framing the problem and its solutions. Agreeing on core messages or symbolic representations (e.g. framing rainforest destruction as "ecocide" or gender violence as a "human rights violation") helps maintain coherence and unity of purpose across cultures. Keck and Sikkink emphasize that *network cohesion comes from agreeing on how to interpret and narrate the issue* at hand.
- Flexibility and Informality: TANs are typically *informal and flexible* in structure. They are not hierarchies or formal institutions; rather, they are networks, meaning relationships are voluntary and fluid. Organizations in a TAN coordinate with each other but retain independence. Leadership can be distributed or rotating. This informality allows networks to expand rapidly and adapt – new groups can join, and the network can reconfigure as needed. It also means influence within a TAN often depends on information access and moral authority rather than legal authority.
- Issue Scope: The authors note that TANs most commonly form around issues involving *harm to vulnerable individuals* or *intentional inequality*, because such issues generate the moral outrage and clear-cut claims that facilitate transnational advocacy. In their words, the two most prevalent issue areas for TAN emergence are "issues involving bodily harm to vulnerable individuals" (e.g. torture, genocide, violence against women) and "issues involving legal equality of opportunity" (e.g. apartheid, women's political rights). These kinds of issues are likely to resonate widely and overcome national, cultural, or ideological barriers, giving networks a greater chance

of forming and succeeding. In contrast, issues that lack a clear victim or violator, or that are heavily technical, may not galvanize TANs as easily.

In summary, TANs are *value-driven networks of advocacy organizations and activists* that communicate and collaborate intensively across borders. They leverage their diverse memberships and information flows to influence political outcomes.

How TANs Work: Strategies and Functions

Keck and Sikkink identify four main strategies ("politics") that TANs deploy to create impact:

- Information Politics: the ability to quickly and credibly generate, package, and disseminate information (e.g. investigative reports, eye-witness testimonials) that can change the thinking of target audiences or expose wrongdoing. TANs act as information brokers, *bringing to light facts* that local governments may wish to suppress. For example, a human rights network might document abuses and share reports with foreign media and the UN, putting an issue on the international agenda. Accurate, timely information is a currency of power for TANs.
- Symbolic Politics: the use of symbolic events, actions, or stories to make sense of a situation or gain attention. This involves framing issues by linking them to meaningful narratives or symbols that resonate across contexts. For instance, portraying an environmental struggle in the Amazon as "David vs. Goliath" (indigenous tribes versus big loggers), or using images of a wounded child to symbolize the horrors of war, can galvanize international opinion. TANs excel at finding compelling symbols to communicate complex issues in simple, emotional terms.
- Leverage Politics: calling upon powerful actors to exert influence on weaker actors. When a network by itself lacks material power, it will seek leverage by getting more powerful governments, institutions, or public opinion on its side. This might involve lobbying a sympathetic foreign government ("State B") or a multinational institution to sanction or pressure the offending government ("State A"). It could also mean mobilizing boycotts or financial leverage (e.g. encouraging a development bank to withhold funding). Essentially, TANs *borrow the clout of others* – like states, international organizations, or celebrities – to strengthen their position.
- Accountability Politics: efforts to hold powerful actors accountable to their own stated policies or principles. This strategy involves exposing the distance between a state's commitments (e.g. treaties signed, laws passed) and its actual practices. By publicly shaming actors for failing to live up to their promises, TANs create pressure for compliance. For example, if a government has ratified a human rights convention but is secretly torturing prisoners, a TAN will highlight this hypocrisy to domestic and international audiences, embarrassing the government and prompting corrective action. Accountability politics often works in tandem with information politics (providing the evidence of violations) and leverage (mobilizing oversight bodies or courts).

Through these strategies, TANs perform several functions in international politics. They *raise issues onto the agenda*, frame debates, and even change the standards of accountability in international society. Keck and Sikkink observe that TANs are most influential in five stages of the policy process:

1. Issue Creation and Agenda-Setting: *Framing debates and getting issues on the agenda* – TANs introduce new issues or reframe old ones in persuasive ways (e.g. redefining "wife-beating" as "domestic violence" and a public matter).
2. Discursive Positions: *Influencing the positions of states and international organizations (discursive commitments)* – States start to make rhetorical commitments or endorse declaratory principles the network advocates for (even if just lip service at first).
3. Institutional Procedures: *Causing procedural changes at domestic or international levels* – TANs push for new procedures, such as the creation of human rights offices, environmental impact assessments, or inclusion of NGOs in policy dialogues. These procedural shifts can institutionalize the concerns raised by the network.
4. **Policy Change: Affecting policy adoption* – Ultimately, TANs aim for concrete policy outcomes: laws passed, treaties signed, projects halted, reforms enacted in line with their goals.
5. Behavior Change: *Influencing state or target behavior* – The deepest level of impact is when states (or other targets like corporations) actually change their behavior and practices to align with the norms advocated by the network. For example, a government stopping torture, or a corporation changing its sourcing to avoid child labor, would represent behavioral change due to advocacy pressure.

This staged influence (from agenda-setting through behavioral compliance) underscores that TANs can operate not only to *prompt immediate policy concessions*, but also to *socialize* states into new norms over time. In effect, TANs can help transform the "preferences of states" and even the expectations of international society by a combination of persuasion, shaming, and pressure.

Methodology and Empirical Approach

Keck and Sikkink adopt a primarily qualitative, comparative case study approach to examine TANs. Rather than a single-case narrative, the book is structured to draw evidence from multiple cases across different issues and regions. The methodology has several components:

- Historical Analysis: The authors begin by looking at *historical precursors* to modern advocacy networks (Chapter 2 of the book). They examine 19th-century and early 20th-century transnational campaigns – such as the Anglo-American anti-slavery movement, the international women's suffrage movement, and campaigns against footbinding in China and female genital mutilation in Kenya – to identify patterns in transborder activism. This historical perspective provides a baseline to compare with contemporary networks and shows that while technology and context differ, the core dynamics of advocacy networks are longstanding.
- Case Studies: The heart of the empirical strategy is three in-depth case study chapters, each focusing on a major issue area:
    1. Human Rights Advocacy Networks in Latin America (Chapter 3) – focusing on the 1970s–80s campaigns in countries like Argentina and Mexico.
    2. Environmental Advocacy Networks (Chapter 4) – focusing on environmental campaigns such as those in the Brazilian Amazon and Malaysia (Sarawak) in the 1980s–90s.
    3. Transnational Networks on Violence Against Women (Chapter 5) – focusing on the rise of a global women's rights network in the 1990s around the issue of gender-based violence.

Each case study chapter traces the emergence and activities of TANs in that domain, often comparing a successful mobilization with a less successful one to distill factors that influence outcomes. For instance, in the human rights chapter they contrast Argentina's robust advocacy network under the military dictatorship with Mexico's relatively weaker international advocacy during the same era. In the environmental chapter, they compare the campaign to save the Amazon (which had significant success in changing policies) with the campaign to stop logging in Sarawak, Malaysia (which had more limited success). This most-similar or most-different case comparison within each issue area allows them to control for issue-type while observing what factors (political context, strategies used, presence of international allies, etc.) made a difference in success or failure.

- Process Tracing and Network Mapping: Within each case, Keck and Sikkink employ *process tracing* to show how advocacy networks formed and how they achieved influence step by step. They identify key events (e.g. conferences, publication of reports, crises that galvanized opinion) that served as catalysts for network expansion. They also map out the links between domestic groups and international allies, illustrating the flow of information and pressure – often visualized by the "boomerang" diagram for cases like Argentina (more on this below). The narrative thus tracks the causal chain from network activities to political outcomes.
- Interdisciplinary Sources and Fieldwork: The authors draw on a mix of data sources: interviews with activists, archival documents, NGO reports, media coverage, and secondary scholarly works. In fact, they note that their analysis is built on "firsthand experiences, fieldwork, and a vast secondary literature on social movement activity". Both authors brought prior research expertise: Keck had studied environmental activism and Brazilian politics, Sikkink had researched human rights movements and Latin America. They incorporate their field insights and even helped construct a database of international NGOs (with collaborator Jackie Smith) to get a quantitative sense of the population of advocacy organizations. This NGO database (covering what they term "international nongovernmental social change organizations") provided context, for example, noting that about *half of all international NGOs in the 1990s worked on the three issues featured in the case studies (human rights, environment, women's rights)*. Thus, the chosen cases were not outliers but represent a large portion of transnational activism.
- Comparative Synthesis: In the concluding chapter, Keck and Sikkink synthesize findings across the cases to generalize about TANs. They assess common patterns, necessary conditions, and variations. For example, they conclude that the density and strength of a network (number of organizations, quality of information flows) correlates with its effectiveness. They also revisit their initial hypotheses about when TANs emerge (e.g. when domestic access is blocked) and largely confirm them with evidence from the case studies. By comparing across human rights, environmental, and gender networks, the authors identify which observations are consistent (e.g. importance of framing, role of international conferences in seeding networks) and which are issue-specific. This comparative method strengthens the credibility of their broader theoretical claims.

In sum, the authors' empirical approach is qualitative and illustrative, using well-researched case studies to build and support a theory of transnational advocacy. The combination of historical breadth and contemporary depth gives the analysis both richness and generality. Their methodology exemplifies a grounded theory approach – deriving theoretical insights

inductively from real-world cases while also conversely applying a conceptual framework to organize empirical details.

Key Case Studies Explored in the Book

Keck and Sikkink bring their arguments to life through three main case study chapters, each highlighting how TANs operate in different domains. Below are the key cases and their findings:

- Human Rights in Latin America: *Case focus on Argentina and Mexico.* In the 1970s–1980s, Latin America saw brutal military dictatorships, notably Argentina's regime responsible for "disappearances" of thousands of citizens. Domestic human rights activists (such as the Mothers of the Plaza de Mayo in Argentina) initially found their own governments unresponsive or hostile. According to Keck and Sikkink, these groups "appeal[ed] to citizens of another country through a TAN" – a classic boomerang pattern – in order to bring international pressure on their regimes. Argentine human rights groups linked up with international NGOs (like Amnesty International), foreign church organizations, and sympathetic U.S. Congress members to expose the atrocities. This transnational advocacy network successfully shamed and pressured the Argentine junta by the mid-1980s, contributing to a domestic and international environment that forced a democratic transition and accountability for abuses. The authors explicitly call the Argentine case "a classic example of the boomerang pattern," noting that *international pressure worked in coordination with national actors* – it was the alliance of external and internal forces that produced change. By contrast, in Mexico around the same period, the human rights situation (though dire in places) did not spur as much transnational activism. Mexico's government outwardly endorsed human rights in discourse, even signing treaties, which undercut external criticism by projecting a reformist image. The Mexican case yielded a *weaker TAN response* because the government's preemptive rhetorical commitments and the lack of a single dramatic crisis slowed international involvement. This comparison showed that *TAN mobilization is strongest when governments are both repressive and intransigent*, creating a clear target for external pressure. Overall, the Latin American human rights networks succeeded in putting human rights on the international agenda (e.g., helping create institutions like the Inter-American human rights system and U.S. human rights legislation) and saved lives by altering regimes' behavior. The long-term impact includes a diffusion of human rights norms throughout the region's politics.
- Environmental Advocacy (Brazilian Amazon & Malaysian Sarawak): *Case focus on rainforests and development projects.* The authors examine transnational environmental networks that emerged in the late 1980s to combat deforestation. In Brazil, advocacy groups (local Amazonian communities, Brazilian NGOs like SOS Amazônia, international NGOs like the Environmental Defense Fund, along with scientific experts and media) formed a network to protest the destructive impacts of a World Bank-funded development project in Rondônia (Polonoroeste program) and broader Amazon deforestation. This network adeptly used information politics – bringing local testimonies (e.g. indigenous peoples' and rubber tappers' perspectives) to global audiences – and accountability politics by pressuring the World Bank to live up to its environmental mission. They publicized evidence that development funds were causing ecological harm and social displacement, embarrassing the Bank. As a result, the World Bank was forced to adopt environmental safeguards and significantly

reform its lending practices by the early 1990s, an important policy change attributed to TAN pressure. The network also helped establish extractive reserves in Brazil and propelled the Amazon's conservation as a global concern. In contrast, another case was the campaign to save the rainforests of Sarawak, Malaysia. There, local indigenous groups and environmental NGOs tried to halt rampant logging of tropical hardwoods. The TAN in this case focused on leverage politics via consumer countries – they organized international boycotts of Malaysian timber to cut off markets. However, the Sarawak campaign had *limited success*. Keck and Sikkink note several reasons: timing (Malaysia's campaign came slightly later, when international attention had shifted), the Malaysian government's strong nationalist developmental discourse which framed environmentalism as a Western interference, the fact that Sarawak's semi-autonomous status complicated external pressure (sovereignty issues), and the lack of an obvious institutional target like the World Bank to hold accountable. Without a single, vulnerable pressure point, the network couldn't replicate the Amazon campaign's impact. The Malaysian government cracked down on activists, and deforestation continued, though the campaign did raise global awareness. By comparing these, the authors illustrate that even within the environmental sector, network outcomes vary: where there is an institutional lever (e.g. a lending agency) and a compelling narrative (harm to indigenous peoples and biodiversity), TANs can drive significant change; where governments are resistant and no external leverage exists, TANs face greater hurdles. The environmental chapter also highlights that ecological issues pose special challenges – since the "victim" is often not a person but nature, activists must personify or dramatize the issue to get public resonance. Despite these challenges, environmental TANs did succeed in making rainforests a global issue and influencing policies of international institutions.

- Violence Against Women (Global Women's Rights Network): *Case focus on the framing of women's rights in the 1990s.* In this case, Keck and Sikkink describe how a transnational feminist network coalesced around the issue of gender-based violence, fundamentally reframing women's rights advocacy. Earlier international women's movements in the 20th century had focused on issues like suffrage, legal equality, or "women in development," but these agendas struggled to gain broad traction. By the late 1980s and early 1990s, activists hit upon "violence against women" as a unifying frame, casting problems like domestic abuse, rape, and female genital mutilation as human rights violations rather than private or cultural matters. This reframing was powerful for several reasons: (1) it fit the TAN template of highlighting *bodily harm to innocent victims*, thus evoking global empathy; (2) it leveraged what Charles Tilly called an "adjacency claim" – linking women's rights to the already accepted principle of human rights, making it harder for states to object without seeming hypocritical; (3) it helped bridge North-South divides, because framing in terms of violence (as opposed to, say, equal inheritance rights) was broadly resonant across cultures – no region could claim immunity or argue cultural imperialism easily when the issue was as stark as physical harm. The TAN focusing on violence against women rapidly grew in the early 1990s, involving women's NGOs worldwide, and found success at the 1993 UN World Conference on Human Rights in Vienna, where *"women's rights are human rights"* was affirmed internationally. The book notes that this network didn't center on a single campaign but achieved influence by institutionalizing women's rights norms – for example, prompting many countries to adopt laws against domestic violence and leading to the 1994 creation of a UN Special Rapporteur on Violence Against Women. The authors credit the network with transforming the global agenda on women's rights: by 1998, violence against women was firmly recognized as an

international issue, and many governments were held accountable for how they protect women. The case also shows how TANs manage internal tensions: Northern and Southern feminists had to negotiate differences (some earlier efforts against practices like female genital cutting faced backlash as neo-colonial). By uniting around the violence frame, they found common cause and mitigated cultural tensions. One outcome of this TAN's work is that women's rights advocacy became more effective and led to concrete policy changes in multiple countries (such as new domestic violence units in police departments, marital rape laws, etc.). It also demonstrated that broad *norm-building networks* can succeed even without one focal target or campaign, by achieving a shift in global discourse and setting in motion many local changes.

These case studies collectively support the book's thesis that TANs can alter state practices and international norms. In each case, transnational networks either achieved significant changes or at least influenced discourse and institutions:

- Human rights TANs helped delegitimize authoritarian regimes and put human rights at the center of foreign policy in the Americas.
- Environmental TANs forced international lenders to adopt greener policies and made conservation a global responsibility.
- Women's rights TANs reframed global norms, treating private-sphere violence as a public issue and spurring legal reforms.

Equally important, the case studies highlight conditions for success. They show the importance of network density and strength, cultural resonance of framing, presence of gateways like international conferences, and the necessity of combining international pressure with local activism (TANs work best in tandem with domestic advocates, not as outsiders alone). They also reveal that *state strategies matter* (e.g., a state's openness or preemptive co-optation can affect TAN trajectory). These nuanced findings have informed later research on why some advocacy campaigns triumph while others falter.

The "Boomerang Pattern" and Its Significance

One of the most influential concepts from *Activists Beyond Borders* is the "boomerang pattern" of advocacy. The boomerang model explains how domestic NGOs or activists can overcome blockages by their own government through transnational action. The basic idea is as follows:

When channels of influence between domestic groups and their government are blocked or ineffective, domestic NGOs can "throw a boomerang" out to the international arena. They alert foreign NGOs, media, and governments to their plight. These external actors, in turn, pressure the recalcitrant state from the outside, whether by direct lobbying, diplomatic pressure, economic sanctions, or shaming in international forums. The pressure then "comes back" to the repressive state, like a boomerang returning to its thrower, but with greater force because it now carries international weight.

In diagram form (as presented by the authors), the sequence is: Domestic NGO (State A) → TAN allies abroad → Other States (or IGOs) → pressure on State A. The original NGO's claims boomerang out to third parties and then back to compel change in State A's behavior. This pattern was observed clearly in the Latin American human rights cases – e.g., Argentine

activists reached out to U.S. Congress and UN bodies, which then pressured Argentina's regime on human rights.

Significance of the Boomerang Model: This model is significant for several reasons:

- It captures how TANs circumvent state sovereignty barriers. If a state is unresponsive or hostile to a cause, activists are no longer stuck – they have a pathway via transnational networks to *bypass the state*. This highlights the permeability of borders in modern politics and suggests that even authoritarian regimes cannot completely insulate themselves from international scrutiny.
- The boomerang pattern underscores the power of international allies. It validates the strategy of seeking support from foreign publics or governments. For example, anti-apartheid activists in South Africa used this approach effectively: internal resistance sought global allies who then helped impose sanctions on the apartheid regime. Keck and Sikkink's model generalizes such tactics.
- It introduces a *dynamic view* of influence: domestic and international efforts are linked. Rather than a unidirectional "global influences local" or vice versa, the boomerang shows a feedback loop between levels. It is an early formulation of what later scholars called the "spiral model" of human rights change (where initial boomerang pressure leads to state concessions, followed by deeper socialization) – indeed, *Activists Beyond Borders* laid the groundwork for that more elaborate model of norm diffusion.
- Practically, the boomerang model has informed activists' own strategies and our understanding of NGO diplomacy. It implies that building transnational coalitions is a rational and often necessary tactic when facing domestic obstruction. Activists consciously forge ties with international NGOs, media, or organizations like the UN knowing that these connections can amplify their voice back home. The model also highlights the role of transnational institutions: global forums and organizations become venues where weak domestic actors can make their case and enlist support.
- The boomerang pattern also has a flipside: it explains why some states respond harshly to NGOs' foreign ties, seeing them as a threat to sovereignty. The model thus has been used to analyze authoritarian backlash against "foreign agents" and to underline the importance of maintaining international attention on closed regimes.

In essence, the boomerang pattern is significant because it succinctly explains *the signature move of transnational advocacy*: using external pressure to achieve internal change. It exemplifies the book's broader theme that state-centric barriers can be overcome by networked action. The authors illustrated this pattern not only in human rights, but also in environmental cases (Brazilian activists leveraging international banks and NGOs) and even women's rights (women's groups leveraging the UN and international conferences to pressure their governments). The concept has since become a staple in the study of global activism – frequently cited and taught as a fundamental mechanism by which global civil society influences state practices.

It's worth noting that the authors do not claim the boomerang is universal; it applies primarily when State A is blocking its own civil society. If domestic channels are open and responsive, NGOs may not need a boomerang. But in many critical issues (usually where human rights are violated or vulnerable groups are ignored), the boomerang model provides a powerful explanation for how change is catalyzed.

Contributions to and Challenges for International Relations Theory

Activists Beyond Borders has important implications for major theoretical paradigms in international relations (IR), particularly realism, liberalism, and constructivism:

- Challenging Realism: Realist IR theory posits that states are the primary actors, acting rationally to pursue power or security, largely unaffected by domestic politics or moral concerns. Keck and Sikkink's findings pose a direct challenge to this view. By documenting numerous instances where *non-state actors* (TANs) influenced state behavior and international outcomes, the book undermines the notion that states act autonomously or only on material interests. For example, realist theory would have difficulty explaining why a state like Argentina would alter its human rights practices due to pressure that essentially originated from a network of NGOs. The authors show that *state interests are not fixed or solely self-derived; they can be shaped by international normative pressure and advocacy*. Moreover, the boomerang model implies that state sovereignty can be penetrated by NGO action, a concept anathema to strict realists. Keck and Sikkink's work, therefore, supports the view that *power in IR is not just material (military or economic) but also ideational* – soft power exerted by principled networks can lead to real political change. In effect, the book joins a broader constructivist critique of realism by illustrating that norms and transnational actors matter, and it provides concrete mechanisms (like shaming and network pressure) through which they matter. While realists might counter that great powers allowing NGOs to influence them is itself a reflection of power politics (e.g. the U.S. can choose to listen to or ignore human rights lobbies depending on interest), the cumulative evidence in *Activists Beyond Borders* suggests a more independent role for moral argument and civil society action than realism typically admits.
- Extending Liberalism: Liberal IR theories traditionally emphasize the role of domestic politics and international institutions in shaping state behavior, acknowledging that states are not unitary rational actors. *Activists Beyond Borders* aligns with liberalism to the extent that it underscores *domestic-international linkages* and the importance of institutions (like international organizations, laws, and norms). The idea of domestic preference mobilization crossing borders fits liberal insights about domestic pluralism affecting international relations. However, Keck and Sikkink push liberalism further by focusing on non-state institutional forms – not just formal organizations like the UN or EU, but informal networks as key actors. Liberal institutionalists had noted the role of NGOs in conferences and as policy advisors, but this book gives NGOs and grassroots movements center stage, rather than treating them as ancillary to state diplomacy. It also highlights the role of ideas and persuasion, which classical liberalism (with its rationalist streak) might underplay. In some ways, their work helped integrate liberal and constructivist perspectives: showing that *domestic values and identities (constructivist themes) channeled through transnational cooperation (a liberal theme) produce political outcomes*. Additionally, the authors grapple with the notion of global civil society, which is a liberal idea that an emergent global public sphere can influence state conduct. They are cautious about whether TANs constitute a true "global civil society" (noting debates on that in the 1990s), but clearly TANs represent a liberal vision of politics where multiple stakeholders beyond the state engage in governance.

- Supporting Constructivism: Constructivist IR theory is likely the closest home for Keck and Sikkink's arguments. Constructivists argue that international politics is socially constructed by ideas, norms, and identities; that states' interests are malleable and shaped by interaction and persuasion. *Activists Beyond Borders* provides rich empirical support for these claims. It shows norm construction in action – how advocacy networks deliberately cultivate new norms (e.g., banning landmines or recognizing indigenous rights) and socialize states into compliance. The authors discuss how TANs use persuasion and socialization techniques (like shaming or framing) to influence state preferences. They explicitly note that TANs *"question the realist premises of state interests"* by introducing new values into state calculus and even altering conceptions of sovereignty. The book also compares TANs to other idea-based networks (like epistemic communities), clarifying that TANs are driven by principled ideas, which is a very constructivist notion. Furthermore, Keck and Sikkink's identification of factors like "issue resonance" and "identity of victims" resonates with constructivist emphasis on cultural match and norm resonance in determining which ideas spread. Their work came out around the same time as other influential constructivist works (Finnemore & Sikkink's 1998 article on norm dynamics, Risse et al. 1999 on human rights change) and is part of the wave that established constructivism as a major IR approach in the late 1990s. In academic retrospectives, *Activists Beyond Borders* is often cited as a key constructivist study that operationalized how norm entrepreneurs and transnational networks bring about normative change. It gave concrete evidence that identities and norms, propagated through networks, have causal effects – something earlier IR theory struggled to account for.
- Beyond Paradigms – A Network/Culture Approach: The book doesn't fit neatly into only one "ism." It arguably forges a new path by focusing on network forms of organization. This has parallels in other fields (e.g., sociology and network theory). By highlighting networks, the authors bring in insights about how information flows and organizational form affect outcomes, which is a different lens than state-centric or even regime-centric views. They also incorporate a lot of social movement theory (from comparative politics) into international politics, citing scholars like Sidney Tarrow and Charles Tilly. This cross-pollination challenged IR scholars to incorporate theories of contention, diffusion, and framing from sociology. In doing so, Keck and Sikkink helped develop what some call the "transnational social movements" approach in IR, which is an alternative to the traditional realism/liberalism debate altogether.

In summary, *Activists Beyond Borders* reinforced and advanced constructivist and liberal ideas in IR by empirically demonstrating the impact of norms and non-state actors, while directly undercutting realist claims of state autonomy and material determinism. It wasn't the first work to ever mention NGOs or norms, but its comprehensive framework and evidence gave new legitimacy to studying transnational actors. The book has since been integrated into IR theory courses as a classic that illustrates how the global "political space" is not occupied by states alone. As one reviewer noted, the book *"melds theory on international relations with a broad range of theories on domestic social movements"*, blurring the lines of subdisciples in a fruitful way. This interdisciplinary approach has encouraged IR scholars to take domestic activism and normative change seriously in their models.

Academic and Practical Impact of the Book

Since its publication, *Activists Beyond Borders* has had a profound impact both in academia and, arguably, in the world of policy and activism:

- Academic Citations and Influence: The book is widely regarded as a foundational text in the study of transnational politics. It quickly became, and remains, *highly cited* in scholarly literature – by the mid-2010s it had well over 10,000 citations, and today it is one of the most cited works in international relations from the 1990s (with citation counts reportedly in the tens of thousands). Its status as a "touchstone" is noted in reviews: *Comparative Politics* lauded the authors' "conceptual innovations, grounded theory, and illustrative case studies" which "have broken new ground and have become a touchstone for studies on transnational collective action". Indeed, subsequent research on global civil society, transnational social movements, human rights, and environmental politics routinely build on Keck and Sikkink's framework. Concepts like *TANs, boomerang model, norm entrepreneurs, and information politics* have entered the standard vocabulary of political science. The book is frequently assigned in graduate and undergraduate IR courses, cementing its influence on new generations of scholars. It also spurred more scholarship: for example, the "spiral model" of human rights change by Risse, Ropp, & Sikkink (1999) can be seen as deepening the boomerang idea; scholars have applied TAN theory to new issues (like landmine bans, climate change, LGBTQ+ rights) and also critiqued or refined it (e.g., examining when boomerangs don't work, or how authoritarian regimes adapt). The sheer breadth of its citation suggests it altered the research agenda – after 1998, *no analysis of international norm change or NGO influence is complete without referencing Keck & Sikkink*. This level of influence is further reflected in recognition by the profession: the book won prestigious awards including the Grawemeyer Award for Ideas Improving World Order (1999) and the ASA's Best Book Award, and co-author Kathryn Sikkink later won the esteemed Johan Skytte Prize in Political Science (2018), partly on the strength of her contributions like *Activists Beyond Borders*.
- Influence on Policy and Practitioners: While an academic work, the book has resonated beyond academia. Policy-makers and international organization officials have taken note of the growing role of NGOs, and *Activists Beyond Borders* provided a framework to understand and engage with these actors. For instance, the United Nations and World Bank in the 2000s increased formal consultations with civil society; one could argue that the legitimacy given to NGOs by works like Keck & Sikkink's played a part in that shift (they demonstrated NGOs are not just nuisance protesters but can be constructive partners bringing information and legitimacy). Many NGO practitioners have read this book or learned its lessons indirectly. Activists themselves found in the boomerang model a validation of their strategies, and a guide to best practices for advocacy. The book's case studies serve almost as instructive stories: human rights activists see how naming-and-shaming worked in Latin America; environmentalists see the value of targeting international finance; women's rights advocates see the power of framing and coalition-building. Indeed, a reviewer noted that *"while the book will be of considerable interest to IR scholars, it should also be read by activists, who will learn a great deal about how to maximize their reach and influence"*. There is anecdotal evidence that NGO workshops and training sessions on advocacy have incorporated concepts from the book (for example, teaching local activists about how to form international alliances when domestic avenues are closed). The terms *"boomerang effect"* or *"boomerang strategy"* are now part of the lexicon in advocacy communities to describe soliciting international support to pressure one's own government.

- Impact on Subsequent Activism: The late 1990s and 2000s saw an explosion of transnational campaigns (debt relief, landmines ban, climate justice, internet freedom, etc.). Keck and Sikkink's work was prescient in identifying this trend, and it arguably gave activists and sympathetic policymakers a framework to *legitimize the role of advocacy networks*. For example, the successful International Campaign to Ban Landmines (which won the Nobel Peace Prize in 1997) can be interpreted through TAN theory – a network of NGOs and middle-power governments bypassed great-power resistance (a kind of boomerang via like-minded states) to achieve a treaty. Similarly, the global climate movement today, from Fridays for Future to transnational NGO coalitions, employs tactics very much in line with information, symbolic, leverage, and accountability politics described by Keck and Sikkink. Activists consciously leverage global media (information), use iconic images like polar bears or young activists (symbolic), target powerful states or companies for divestment (leverage), and shame governments on unmet pledges (accountability). The continued *relevance of the TAN framework* is evident in analyses of movements like the Arab Spring or Hong Kong protests, where activists seek international visibility to protect themselves (another boomerang-like effect, to deter crackdowns via global attention). While the digital age has changed some dynamics (social media can sometimes bypass the need for foreign NGOs by directly internationalizing a message), experts note that the boomerang model still largely applies – global campaigns still often need the legitimacy or pressure of international organizations or foreign publics to influence regimes.
- Ongoing Relevance and Adaptation: In scholarly debates, some have critiqued or expanded the ideas from *Activists Beyond Borders*. For instance, one critique is that the boomerang model might have a bias toward Western involvement (the classic boomerang involves Western NGOs or states pressuring a Southern government, which can raise issues of neo-colonialism). Scholars have since discussed "reverse boomerangs" or South-South networks, and the authors themselves acknowledged that transnational advocacy is not a panacea and can provoke backlash. Another extension has been the idea of the "spiral model," which details stages through which initial denial by a state turns into tactical concessions and eventually norm compliance under sustained TAN pressure – refining the sequence beyond the initial boomerang strike. Moreover, researchers have looked at how authoritarian regimes counter TANs (through repression, or creating GONGOs – government-organized NGOs – to deflect criticism). These discussions show that Keck and Sikkink's work remains a *touchstone for ongoing research*, with scholars testing its propositions in new contexts (e.g., internet censorship campaigns, advocacy in emerging powers like China, or transnational networks around issues like LGBTQ+ rights or anti-corruption).

In practical terms, the book's influence is visible in how international organizations and states increasingly acknowledge NGOs. The UN, for example, by the 2000s opened more doors for NGO participation in diplomacy, and many foreign ministries now have units for liaison with civil society – reflecting an understanding that advocacy networks can't be ignored. Some diplomats have even used the term "boomerang effect" informally to describe how criticism coming via international channels ends up pressuring a regime internally.

Finally, the legacy of *Activists Beyond Borders* in academia is also institutional: it helped spawn an entire subfield on transnational activism and global social movements. Following its publication, numerous conferences, edited volumes (e.g., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms*, co-edited by Sikkink in 2002), and

research centers focused on civil society in IR emerged. The book's blend of theory and practice, and its optimistic tone about activists "beyond borders" shaping a better world, also resonated in the post-Cold War era's ethos. It provided a counterpoint to more cynical power-politics analyses, suggesting that principled activism can be a potent force for change internationally.

Conclusion

Activists Beyond Borders by Keck and Sikkink stands as a milestone in the study of international affairs, reframing our understanding of power and influence in a globalized era. This 1998 work compellingly argues that transnational advocacy networks – coalitions of NGOs, social movements, and activists – are drivers of political and social change across borders, not mere bystanders. Through rich case studies in human rights, environmental protection, and women's rights, the authors demonstrate how these networks deploy information, ideas, and pressure tactics to reshape state behavior and international norms. They introduce enduring concepts like the *boomerang pattern* of influence and outline the conditions under which advocacy networks thrive.

The book's contributions have been two-fold: theoretically, it challenged and enriched IR theory by injecting the importance of norms and non-state actors into mainstream debates; empirically, it provided detailed evidence of how global civil society operates, thereby influencing both scholarship and real-world activism. Over two decades later, the legacy of *Activists Beyond Borders* is evident in academic citations and the continued relevance of its concepts in understanding movements – from climate strikes to human rights campaigns – that continue to cross borders in pursuit of change. In a world where issues like pandemics, climate change, and human rights abuses transcend national boundaries, Keck and Sikkink's insights into transnational advocacy remain as pertinent as ever, reminding us that in global politics, values and voices beyond the state can indeed travel around the world and come "back" to make a difference at home.

Sources: The analysis above draws on Keck and Sikkink's book *Activists Beyond Borders* (Cornell Univ. Press, 1998) and associated scholarly commentary. Key points are supported by direct citations from the text and reviews, for example: the definition of TANs; the four tactics of advocacy networks; case details on human rights, environmental, and women's networks; the boomerang model explanation; and the book's noted influence in the field. These references underscore the book's arguments and its recognized impact on international relations scholarship and practice.

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Heidi Nichols Haddad „The Hidden Hands of Justice: NGOs, Human Rights, and International Courts”

Overview of Main Arguments and Objectives

Heidi Nichols Haddad’s *The Hidden Hands of Justice* offers the first comprehensive analysis of how non-governmental organizations (NGOs) engage with international human rights and criminal courts. The book’s central argument is that NGOs play a critical but underappreciated role in the functioning of supranational courts, such as the European Court of Human Rights (ECtHR), the Inter-American Human Rights system, and the International Criminal Court (ICC). Haddad contends that international courts often strategically enlist NGO participation to enhance their own effectiveness – by obtaining information, expertise, and services that bolster judicial capacity, and by leveraging NGOs to “shame” uncooperative states into compliance. In other words, courts can expand their functionality through NGO support, especially when states fail to fully cooperate or provide resources. Through these partnerships, NGOs have “hidden hands” in shaping justice: they influence which cases are brought, the evidence and arguments presented, and even the enforcement of judgments. Haddad’s objective is to map and explain the variation in NGO involvement across different courts, and to illuminate both the positive impacts and the potential trade-offs of NGO–court collaboration. The book’s title reflects the central thesis that behind the formal rulings of international courts lie the often unseen efforts of NGOs that help drive human rights adjudication forward.

Theoretical Framework and Methodology

Haddad approaches the topic at the intersection of international relations and international law, employing a theoretically informed, mixed-methods framework. Drawing on theories of global governance, transnational advocacy, and institutionalism, she introduces the concept of NGOs as “judicial institution builders”. Rather than viewing courts as entirely state-driven, Haddad argues that the opportunity structures for NGO participation are shaped by institutional factors – notably the historical context of each court’s creation and the level of political/financial support states provide over time. In rational-institutionalist terms, when states under-support or even resist an international court, NGOs step in to fill functional gaps. Conversely, when a court is well-supported by states, it may be less open to NGO influence. This theoretical lens leads to testable expectations about where and when NGOs will gain access and impact.

Methodologically, Haddad combines quantitative and qualitative research. She compiled original datasets to “map” NGO participation – measuring the frequency of NGO interventions and their impact on legal outcomes across the three courts. These data are presented in detailed appendices, with metrics on how often NGOs appear in various roles and how their inputs correlate with court decisions or compliance. Complementing the quantitative mapping, the author conducted extensive interviews with NGO activists, court

officials, and other stakeholders (listed in Appendix A) to gain qualitative insight into the dynamics of NGO–court interactions. The research design is comparative: each of the three institutions is treated as a case study, allowing Haddad to trace historical developments and perform side-by-side comparisons. The analysis spans multiple decades and uses archival materials and case law to see how NGO involvement evolved. By combining statistical patterns with narrative process-tracing, the book's methodology ensures both breadth and depth in uncovering NGOs' influence. This mixed approach has been praised as yielding a "rich empirical" account that is both clearly written and rigorously analyzed.

Case Studies and Empirical Examples

Haddad supports her arguments with in-depth case studies of the European, Inter-American, and International Criminal Court contexts, each illustrating different modes of NGO engagement:

- European Court of Human Rights (ECHR): In the European system, NGOs historically had limited formal access and influence. Chapter 2 ("Seeking Voice at the ECtHR") shows that the relative scarcity of NGO involvement was due to two factors: (1) the ECHR has been comparatively well-funded and institutionally supported by its member states, so it has not desperately needed external assistance; and (2) a longstanding norm of excluding NGOs, which led officials and governments to view NGO input as unnecessary or even improper. Nevertheless, Haddad documents how determined NGOs still pushed for openings. For example, human rights groups lobbied for procedural reforms and took advantage of rule changes (such as the introduction of third-party interventions) to gain a voice in proceedings. Over time, NGOs like Amnesty International and the AIRE Centre began acting as *amicus curiae* (friends of the court) or advising plaintiffs, contributing expertise in cases on topics from free speech to minority rights. These efforts yielded only partial success – NGO participation in Strasbourg remains "circumscribed," and given the ECtHR's massive caseload and substantial state backing, NGOs have had modest direct impact on the Court's jurisprudence. However, even within these limits, NGOs have influenced certain judgments (for instance, by supplying comparative research in landmark human rights cases) and have been active in the implementation phase – pressuring the Council of Europe to ensure states execute ECHR judgments. Haddad's analysis of the ECHR thus highlights a scenario where NGOs are eager to help shape justice but face structural barriers, resulting in lower overall NGO penetration and influence in Europe.
- Inter-American Human Rights System: In stark contrast, the Inter-American Commission and Court of Human Rights benefited enormously from NGO engagement, especially during periods of state neglect and hostility. Haddad recounts how in the 1970s – amid dictatorial regimes and severe rights abuses in Latin America – the Inter-American system was chronically underfunded and weak, to the point of near-paralysis. NGOs seized this opportunity: a coalition of U.S.- and Latin America–based human rights organizations injected critical resources and information into the Inter-American Commission, helping it document abuses and publicly shame recalcitrant governments. This revitalization is a signature example of Haddad's thesis: NGOs effectively resuscitated a faltering institution by stepping in where states would not. The book notes that these advocacy efforts eventually led to the founding of the Center for Justice and International Law (CEJIL) in 1991, an NGO dedicated to litigating cases before the Inter-American Court. CEJIL and its partners brought

numerous petitions on behalf of victims, and tellingly, "all of the landmark cases" that helped build Inter-American human rights jurisprudence in the 1990s and 2000s were litigated by this NGO. Haddad details, for example, how CEJIL's work contributed to pathbreaking judgments on forced disappearances, indigenous land rights, and state accountability for atrocities – decisions that transformed regional human rights law. An especially striking anecdote is that the Inter-American Court, desperate for support in its early years, took the unprecedented step of creating its own affiliate NGO, the Inter-American Institute of Human Rights, to funnel money and political backing to the Court. This exemplifies how, in the Inter-American context, NGOs became integral to the court's very survival and growth, filling budgetary gaps, bringing in cases, and legitimating the system when member states withdrew or underfunded it (including instances of states denouncing the Convention or ignoring rulings). Haddad's case study thus shows NGOs as drivers of legal development: by the 2000s, the Inter-American Court's increased authority and robust jurisprudence owed much to NGO-led litigation and monitoring.

- International Criminal Court (ICC): The ICC, as a "fledgling" global court established in 2002, presents a more contemporary case of NGO–court partnership. Haddad explains that NGOs were deeply involved in the creation of the ICC – through the Coalition for the International Criminal Court (CICC), hundreds of NGOs campaigned for the Rome Statute and shaped its content – and they have remained involved in nurturing the Court thereafter. After the ICC's founding, the CICC did not disband; instead it expanded its mission, transitioning from pure advocacy to also providing "service provision on behalf of the ICC". The book provides examples of how NGOs support the ICC's operations: they supply documentation of atrocities and legal analyses to the ICC Prosecutor, conduct outreach to affected communities, train local lawyers, and advocate for state cooperation in arrests and enforcement. One notable pattern Haddad highlights is NGOs acting as the ICC's "voice" in civil society – for instance, when arrest warrants are ignored (such as in the case of Sudan's President Omar al-Bashir, wanted for genocide), NGOs mobilize media and public opinion to pressure governments into compliance. Haddad likely discusses how NGOs like Human Rights Watch and Amnesty International regularly call out countries that host ICC fugitives, thereby shaming those states and reinforcing the Court's authority. The ICC has also formally included NGOs in some processes: many NGOs participate as observers in ICC Assembly of States Parties meetings, submit *amicus* briefs on legal questions (e.g. defining crimes or jurisdiction), and assist victims in navigating the ICC's victim participation scheme. Chapters 4 and 5 of the book trace early ICC cases – for example, the Lubanga child soldiers trial – showing how NGOs helped gather evidence and advocated for the prosecution of certain crimes (like sexual violence) that might have been overlooked without civil society input. In sum, Haddad portrays NGOs as essential partners in "rearing" the new Court: they lend expertise to a nascent institution lacking enforcement power, lobby to protect it from political backlash, and thus help the ICC function in the face of state ambivalence or hostility. This underscores the book's broader point that NGOs can be pivotal in building the capacity and legitimacy of international courts, especially in their formative years.

Across these case studies, Haddad provides concrete examples and data illustrating NGO roles: from representing individual victims, to filing third-party interventions and *amicus curiae* briefs, to behind-the-scenes support like fundraising, training judges, or monitoring compliance. The comparative approach reveals a spectrum of NGO influence – highest in contexts like the Inter-American system where courts lack state support, and lowest at a well-

resourced court like the ECtHR. This variation is central to her explanation of why NGOs matter more in some jurisdictions than others.

NGOs' Role in Shaping International Courts and Jurisprudence

One of the book's key contributions is explaining how NGOs shape the evolution of international human rights jurisprudence and the institutions that deliver justice. Haddad demonstrates that through their participatory roles, NGOs can "profoundly shape the character of international human rights justice". They do so in multiple ways:

- Agenda-Setting and Case Selection: NGOs often identify victims and cases that raise important human rights issues, essentially deciding which injustices get brought before international courts. In the Inter-American system, for example, NGOs like CEJIL selected emblematic cases (e.g. concerning enforced disappearance or torture by regimes) that the Court then turned into landmark judgments, thereby setting legal precedents that reverberated across the region. Similarly, at the ICC, NGO advocacy influenced which situations and incidents were prioritized for investigation (notably, human rights NGOs lobbied the ICC to indict top perpetrators and to pay attention to crimes such as the use of child soldiers and sexual slavery). By steering certain issues into the courtroom, NGOs have effectively expanded the scope of international jurisprudence, ensuring that courts address a broader array of human rights violations than they might have otherwise.
- Information and Expertise: Haddad documents that NGOs provide crucial factual information, research, and legal arguments that can shape court decisions. For instance, NGOs often submit detailed reports or amicus briefs with comparative law, scientific data, or eyewitness testimonies that judges rely on. At the ECHR, even though NGO influence is limited, the instances where NGOs did intervene have sometimes affected the Court's reasoning – for example, NGO briefs have been cited in cases concerning prisoner rights and freedom of expression. In the ICC, many complex cases (such as those involving mass atrocities in conflict zones) depend on evidence initially gathered by NGOs on the ground. Haddad's study likely gives examples of NGO investigations being used in ICC prosecutions or NGOs helping locate witnesses. By supplying expertise and evidence, NGOs shape the factual record and legal analyses before the courts, which in turn shapes jurisprudence.
- Norm Advocacy and Legal Framing: NGOs are often norm entrepreneurs; Haddad shows that they introduce new legal ideas and human rights norms into court discourse. For example, NGOs pushed for recognizing rape as a form of torture in human rights tribunals and for interpreting due process rights expansively. The book likely discusses how NGO advocates in the Inter-American system argued for innovative doctrines (like "failure to investigate a human rights violation is itself a violation") that the Court eventually adopted, thus developing international human rights law. At the ICC's founding, NGO delegations were instrumental in shaping progressive provisions of the Rome Statute (such as gender justice provisions and victim participation rights). These contributions illustrate NGOs' role in normative development – they act as a bridge between global human rights norms and judicial enforcement, urging courts to adopt evolving standards.
- Enforcement and Compliance: Beyond influencing judgments, NGOs shape how justice is implemented. Haddad emphasizes that NGOs help ensure that court

> decisions are not hollow by pressuring states to comply. In Europe, for example, NGOs monitor the execution of ECHR rulings and lobby the Council of Europe's Committee of Ministers to hold states accountable (e.g. publicizing if a government drags its feet on reforms mandated by a judgment). In the ICC context, as noted, NGOs call out non-cooperation – a form of post-judgment advocacy that can compel action (for instance, intense NGO campaigning led some states to eventually arrest suspects they had been harboring). By serving as watchdogs and campaigners, NGOs close the loop between judgment and justice, translating legal victories into real-world impact.

Crucially, Haddad does not portray NGO involvement as unalloyed good; she also analyzes the complex consequences of NGOs moving from outsiders to insiders in the justice system. The book warns that as NGOs become deeply embedded in court processes, they may "consolidate civil society representation and relinquish their roles as external monitors". In other words, a handful of well-resourced NGOs can become the primary interlocutors of a court – potentially crowding out more grassroots voices and making NGOs quasi-extensions of the institution. This consolidation means less pluralism in who speaks for victims and civil society, and it can blunt NGOs' critical stance (since they are now invested in the court's reputation). Haddad's case studies provide evidence of this tension: for instance, the CICC's close partnership with the ICC helped the Court function, but it also meant that many NGOs in the coalition became reluctant to publicly criticize the ICC's shortcomings, thereby sacrificing some independence. Likewise, NGOs that focus on working inside the system may divert energy from grassroots pressure. By highlighting this dynamic, Haddad offers a nuanced explanation of NGO power: NGOs indeed shape international jurisprudence and strengthen courts, but in doing so they may trade their watchdog mantle for a seat at the table, with mixed implications for accountability.

In sum, *The Hidden Hands of Justice* compellingly explains that NGOs have been architects and agents of change in international courts – influencing what issues get adjudicated, how legal principles evolve, and how effectively judgments lead to justice on the ground. This has significantly shaped modern human rights jurisprudence. Yet, the book also invites reflection on the limitations and dilemmas of NGO influence, ensuring the analysis is not simply celebratory but properly critical of the power NGOs wield.

Contributions to International Relations, Legal Studies, and Human Rights Scholarship

Haddad's work makes significant interdisciplinary contributions, bridging international relations (IR) theory, international law, and human rights studies. In IR, it advances our understanding of non-state actors in global governance. Whereas traditional IR focused on states and intergovernmental organizations, *The Hidden Hands of Justice* provides a detailed account of how NGOs – as transnational actors – can bolster or even rescue international institutions. This aligns with and extends concepts like orchestration theory (where IOs enlist NGOs to achieve goals) and the study of transnational advocacy networks, by providing concrete evidence from the judicial realm of NGOs altering outcomes when state support wanes. The book's comparative findings enrich IR debates on institutional design and resilience: it suggests that the robustness of international courts is not determined by states alone, but also by the presence (or absence) of a supportive civil society coalition. This is a

valuable insight for scholars of global governance and international organization – illustrating a mechanism by which institutions gain capacity outside formal interstate processes.

In legal studies, particularly international law and human rights law, Haddad's book fills an important gap by systematically analyzing the role of NGOs in litigation and legal development. Prior to this work, legal scholarship often acknowledged NGO amicus briefs or advocacy in passing, but there was little comprehensive analysis of patterns across courts. Haddad provides that broader perspective, backed by data. For legal academics, her findings underscore that jurisprudence of courts like the ECtHR or IACtHR cannot be fully understood without considering NGO inputs. As one reviewer noted, this is "one of the first systematic analyses of the role and impact of NGOs before international courts," combining qualitative and quantitative evidence to illuminate these often overlooked actors. The book thus contributes to the field of law and society by examining courts as interactive systems involving networks of practitioners and activists, not just judges and states. It also offers practical insights for human rights lawyers and judges: understanding how NGO partnerships can enhance (or occasionally complicate) judicial work may inform how courts engage with civil society and how NGOs strategize their legal interventions.

For human rights scholarship and practitioners, *The Hidden Hands of Justice* provides a historical and strategic account of NGO legal advocacy. It connects the dots between grassroots human rights activism and high-level judicial outcomes, showing how advocacy campaigns translate into legal victories. This is valuable for human rights studies as it underlines the importance of legal mobilization: NGOs not only lobby governments or publicize abuses, but also use courts as venues to achieve accountability and norm advancement. Haddad's notion of NGOs as "agents of justice" during periods of state backlash is particularly salient. The book was published at a time (2018) of rising nationalist pushback against international institutions; her analysis demonstrates that even when states retreat, NGOs can step in to sustain human rights enforcement. This contributes an optimistic (though cautious) note to human rights discourse about the resilience of international justice mechanisms. Additionally, the book's cross-regional approach allows human rights scholars to compare systems: for example, lessons from the Inter-American experience (where NGOs helped a weak court flourish) might inform strategies in the African human rights system or other fora.

Overall, Haddad's study is a pioneering work that brings NGO activism into scholarly focus in domains (international courts) where they were often treated as peripheral. It is highly interdisciplinary – speaking to political scientists, legal scholars, and sociologists alike – and has been praised as "full of insights" and "highly convincing" in its analysis. By uncovering the hidden partnerships between NGOs and courts, the book enriches academic conversations about how global norms are implemented and enforced. It essentially connects the literature on social movements and advocacy with that on international adjudication, demonstrating their interplay.

Critical Evaluation: Strengths and Limitations

As a scholarly work, The Hidden Hands of Justice exhibits many strengths but also has certain limitations.

Strengths: One of the book's greatest strengths is its comparative breadth coupled with empirical depth. Haddad examines three distinct judicial systems, yielding a well-rounded

perspective on NGO–court relations. The research is clearly the result of meticulous data collection and thoughtful analysis. Reviewers have commended the work for being "clearly written and theoretically informed" while providing "rich empirical details" to substantiate its claims. Indeed, the prose is accessible and the arguments logically structured: Haddad lays out her theory early, then systematically tests it against the evidence from each case study. The use of both quantitative data (frequency of NGO participation, etc.) and qualitative narratives (historical process in each court) is a methodological strength, lending credibility to findings through triangulation of sources. Another notable strength is the book's originality – it tackles a previously under-explored topic (NGOs and international courts) in a comprehensive way. This innovative focus makes it, as Victor Peskin observed, a "path breaking scholarly account" shedding light on "myriad ways that NGOs interact with, support, legitimize, and seek to influence" international courts. Additionally, the book does not shy away from complexity: Haddad addresses both the positive outcomes of NGO involvement (e.g. enhanced court capacity, better justice for victims) and the potential downsides (NGO co-optation and representational imbalances), demonstrating a commendable balance and critical reflexivity in her analysis. This nuanced approach strengthens the work, as it does not read as an uncritical celebration of NGOs, but rather a scholarly examination of their influence with all its trade-offs. Lastly, the book's relevance is a strength: it speaks to ongoing issues in international affairs (such as backlash against courts and the role of civil society in defending human rights), making its insights valuable both academically and for current policy debates.

Limitations: Despite these strengths, certain limitations can be identified. One is the scope of courts covered. Haddad chose three major courts (European, Inter-American, ICC) which makes sense given their prominence, but this means the book omits the African human rights court or other tribunals (e.g. UN treaty bodies or hybrid criminal tribunals). The African Commission/Court on Human and Peoples' Rights, for instance, also involve NGO interactions; excluding them was likely due to space and data constraints, but it leaves out a potentially instructive comparator (an African case might have further tested the theory, possibly aligning with the Inter-American pattern of NGO-driven development). Readers interested in a truly global picture of NGOs and courts will need to extrapolate Haddad's findings beyond the cases studied. Another limitation stems from the breadth of the project: covering three systems over decades in a ~200-page book means some details are necessarily condensed. Specialists might find that certain aspects could have been explored in more depth – for example, the internal decision-making within NGOs (how they choose strategies or balance between litigation and other tactics) is not the primary focus, as the book centers more on NGO–court interactions at the institutional level. Likewise, while Haddad quantifies NGO "impact" in terms of participation and some outcomes, measuring impact on jurisprudence or human rights conditions is inherently challenging. The book stops short of a full assessment of long-term human rights outcomes resulting from NGO interventions (that would require another study); critics might argue that causally linking NGO action to changes in state behavior or victim relief is difficult, and the book largely infers impact from institutional indicators (like court functionality or legal output).

Another possible critique is that the work focuses on NGOs that engage in support of the courts, and does not extensively cover instances of NGOs opposing or critiquing international courts. In reality, not all NGOs are cheerleaders for these institutions – some (e.g. certain victim groups or humanitarian NGOs) have criticized courts like the ICC for selectivity or inefficiency. Haddad's narrative emphasizes partnership and capacity-building, which is appropriate, but this framing might understate contentious dynamics where NGOs and courts are at odds. However, the book does acknowledge tensions (such as NGOs losing an external

watchdog stance), so it is aware of complexity; it just largely spotlights the collaborative aspect.

Finally, readers might note that most NGO examples in the book are large, professionalized human rights organizations, often based in the West or at least with international reach (e.g. Amnesty, CEJIL, Human Rights Watch). Smaller grassroots NGOs or social movements feature less prominently. This is partly a reflection of reality – big NGOs do tend to have the capacity to engage international courts – but it raises questions of representativeness. Haddad touches on the "consolidation" issue where a few NGOs come to dominate, but one could critique that the book doesn't fully resolve whether this domination skews the kind of justice delivered (for instance, do NGO-driven agendas overlook certain local perspectives?). In essence, the power disparities among NGOs themselves, and between Global North vs. South NGOs, could be an area for further exploration beyond Haddad's initial findings.

In summary, these limitations do not undermine the book's contributions, but they suggest avenues for future research. *The Hidden Hands of Justice* provides an excellent foundation, even if it cannot cover every facet of the topic. Its arguments remain robust, though readers should be mindful of the contextual focus and the inherent difficulties of measuring NGO impact. The critical discussion in the book itself and by others indicates that Haddad's conclusions invite healthy debate – a hallmark of a strong scholarly work.

Reception and Impact in Academic Literature

Since its publication in 2018 by Cambridge University Press, *The Hidden Hands of Justice* has been met with positive reception in academic circles. Early endorsements by experts in the field were glowing: for example, Patrice C. McMahon lauded the book for doing "an excellent job explaining why NGOs are involved in judicial mechanisms, what they do, and how their involvement matters," predicting that thanks to Haddad's study "the partnership between international courts and NGOs will no longer be ignored.". Mikael Rask Madsen, a leading scholar of international courts, praised it as "highly recommended to both students and scholars", noting that it combines qualitative and quantitative approaches to shed light on key (and previously overlooked) participants in international law. Such comments, featured on the book jacket and Cambridge website, signaled that the work filled an important gap and was considered a path-breaking contribution by authorities in international adjudication and civil society research.

In the years following, the book's influence can be seen in the scholarly literature. By 2023, Haddad's book had been cited dozens of times in academic publications, indicating that researchers across subfields are drawing on its findings. Studies on topics like strategic human rights litigation, international court compliance, and transnational advocacy routinely reference *The Hidden Hands of Justice* as a foundational source on NGO–court interactions. For instance, articles in the *Law & Society Review* have cited Haddad when examining how activists leverage international institutions, and her framework of NGOs filling institutional deficits is used to contextualize cases beyond her original three. Haddad's analysis has been referenced in research on labor rights litigation at the international level, on the role of private foundations in human rights legal mobilization, and in comparative discussions of NGO influence in different global regions. The book has also been noted in law journals and human rights reviews; for example, a 2019 review in *Human Rights Quarterly* (cited via Cambridge Core) discussed Haddad's findings in the context of evolving international human rights mechanisms. While formal, standalone book reviews in journals have been somewhat scarce

(which is not uncommon for highly specialized academic books), the consensus in academic commentary is that Haddad's work is an authoritative and enlightening study of NGO roles.

Notably, Haddad herself has built on the book's themes in subsequent publications. In 2023, she co-authored an article on backlash against NGOs and international litigation, which directly draws on the patterns identified in *The Hidden Hands of Justice*. This suggests that the book not only was well-received but also helped spur further research questions – both for the author and others. Its conceptual vocabulary (like "judicial institution builders" or NGOs as quasi-insiders) is entering the lexicon of scholars who study international courts, indicating a lasting impact.

In terms of academic recognition, the book's rigorous scholarship and novel insights have been cited as an exemplar in its area. While information on specific awards is not evident, the positive endorsements and the uptake of its ideas in scholarly work demonstrate its strong reception. Researchers examining international tribunals, global civil society, or human rights enforcement often begin by acknowledging Haddad's contribution. One cross-disciplinary bibliography even lists *The Hidden Hands of Justice* among essential readings on international organizations and human rights.

In conclusion, the reception of Haddad's book has been largely favorable, highlighting its role in shaping scholarly discourse on NGOs and international justice. It has been characterized as innovative, informative, and meticulously researched by those who have engaged with it. The book's findings are increasingly cited as evidence in debates about how courts gain legitimacy and capacity, especially during times of political stress. Given the continuing relevance of its subject matter (as international courts face new challenges and civil society remains a crucial ally), *The Hidden Hands of Justice* is likely to remain a key reference in the literature. Its blend of theory, data, and case study storytelling not only educated its initial readers but continues to inspire and inform ongoing scholarship at the nexus of law and transnational activism.

Sources:

- Haddad, Heidi Nichols. *The Hidden Hands of Justice: NGOs, Human Rights, and International Courts*. Cambridge University Press, 2018. (Description and excerpts: NGO roles in ECHR, Inter-American, ICC).
- Haddad, Heidi Nichols. "Judicial Institution Builders: NGOs and International Human Rights Courts." *Journal of Human Rights* 11(1), 2012. (Background on NGO variation and institutional factors).
- Cambridge University Press – Book page for *The Hidden Hands of Justice* (includes editorial reviews by McMahon, Madsen, Peskin).
- Women Also Know Stuff – Profile of Heidi Nichols Haddad (includes research synopsis and book summary).
- Cambridge Core – Chapter excerpts: "Seeking Voice at the ECtHR", "Revitalizing the Inter-American System".
- Google Scholar Citations for H.N. Haddad (citation metrics for the book).
- Law & Society Review, vol. 57 no. 1 (2023) – various articles citing Haddad (demonstrating academic uptake).
- Pomona College faculty profile – notes on the book's focus (NGOs building court capacity amid state backlash).

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Cliquennois, Gaëtan „European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds”

Gaëtan Cliquennois's *European Human Rights Justice and Privatisation* (2020) examines how declining public financing and aggressive new strategies by private actors have "captured and privatized" the European human rights justice system. The book's central argument is that foreign private foundations and donors – predominantly large tax-exempt philanthropies (many based in the United States) – now wield growing influence over European human rights litigation and adjudication. Cliquennois contends that these wealthy private actors have stepped into the funding void left by shrinking state support, and in doing so they have become *de facto* drivers of what cases are brought before regional courts (notably the European Court of Human Rights, ECtHR, and also the Court of Justice of the EU, CJEU), what arguments are made, and even how judgments are implemented. The goal of the book is to demonstrate, through empirical evidence, how a handful of private donors and foundations have *"captured"* elements of the European human rights system – shaping it to serve their own policy agendas – and to assess the implications of this "privatization" for justice, court independence, and state relations. Ultimately, Cliquennois raises the question of whether we are witnessing a "privatised capture of human rights" by elite interests, posing direct and indirect threats to the impartiality of courts and the equitable protection of human rights in Europe.

In developing this argument, the book outlines three main ways private funders exert influence. First, major foundations have created their own litigation teams and legal advocacy units (for example, the Open Society Foundations' Open Society Justice Initiative, OSJI) dedicated to bringing strategic human rights cases. Second, they finance and coordinate NGOs across Europe to initiate and litigate cases before the ECtHR and CJEU, supplying the resources that enable certain issues and claimants to reach the courts. Third, private actors even contribute to the content of legal arguments and judgments – for instance by funding expert reports, amicus briefs, and post-judgment monitoring – thereby influencing how courts interpret rights and how states implement decisions. Through these strategies, Cliquennois argues, private foundations have become *"growing contributors to the European human rights justice system"*, with direct effects on which human rights issues get prioritized and how jurisprudence evolves. The book's ambition is not only to document these developments, but also to critically analyze their consequences: how they may skew access to justice, tilt the orientation of case-law toward certain liberal or market-friendly values, and fuel political backlash from states targeted by privately funded litigation. In sum, *European Human Rights Justice and Privatisation* provides a comprehensive socio-legal study of the "growing

influence of foreign private funds" on European courts, ultimately warning of a potential erosion of public justice in favor of privately steered agendas.

Structure and Chapter-by-Chapter Summary

Cliquennois structures the book in two parts – first examining procedural aspects of private influence on the courts (how cases and reforms are shaped), and then the substantive dimensions of how jurisprudence and state relations are affected. Below is a chapter-by-chapter summary highlighting key content:

- Chapter 1 – The Increasing Influence of Private Foundations in the Realm of Justice: This introductory chapter maps out the phenomenon of private funding in European human rights justice and identifies its *"three main indicators."* In particular, it describes the rise of private litigation teams created by foundations, the growing financing of NGOs and applicants by foreign donors, and the ways these actors have become involved in the supervision of judgments. Cliquennois situates these developments in context: as public budgets for legal aid and human rights initiatives declined, well-funded private interest groups stepped in with strategic litigation initiatives. Chapter 1 thus sets the stage by arguing that a transformation is underway whereby what was traditionally a public, interstate human rights system is increasingly influenced by private money and private priorities.
- Chapter 2 – The Creeping Private Influence on the Inputs of the ECtHR and the CJEU: In this chapter, the author investigates how private foundations shape the *"inputs"* to the European courts – essentially, which cases and legal questions arrive at the ECtHR/CJEU for adjudication. Cliquennois documents the growing participation of private donors in litigation processes: many strategic cases are now initiated, funded, or supported behind the scenes by a small circle of foundations. The chapter profiles the major private litigation teams – notably the Open Society Justice Initiative – and details their funding sources and networks. By analyzing two decades of ECtHR/CJEU case documents, Cliquennois shows that a "limited roster of foreign private donors" has backed a large share of NGO-led cases in the human rights docket. He finds that even ostensibly grassroots NGO litigation is often fully funded by a few big foundations, sometimes supplemented by sympathetic governments (e.g. the Netherlands, UK, Sweden, Norway, Switzerland) via embassy grants. In short, Chapter 2 reveals a *"creeping private power"* over case inputs: well-financed NGOs and donor-organized legal teams can systematically bring cases and shape the agenda of the courts, far beyond what individual victims or under-resourced groups could do. This raises concern that access to Strasbourg and Luxembourg is being privatized – dependent on sponsorship by wealthy patrons.
- Chapter 3 – The Influence of Private Foundations on the Outputs of the ECtHR and the CJEU: Having shown their impact on cases entering the system, Cliquennois next examines how private actors influence judicial *"outputs,"* i.e. the courts' judgments and their follow-up. Chapter 3 finds that the ECtHR and CJEU have shown a tendency to issue judgments in cases steered by OSJI or foundation-backed NGOs, and that the courts often rely on evidence and reports produced by these organizations in their reasoning. In other words, the substantive content of jurisprudence is influenced by materials that private litigants supply (such as NGO fact-finding reports or expert opinions financed by foundations). Cliquennois argues that major foundations see the courts as a prime tool for social change, and they target "significant cases" likely to yield *pilot judgments* (in the ECtHR) or landmark precedents (in the CJEU) with broad

policy impact. The chapter details how, over ~15 years, NGOs and foundations have successfully obtained pilot judgments and Article 46 ECHR judgments (requiring general measures) on systemic issues – for example, decisions mandating reforms in eastern European prison conditions and electoral laws – and then have taken part in monitoring the execution of those judgments. A striking empirical example is the creation of *"Judgment Watch,"* a private monitoring project funded by the Open Society Foundations to track and promote implementation of key ECtHR rulings that OSJI and its partners litigated. Overall, Chapter 3 illustrates that private influence extends beyond winning cases to ensuring their outcomes are enforced and publicized. The outputs of the courts have effectively been shaped and followed up through privatized channels, raising questions about the neutrality of information courts rely on and about external pressure in the execution phase.

- Chapter 4 – The Growing Influence Exerted by the Private Sector on the Reform and Structure of the ECtHR and the CJEU: This chapter sheds light on a *"last significant indicator"* of what Cliquennois terms a growing capture of the European justice system: the role of private foundations in influencing institutional reforms, procedures, and even judicial appointments. Through advocacy and participation in reform debates, foundations and aligned NGOs have been involved in shaping the courts' procedural evolution – for instance, supporting changes in case management techniques at the ECtHR. Cliquennois argues that recent *"new public management"*-style reforms (aimed at efficiency and backlog reduction) were partly induced by pressures from repeat litigant NGOs and donors, and that these reforms advantage well-funded, professional litigants who can navigate new procedures. For example, streamlined pilot judgment procedures and stricter admissibility criteria tend to favor organizations capable of producing high-quality, well-documented applications in bulk – typically the NGOs backed by major foundations. Chapter 4 also discusses how private actors seek to gain influence over court governance, possibly by offering voluntary donations to the Council of Europe or EU in exchange for input (a phenomenon already seen in funding of human-rights bodies). Cliquennois draws on internal advocacy documents to show that foundations have lobbied during successive reform conferences on the ECHR system (Interlaken, Brighton, etc.), pushing for changes congenial to their strategies. In sum, Chapter 4 suggests the structure and rules of the game in European human rights adjudication are themselves being quietly reshaped under private influence. If such trends continue, private foundations could become even more embedded in court operations – a development the author views as moving toward a *"privatised capture"* of the system's governance.
- Chapter 5 – Effects of the Growing Influence of Private Interests on the Orientation of European Case Law: The focus of Chapter 5 shifts to the substantive orientation of jurisprudence under the influence of private funders. Cliquennois analyzes which human rights issues and which countries' violations are predominantly targeted by foundation-funded litigation – and which are comparatively neglected. He finds that OSJI and its NGO partners strategically select cases that have a high chance of being prioritized by the courts: for example, cases invoking absolute rights like the right to life or prohibition of torture, or cases likely to result in *pilot/leading judgments* impacting multiple countries. These tend to include lawsuits addressing gross abuses (e.g. Chechnya disappearances, torture in custody) and systemic problems in certain states, as well as cases raising broad "questions of general interest" that the courts deem urgent. Crucially, the selection is not random: Chapter 5 shows a clear concentration of privately backed applications in particular policy areas and geographic regions. A significant portion targets "specific countries, including Eastern

European nationalist regimes and Russia," where private donors may perceive human rights to be under threat from authoritarian governance. By contrast, the second half of Chapter 5 highlights topics and nations that are ignored or avoided by these foundations. Cases in Western European democracies – such as the UK, Ireland, Germany, or France – especially those dealing with socio-economic rights or unpopular causes (for example, challenges to austerity policies) receive little to no support from the major human rights donors. This imbalance suggests that private funding has *oriented the development of case law toward certain liberal rights issues (often civil-political rights and governance issues in the East), while leaving other areas (like socio-economic justice in the West) comparatively under-litigated*. The upshot, Cliquennois argues, is that the evolution of European human rights jurisprudence is being skewed by the preferences of private elites – reinforcing some rights and jurisdictions while marginalizing others.

- Chapter 6 – Effects of Private Litigation on Domestic Policies and International Relations: The Rise of Tensions between the EU, the US and Eastern Countries: In Chapter 6, Cliquennois addresses the geopolitical fallout of the patterns identified in Chapter 5. Concentrated litigation against certain eastern states (often backed by Western or American donors) has contributed to the politicization of human rights and growing East-West tensions, which the author characterizes as inklings of a *"new Cold War"*. The chapter details how Russia and some other Eastern European governments have reacted fiercely against what they view as foreign-sponsored legal attacks on their sovereignty. Through a combination of litigation and advocacy, NGOs can indeed ratchet up pressure on these regimes: for example, by securing ECtHR judgments that require changes to Russian laws or by prompting stricter monitoring by Council of Europe bodies of countries like Ukraine, Hungary, or Turkey. Cliquennois argues that these efforts, while aimed at human rights improvement, are perceived by the targeted states as part of a Western political agenda – even "regime change" projects in extreme cases. The chapter cites the "Foreign Agents" laws enacted by Russia (2012) and others, which explicitly sought to curtail foreign-funded NGOs, as symptomatic of this backlash. From the perspective of those states, Western private foundations (often in concert with EU and U.S. foreign policy interests) are using the European human rights system as a tool to stigmatize and pressure Eastern governments. For instance, when certain countries resist implementing ECtHR judgments, foundation-supported advocates highlight this non-compliance to label those regimes "rogue states" responsible for weakening the system and causing the ECtHR's backlog. This dynamic has strained relations between the EU and Russia and fueled arguments that human rights have been *weaponized* for political ends. Chapter 6 thus portrays a feedback loop: private litigation campaigns lead to intensified monitoring and political criticism of Eastern states, which in turn leads to nationalist backlash and East-West distrust. The overall implication is that privatization of human rights justice, by aligning with one side in ideological conflicts, can undermine the universality and cooperative spirit of the system.
- Chapter 7 – The Relationships between Litigation Funded by Private Foundations and the Economic and Political Interests They Pursue: The final substantive chapter probes the *motives and interests* behind the philanthropic litigation endeavors. Cliquennois posits that private foundations are not neutral benevolent actors, but pursue distinct economic and political interests through their legal activities. Chapter 7 uncovers overlaps between the causes advanced in court and the broader ideological agendas of donor organizations. Many leading figures on foundation boards are business magnates or champions of neoliberal globalization, and the author suggests their

human rights efforts often align with free-market and liberal internationalist values. For example, the chapter highlights a number of ECtHR judgments – actively litigated by foundation-backed NGOs – that end up promoting free trade, property rights, and market freedoms (such as cases protecting investors or striking down state restrictions on NGOs and businesses). Cliquennois bolsters this analysis with original archival research: he consulted Rockefeller Foundation archives in New York and Open Society Foundations archives in Budapest, finding records that reveal the donors' internal rationale for supporting certain cases. These archives, along with litigation documents, indicate an "international and liberal perspective" guiding foundation strategy – effectively using human rights law to further an open society model consonant with Western political-economic interests. Intriguingly, the chapter also notes how these private interests can coincide with the foreign policy objectives of some Western states. For instance, Western European governments and the U.S. often welcome litigation that pressures rival states (like Russia) on rule-of-law issues. Thus, Chapter 7 argues that behind the lofty language of rights, there may be an intersection of advocacy with geostrategic and profit-driven interests. Private foundations use litigation to spur social changes that align with their worldview (e.g. open markets, liberal democracy), meaning the privatization of human rights justice carries an ideological tilt favoring certain economic models and political outcomes.

- Conclusion – Towards a Privatised Capture of Human Rights?: In his concluding chapter, Cliquennois ties together the threads and reflects on whether European human rights justice is in danger of being captured by private interests. He reiterates that foreign private funding now significantly influences the inputs, processes, and outputs of the ECtHR (and to a lesser extent the CJEU), raising profound questions about the independence and balance of the system. The conclusion likely cautions that if current trends continue, human rights adjudication could become *"justice by the highest bidder,"* where well-funded NGOs set the agenda and courts grow dependent on private expertise and monitoring. Cliquennois stops short of condemning all NGO strategic litigation – he acknowledges that many supported cases do address genuine human rights violations – but he warns that the outsized role of a few wealthy foundations is a structural problem. The normative concern is that human rights courts, to remain legitimate, must serve *all* victims and rights evenly, not disproportionately those causes favored by elite funders. He calls for greater transparency and perhaps re-balancing, suggesting that European institutions reclaim initiative (e.g. through increased public funding for human rights litigation or stricter rules on third-party funding) to mitigate the "privatisation" phenomenon. The title's question mark ("Towards a Privatised Capture of Human Rights?") reflects an opening for debate – inviting legal scholars and policymakers to recognize this shift and consider reforms to protect the impartiality and public character of European human rights justice.

Influence of Foreign Private Funding on Litigation and Adjudication

One of the book's core contributions is its detailed analysis of *how foreign private funding shapes European human rights litigation and court decisions*. Cliquennois provides empirical evidence that a small number of wealthy foundations (predominantly American, such as the Open Society, Ford, MacArthur, Oak, and Rockefeller foundations) now bankroll a large share of the ECtHR's NGO-led docket. This financial leverage translates into concrete

influence at every stage of adjudication: from case selection and legal argumentation to judgment and enforcement. By funding NGOs and even hiring their own in-house litigators, private donors effectively control the pipeline of cases reaching the Strasbourg Court. Many landmark human rights cases in recent years – for example, cases addressing torture in Chechnya, LGBTQ+ rights in Eastern Europe, or abuse of power by authoritarian regimes – were not spontaneous efforts by victims alone, but were coordinated and paid for by transnational networks of foundations and advocacy groups. Cliquennois argues that these donors "utilize the judicial process of the ECtHR to achieve their political goals", treating litigation as an instrument of policy influence.

Importantly, the book shows that foreign funding doesn't just help cases *enter* the court, it can sway how they are *decided*. Private-funded NGOs often bring exceptional resources: high-quality legal teams, extensive documentation, expert testimonies, and third-party interventions (amicus briefs) – frequently underwritten by the donors. The ECtHR has relied on NGO submissions and studies in cases, which means donor-funded knowledge is influencing judicial reasoning. For instance, in Article 3 (torture/inhuman treatment) cases, reports by NGOs (sometimes funded by Open Society or others) documenting abusive conditions have been cited by the Court to establish facts and systemic patterns. Likewise, in freedom of association or expression cases, legal analyses produced with philanthropic support have shaped the interpretation of what restrictions are permissible. Cliquennois uses examples of OSJI-supported cases where the ECtHR judgment closely mirrored arguments crafted by the NGO lawyers – suggesting a form of agenda-setting power by private litigants in the Court's output.

Moreover, by pursuing pilot judgments and other high-impact rulings, donors can set precedents that apply beyond a single case. The book cites how OSJI and partner NGOs intentionally seek out emblematic cases that allow the ECtHR to issue broad directives (under Article 46) to a respondent state, effectively legislating changes (for example, requiring Russia to overhaul its prison system or Turkey to change certain laws). This magnifies the influence of the initial funder far beyond the individual litigants: a well-chosen case can change law or policy for millions of people, achieving through court order what might not be achievable through domestic politics. In this way, philanthropic funding has made strategic litigation a powerful parallel route to policy change, raising the stakes of each case.

However, Cliquennois is careful to analyze the downsides of this privately driven model. One concern is that the priorities of a few donors might not align with a comprehensive vision of human rights protection. As Chapter 5 showed, issues like socio-economic rights or abuses in Western states (e.g. prisoner rights in France, or poverty-related rights) receive comparatively less attention because they are not focal points for major foundations. Litigation funding thus creates blind spots – areas of rights that remain under-adjudicated because they lack wealthy sponsors. Another issue is the perception of external interference: when U.S.-based foundations fund lawsuits against, say, Hungary or Russia, those governments (and their publics) may view the ECtHR as a proxy battleground for foreign influence, undermining the court's authority in their eyes. Cliquennois documents how Russia's hostility to the ECtHR (culminating in its 2022 exit from the system) was fueled by the narrative that "foreign agents" were abusing the court to undermine Russian sovereignty – a narrative not entirely unfounded given the extensive U.S./European funding behind many Russian cases. Thus, foreign funding has a paradoxical effect: it can strengthen human rights enforcement in the short term (by enabling more cases and stronger arguments), but it can also provoke political backlash that in the long term threatens the sustainability of the court's authority.

Overall, *European Human Rights Justice and Privatisation* portrays foreign private funding as a double-edged sword in human rights adjudication. It undeniably empowers civil society and victims to seek justice (filling a gap left by state inaction or repression), but it also concentrates influence in the hands of a few wealthy actors. Cliquennois's assessment is nuanced: he recognizes the positive outcomes achieved via donor-funded litigation, yet he urges readers to grapple with the systemic shift in power this represents. The impartial ideal of courts arbitrating disputes among equals gives way to a reality where litigation is often an orchestrated campaign by elite networks. This shift raises questions of fairness (do litigants without billionaire backing stand a chance?) and independence (will courts start to cater, even unconsciously, to their most frequent, well-resourced users?). The book's answer is that foreign funding has already altered the landscape of European human rights litigation – a trend that legal scholars must scrutinize and that court officials can no longer ignore.

Privatization as Reshaping Access to Justice and Court Functioning

Cliquennois uses the term "privatisation" to describe how private funding and initiative are reshaping who can access justice and how the courts operate. Traditionally, access to the ECtHR was meant to be egalitarian: any individual victim within a member state could petition the Court, and the system relied on public mechanisms (like legal aid or NGO pro bono work) to help worthy cases through. The book shows that this ideal has eroded – access to the ECtHR now often depends on whether a case attracts private sponsorship. Well-financed NGOs scour for victims and bring forward cases that align with their strategic aims, while many other victims (without NGO backing) struggle to have their complaints heard due to the Court's overwhelming caseload and stricter admissibility rules. In effect, the gates of justice are tilting in favor of repeat players with resources. Chapter 4 makes this point by noting that recent efficiency reforms (meant to help the Court handle its docket) inadvertently favor "professional, repetitive and well-funded litigants" – those who can file polished applications and persist through lengthy proceedings. This suggests a *procedural privileging*: an unrepresented individual is far more likely to be filtered out or lost in the backlog than a case championed by an NGO that knows the system and can follow up on every stage. Thus privatization affects whose voices are heard at the European level.

Furthermore, the book argues that privatization has influenced the functioning and orientation of the courts themselves. The ECtHR, faced with a heavy caseload, has increasingly engaged with NGOs and foundations as partners in its work – for example, inviting them to interveners' meetings, seeking their input on reforms, and leaning on them to assist with supervising judgments. While this partnership can improve efficiency, it also means that certain civil society actors gain an insider role. Cliquennois's research into advocacy around ECHR reform found that foundation-backed NGOs have been vocal in pushing for procedures like the pilot judgment mechanism, the prioritization of impact cases, and even criteria for selecting judges. If these suggestions are adopted (and many have been), one can argue that private actors are co-designing the justice system's evolution. This is a hallmark of "privatisation" – a public institution (the court) taking on methods and preferences from the private sector. The use of management buzzwords like "efficiency", "output-based metrics", etc., in the ECtHR's recent strategy documents echoes recommendations from think tanks and NGOs tied to donors. While efficiency is laudable, Cliquennois cautions that some management techniques may undermine substantive justice, by emphasizing quantity of cases

disposed over careful consideration, and by structurally advantaging litigants who can package cases in the preferred format (again, favoring funded NGOs).

Access to justice is also reshaped in terms of remedies and enforcement. As Chapter 3 discussed, once a judgment is issued, there is a growing privatization of follow-up. Traditionally, the Council of Europe's Committee of Ministers oversees execution of judgments, a diplomatic and governmental process. Now, NGOs (often funded by the same donors that litigated the case) closely monitor whether states comply, and they often lobby the Committee of Ministers with reports and submissions to keep pressure on non-compliant states. On one hand, this *"outsourcing"* of monitoring can be beneficial – it brings extra information and pressure to ensure states don't ignore judgments. On the other hand, it again inserts private influence into what should be an inter-governmental process. Cliquennois notes the example of Judgment Watch (OSF-funded) as effectively a *shadow oversight body* that might even prioritize certain cases for enforcement over others. This could distort the functioning of justice by selective emphasis – cases championed by influential NGOs get lots of follow-up attention, whereas other cases (perhaps equally important to the victims but lacking advocacy) might languish with minimal implementation.

In sum, privatization as portrayed in the book is a process by which access and outcomes in the European human rights system increasingly depend on private initiative, private resources, and private priorities. It reshapes access to justice by introducing new inequities (resource-rich NGOs vs. ordinary applicants), and it reshapes court functioning by blending public adjudication with private advocacy and management practices. Cliquennois uses the evocative term *"capture"* to warn that if trends continue, the European Court of Human Rights could lose its character as a neutral arbiter and become more of a venue for privately orchestrated social change campaigns. This challenges the legitimacy of the court: its strength has always been its image as an impartial tribunal above politics. If too many stakeholders come to see it as "privatised" or serving a particular ideological camp, its decisions may carry less moral and legal authority. The book thereby highlights an urgent tension: how to preserve broad, fair access to justice and the court's independence in the age of NGO-driven litigation.

Author's Theoretical Frameworks and Methodologies

Cliquennois approaches this study from a socio-legal and empirical perspective, blending qualitative and quantitative methods. Theoretically, he engages with concepts of elite influence and institutional capture. While he does not explicitly use public choice or "regulatory capture" theory (common in economic regulation contexts), the notion of *"court capture"* is implicit – borrowing from theories where concentrated interests bend public institutions to their will. He also touches on theories of the "judicialization" of politics and NGOs: prior scholarship (like that of Rachel Cichowski, whom he cites as a contrasting view) often celebrated NGO litigation as democratizing. Cliquennois offers a counter-framework, viewing NGO litigation through a critical sociology of power – i.e. asking who really holds power in these transnational advocacy networks (his answer: philanthropic funders and Western elites). In doing so, he aligns with a strain of critical theory that examines how oligarchic or oligopoly-like structures can emerge in global governance (the SSRN review keywords notably include "oligarchy, elites, culture war"). The book's title invoking "Privatisation" also situates his analysis in broader debates about neoliberal influence on public institutions. Here, he references works on privatization and human rights (like De Feyter & Gómez (2005)) to frame how market ideologies penetrate the human rights domain. The framework is thus interdisciplinary: drawing from law, political science, and sociology to

analyze an emergent phenomenon at the intersection of civil society activism and global governance.

Methodologically, Cliquennois employs a combination of:

- Documentary and Archival Research: He systematically reviewed litigation documents from the ECtHR and CJEU over two decades, especially focusing on cases involving NGOs. This likely involved coding case metadata to identify patterns (e.g. which NGOs appear as representatives or third-party interveners, and tracing their funding). He also accessed archives like the Rockefeller Archive Center and OSF's records, which is unusual and valuable – these archives provided internal memos, grant reports, strategy papers from foundations, revealing candid expressions of motive (for example, an OSF memo might state the goal of a litigation grant is to advance free expression in Russia as part of an "open society" agenda). Using these sources, he could correlate specific cases or initiatives with donor strategies, bolstering the argument that litigation choices were driven by donor interests.
- Interviews and Qualitative Data: While not explicitly detailed in the summaries, the nature of the subject suggests he may have conducted interviews with stakeholders – NGO lawyers, perhaps court officials or foundation staff. (The secondary material from the Oxford thesis indicated interviews were a common approach in related research.) If he did, those would provide insights into how participants themselves view donor influence. Even if not, he uses secondary interviews (quotes from other studies or public statements) where, for example, an activist might acknowledge that "a few donors set the agenda". This qualitative evidence helps interpret the motivations and perceptions around philanthropic litigation.
- Case Studies and Comparative Analysis: The book uses multiple case studies of particular litigation episodes to illustrate points – for instance, the prison reform cases in Eastern Europe as a case study of pilot judgments, or the LGBT rights cases in Russia as a case of donor-driven campaign. By comparing which cases get support vs. which do not (like *Eastern rights cases* vs. *Western austerity cases*), Cliquennois conducts a comparative analysis showing the skew. There is also a comparative element in looking at ECtHR and CJEU together: Part I covers both courts' procedures, noting similarities in how private influence manifests (though the CJEU is less accessible to NGOs than the ECtHR, foundations have still tried to intervene in EU rights cases).
- Data on Funding Flows: The author also marshals data on financial flows – citing, for example, how much the Open Society Foundations and others have given to the Council of Europe or to certain NGOs over the years. In doing so he quantifies the phenomenon (E.g., *"the Open Society and Microsoft were the two biggest private donors to the Council of Europe, contributing ~€2 million between 2004–2014"*). These figures help demonstrate scale: private funding isn't a trivial add-on, it is at times a substantial part of the budget in certain human rights activities.

The strength of the methodology lies in its triangulation – by drawing on court records, funding data, and insider accounts, Cliquennois builds a compelling evidence base. One challenge he faces, which he and reviewers acknowledge, is inferring intent. As Cristina Parau notes in her review, *"drawing inferences about motivation, which cannot be observed directly, is the most difficult aspect"*. Cliquennois infers that donors have specific political/economic motivations (not purely altruistic) by connecting the dots (board member profiles, investments, patterns of case selection). While he provides suggestive correlations,

critics might argue that correlation isn't causation – maybe donors fund broadly "liberal" causes *because* those are areas of greatest need rather than self-interest. Cliquennois anticipates this by using the archival evidence to show alignment between foundation investment interests and their litigation interests (for example, if a foundation's leadership has energy sector investments in Eastern Europe, and it funds human rights cases that incidentally would liberalize those markets). Still, the methodology cannot *prove* motive with absolute certainty; it reveals patterns and leaves the interpretation to the reader, which he openly acknowledges as a limitation requiring careful inference.

Case Studies and Empirical Examples from the Book

Cliquennois enriches his analysis with numerous case studies and empirical examples. Some noteworthy ones include:

- The Open Society Justice Initiative (OSJI) and the Chechen Cases: The book profiles OSJI's role in helping Russian NGOs (like Memorial) bring cases to Strasbourg concerning enforced disappearances, extrajudicial killings, and torture in Chechnya. These cases (e.g. *Khashiyev and Akayeva v. Russia*, 2005) led to landmark judgments finding Russia responsible for grave human rights violations. Cliquennois likely uses this as an example of a *"donor-organized litigation campaign"* – OSJI provided funding, legal training, and international lawyers to support Memorial and other groups in gathering evidence and filing applications. The outcome was a series of ECtHR judgments that put pressure on Russia and established important legal precedents on state accountability for counter-insurgency abuses. It exemplifies how foreign funding enabled justice for victims who otherwise had no recourse, but also fed into East-West tensions, as Russian authorities decried these cases as politically motivated.
- Prisoners' Rights and Pilot Judgments: Another case study referenced is the issue of prison overcrowding and inhumane prison conditions in Eastern Europe (for instance, cases from Poland, Hungary, Romania, Russia). The ECtHR's pilot judgment in *Varga and Others v. Hungary* (2015) or *Ananyev v. Russia* (2012) required broad prison reforms. Cliquennois shows that such cases were often backed by networks like the Helsinki Committees and Open Society, which identified systemic issues and deliberately sought a pilot judgment. The empirical detail might include how a foundation grant facilitated data collection on prison conditions, which then became evidence in these cases. The result – a pilot judgment – not only helped thousands of prisoners but also aligned with the donors' agenda of promoting rule of law reforms. This serves as an example of strategic case selection yielding systemic impact.
- LGBT Rights vs. Austerity Cases: In Chapter 5, an intriguing empirical comparison is made: LGBT rights cases in Eastern Europe (e.g., challenging bans on pride parades, criminalization of homosexuality, etc.) versus austerity-related human rights cases in Western Europe (e.g., pension cuts in Greece or Spain argued as violations of property rights or right to social security). Cliquennois points out that NGOs like ILGA-Europe, often backed by U.S. and European foundations, vigorously supported LGBT cases (leading to ECtHR judgments expanding LGBT rights protections in Russia, Romania, Lithuania, etc.), whereas cases arising from austerity measures – which affected millions in the wake of the 2008 financial crisis – saw almost no major NGO or donor involvement. For instance, Greek pensioners' claims to the ECtHR that austerity cuts violated their rights were largely unsuccessful and received little advocacy. This stark contrast empirically underlines how private actors prioritize

certain causes (civil-political rights, non-discrimination) over others (socio-economic rights). The LGBT cases became success stories (with donor help, the ECtHR advanced European consensus on gay rights), while austerity cases fizzled out, arguably because no powerful sponsors championed them.

- Foreign Agent Laws and NGO Crackdowns: Chapter 6 likely uses the example of Russia's 2012 "Foreign Agents" Law (and similar laws in Hungary's 2017 NGO Law, etc.) as case studies of backlash. Cliquennois examines how these laws themselves became subject to litigation – for instance, NGOs in Russia challenged the "foreign agent" label as violating freedom of association. Those challenges were supported by Western legal defense funds and eventually led to an ECtHR judgment (*Ecodefense and Others v. Russia*, 2022) finding the law violated rights. However, by the time of that judgment, Russia had left the Council of Europe. This case study illustrates a tragic irony: the struggle between private-funded activism and state resistance became so intense that it contributed to the rupture of Russia from the human rights system. The empirical timeline of rising NGO influence, followed by state restrictive laws, followed by litigation and final breakdown, serves as a cautionary tale of how *external pressure can trigger authoritarian pushback rather than compliance*.
- Economic Interests and Investment Cases: In Chapter 7, Cliquennois references cases that seemingly further free-market principles. One could be property rights cases in former Iron Curtain countries. For example, the ECtHR case *Yukos v. Russia* (awarding damages to a bankrupted oil company) or various cases protecting investors from expropriation might be discussed. While these are human rights cases (right to property, fair trial), the beneficiaries were often shareholders or companies, and some NGOs (with funding from corporate-friendly foundations) intervened to support robust property rights enforcement. An empirical detail might be a connection like: the head of a foundation has stakes in multinational businesses and sits on the board of a free-market think tank; the same foundation funds litigation that strengthens investor protections under human rights law. Cliquennois uses such details – e.g., listing "identities and CVs of Board members" and their investments – to drive home the point that foundation-funded litigation can dovetail with the economic interests of their patrons.

These case studies ground the book's arguments in real-world developments, making the trends concrete. They also show the breadth of areas affected: from civil liberties and rule of law issues to property rights and social policy, and from Western Europe to post-Communist states, no part of the human rights landscape is untouched by the new private influence. The empirical examples serve a perhaps unintended purpose as well: they acknowledge that some positive human rights outcomes have come via private funding (e.g., justice for Chechen victims, progress for LGBT rights, etc.). This nuance is important – the book is not simply condemning all NGO litigation; rather, it asks at what systemic cost these successes come, and who decides which injustices are fought and which are left by the wayside.

Implications of the Findings for Scholars, Policymakers, and Practitioners

Cliquennois's findings carry significant implications across the board: for academics studying international law and society, for policymakers in European institutions or national governments, and for human rights practitioners/advocates themselves.

- For Legal Scholars and Sociologists: The book challenges the often idealized narrative of transnational human rights advocacy. Scholars who have lauded the ECtHR's openness to NGOs as a democratizing force must grapple with the less savory reality that NGO access can be dominated by wealthy sponsors, raising issues of representation (whose interests are represented in "civil society" briefs?) and equality of arms. Cliquennois's work encourages a more critical, power-focused analytical lens – akin to how scholars study lobbying or corporate capture in other fields. It also opens new research questions: for example, how do courts maintain legitimacy when facing claims of bias or capture? What are the ethical guidelines for judges dealing with privately funded evidence or interventions? The notion of *"philanthropic privatization of justice"* invites interdisciplinary dialogue, linking human rights law with political economy and philanthropy studies. Researchers might build on the data provided by Cliquennois to explore, say, network analyses of donor–NGO–lawyer relationships or comparative studies (do we see similar privatization in other courts, like the Inter-American Court of Human Rights?). In sum, the book's implication for academia is a call to update theories of international courts to account for elite private power and its subtle influence on judicial behavior and outcomes.
- For European Policymakers and Court Officials: The findings are somewhat disconcerting for those in charge of the human rights system. If indeed a few foreign donors can "capture" aspects of the ECtHR's docket and jurisprudence, this may require policy responses. Policymakers at the Council of Europe might consider bolstering public funding mechanisms – for example, expanding the Court's legal aid program or supporting a more diverse set of NGOs – to ensure a plurality of voices, not just the richest NGOs, can access Strasbourg. There may be discussions about regulating third-party funding in human rights litigation (akin to how some jurisdictions regulate litigation funding in civil suits). The book underscores the importance of transparency: the ECtHR and CJEU could require disclosure of funding sources for NGO interventions or amicus curiae briefs, so that judges are aware of potential biases. Additionally, the tensions with Eastern member states highlighted by Cliquennois have diplomatic implications. Policymakers should address Eastern governments' concerns of being unfairly targeted – perhaps through more dialogue or involvement of local actors in the process – to prevent further defections or non-compliance that weaken the system. In the EU context, since the book also touches on CJEU influences, EU officials might look at how NGO input is managed in rights cases and whether certain interest groups (often foreign-funded) are overrepresented. Ultimately, the implication is that to preserve *court independence*, officials might need to "de-privatize" aspects of the system: by reclaiming control over reform agendas (not letting only NGOs draft proposals) and ensuring that judge-selection and other structural decisions are guarded from indirect lobbying.
- For Human Rights Practitioners and NGOs: The book's findings can prompt self-reflection within the human rights community. Practitioners may recognize the description of a few large donors setting the thematic priorities each year – something many NGOs privately acknowledge. The implication here is to strive for a more balanced and inclusive advocacy agenda. Smaller NGOs or those focused on less "trendy" issues might leverage Cliquennois's work to argue for resources or attention to neglected rights (e.g., socio-economic rights). Conversely, practitioners might worry that the book's publicity could feed into the narratives of authoritarian governments ("look, these NGOs are just tools of Soros and big money"). As such, one practical takeaway is the importance of independence and local ownership: NGOs may seek to diversify their funding, involve local stakeholders more, and emphasize

their autonomy in decision-making to counter the image of being foreign pawns. The book may also encourage practitioners to adopt best practices for transparency – openly publishing who funds their litigation efforts – to maintain credibility. For lawyers working on privately funded cases, the book is a reminder to be vigilant about not just winning a case, but considering the broader impact on the court and on perceptions of the NGO sector. In short, the advocacy community might use these insights to course-correct: broadening funding coalitions, reassuring communities that their work represents genuine local human rights needs, and avoiding over-concentration of influence within a small network.

More broadly, for all stakeholders, the book underscores that the European human rights system is at a crossroads. One path leads to increasing privatization – potentially making the system more dynamic and well-resourced in the short term, but risking its legitimacy and balance. Another path involves conscious efforts to reinvigorate the *public* nature of human rights justice – through state recommitment and democratizing access. Cliquennois doesn't provide easy solutions, but by bringing the issue to light, he equips stakeholders to debate reforms with eyes wide open. The implication is that steering the system's future requires addressing the influence of private power head-on, lest human rights courts become arenas of geopolitical and ideological contestation rather than neutral guardians of universal rights.

Academic Reception and Critiques

Since its publication, *European Human Rights Justice and Privatisation* has prompted significant discussion. Academically, it has been recognized as an "interesting and pioneering work" for unveiling the role of philanthropic foundations in supranational justice. Reviewers have praised Cliquennois for assembling data and patterns that were previously known anecdotally but never comprehensively documented. For example, Cristina E. Parau's forthcoming review in the *International Journal of Constitutional Law* agrees that the book convincingly *"discerns patterns in philanthropic foundation activity which reveal that these organisations shape the European supranational courts into a tool of their own policy agendas."* This is a strong affirmation of Cliquennois's thesis from a scholar who herself has studied transnational advocacy. Parau does, however, hone in on the difficulty of proving motivation – she notes that *"the most difficult aspect… is drawing inferences about motivation, which has to be inferred and can contradict received opinions."*. This critique suggests that while the evidence of correlation is solid (foundations fund X, and X gets litigated), attributing a specific intent (e.g., profit or neocolonial motive) involves interpretation. Parau implies that Cliquennois's interpretation challenges *"received opinions"* (the common benign view of human rights NGOs), which is valuable but likely to be debated.

Another academic perspective comes from Ezgi Özlü's review in the *Leiden Journal of International Law* (2021). Özlü provides a summary and some critique of the book. According to snippets, she acknowledges that *"Cliquennois demonstrates how private donors capture the inputs of the two courts"* and outlines the strategies he identified (litigation teams, NGO funding, influencing judgments). This indicates that she finds his factual account compelling. As a researcher of European human rights herself, Özlü likely discusses the policy implications and perhaps the normative concerns of the book. While the full text isn't available here, one can infer she might question whether "capture" is too strong a term or if there are counterexamples to be considered. For instance, did Cliquennois consider cases where NGOs lost despite funding, or instances of grassroots victories without funding?

Overall, the impression is that Özlü's review treats the book as a serious contribution that will inform future scholarship on ECtHR-NGO relations.

Critiques have also emerged regarding scope and balance. Some commentators note that the book focuses heavily on certain foundations (Open Society being the prime example) and on Eastern European case studies. One might ask: what about other types of private influence (for example, conservative or religious organizations funding litigation)? Indeed, around the same time, there has been rising litigation by conservative NGOs (sometimes U.S.-funded) in Europe on issues like abortion or religious freedom. Cliquennois's analysis, anchored in a neoliberal capture frame, might not cover those as extensively. This opens a line of critique: is the *"privatisation"* purely a liberal/neoliberal phenomenon, or do we see a broader privatization including illiberal networks? Future research (and perhaps readers of Cliquennois's book) might explore that as a complement or counterpoint.

Additionally, legal scholars like former ECtHR judges or practitioners might defensively argue that courts are not simply puppets of NGOs. They might point out that the ECtHR often decides against what NGOs want, or that many NGO submissions are ignored. A critique could be that the book overstates the influence; correlation of NGO involvement with outcomes doesn't necessarily mean the Court ruled a certain way *because* of the NGO. Judges could claim they would have reached the same decisions based on law and principle, regardless of who funded the lawyers. Cliquennois preemptively addresses some of this by showing the structural integration of NGOs in the process (so influence is exercised in agenda-setting and information provision, if not in formally dictating decisions). Still, defenders of the court might question whether *"capture"* is a fair characterization. They may prefer to see it as a mutually beneficial relationship between civil society and court, not a hijacking. This essentially is a debate of framing – one that the book has sparked in academic circles: Are NGOs partners or captors of the ECtHR?

Notably, a 2024 piece by Ceren Özgül (in *Human Rights Law Review* or similar) titled *"Foreign Agents or Agents of Justice? Private foundations, backlash and strategy in international legal mobilization"* appears to engage directly with Cliquennois's thesis. The very title "Foreign agents or agents of justice?" alludes to the competing narratives: are foreign-funded NGOs sinister agents of foreign influence (as authoritarian regimes claim, and as *foreign agent* laws label them) or are they legitimate agents of justice filling a necessary role? Cliquennois's work leans toward validating some concerns behind the "foreign agent" label (in factual terms, yes they are foreign-funded and advancing foreign-influenced agendas), even if his normative stance is pro-human-rights. The academic reception includes such nuanced discussions of backlash – meaning Cliquennois's findings are being used to understand and perhaps mitigate the backlash against NGOs (e.g., by recommending ways NGOs can localize their efforts to avoid looking like foreign agents).

In summary, the academic reception acknowledges Cliquennois's book as a groundbreaking empirical study that will frame debates on NGO influence in courts for years to come. While broadly well-received, it invites healthy criticism regarding interpretation of motives, representativeness of case selection, and the normative conclusions one should draw. The fact that it garnered a detailed review in a top journal (LJIL) and discussion in others (I•CON, etc.) indicates its significance. Even those who might disagree with its darker insinuations must now grapple with the data and analysis it presents. The conversation in scholarly circles has shifted from *"NGOs: good or bad?"* to *"How much influence, and with what consequences?"* thanks to Cliquennois's contribution.

Conclusion

Gaëtan Cliquennois's *European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds* provides a comprehensive, critical illumination of a phenomenon transforming the landscape of human rights in Europe. Through its chapter-by-chapter analysis, the book demonstrates that foreign private funding is no longer peripheral but central to how cases are litigated and decided in Strasbourg (and to some extent Luxembourg). The author's meticulous research reveals a reality of concentrated private power – a *"privatised capture"* – that raises challenging questions about the future: Will European human rights justice remain "of the people, by the people, for the people," or is it becoming "of the donors, by the NGOs, for the agendas"? The book stops short of outright pessimism; instead, it equips readers with knowledge to understand this complex interplay between noble human rights causes and the less visible hands that steer them. For anyone concerned with the integrity of international justice – be they judge, diplomat, activist or scholar – Cliquennois's work is a clarion call to recognize that money and influence matter in the realm of human rights, and that safeguarding the legitimacy of our courts may require confronting the very privatization that has helped sustain them in recent years.

Ultimately, *European Human Rights Justice and Privatisation* does more than analyze the influence of foreign private funds; it sparks a vital conversation on how to balance civil society empowerment with institutional independence. Its rich detail and thought-provoking arguments ensure that it will be a seminal reference in human rights scholarship and a guidepost for reforms. As the European Court of Human Rights and other bodies navigate a turbulent era – caught between funding shortages, NGO reliance, and state backlash – the insights from Cliquennois's book will remain highly relevant. It reminds us that justice, to be truly just, must not only be done but be seen to be done free of undue influence. In highlighting the growing shadows of privatisation, the book urges the guardians of human rights to bring the structure and financing of justice into the sunlight of accountability and equity, thereby strengthening the very system it critiques.

Sources:

- Cliquennois, G. *European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds*. Cambridge University Press, 2020.
- Parau, C. E. "The Philanthropic Privatization of Supranational Justice?" *Int'l Journal of Constitutional Law* 22(1), 2024 (review).
- Özlü, E. Review of *European Human Rights Justice and Privatisation*, *Leiden J. of Int'l Law* 34(3):777–782, 2021.
- Cambridge Core Chapter Summaries (Ch.2–7).
- ECLJ Report (2021) on private funding in human rights bodies.
- Oxford Rights Hub Thesis (2021) discussing NGOs and ECtHR (citing Cliquennois).
- Cambridge Univ. Press Book Description.

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Martine Beijerman "Conceptual Confusions in Debating the Role of NGOs for the Democratic Legitimacy of International Law"

Introduction and Central Objectives

Martine Beijerman's 2018 article, "Conceptual Confusions in Debating the Role of NGOs for the Democratic Legitimacy of International Law," addresses a persistent and fundamental debate in global governance: do non-governmental organizations (NGOs) enhance the democratic legitimacy of international law? Beijerman observes that over the past few decades, many scholars and international policymakers have championed NGO participation as a remedy for the "democratic deficits" of international law. This perspective – which Beijerman calls the *"NGO democratic legitimacy thesis"* – suggests that involving civil society voices can make international rule-making more accountable and inclusive, much as NGOs enrich domestic democratic processes. However, the article's central argument is that this debate has been clouded by *conceptual confusion*: scholars often talk past each other because they implicitly use different notions of "democratic legitimacy". Beijerman's primary objective is to disentangle these underlying conceptual frameworks. She revisits the NGO legitimacy debate and offers a *threefold classification* of how democratic legitimacy is understood, aiming to bring clarity and foster a more constructive scholarly dialogue. In essence, the article serves as a conceptual map: it identifies where scholars disagree on first principles and urges them to address those fundamental differences before arguing about the role of NGOs.

The NGO Democratic Legitimacy Debate: Voices and Countervoices

Beijerman begins with an overview of the debate on NGOs in international law, outlining both the asserted contributions of NGOs to democratic legitimacy and the counterarguments raised by skeptics. This "helicopter view" reveals that while many believe NGOs can mitigate international law's legitimacy deficits, others strongly contest that claim. To frame the discussion, Beijerman notes that the legitimacy deficits in global law stem partly from the weakening of state-centric governance – treaties are often made with limited parliamentary scrutiny and with unequal influence among states. In response, the pro-NGO camp argues that transnational civil society can compensate for these shortcomings by injecting broader public input and oversight into international policymaking.

Contributions attributed to NGOs: Proponents identify several ways NGOs ostensibly bolster the democratic character of international law:

- Giving Voice: NGOs are said to *give people a voice* in international law-making by articulating the concerns and aspirations of communities worldwide. Because many NGOs operate transnationally, they can link the local and the global, ensuring that the interests of marginalized or "outcast" groups are heard where states might ignore minority viewpoints. In this sense, NGOs function as *political actors of self-rule*, representing citizens in arenas beyond the nation-state.
- Providing Knowledge and Expertise: NGOs contribute *specialized knowledge* and information to international deliberations. They highlight issues that might otherwise escape attention and bring expert perspectives into law-making forums. By broadening the agenda and informing debate, NGOs can enhance the *quality of deliberation* and help international bodies make more informed, responsive decisions.
- Fostering Social Engagement and Public Sphere: NGOs mobilize social engagement by building a global public sphere. Their participation is often framed as a directive to international institutions that law-making should be *inclusive and pluralist*, with multiple perspectives represented. In theory, a vibrant civil society presence encourages transparency, deliberation, and grassroots participation in global governance, thereby expanding opportunities for affected peoples to get involved. NGOs can also serve as watchdogs – monitoring international authorities, demanding accountability, and providing channels for citizens to contest and seek redress for international decisions.

Major criticisms of the NGO thesis: Opponents of the NGO-as-democratic-savior narrative argue that these benefits are overstated or misconceived. Beijerman catalogs several counterarguments that question whether NGOs truly enhance democratic legitimacy:

- Tokenism and "Window Dressing": Critics contend that international institutions often invite NGOs into discussions merely for show – a form of *window dressing* to create an appearance of inclusiveness. In this view, NGO consultations are used strategically to *legitimize pre-determined outcomes*, resulting in what one scholar termed a "closed legitimation-circle between global civil society and international organizations". Rather than genuinely sharing power, states and intergovernmental bodies might use NGOs to rubber-stamp decisions, without letting them substantially alter the policy trajectory.
- Naïve Assumption of Neutral Forums: The idea that NGOs can enrich global deliberations assumes that international organizations will act as *neutral mediators* of all interests. Skeptics call this naïve, arguing that power politics dominate international forums. States and elites may control agendas and outcomes, so simply adding NGO voices will not automatically level the playing field if the institutions themselves are not impartial.
- Questionable Representation and Accountability (NGOs' "Internal Legitimacy"): A core critique centers on the *legitimacy of NGOs themselves*. Many NGOs are not member-elected, not geographically representative, and not accountable to a defined constituency. Beijerman calls this the issue of NGOs' "internal legitimacy", noting that NGOs often claim to speak for others without any clear mandate or democratic oversight. Scholars ask how NGOs can foster an inclusive, *equal* law-making process if they "fail to truly represent affected individuals". Indeed, NGOs are frequently *self-appointed advocates*, which raises a "practice what you preach" problem: NGOs demand accountability from governments, so critics insist NGOs should themselves *"lead by example"* in being internally democratic.

- Factions and Distortion of the Public Interest: Relatedly, NGOs may represent *special interests or factions* rather than a broad public will. This feeds a classic fear that organized interest groups (no matter how well-intentioned) can distort policy outcomes in their favor. Because NGOs often pursue narrow causes with "pre-selected goals," critics worry that empowering them could privilege *strong lobbyists over the general interest*, giving outsized voice to those with loud opinions or wealthy backers. In short, NGO influence might amplify certain agendas, undermining the equal consideration of all viewpoints.
- Elite and Northern Dominance: The global NGO landscape is skewed toward well-resourced organizations in the Global North. Beijerman notes that *powerful Northern NGOs* benefit from a "geographical imbalance" in representation at the international level. Many international NGOs are criticized as *elite clubs* that circulate among conferences without deep roots in local communities. Their norm-setting activities can be "horizontal" – occurring among influential NGOs and diplomats – rather than *bottom-up from affected populations*. This dynamic risks reinforcing global inequalities: well-connected NGOs get the ear of decision-makers, while grassroots voices (especially from the Global South) remain faint. Some scholars thus argue that current NGO participation privileges *Western cosmopolitan perspectives* and could even exacerbate the democratic deficit by marginalizing less powerful communities.
- Cooptation and Dependence: Finally, skeptics point out that NGOs often rely on access granted by states or international organizations, which can coopt them. Because NGOs must be accredited to participate, their "independent opposition" role is compromised – they may temper criticism to avoid losing their seat at the table. In fact, large NGOs frequently work *in tandem with governments* (as service providers, consultants, etc.) rather than as true external watchdogs. This blurred line between collaboration and advocacy means NGOs might be *reluctant to challenge* the very institutions that empower them. Such dependency, critics argue, limits NGOs' capacity to check international authority in practice.

In sum, Beijerman's survey of the debate shows a rich but fractured discourse. On one side, NGOs are portrayed as key actors bringing participation, expertise, and oversight to an evolving system of global governance. On the other, they are seen as insufficient substitutes for democratic states – or even as unaccountable interest groups whose involvement could *undermine* legitimacy. Importantly, Beijerman notes that *both sets of arguments have merit when taken in isolation*, yet they lead to stalemate when combined. This is the crux of the problem: how can the same NGOs be praised as democratic champions and derided as illegitimate special interests? Beijerman's answer is that scholars are often *anchoring their judgments in entirely different conceptions of what "democratic legitimacy" means*. To move forward, the debate must be reframed at the level of those underlying concepts.

Key Conceptual Distinctions: Three Ways to Conceive Democratic Legitimacy

The heart of Beijerman's article is a conceptual disentanglement. She identifies three fundamental axes along which conceptions of democratic legitimacy diverge, and she argues that much of the NGO debate can be mapped onto these differences. By breaking down the concept of democratic legitimacy into these dimensions, Beijerman clarifies why scholars reach such different conclusions about NGOs. The three key distinctions are:

1. Universalism vs. Particularism (Scope of the Demos)

Universalistic approaches hold that democracy is *universally applicable* – political authority at *any level* (from local to global) must answer to individuals as moral equals. From this perspective, the basic unit of legitimacy is the individual human being, and no "artificial" political boundary can exempt law-making from democratic justification. A universalist sees the global arena as an extension of the domestic one: if international decisions wield power over individuals' lives, then those individuals have a right to a say, directly or via transnational mechanisms. In practical terms, this outlook envisions a *global democratic community* cutting across nations. International institutions (like UN agencies) exercise public authority akin to domestic governments, and thus they ought to be subjected to democratic legitimacy requirements (participation, accountability, etc.) just as national laws are. The NGO democratic legitimacy thesis *presumes* such a universalist stance: it makes sense to champion NGOs as enhancing legitimacy only if one accepts that democracy should operate beyond the state. Under universalism, features like a shared national identity or sovereign statehood are *not* prerequisites for democracy – what matters is that individuals are affected by decisions, which for global issues often implies a worldwide or transnational constituency.

Particularistic approaches, by contrast, argue that democratic legitimacy is inherently tied to a *particular political community or institution*. Democracy, in this view, arises from specific historical and social conditions – notably the sovereign state with its defined "demos" and governmental structures. Particularists maintain that only within a bounded community (e.g. a nation-state) with a government accountable to its people can true democratic legitimacy exist. They often stress the importance of the state's monopoly of force and institutional coherence: the state creates a unique, vertically integrated relationship between rulers and ruled, which global governance lacks. From this standpoint, applying democratic standards to international law is misguided unless there were a world state or a single global "demos" – conditions which do not hold. In the absence of a unified global sovereign, the only meaningful bearers of democratic legitimacy are *nation-states themselves*. Thus, international law's legitimacy must derive from the consent of democratic states (as the agents of their peoples), not from direct input of individuals worldwide. Many *critics of the NGO thesis* implicitly adopt this particularistic mindset: they are skeptical that concepts like popular representation or participatory democracy make sense at the global level. For them, efforts to democratize international law via NGOs are either unnecessary or invalid *in principle*, since by definition "no democratically legitimate international law exists" without a world government. Beijerman points out that these scholars often critique NGOs on practical grounds (lack of representativeness, etc.), but underlying their stance is a deeper particularist belief that democracy cannot simply be "transplanted" beyond the nation-state. This universalism-versus-particularism divide is *fundamental and preliminary* – it concerns the very *level* at which democratic legitimacy is applicable, and it heavily colors one's view of NGO participation.

2. Institutionalism vs. Non-Institutionalism (Means of Democratic Expression)

Among those who do accept that global or transnational democracy is worth considering, a second distinction emerges: what form should democratic legitimacy take in the international realm? Beijerman distinguishes institutionalist approaches from non-institutionalist ones. This relates to whether formal structures and procedures (analogous to those in domestic governments) are deemed essential, or whether looser, more informal processes can suffice.

An institutionalist approach emphasizes formal *institutions* as carriers of democratic legitimacy. Scholars of this stripe argue that genuine democratic control requires structured arrangements – for example, elected bodies, clear legal personality for participants, voting mechanisms, and so on – even at the international level. They tend to favor developing an institutional "hardware" for global democracy: perhaps a parliamentary assembly at the UN, formal representation of peoples alongside states, or other constitution-like frameworks. Within international law, institutionalists often stress the centrality of *state consent* and legal status. For instance, they point out that NGOs lack international legal personality – they are not official parties to treaties – and thus by formal criteria they cannot be "democratic actors" in the same way officials of states are. Such scholars view *sovereign states or intergovernmental institutions* as the primary lawful actors, and are accordingly wary of informal "workarounds" to state-based legitimacy. In their eyes, democratic legitimacy at the international level would require building institutional parallels to domestic democracy (e.g. robust international voting procedures, charters, perhaps a world constitution), rather than relying on ad hoc civil society input. Any talk of a global public sphere or grassroots transnational democracy meets skepticism from institutionalists, because there is "no juridical public" in international society comparable to a domestic public. They often argue that until formal global institutions exist, the best we can do is rely on *indirect legitimacy* via states (the classic view that international law is legitimized by being consented to by democratically governed states).

A non-institutionalist approach, on the other hand, puts more weight on *informal and societal processes* – the culture, communication, and networks through which people can influence power beyond formal ballots. Proponents of NGO involvement frequently lean this way. They highlight elements like a vibrant global civil society, public deliberation, activism, transparency, and reason-giving as sources of democratic legitimacy, even in the absence of fully developed electoral institutions. In this view, democracy is not only about voting or parliaments; it's also about whether governance is responsive to public opinion, inclusive in debate, and held to account through scrutiny and contestation. NGOs can thus enhance legitimacy by creating channels for *engagement and deliberation* at the international level – a kind of "bottom-up" democratization. Beijerman notes that non-institutionalist readings are often a *reaction against state-centric formalism* that has long dominated thinking about international democracy. For example, while an institutionalist might dismiss NGOs because they lack formal status, a non-institutionalist would counter that in practice law-making legitimacy comes from discourse and consent of the governed, not just legal personality. This debate appears in issues like treaty consent: institutionalists emphasize state consent as fundamental, whereas non-institutionalists argue that focusing solely on state consent misses the principle that law's legitimacy ultimately rests on the *affected people's acceptance*, which can be gauged through broader means (public opinion, NGO advocacy, etc.). In short, institutionalists seek democratic legitimacy via formal structures and clear authorization, whereas non-institutionalists find legitimacy in normative openness – ensuring that all affected voices, however organized, can participate and be heard.

It is worth noting that these approaches are not mutually exclusive; they exist on a spectrum. Some scholars blend them, advocating incremental institutional reforms *and* greater civil society involvement. But the tension is clear in the NGO debate: Is it enough that NGOs stimulate deliberation and serve as watchdogs (a non-institutional view of legitimization), or must there be a more codified role for "the people" in international law-making (an institutional redesign)? Beijerman uses this distinction to explain why even among

universalist thinkers (who agree democracy should extend beyond the state), there is disagreement about *how* to democratize global governance.

3. Uniform vs. Multiform Models of Democracy (One-Size vs. Tailored Criteria)

A third confusion in the debate relates to how rigidly one defines the criteria of democracy. Beijerman observes that some scholars apply a uniform standard of democratic legitimacy across all contexts, while others adopt a multiform or flexible standard that adapts to different governance levels. This distinction affects whether one views partial or alternative methods (like NGO consultations) as genuinely contributing to legitimacy, or whether only full-fledged democracy as we know it domestically counts as "real" democratic legitimacy.

Those with a uniform approach insist that *the same essential features of democracy* must be present for legitimacy, whether in a nation-state or in international institutions. Typically, this means a fairly strict checklist: e.g. electoral representation of the people, majority decision-making, checks and balances, and so forth. Scholars of this mind tend to be the harshest critics of NGO-based legitimacy. Since international law currently lacks elections and direct representation, *and NGOs cannot provide those in any literal sense*, a uniformist perspective is that democratic legitimacy is largely absent internationally. Many NGO skeptics adhere to a rigid, uniform conception – they argue that unless international law-making replicates the same democratic institutions found in constitutional democracies, claims of legitimacy are premature. For example, if a theorist believes that only elected legislatures confer democratic legitimacy, then at the global level we simply don't (yet) have the equivalent, and allowing NGOs to participate doesn't satisfy that criteria. In uniform approaches, there is little room for creative or partial fixes: *either an institution meets the full democratic standard or it doesn't*. Beijerman notes that this rigidity is often implicit in NGO critics' arguments – they measure NGOs against an ideal of democratic accountability that the NGOs inevitably fail (since NGOs are not elected, not widely representative, etc.), and thus they conclude NGOs cannot significantly improve legitimacy.

In contrast, a multiform approach views democratic legitimacy as a *variable constellation of values and practices* that might manifest differently depending on context. Rather than one blueprint, democracy is seen as a bundle of core principles – such as inclusion, deliberation, equality, accountability, transparency – which can be realized through different institutional forms. A multiform theorist would argue that what democratic legitimacy *"looks like"* at the international level need not mirror the state model; it could take alternative forms that still uphold democratic values For instance, increasing transparency and consultation in a treaty process might be viewed as adding a piece of democratic legitimacy (even if there are no elections). Scholars with this approach tend to isolate specific democratic *practices* (e.g. public participation, reason-giving, or oversight mechanisms) and ask whether international law-making includes them. If it does, then to that extent international law can be said to enjoy *some degree of democratic legitimacy* – even if other elements are missing. Beijerman terms this a "variable conception" whose appearance changes with the setting. Many *proponents of the NGO thesis use a multiform logic*: they contend that NGOs inject important democratic elements (voice, accountability, contestation) into global governance, thereby improving its legitimacy without requiring a full-scale world democracy. A flexible approach can acknowledge that while international institutions aren't democracies in the traditional sense, they can still be made *more democratic* by incorporating certain norms of openness and participation – and NGOs are one vehicle for that.

Beijerman highlights that adopting a multiform versus uniform approach often explains divergent evaluations of the *same empirical reality*. For example, one scholar might look at an NGO consultation process and dismiss it as woefully inadequate by domestic electoral standards (uniform view), whereas another might applaud it as a meaningful step toward greater accountability and inclusion (multiform view). The former sees an all-or-nothing scenario; the latter sees a spectrum. As with the other distinctions, this one frequently goes unacknowledged – scholars may not explicitly say "I apply domestic democratic standards globally" or "I relax the standards," but their analyses reveal these attitudes. By making this distinction explicit, Beijerman encourages a more nuanced debate: participants should clarify whether they expect *complete equivalence* with national democracy or are willing to accept *alternative democratic innovations* for global governance.

Unpacking Scholarly Perspectives: Beijerman's Critique of the Debate

After laying out the above conceptual schema, Beijerman's article turns a critical eye to how existing scholarship has handled the question of NGO legitimacy. She argues that much of the scholarly and legal debate has been unproductive because authors fail to articulate their underlying assumptions, leading to confusion and talking at cross-purposes. Her critique can be summarized in a few key points:

- Implicit Conceptions Drive Opposing Arguments: Beijerman shows that each side of the NGO debate often builds on a different *implied* model of democratic legitimacy. For instance, some scholars opposing NGOs hold a particularist, state-centric and uniform view of democracy – so naturally they find NGOs lacking (since by their definition, *any* international arrangement without a sovereign people and elections is illegitimate). Meanwhile, scholars supportive of NGO roles might assume a universalist and multiform view – thus they see value in NGOs as advancing democratic principles in a non-state context. Neither side fully engages with the other's premises. Beijerman writes that *"standing alone"* the various arguments have merit, but "considered in conjunction" they reveal "irreconcilable differences in underlying conceptions" of democracy. In other words, the debate isn't just empirical (about what NGOs do) but deeply theoretical – it depends on how one defines democracy and legitimacy in the first place. The failure to recognize this has led to scholars talking past each other.
- Scholars Often Talk Past Each Other's Levels: Because of differing starting points, proponents and critics frequently misalign in their exchanges. Beijerman notes, for example, that an NGO proponent might tout how NGOs bring pluralist interest representation, while a critic retorts that NGOs aren't elected representatives of individuals. Both claims could be true in their own frameworks. She compares the work of Menno Kamminga and Terry MacDonald (who embrace broader notions of representation) with that of Kenneth Anderson (who insists on a classic liberal-individualist notion of representation). Kamminga might validate NGOs as giving voice to various interest groups (a pluralist democratic vision), whereas Anderson sees legitimate representation only in terms of individuals delegating authority (hence NGOs look illegitimate to him). MacDonald, on her part, explicitly expands the theory of representation to include what she calls "constitutive representation" that isn't tied to elections. These *"diverging conceptions of key elements of democratic legitimacy"* – whether it be what counts as representation, who the relevant community is, or how

authority is validated – "evidently guide the validation of the role of NGOs" and make it hard to find common ground. Beijerman criticizes the debate for often failing to acknowledge these conceptual divergences, which leads to circular arguments (each camp finds the other's evidence irrelevant because they prioritize different legitimacy criteria).

- Critics Disguise Fundamental Objections as Practical Flaws: One particularly sharp insight Beijerman offers is that many NGO *skeptics* do not openly concede their particularist-uniform stance, instead couching their objections in practical terms. Rather than say "we believe democracy is only national, so NGOs are moot," they often say "NGOs are not accountable, not representative, etc., therefore they can't help legitimacy". Beijerman suggests this can be disingenuous or at least unproductive. If the real reason for dismissal is a principled one (democracy can't operate globally absent a world state), then no amount of NGO reform would satisfy these critics. Yet by focusing on NGO malfunctions (which *could* in theory be remedied by better practices), the debate shifts to fixing NGOs rather than addressing the root disagreement. She writes that these critics have a *"particularistic mind frame in which no democratically legitimate international law exists,"* but *"instead of acknowledging"* that, *"they often point towards the malfunctioning of NGOs"* and their lack of representativeness. This tends to skew the debate: proponents respond by defending NGO practices or proposing improvements, not realizing the critics would likely remain unconvinced regardless, since the deeper contention is conceptual. Beijerman's call is for greater honesty about such first-order positions. If one's position is that *only* state-based democracy counts, that should be stated clearly, so that the discussion can move to whether one agrees with that position – a more fundamental conversation.
- Fragmentation and Lack of "Same-Level" Engagement: Overall, Beijerman finds the NGO legitimacy discourse highly fragmented. Scholars isolate one aspect (say, NGO accountability, or NGO expertise) and argue on that point, but often fail to situate their arguments within a broader theory of legitimacy that others share. She observes that debates proceed with each scholar "singling out one specific merit or weakness" of NGOs, without addressing the full picture. This piecemeal approach means that debates rarely meet *"at the same conceptual level"*. For a constructive dialogue, Beijerman argues, scholars must first *"engage in the fundamental debate on how democratic legitimacy should be theorised in the context of international law"*. Only by clarifying and, if possible, reconciling their conceptual starting points can they properly address each other's arguments. Her classification of approaches is meant as a tool to facilitate this clarity.

In essence, Beijerman's critique is that the NGO legitimacy debate has been hampered by conceptual muddying and siloed reasoning. By shining a light on the buried normative assumptions – about who "the people" are in international law, what democratic processes are indispensable, and how much we can bend the model of democracy for global use – she believes the discussion can be elevated. Rather than an endless back-and-forth on NGO performance, scholars would do better to tackle the "principled discussion on how democratic legitimacy should be adopted in the international legal order" first. This meta-debate was often sidestepped, but Beijerman insists it is unavoidable if we want to truly understand both the potential and limits of NGOs in global governance.

Contribution to Broader Debates on Global Governance and Civil Society

Beijerman's article contributes significantly to wider conversations about democracy beyond the state, the legitimacy of global governance, and the role of civil society in international decision-making. By providing a structured conceptual framework, the article bridges the gap between international legal theory and democratic theory, yielding insights relevant to scholars of both global governance and transnational civil society.

Firstly, the article underscores that debates about *NGOs in global governance are, at their core, debates about what democratic legitimacy means in a transnational context*. This is a profound point for the broader field of global governance studies: it suggests that any discussion of legitimacy – whether it's about international organizations, multistakeholder initiatives, or transnational networks – must clarify its normative premises. Beijerman's threefold classification (universalistic vs. particularistic, etc.) can be seen as a general template for analyzing how actors legitimize international authority. For example, her work resonates with ongoing discussions about whether we need a "global demos" or whether existing nation-states and their citizens suffice to legitimize international rules. By highlighting the universalist-particularist divide, she connects to classic debates in political theory (cosmopolitan democracy vs. statist sovereignty) and gives them concrete relevance for international lawyers and policymakers. This helps situate the NGO issue within the larger puzzle of democratic global governance: can we have democratic legitimacy without a world state? If so, how? If not, what then justifies international law? Beijerman pushes the reader to confront these questions rather than paper them over.

Secondly, the article's focus on civil society's role contributes to an evolving understanding of global civil society in international law. Beijerman does not take for granted that NGOs are unequivocally a force for democratization; instead, she illuminates how their *democratic value is assessed differently under different theories*. This invites a more nuanced view in the broader discourse: rather than asking "Are NGOs good or bad for global governance?", scholars can ask, "Under what conception of democracy might NGOs be necessary, and under what conception might they be problematic?" This reframing can improve policy dialogues as well. For instance, international organizations that engage NGOs (like the UN, WTO, etc.) often justify it in democratic terms. Beijerman's work would encourage them to be explicit about those terms: Is NGO involvement a surrogate for a global electorate (a universalist-inclusion approach)? Is it a supplement to state consent (two-track legitimacy)? Or is it just consultative (and therefore limited in democratic effect)? Clarifying this can manage expectations and design better governance processes. In this sense, the article contributes to practical debates on making global institutions more legitimate, by showing that one size will not fit all – legitimacy can be pursued via multiple pathways (institutional reforms, public participation, oversight mechanisms) depending on one's ultimate vision of global democracy.

Moreover, Beijerman's critique of how *northern, elite NGOs dominate and potentially skew global civil society* feeds into a broader conversation about inclusivity and power imbalances in transnational activism. Her summary of criticisms (like the risk of reinforcing global divides, or NGOs being coopted by state interests) is a valuable reminder that *civil society is not automatically egalitarian or representative*. In the wider literature on global civil society, there is an ongoing tension between celebrating NGOs as voices for the voiceless and

questioning whom they really represent. Beijerman's work validates the importance of that scrutiny and situates it in the context of democratic theory: representation and accountability are as important for civil society actors as for governments if we are using them to confer legitimacy. This perspective enriches debates on how to improve NGO accountability (e.g., through self-regulation, membership drives, South-North partnerships) by grounding them in the ultimate goal of democratic legitimacy rather than just effectiveness or ethical practice.

Finally, the article's "call to order" – inviting scholars to declare their conceptual starting points – is itself a contribution to scholarly methodology in global governance studies. In an interdisciplinary field where legal scholars, political scientists, and philosophers intersect, Beijerman's piece demonstrates the value of *conceptual clarity*. It encourages cross-disciplinary dialogue: for example, a political theorist concerned with democratic legitimacy can use her classification to categorize various international law arguments, and an international lawyer can better situate normative political critiques. This fosters a more integrative conversation about global governance legitimacy. The article implicitly supports a more *reflective and transparent scholarship* in global governance: researchers should be clear whether they're arguing from a cosmopolitan-democratic viewpoint, a realist-statist one, a deliberative democracy angle, etc., so that debates advance rather than loop endlessly. By contributing this meta-analytical perspective, Beijerman's work adds to the broader project of refining how we discuss legitimacy and accountability in international affairs.

In conclusion, Martine Beijerman's article is an important scholarly analysis that clarifies a tangled debate about NGOs and democratic legitimacy in international law. It explains why the debate is so divided – pointing to deep conceptual cleavages – and provides a framework to navigate those divisions. The central arguments and conceptual distinctions Beijerman introduces not only illuminate the specific issue of NGO participation, but also enrich the broader discourse on democratizing global governance and the evolving role of civil society in legitimating international authority. By urging scholars (and by extension, policy-makers) to be explicit about what they mean by *"democratic legitimacy"*, the article helps align discussions that have long been at cross-purposes. This paves the way for more coherent debates about how to make international law-making more accountable and whose voices should count – questions at the heart of global governance in the 21st century. As Beijerman concludes, achieving a *"deeper understanding"* of NGOs' roles and the persistent controversies around them requires nothing less than confronting our fundamental assumptions about democracy in the international legal order. Her work is a valuable step toward that critical self-reflection and, ultimately, toward a more conceptually sound approach to enhancing legitimacy in world affairs.

Sources: Martine Beijerman, *Transnational Legal Theory* 9(3–4): 147–173 (2018), and sources therein.

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Luisa Vierucci “NGOs Before International Courts and Tribunals.” In NGOs in International Law: Efficiency in Flexibility?”

Introduction

Luisa Vierucci’s chapter “NGOs Before International Courts and Tribunals” (in *NGOs in International Law: Efficiency in Flexibility?*, eds. Dupuy & Vierucci, 2008) examines the growing role of non-governmental organizations (NGOs) in international judicial proceedings. Vierucci explores how NGOs participate in or influence various international courts and tribunals, the legal frameworks governing such participation, and the implications for international law. She focuses on two main forms of NGO involvement – locus standi (legal standing to bring or join cases) and amicus curiae submissions – while largely excluding other contexts like administrative compliance mechanisms. The chapter combines descriptive analysis of existing practices with a normative discussion on whether NGO participation should be enhanced or more formally regulated. Below, we summarize the chapter’s key arguments and themes, outline the legal/institutional frameworks for NGO engagement in specific courts (ICJ, ICC, ECHR, WTO, and regional tribunals), identify examples provided by Vierucci, assess her methodological approach, and critically evaluate the strengths and limitations of her arguments.

Key Arguments and Themes

Increasing NGO Role vs. State-Centric Adjudication: Vierucci starts from the observation that civil society now plays a role in virtually all areas of international law – “from treaty making to law enforcement” – yet international adjudication remains largely state-centric. Access to international justice is identified as a *“major component”* of relations between intergovernmental organizations and civil society. Despite the proliferation of international courts in recent decades, NGOs generally lack direct access to these forums, a situation she finds remarkable given the widespread calls by NGOs for greater involvement. In other words, while NGOs have gained influence in international norm creation and monitoring, their formal access to courts and tribunals has not kept pace.

Forms of NGO Participation – Locus Standi and Amicus Curiae: The chapter emphasizes two primary modes by which NGOs engage with judicial bodies. First, locus standi – the right to initiate or join legal proceedings – is generally reserved to states or inter-state bodies in most international courts. With few exceptions (notably human rights systems), NGOs cannot appear as parties before international courts. Second, NGOs often act as amicus curiae (“friends of the court”), submitting information or legal arguments to a court even though they are not parties to the case. Vierucci notes that NGOs frequently rely on amicus briefs specifically to *“overcome the lack of standing in contentious cases”*. These two avenues –

limited standing in certain tribunals and third-party interventions – form the crux of her analysis of NGO participation.

Contributions and Benefits of NGO Involvement: Vierucci argues that NGO participation, even if indirect, can be highly beneficial to international adjudication. NGOs often possess specialized expertise and information that can assist courts in resolving complex cases. She observes that NGOs' involvement has proven "fructuous" for international courts and tribunals in two ways: (1) providing technical experience and factual knowledge, and (2) contributing subject-matter expertise that helps *"develop jurisprudence"* and clarify the scope of rights. In short, NGOs supply valuable data, arguments, and perspectives – particularly in cases involving scientific, social, or human rights issues – which may improve the quality of judicial outcomes. According to Vierucci, international adjudicatory bodies increasingly *"acknowledge the determinant contribution that NGOs make to the proceedings"*. NGOs see their engagement as serving the public interest, often acting as proxies for affected communities or diffuse societal interests that states might neglect. For example, NGOs can pursue an *actio popularis* role – representing the "public interest" or collective concerns in front of a judge – in forums where this is allowed.

Ongoing Restrictions and NGO Frustrations: Despite these contributions, Vierucci highlights that formal access for NGOs remains tightly constrained. Most courts were designed for states, and there is a continuing reluctance to open the doors to non-state actors. She notes that the degree of NGO access to international justice has not significantly "opened up," even in fields like environmental protection where one might expect broader participation given the public goods at stake. NGOs themselves are aware of the gaps; many feel that their participation in courts is still too limited and largely at the discretion of states or judges. Vierucci cites the *"widespread outcry of NGO representatives claiming more room for maneuver in the international arena"* as evidence that civil society is pushing for greater standing before international tribunals. In sum, a core theme is the tension between the growing role of NGOs in global governance and the still-limited formal avenues for them to directly engage in judicial processes.

Prospects for Reform – Desirability of Greater NGO Participation: The chapter ultimately addresses whether and how NGO participation in international adjudication should be enhanced. Vierucci weighs the arguments *against* expanding NGO access (such as contentions that current levels are sufficient or concerns about procedural fairness) and those *in favor* (such as democratic legitimacy and better representation of public interests). On one hand, a purely quantitative view of the situation might conclude that NGOs already contribute enough through informal means like amicus briefs, and that no further formalization is needed. Moreover, skeptics argue that identifying a clear legal interest for NGOs in cases is difficult, since NGOs are not parties to treaties – this undercuts claims for an automatic "right" to appear in court. On the other hand, Vierucci submits that a higher degree of NGO participation is both desirable and ought to be fostered. She advances three key justifications for this stance: (1) there is often no institutional actor tasked with representing *collective or public interests* in international disputes, leaving a void that NGOs could fill; (2) judicial procedures in international law are highly formalized and state-centric, which might exclude important perspectives – carefully widening NGO input could improve transparency and substantive justice; and (3) allowing NGOs a greater role can help alleviate the "democratic deficit" in international institutions by injecting voices from civil society into processes traditionally dominated by governments. In short, she argues that *responsibly* increasing NGO involvement would enhance the legitimacy and inclusiveness of international adjudication.

Caution and Balance – Tailoring Participation to Each Forum: Vierucci's analysis is nuanced in that she does not advocate an unqualified opening of the floodgates for NGOs in every context. She recognizes the need to tailor NGO participation to the specific jurisdiction and mandate of each court or tribunal. What works for a human rights court (which deals with individual rights and already accepts non-state applicants) may not be appropriate for a state-to-state tribunal in other fields. She also acknowledges potential downsides or concerns. For example, some NGOs themselves worry that *"enlarged legal standing…would generate more problems than it solves"*, possibly undermining the fairness of proceedings or the rights of the parties. There are fears that too many outside interventions could complicate or delay proceedings, or that powerful NGOs might dominate the narrative. Additionally, informality vs. formalization is a delicate trade-off: the current flexible, ad hoc practices (e.g. judges informally considering NGO-submitted information) give NGOs some influence, and rigid rules might inadvertently limit the creative ways NGOs engage. Vierucci highlights this by noting that NGOs often enjoy a degree of informal access and "flexibility" in how they interact with courts, and excessive institutionalization could reduce transparency or certainty in procedure if not carefully designed. Ultimately, she seems to call for a balanced approach: gradual, context-specific reforms that increase NGO access where it strengthens adjudication, while safeguarding due process for the primary litigants (usually states).

Legal and Institutional Frameworks for NGO Participation

Vierucci systematically examines how NGOs engage (or struggle to engage) with a variety of judicial and quasi-judicial bodies. She reviews the formal rules and evolving practices in several major venues, including the International Court of Justice, the International Criminal Court, the European Court of Human Rights, the World Trade Organization's dispute settlement system, and regional human rights tribunals. Below is an overview of these frameworks and specific examples highlighted in the chapter:

International Court of Justice (ICJ)

The ICJ, as the principal UN court for interstate disputes, is traditionally closed to NGO participation in any formal sense. Only states (and certain international organizations in advisory opinion cases) have standing before the ICJ; NGOs have no locus standi to initiate or intervene in contentious cases. Vierucci notes that *actio popularis* – a legal action in the public interest by a non-affected party – is "virtually unknown" in international law and explicitly rejected by the ICJ's jurisprudence. A famous illustration is the South West Africa cases (ICJ 1966), where the Court refused to let Liberia and Ethiopia act on behalf of the inhabitants of South West Africa, effectively ruling out a public interest standing in that contex. This established a precedent that only directly injured states could sue, sidelining broader humanitarian arguments.

However, NGOs have tried to contribute to ICJ proceedings indirectly. One avenue has been through the ICJ's advisory opinion jurisdiction, where the Court can receive information from international organizations. *Unofficially*, NGOs have sometimes submitted amicus-type briefs or information in advisory cases – but the ICJ's practice has been to discourage direct NGO filings. Vierucci discusses *ICJ Practice Direction XII*, adopted in 2004, which explicitly addresses unsolicited information: it states that a "written statement or document" submitted *sua sponte* by an NGO in an advisory case *"shall not be considered as part of the case file"* and is instead treated as a public document available to states. In essence, the ICJ will not formally accept NGO briefs; at best, an NGO's report or legal brief is relegated to the status

of a publication that states or the Court *may* consult like any other piece of literature. According to Vierucci, this approach shows that the Court values the *content* of NGO contributions (allowing their arguments to be considered if found persuasive), but pointedly refuses to grant NGOs any official standing or acknowledgement in the proceedings.

Examples: Vierucci cites an ICJ judge's remark that the Court *"is increasingly confronted with issues which are not strictly of inter-party relevance and do not merely affect bilateral relations between States"*. This alludes to cases involving global public goods or humanitarian concerns (such as environmental disputes or human rights-related issues) that transcend the narrow interests of the two state litigants. For instance, in the Gabcíkovo-Nagymaros Project case (1997), although it was a dispute between Hungary and Slovakia over a dam, the case raised broader environmental questions affecting the Danube ecosystem. Similarly, the East Timor case (1995) and others touched on self-determination of peoples. In such disputes, NGOs had vital interests and expertise (e.g. environmental NGOs in Gabcíkovo) but could not formally participate. Instead, NGOs influenced these cases from the outside – by providing research used by the parties, submitting amicus briefs that were not officially accepted, or generating public pressure. Vierucci implies that the ICJ's strict bar on NGO participation leaves a gap: issues of *collective interest* may not be fully voiced in the courtroom. She suggests that even the ICJ has implicitly recognized these broader values (e.g. references to humanitarian principles or environmental standards invoked by NGOs) but has not systematically clarified fundamental principles in part because NGOs lack direct standing to press those points.

One minor concession has been the ICJ's acceptance that states can incorporate NGO-supplied materials in their pleadings. If an NGO has relevant data or arguments, a sympathetic state party can annex the NGO's brief or report to its own submissions. This occurred, for example, in the Whaling in the Antarctic case (Australia v. Japan, 2014) – after the period of Vierucci's chapter – where Australia relied on evidence gathered by environmental NGOs. In earlier cases like Nuclear Tests (1995) or the Nuclear Weapons advisory opinion (1996), NGOs campaigned and provided scientific data to states and the World Health Organization, indirectly influencing the Court's considerations. Vierucci's analysis precedes these later developments but underscores that, as of 2008, the ICJ maintained a firm stance: *NGOs have no formal voice* before the World Court, aside from being content providers to states. The implication is that this model prioritizes state consent and procedural formality over direct public interest representation, a status quo that Vierucci questions given the changing nature of international disputes.

International Criminal Court (ICC)

The International Criminal Court presents a different paradigm, as it deals with individual criminal responsibility for atrocities rather than inter-state disputes. While NGOs cannot initiate prosecutions (only states, the U.N. Security Council, or the ICC Prosecutor can trigger cases under the Rome Statute), they have been deeply involved in both the formation of the ICC and its operations. Vierucci highlights the ICC as an example of an international jurisdiction with *"competence over individuals"* where non-state actors have had an influence. NGOs were instrumental in the creation of the Rome Statute in 1998 (the NGO Coalition for the ICC coordinated advocacy during the negotiations) – a point beyond the chapter's main scope but relevant background for why the ICC's procedural rules are comparatively more open.

In terms of formal framework, the ICC allows limited participatory rights that NGOs often help to realize:

- Victim Participation: The Rome Statute and ICC Rules grant rights to victims to participate in proceedings (through legal representatives, who are often supported by NGOs). Victims can present their views and concerns at various stages – a significant innovation in international justice. In practice, human rights NGOs frequently assist victims in organizing and submitting applications to participate, and sometimes NGO lawyers serve as legal representatives for victims in court. For example, in early ICC cases like *Prosecutor v. Lubanga* (2006-2012), NGOs played a key role in identifying child soldier victims and helping them engage with the Court's Victims Participation Unit. While the *victims* are the formal participants, NGOs operate as facilitators and intermediaries, thereby indirectly entering the courtroom on victims' behalf. Vierucci notes this development as part of the trend of opening international justice beyond states – individuals (backed by NGOs) are no longer mere spectators. This blurs the line between NGO and individual roles, since often the "individuals" are represented or supported by civil society organizations.
- Amicus Curiae Briefs: The ICC explicitly permits *amicus curiae* interventions. Under Rule 103 of the ICC's Rules of Procedure and Evidence, the judges may invite or grant leave to an organization or individual to submit observations on any issue the Court deems appropriate. In practice, NGOs have taken advantage of this. A notable example shortly after the ICC's establishment was the *Lubanga* case, where NGOs filed amicus briefs on the definition of conscription of child soldiers and the scope of victims' participation rights. Another example is the *Kenya post-election violence cases*, in which NGOs submitted legal arguments on matters like the definition of crimes against humanity. Vierucci would classify this as one of the genuine channels for NGO input, illustrating how NGOs use amicus briefs to bring specialist knowledge (e.g. on international human rights law or gender violence) to the Court. She underscores that an amicus brief is essentially *"the presentation of a technical view of a party not represented before the judge"*, reinforcing the proceedings with external technical support. In other words, NGOs as amici can supply the Court with analysis or facts that neither the prosecution nor defense may have provided. The ICC, being a new institution in 2008, had limited case experience at that time, but the procedural openness was by design.

Vierucci likely also points out the role of NGOs in triggering investigations. Although an NGO cannot *formally* refer a case to the ICC (unless it persuades a state or the ICC Prosecutor to act), Article 15 of the Rome Statute allows the Prosecutor to initiate investigations *proprio motu* on the basis of information from any source. In practice, NGOs have been crucial "sources of information" – they submit dossiers of evidence on alleged crimes (for instance, NGOs documented atrocities in situations like Congo and Uganda and sent them to the Prosecutor). This quasi-judicial role – as unofficial investigators or informants – means NGOs influence which cases the ICC takes up and what evidence is available. While Vierucci's chapter centers on court proceedings rather than pre-trial investigation, it exemplifies how NGOs engage with the ICC in multiple capacities (advisors, representatives, and amici).

In summary, the ICC's framework is more welcoming to NGO involvement than classical inter-state courts. NGOs do not have standing as parties (they cannot be "the Prosecutor" or the accused), but through victims and amicus provisions they have found entry points. Vierucci uses the ICC to illustrate how a court's design can incorporate non-state actors in

pursuit of wider justice aims, albeit still under court supervision. The ICC demonstrates that, at least in certain tribunals, individuals and NGOs have an active voice, reflecting a shift from the state-centric model. This is an important contrast to forums like the ICJ, and one of the reasons Vierucci calls for context-specific understanding: what is suitable in a criminal/human rights context (involving atrocities and individual harm) might differ from a trade or territorial dispute context.

European Court of Human Rights (ECHR)

The European Court of Human Rights is often held up as the most accessible international court for individuals and NGOs. Under Article 34 of the European Convention on Human Rights, *"any person, non-governmental organization, or group of individuals"* claiming to be a victim of a Convention violation by a state can file an application to the Court. NGOs thus have direct locus standi at the ECHR, provided they are themselves victims of a rights violation or represent individuals who are victims. Vierucci acknowledges this as a *limited form of actio popularis* in a regional system – while the NGO must be affected or closely linked to the affected persons, it dramatically broadens standing beyond state applicants. For instance, an NGO (as a legal person) can allege that its own rights (like freedom of association or expression) were breached by a state. Many landmark ECHR cases have NGO applicants – e.g. United Communist Party of Turkey v. Turkey (1998) where a political party/association challenged its dissolution, or Refah Partisi v. Turkey (2003). Another example is Verein gegen Tierfabriken (VgT) v. Switzerland (2001), where an animal welfare NGO was the applicant claiming a free expression violation when its TV ad was censored. These show NGOs acting on their own behalf as "victims" under the Convention.

Beyond being direct applicants, NGOs frequently participate as third-party interveners (amicus curiae) in ECHR proceedings. The Court's rules (Article 36(2) ECHR and Rule 44) allow the President of the Court to grant leave to any person or organization to submit written comments or take part in hearings if it is in the interest of justice. Vierucci would highlight that the ECHR has a well-established practice of accepting amicus briefs from NGOs in cases raising important human rights questions. For example, in cases concerning freedom of expression, privacy, or anti-torture norms, it is common for NGOs like Amnesty International, Human Rights Watch, or the AIRE Centre to be invited to contribute legal briefs. This tradition predates Protocol No. 11 (which simplified the Court's procedure in 1998) and has only grown since. Specific example: In Opuz v. Turkey (2009) – again slightly after 2008, but relevant – NGOs submitted briefs on domestic violence issues. Closer to the chapter's timeframe, the Gorraiz Lizarraga v. Spain case (ECHR 2004) is directly cited by Vierucci. In *Gorraiz Lizarraga*, a residents' association (an NGO) was a co-applicant alongside individuals in a case about a dam project flooding villages. The association had helped the individuals domestically and then jointly filed in Strasbourg. The Court, in an innovative ruling, *interpreted the term "victim" evolutively* to accept the NGO's standing even though some individual members hadn't exhausted local remedies – essentially recognizing the practical reality that "recourse to collective bodies such as associations is one of the means…whereby [citizens] can defend their interests effectively". The Court explicitly noted that in complex cases (like environmental decisions affecting many people), an association can legitimately represent its members' interests, and many domestic laws allow NGOs to sue for collective interests. This example underscores the ECHR's comparatively progressive stance: it pragmatically allowed an NGO to stand in for victims to ensure access to justice.

Vierucci uses the ECHR to illustrate how a regional tribunal can accommodate NGOs as both applicants and amici. The legal framework of the Convention, while still requiring a "victim", has been flexibly interpreted to acknowledge NGO participation. Notably, however, she reminds that the ECHR (unlike the Inter-American system) *does not allow pure actio popularis*: one cannot bring a case solely in the public interest without an actual victim. The *victim requirement* remains a gatekeeper (as confirmed by Article 34 and affirmed in jurisprudence). So an NGO cannot simply challenge a law or policy in abstract – it needs to tie it to a victim's rights. Still, the combination of direct standing for NGOs (when they themselves are affected) and routine acceptance of NGO amicus briefs makes the ECHR one of the most NGO-inclusive international courts.

Vierucci likely also references how the Committee of Ministers (which supervises enforcement of ECHR judgments) and other Council of Europe bodies interact with NGOs, but those are more about policy. Within the litigation process itself, the chapter's examples (like *Gorraiz Lizarraga*) demonstrate the ECHR's openness to evolving concepts of standing, influenced by the reality of NGO advocacy.

World Trade Organization Dispute Settlement (WTO)

The WTO dispute settlement system is another important forum examined by Vierucci, notable for the stark contrast between its formal rules and the pressures for transparency and participation. WTO disputes are strictly state-to-state; only member governments (and the EU as a collective) can initiate cases under the Dispute Settlement Understanding (DSU). There is no provision in WTO law for NGOs or private parties to have standing or even formal intervenor status. However, as global economic rules increasingly impact public interests (environment, health, etc.), NGOs have sought ways to make their voices heard in trade disputes. Vierucci describes how NGOs attempt to engage via amicus curiae briefs and how the WTO's Appellate Body (AB) and panels have responded.

A key example is the controversy over NGO amicus briefs in the late 1990s and early 2000s. In the landmark US – Shrimp/Turtle case (1998), several environmental NGOs submitted unsolicited briefs to the WTO panel, which the panel initially declined to consider. On appeal, the Appellate Body famously held that while NGOs have no *right* to participate, a WTO panel has the authority to accept information from any source at its discretion. The AB in Shrimp/Turtle remarked that accepting an amicus brief is within a panel's inherent powers even if not explicitly mentioned in the DSU, setting a tentative opening. This signaled that NGO inputs could potentially be used in WTO dispute settlement, although in that case the panel didn't rely on them heavily.

The more explosive development came with the EC – Asbestos case (2001). In that dispute (about France's ban on asbestos imports), the Appellate Body went further: it created an *Additional Procedure* during the appeal to invite amicus curiae briefs from the public. The AB publicly announced criteria and a deadline for submissions, and indeed received numerous briefs from NGOs, industry groups, and others. Ultimately, the Appellate Body reviewed some of these but did not base its decision on them. Nevertheless, this proactive solicitation of NGO views provoked a backlash among WTO member states. Vierucci highlights the reaction at the WTO's General Council meeting on 22 November 2000, where many member governments (especially developing countries) protested the Appellate Body's action. For example, Mexico's representative asserted that by setting procedures for NGO briefs, the AB *"had taken a precedence to the submissions from interests outside the WTO*

over the concerns expressed by many WTO Members," and that this move risked *"diminishing the rights and obligations of Members"* in violation of the DSU. This criticism, cited by Vierucci, encapsulates state resistance to NGO interference in a domain jealously guarded as intergovernmental. The General Council subsequently reaffirmed that the authority for accepting amicus briefs lies with panels/AB themselves, and no consensus emerged to formally authorize or bar such briefs in the DSU text. Essentially, the WTO members *tolerated* the practice but showed hostility to making it routine.

Vierucci uses this WTO saga as a prime example of the institutional reluctance to embrace NGOs in certain fields. Formally, nothing in WTO law grants NGOs a role, but through Appellate Body jurisprudence, a *de facto* avenue opened for non-party submissions. The legal framework remains ambiguous: panels are free to ignore unsolicited briefs, and often they do. After the Asbestos controversy, WTO panels became cautious – some would note receiving amicus briefs but then politely state they didn't find them necessary. Only a few disputes saw significant engagement with NGO briefs (one example is US – Steel Safeguards (2003), where the panel listed numerous amicus submissions but ultimately didn't rely on them). Another unusual instance was EC – Biotech (GMOs) case (2006), where the panel received a large number of NGO briefs due to public interest in GMOs; the panel considered some scientific data therein.

Vierucci likely references how the Appellate Body justified amicus acceptance by focusing on the *content* of submissions rather than the identity of the submitter. This resonates with her broader point that international adjudicators should value the persuasiveness of arguments over formal credentials. Indeed, she notes that the success of an NGO's brief in WTO (or elsewhere) will depend on the soundness of its reasoning, much like a published expert report, rather than any official standing. This is analogous to how the ICJ treats NGO inputs as "readily available publications" – the idea being that a compelling legal or factual argument can find its way to the judges' attention if it's truly useful, even if the NGO is not a party.

However, the WTO example also underscores concerns: Member states fear that allowing NGOs to routinely argue cases *could undermine the intergovernmental nature* of the system and burden developing countries (which may lack resources to respond to a flood of external briefs). Vierucci acknowledges such concerns – e.g. the due process issue if one side has support from multiple NGO briefs that the other side must answer, potentially biasing the proceeding. She notes that WTO bodies have attempted to balance openness with fairness by, for instance, not considering amicus submissions unless they truly add novel information, and by maintaining that decision-making remains strictly with states' representatives.

In summary, WTO dispute settlement in Vierucci's account exemplifies a cautious, contested opening for NGOs. The legal framework is closed by design, but practice has carved out a small, discretionary space for NGO amicus curiae interventions. The examples of Shrimp/Turtle and Asbestos show both the potential value of NGO input (e.g. providing environmental perspectives in trade disputes) and the strong pushback from many governments against formalizing any NGO role. This case study reinforces one of Vierucci's themes: changes in international adjudication often come through flexibility and informal practice rather than formal rule-change, and this flexibility can be efficient but also controversial (*hence the book's title "Efficiency in Flexibility?"*).

Regional Human Rights Tribunals (Inter-American and African Systems)

Vierucci also surveys the position of NGOs in other regional tribunals, particularly the Inter-American and African human rights mechanisms. These systems, like the European Court, deal with complaints of human rights violations, but their rules on who can bring a case differ and in some ways allow even broader NGO involvement.

In the Inter-American Human Rights system, the key entry point is the Inter-American Commission on Human Rights (IACHR). Article 44 of the American Convention on Human Rights explicitly provides that *"any person or group of persons, or any nongovernmental entity legally recognized in one or more OAS member states"* may lodge petitions alleging human rights violations by a state. This is a true actio popularis mechanism: an NGO does *not* need to be itself a victim or directly affected – it just must be a legally recognized NGO – in order to file a petition on behalf of victims. Vierucci points out that the only condition is that the NGO be recognized in at least one OAS country. In practice, this has allowed many human rights cases to be pursued by NGOs (domestic or international) representing victims who may be unable to navigate the process themselves. For example, NGOs like CEJIL (Center for Justice and International Law) or Transparency International have filed numerous petitions as representatives. A concrete case: Maria da Penha v. Brazil (2001) – a domestic violence case – was brought to the IACHR by NGOs on behalf of the victim, leading to a landmark decision. Another is Maya Indigenous Communities of Toledo v. Belize (2004), filed by an NGO on behalf of indigenous communities to protect land rights. These illustrate how NGOs function as surrogate litigants before the Inter-American Commission. Once a case proceeds to the Inter-American Court of Human Rights, however, the procedural rules (at least in 2008) allowed only the Commission or a state to formally submit the case to the Court. Victims (and by extension their NGO representatives) did not *directly* file cases to the Court; they participated in Court proceedings as delegated by the Commission and later via their own legal counsel. By 2008, reforms had been made so that victims' representatives (often NGOs or NGO lawyers) could submit briefs and evidence in Court once a case was referred. Vierucci likely references Article 23 of the IACHR Rules of Procedure (for the Commission) and how it enabled broad NGO locus standi at the Commission level. The Inter-American system's openness is thus mostly at the *complaint submission stage*, which is crucial for getting cases heard.

In the African human rights system, a similar dynamic exists. Under the African Charter on Human and Peoples' Rights, communications (complaints) can be submitted to the African Commission on Human and Peoples' Rights by NGOs with observer status, among others. However, the African Charter imposes a notable caveat: Article 55 and related rules allow the Commission to consider communications from NGOs *"pertaining to special cases which reveal the existence of a series of serious or massive violations"*. This means NGO complaints are typically taken up when they allege widespread or systematic human rights abuses. Vierucci notes this as a restriction on NGO locus standi – the African system doesn't invite NGOs to litigate every individual case, but rather to act in situations of grave, widespread injustice. This reflects an emphasis on NGOs as guardians of collective rights (peoples' rights, anti-mass-violation actions), consistent with the African Charter's communal ethos. A well-known example is the SERAC and Another v. Nigeria (2001) case, where two NGOs filed a communication to the African Commission about environmental and social rights violations in the Niger Delta; the Commission's decision in favor of the NGOs' claims was a milestone for socio-economic rights.

The African Court on Human and Peoples' Rights (operational since 2006) adds another layer. Vierucci mentions that the African Court *may* allow NGOs to institute cases directly,

but under strict conditions. Article 5(3) of the Protocol establishing the African Court provides that accredited NGOs with observer status before the African Commission can bring cases *against states that have made a special declaration accepting the Court's direct jurisdiction for NGO/individual cases*. In 2008, this was a nascent mechanism – only a few states had made the necessary declaration (e.g. Burkina Faso, Malawi, Tanzania, etc.), limiting the use of this avenue. Vierucci cites this provision to show that, at least in theory, certain NGOs can have full locus standi before a regional court if conditions are met. As an example, after 2008, cases like SERAP v. Nigeria were attempted (SERAP is an NGO that tried to sue Nigeria in the African Court, though jurisdictional issues arose due to Nigeria's lack of declaration). The inclusion of this possibility in the Protocol is indicative of a trend to empower civil society legally, albeit contingent on state consent.

By comparing these regional frameworks, Vierucci illustrates a spectrum of NGO participation rights:

- Inter-American: broad NGO standing at the commission level (any recognized NGO can petition on others' behalf).
- African: NGO standing to petition the commission for serious violations, and potential standing at the court if observer status and state consent are in place.
- European: NGO standing only if the NGO is itself a "victim," but NGOs can assist victims and intervene as amici freely.

Each system thus balances individual vs. collective approaches differently. Vierucci uses these examples to underscore her argument about filling the representation gap. The Inter-American and African mechanisms explicitly acknowledge that NGOs can act in the public interest to bring forth violations that states or individual victims alone might not. This buttresses her point that in many international settings, *"there is a lack of a body/entity which may represent collective and public interests"*, and NGOs have emerged to occupy that role. The Gorraiz case in the ECHR, where the Court admitted an association to bolster individual applicants, similarly shows courts adapting to involve NGOs when it serves justice.

Vierucci also alludes to innovative procedures that indirectly accommodate NGOs or collective claims, such as the "pilot judgment" procedure at the ECHR. Pilot judgments bundle numerous similar individual cases (often brought or supported by NGOs) and resolve systemic issues in one go, which is an efficiency measure acknowledging mass inputs. Additionally, she references how international tribunals outside human rights have started to accept NGO amici when public interest is at stake: for instance, she notes an ICSID arbitration (Methanex v. USA) where amicus briefs were allowed due to the "public interest" nature of the dispute. (Methanex, decided in 2005 under NAFTA/UNCITRAL rules, indeed set a precedent by accepting NGO submissions concerning an environmental regulation affecting investors.) Likewise, the NAFTA Free Trade Commission's 2003 Statement on non-disputing party participation is cited, which explicitly encouraged arbitral tribunals to accept amicus briefs in investor-state cases. These examples broaden the scope beyond human rights, indicating that even in trade/investment, there is movement toward recognizing NGO input when broader societal interests (environment, public health) are involved.

In sum, the legal and institutional frameworks across various courts show a patchwork evolution: from total exclusion to cautious inclusion of NGOs. Vierucci's chapter documents this evolution with concrete examples and by quoting relevant provisions (e.g., *American Convention Art. 44, African Charter Arts. 55 & 58, ICJ Practice Direction, WTO panel/AB*

practice, etc.). This comparative survey supports her contention that NGO participation, while not uniformly granted, is increasingly part of the functioning of international adjudication, whether formally (as in human rights systems) or informally (as in WTO and ICJ advisory cases).

Methodological Approach of Vierucci

Vierucci's methodological approach in this chapter is primarily a comparative legal analysis grounded in doctrinal research, with a strong normative and critical perspective. Several aspects characterize her approach:

- Doctrinal and Case Law Analysis: Vierucci meticulously examines treaties, statutes, court rules, and case law across different jurisdictions. For each type of tribunal (ICJ, ICC, ECHR, etc.), she identifies the relevant legal provisions governing NGO participation (or excluding it) and discusses how those have been interpreted or applied. For example, she parses the wording of Article 34 ECHR and its interpretation in cases like *Gorraiz Lizarraga*, or Article 44 ACHR for the Inter-American system. She also discusses judicial decisions (ICJ cases, WTO rulings, human rights judgments) to illustrate how the law is actually implemented. This doctrinal approach ensures her analysis is well-founded on positive law and actual practice. The footnotes in her chapter are rich with citations to statutes, rules of procedure, and judgments – indicating classic legal scholarship method.
- Comparative Scope: A notable strength of her methodology is the comparative breadth. She does not examine one court in isolation, but rather juxtaposes multiple forums to draw broader insights. By comparing, say, the ICJ's near-total exclusion of NGOs with the ECHR's partial inclusion and the Inter-American's open petition system, she highlights the spectrum of possibilities and how context influences practice. This comparative lens allows her to identify trends (such as a general opening toward amicus curiae submissions in various systems) and outliers (such as the ICJ's resistance). It also helps in formulating general arguments about international law's treatment of NGOs, beyond one specific regime. In effect, her chapter serves as a survey across international courts, synthesizing information that might otherwise be siloed in specialist literatures.
- Interdisciplinary Awareness (Law and Policy): While fundamentally legal in analysis, Vierucci's approach shows awareness of broader theoretical and policy debates, particularly concerning legitimacy and democracy in international law. She frames the discussion with concepts like the "democratic deficit" in international organizations and the idea of NGOs enhancing democratic legitimacy. She engages with scholarship (citing authors like Dinah Shelton on NGO participation in judicial proceedings, Pierre-Marie Dupuy on fundamental principles, or legal theorists on actio popularis) to bolster her arguments. This shows a methodological approach that is *not purely descriptive*, but also evaluative and theoretical. She is concerned with the functional and normative implications of NGO participation, not just the black-letter law. For instance, she considers why states may be reluctant to bring public interest claims themselves, and why NGOs might or might not be seen as legitimate proxies. This adds a layer of critical analysis to her comparative study.
- Structure – Problem and Solution: The chapter is structured to first map the *"state of the art"* (what is the current role of NGOs in courts?) and then address the *"desirability of enhanced regulation"*. This problem-solution structure is a common methodological approach in legal scholarship. Part A of the chapter outlines the

problematic issues that arise from NGO participation (or lack thereof) in international courts. Part B then asks whether more formal regulation or increased NGO access is needed and delves into arguments on each side. By doing so, Vierucci systematically evaluates the status quo vs. reform. She doesn't simply assume more NGO involvement is better; she tests that hypothesis by examining reasons and counter-reasons, reflecting a balanced analytical method.

- Use of Examples and Evidence: Methodologically, Vierucci employs detailed examples and even quotes from judgments or official statements as evidence for her points. For example, she quotes the ICJ judge's observation about the Court facing non-bilateral issues, and the *Mexico statement* objecting to WTO amicus briefs. She also references empirical patterns, such as the *"fast-increasing role of civil society"* in international law-making and enforcement. By incorporating these real-world examples and quotations, she strengthens the credibility of her analysis. It shows a method of grounding arguments in concrete instances. This is particularly important in a domain where general claims (e.g., "NGOs improve justice") must be supported by actual instances across different courts.
- Normative Proposals: In the latter part of the chapter, Vierucci's method includes a normative or prescriptive element. She ventures proposals "de lege ferenda" (for future law) to address shortcomings in current NGO participation. For instance, after identifying that no entity represents public interest in many courts, she suggests that granting NGOs a greater formal role could fill that gap. She contemplates whether an *"enhanced regulation"* (perhaps formal guidelines or rules for NGO participation) would be beneficial. This shows her method is not just analytical but also forward-looking. She systematically considers feasibility and appropriateness of such reforms for each context, an approach that blends doctrinal analysis with policy-oriented thinking.

Overall, Vierucci's methodology can be described as legal doctrinal analysis enriched by comparative and normative inquiry. She uses a wide array of legal sources and real examples, engages with existing academic debates, and maintains an objective tone while clearly constructing an argument favoring more NGO involvement (with qualifications). This approach allows her to critically assess the evolution of NGOs' status in international adjudication and to propose reasoned recommendations.

Critical Evaluation of Vierucci's Arguments

Vierucci's chapter is a thorough and insightful contribution to understanding the evolving status of NGOs in international adjudication. In this section, we critically evaluate the strengths and limitations of her arguments and consider their implications:

Strengths and Contributions:

- *Comprehensive Overview:* One of the chapter's major strengths is its breadth and depth. Vierucci brings together diverse tribunals and legal regimes that are often studied in isolation. By doing so, she provides a holistic view of NGO involvement in international courts, from the global (ICJ, WTO) to the regional (ECHR, Inter-American, African) to the thematic (ICC, human rights, trade). This comprehensive scope enables readers to see common patterns and unique divergences. For instance, the contrast she draws between a conservative forum like the ICJ and a more liberal forum like the Inter-American system is illuminating, highlighting how context drives

legal evolution. The chapter effectively synthesizes a large amount of information that would be invaluable to scholars or practitioners interested in NGO roles.

- *Clarity of Key Issues:* Vierucci excels at distilling the key legal and institutional issues regarding NGOs. By focusing on locus standi and amicus curiae as her analytical lenses, she cuts to the heart of the matter – i.e., who has the right to be heard in court, and if you don't have that right, can you still be heard in some way? This focus gives the chapter clarity and cohesion. It avoids being a mere catalog of NGO activities; instead, it analytically frames those activities in terms of formal participation rights and informal influence. The discussion of these two mechanisms is enriched with examples, making abstract concepts concrete (e.g., explaining locus standi through the American Convention's provisions, and explaining amicus through WTO and ICJ practices). The result is that the reader clearly understands what forms NGO engagement takes and why they matter.
- *Balanced Argumentation:* Another strength is the balanced consideration of pros and cons. Vierucci does not adopt a one-sided advocacy tone; although she leans towards supporting greater NGO access, she rigorously presents counterarguments and potential downsides. For example, she acknowledges the view that current NGO participation (via informal means) might be "satisfactory" and that more formal involvement might not be needed. She discusses the principle of procedural fairness, noting concerns that too much NGO input could prejudice states or overload courts. By addressing these points, she demonstrates intellectual honesty and avoids a naïve pro-NGO bias. This strengthens her credibility – her ultimate recommendations carry more weight because she has shown awareness of the difficulties and trade-offs. It also allows her to propose solutions that attempt to mitigate these concerns (such as tailoring participation to each court's nature).
- *Normative Insight:* Vierucci's argument that enhanced NGO participation can ameliorate the *democratic deficit* in international adjudication is a powerful and forward-thinking point. At the time of writing (2008), this was a relatively progressive argument: international courts were not commonly viewed through a democracy lens. By linking NGO involvement to legitimacy and democracy, she places her analysis in a broader context of global governance reform. This normative insight has proven prescient, as debates in the 2010s and 2020s continue to grapple with how to make international institutions more accountable and connected to civil society. Her notion that NGOs can act as a voice for global public interests before international judges foreshadows later developments (for example, climate change cases or cross-border environmental litigation where NGOs spearhead action). The implication is that she pushes readers to see NGO participation not just as a procedural technicality, but as part of a larger evolution in international law's subjects and stakeholders.
- *Use of Evidence and Scholarship:* The chapter is well-supported with evidence (treaty texts, case quotes, state statements) and engages with other scholarship. For instance, Vierucci references Dinah Shelton's 1994 article on NGO participation and contemporary studies in Tullio Treves et al. (2005) on civil society in compliance mechanisms. By doing so, she situates her work in the academic discourse, showing that she builds on and updates prior analyses. This scholarly rigor enhances the chapter's reliability and scholarly value. It also indicates that her methodological approach was thorough, strengthening the persuasiveness of her conclusions.

Limitations and Critiques:

- *Scope Limitations:* While the chapter's scope is broad, it is not exhaustive, and by design Vierucci set certain boundaries that could be seen as limitations. She explicitly *"does not take into consideration"* purely operational cooperation between NGOs and IGOs and excludes compliance review bodies like environmental treaty committees. These are significant arenas of NGO activity (e.g., NGOs play roles in UN treaty body complaints, Aarhus Convention compliance committee, etc.). As a result, her analysis might omit some nuanced forms of NGO influence that do not fit neatly into locus standi or amicus curiae. For example, NGOs often shape outcomes by working within *quasi-judicial* procedures (like the UNESCO World Heritage Committee or OECD Guidelines complaints). One could argue that including these would have provided an even richer picture, though it might have been beyond the chapter's manageable scope. Still, the exclusion means that her proposals are focused only on courts and tribunals, potentially underestimating the importance of these alternative forums where NGO participation has been more direct and innovative.
- *Temporal Context:* Being published in 2008, the chapter is inevitably a product of its time. Some criticisms might be that subsequent developments are not captured (which is not a fault of the author, but a limitation for readers today). For instance, after 2008, there have been further strides: the ICC has completed cases with significant victim (and thus NGO) input; the WTO Appellate Body (before its crisis) continued to receive a trickle of amicus briefs; the UN Human Rights Council set up Universal Periodic Review with NGO participation; and the climate change arena saw NGOs sponsoring cases in national and regional courts. Vierucci's arguments would need an update to consider whether her predictions and suggestions held true. For example, she called for more participation especially in environmental disputes, and indeed we see more environmental litigation now – but often it proceeds in national courts or via creative interpretations of standing. While this is not a flaw in her reasoning, it means the chapter is a snapshot that might not account for all forward trajectories (like the dramatic rise of strategic human rights litigation by NGOs in the 2010s).
- *Optimism vs. Realpolitik:* A critical reader might question whether Vierucci is too optimistic about the willingness of international courts and states to embrace NGOs. Her argument that a "higher degree of participation…needs fostering" assumes a level of receptivity that may not exist equally across the board. In forums like the WTO or ICJ, entrenched state control may resist change indefinitely. The book's title *"Efficiency in Flexibility?"* hints at the dilemma: is the informal flexible approach (with NGOs working around the edges) actually more feasible than formal changes? Vierucci does consider reluctance by states, but perhaps could have engaged more deeply with power-politics impediments. For example, the chapter notes Mexico's fierce objection in WTO, but it does not deeply explore how developing vs. developed country dynamics or sovereignty concerns systematically block NGO access proposals. In a critical sense, one could argue her proposals remain largely at the level of principle and do not outline *how* to overcome state opposition. Thus, while normatively appealing, the path to implementation is left hazy – an issue common in academic reform proposals.
- *Depth of Theoretical Engagement:* Although Vierucci touches on legitimacy and democracy, the chapter is still primarily practical/legal in nature. Some critics might desire a stronger theoretical framework: for instance, drawing on theories of global civil society or transnational legal process to explain *why* NGO participation is evolving. She hints at these by referencing legitimacy and by noting the changing nature of international law (no longer exclusively state-centric, especially in human rights and environment). However, the analysis stops short of probing deeper

questions: e.g., what confers legitimacy on NGOs to represent the "public interest"? How do we address the accountability of NGOs themselves? Vierucci mentions that NGOs face demands for accountability and transparency as they gain power, and that some NGOs fear formal roles might create new burdens. This is insightful, but these points could be further explored. The chapter could be critiqued for not fully resolving the tension between wanting NGOs to have more power and recognizing that NGOs are not democratically elected actors either. In fairness, a single chapter cannot resolve this, but a critical reader might note that the legitimacy of NGOs as quasi-representatives is assumed to be beneficial without extensive scrutiny of which NGOs get to speak and whom they represent (beyond mentioning the issue).

- *Case Selection:* While her examples are generally well-chosen and representative, one might argue that some important instances of NGO influence were overlooked or under-emphasized. For example, in investment arbitration (ICSID cases) or in the International Tribunal for the Law of the Sea (ITLOS), NGOs have also engaged (the Southern Bluefin Tuna case saw NGOs following closely, and by 2011 an NGO even tried to file an amicus in an ITLOS advisory opinion). These weren't mainstream in 2008, so it's understandable they're not covered. Another example: the chapter did not explicitly mention the role of NGOs in the *International Criminal Tribunal for the former Yugoslavia (ICTY)* or *ICTR*, which in the 1990s set precedents for NGO amicus briefs in human rights-related international trials. Vierucci's early section references ICTY/ICTR as new courts with individual accountability, but a deeper dive into their practice (e.g., how Human Rights Watch filed amicus briefs in ICTY appeals, or how NGOs assisted witnesses) could have enriched the analysis. This is a minor critique, as she covered the ICC which is the successor of those tribunals, but it highlights how broad the topic is – inevitably some facets get less attention.

Implications of Vierucci's Arguments:
Despite these limitations, the implications of Vierucci's work are significant. She portrays NGO involvement in international adjudication as both inevitable and beneficial, if properly managed. The chapter implies that the status of NGOs in international law is gradually shifting from outsiders to quasi-participants. If her recommendations were implemented, we would see more formal avenues for NGOs: perhaps advisory panels of experts attached to courts, explicit rules for amicus briefs (ensuring transparency in who submits and how it's considered), or even modified standing rules in areas like environmental disputes (e.g., allowing accredited NGOs to bring cases concerning global commons). Indeed, since 2008, some of these ideas have gained traction. For instance, the Escazú Agreement (2018) in Latin America gives the public, including NGOs, rights to environmental information and justice regionally, reflecting an ethos of public participation akin to what Vierucci champions. Another implication is that international courts could become more effective and perceived as more legitimate if they harness NGO contributions responsibly. By filling information gaps and voicing citizens' concerns, NGOs can help courts make more informed and socially grounded decisions. This could lead to jurisprudence that better reflects common values and evolving norms (as seen in human rights law).

However, Vierucci's analysis also warns of the need for caution and design. The implication is not to invite NGOs haphazardly, but to integrate them in a way that preserves fairness. For example, one can infer that courts might develop criteria for amicus briefs (such as relevance, expertise, no repetition) so that NGO input is substantive and not disruptive. In fact, such criteria have been discussed in WTO and investment arbitration circles post-2008. Similarly, if NGOs were to gain limited standing (say, in an environmental court), there would need to

be rules ensuring they truly represent affected communities or public interests, to avoid frivolous claims. Vierucci's work implicitly calls for these institutional innovations.

Finally, the chapter's implications touch on the philosophy of international law: it suggests a continual erosion of the strict state/non-state divide. If NGOs before courts become normalized, it strengthens the view of international law as a system that can incorporate *peoples, communities, and civil society* directly, not only via state agency. This is a profound shift from classical notions, aligning with the trend of recognizing individuals and groups as subjects of international law. Vierucci's arguments, therefore, contribute to the conceptual expansion of who "counts" in the legal process on the global stage.

Conclusion

Luisa Vierucci's 2008 chapter offers a detailed and critical examination of the role of NGOs in international adjudication, capturing a transformative period when courts and tribunals were starting to grapple with civil society's growing voice. She summarizes the legal landscape: NGOs had made significant inroads as informal influencers (through expertise and advocacy) but remained largely formally disenfranchised in courtrooms, except in dedicated human rights systems. The chapter's key themes – the *tension between state-centric procedures and global public interests*, and the potential for NGOs to bridge that gap – remain highly relevant today. Vierucci's methodological approach of comparing multiple forums provides a rich foundation for understanding how different legal cultures treat NGOs, and her balanced analysis lends credibility to her call for greater, yet careful, NGO participation.

Critically, while some of her optimism might be tempered by the slow pace of change in forums like the ICJ or WTO, subsequent practice has borne out many of her points. NGOs continue to push boundaries: filing amicus briefs, representing victims, and even initiating cases via creative legal arguments. International courts, in turn, increasingly acknowledge the value of these contributions, as seen by more frequent mentions of NGO reports in judgments or formalized third-party intervention rules. The strengths of Vierucci's arguments lie in highlighting that NGOs can enhance both the *quality* of judicial decisions (through expert input) and the *legitimacy* of international courts (by representing voices beyond state executives). The limitations we identified – such as handling NGO legitimacy and state resistance – are in fact part of the ongoing conversation that her chapter stimulates.

In conclusion, *"NGOs Before International Courts and Tribunals"* is a seminal piece that not only maps the state of NGO engagement as of 2008 but also challenges the international legal community to rethink the rigid binaries of party vs. non-party, public vs. private in the pursuit of justice. Vierucci's work implies that the efficiency of international courts and the flexibility of informal NGO involvement need not be at odds; with thoughtful reforms, the two can be reconciled to create a more inclusive and effective international legal order. Her chapter's insights and critiques thus remain a valuable guide for scholars and practitioners navigating the evolving frontier of NGOs in international adjudication.

Sources: Luisa Vierucci's chapter in *NGOs in International Law: Efficiency in Flexibility?* (2008) and related analyses, as well as examples from international case law and procedural developments discussed therein. All citations refer to the above-mentioned chapter or contemporary commentary on its content.

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Lloyd Hitoshi Mayer "NGO Standing and Influence in Regional Human Rights Courts and Commissions"

Introduction and Article Overview

Lloyd Hitoshi Mayer's 2011 article, published in the *Brooklyn Journal of International Law* (Vol. 36, No. 3), examines the role of nongovernmental organizations (NGOs) in regional human rights adjudication. The piece is part of a symposium on NGO accountability and influence, and it seeks to fill a gap in scholarship by focusing specifically on how NGOs participate in regional human rights systems (as opposed to broader studies of NGO involvement across many international bodies). Mayer's core objective is to explore the extent of NGO standing and influence in three major regional systems – the European, Inter-American, and African human rights regimes – and to analyze both the legal frameworks enabling NGO participation and the actual patterns of NGO involvement in these systems. In doing so, he provides a comparative assessment of NGO roles in the European Court of Human Rights (ECHR), the Inter-American Commission and Court of Human Rights, and the African Commission and Court on Human and Peoples' Rights, using data from a ten-year period (2000–2009) to support his analysis.

Mayer's article is structured in three main parts. Part I outlines the *formal legal avenues* for NGO involvement in each regional system, essentially examining the standing rules and procedural opportunities for NGOs to participate. Part II then presents an *empirical study* of how NGOs were actually involved in all merits decisions rendered from 2000 through 2009 in the three systems, highlighting both similarities and differences in NGO participation across regions. Part III discusses the ramifications and implications of the findings from Part II – considering what the degree and pattern of NGO involvement mean for human rights enforcement and for the development of NGO capacity, legitimacy, and strategy in these systems. Throughout, Mayer builds on existing literature about NGOs in international law, but narrows the focus to the regional human rights context. He also adopts a working definition of "NGO" drawn from scholarship by Salamon and Anheier, requiring entities to be formally constituted, structurally separate from government, and non-profit-seeking – thus distinguishing NGOs from government bodies, businesses, or informal groups.

Objectives and Main Arguments

Mayer's primary objectives are threefold: (1) to determine the extent to which NGOs have *standing* (i.e. the legal ability) to bring claims or otherwise participate in the regional human rights tribunals; (2) to assess the degree to which NGOs *actually do* participate in practice (and in what capacity); and (3) to analyze the consequences or *influence* of such NGO

involvement on the human rights systems. In pursuing these goals, Mayer advances several key arguments:

- NGO Standing and Roles: All three regional systems provide multiple roles through which NGOs can engage: NGOs may appear as direct applicants/claimants, as representatives or counsel for victims, or as third-party interveners (amicus curiae) in cases. Mayer emphasizes that while important procedural differences exist between the systems, each of them – Europe, Inter-America, and Africa – permits NGOs to serve in these various capacities in human rights proceedings.
- Comparative Differences: Despite this general similarity in possible roles, the actual *extent and pattern* of NGO involvement varies dramatically by region. Mayer finds that in the decade studied, NGO participation was far more limited in the European system than in the other two: only a relatively small fraction of ECHR decisions on the merits involved NGOs, and those instances tended to be concentrated among a few countries and a few NGOs. In contrast, NGOs played a much larger role in both the Inter-American and African systems, participating in a high proportion of decisions, with less concentration by state (especially in Africa) – i.e. NGO involvement was spread across many countries rather than being focused on just a couple – and only some concentration by certain active NGOs. The one consistent pattern across all regions was that the most common role of NGOs in practice was serving as representatives of victims (providing legal representation), rather than NGOs themselves being petitioners or merely filing amicus briefs. Mayer uses these findings to argue that NGOs have become crucial actors in bringing cases to regional bodies, especially as counsel for victims, but their level of direct engagement is shaped by regional legal frameworks and contextual factors.
- Ramifications and Influence: Mayer discusses what these patterns imply for both the effectiveness of human rights enforcement and for NGO strategy. One notable conclusion is that NGOs have proven *especially important in regions where victims face greater obstacles to accessing justice*, such as lack of legal aid or a weak private bar – which is why NGO representation dominates in the Inter-American and African systems. In Europe, by contrast, the availability of (albeit limited) legal aid and a stronger pool of private lawyers willing to take human rights cases means NGOs are less frequently needed as representatives. Mayer hypothesizes that factors like state-funded legal aid for applicants, the prospect of cost awards (reimbursement of legal fees) for successful claimants, and the size and stability of the domestic legal profession in European countries make individual lawyers more able to take cases, reducing reliance on NGOs. Meanwhile, the broad participation of NGOs in the Americas and Africa suggests a greater structural need for their involvement to ensure victims can bring claims. Based on these differences, Mayer argues that efforts to develop and support human rights NGOs should be *tailored regionally*: in Europe, support might focus on NGOs working in the relatively few countries where access to independent legal representation is lacking, whereas in Inter-America and Africa, support for NGOs may need to be broader since NGOs are filling gaps across many countries.
- NGO Access and Legitimacy: Finally, Mayer reflects on the *procedural gatekeeping* of NGOs in these systems. He notes that unlike some other international arenas where NGOs must clear high bars to gain accreditation or observer status, the regional human rights courts and commissions have been relatively open to NGO participation for any party with a valid case. For example, the African Court requires NGOs to have AU observer status (a form of accreditation) to bring cases directly, but Mayer

> questions whether such screening is necessary or useful. Given that in all three systems NGOs and other private parties can access the complaint mechanisms, and those NGOs that do engage tend to be reputable and closely linked with the broader human rights community, Mayer concludes there is "no need to carefully screen NGOs" before they become involved. He contrasts this openness with other international institutions where NGOs enjoy *privileged insider access* (e.g. lobbying forums or UN bodies) and suggests that in adjudicatory settings, what matters is the information and advocacy NGOs provide, not formal credentials. In short, the regional courts should remain open to NGO contributions, evaluating them on the merits of their submissions rather than imposing strict entry barriers.

These arguments are supported by Mayer's detailed analysis of each regional system's legal framework and by empirical data from the decisions of the relevant bodies. The following sections delve into Mayer's comparative approach, highlighting his legal/theoretical framework and the key examples he uses to illustrate NGO standing and influence in each region.

Legal and Theoretical Framework for NGO Standing and Influence

Mayer begins by establishing the legal context: what formal rules govern NGO participation in the regional human rights courts and commissions. This is essentially the "standing" question – who has the right to bring a case or intervene – as defined by the founding treaties (the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights, along with associated protocols and rules). Mayer's analysis here could be described as a *comparative doctrinal review*, laying out the procedural avenues available to NGOs in theory. His framework also acknowledges a broader theoretical question: how we assess NGO "influence." He notes that influence can be exerted not only through formal standing (bringing or joining cases) but also through indirect means (advocacy, urging others to bring cases, contributing amicus briefs, etc.). However, measuring such influence is difficult. Therefore, Mayer limits his empirical study largely to observable participation in decided cases (as applicant, representative, or amicus) as a proxy for influence. This provides a concrete way to compare NGO engagement across systems, even if it may not capture behind-the-scenes influence.

NGO Standing in the European Human Rights System

The European Court of Human Rights (ECHR), since the entry into force of Protocol 11 in 1998, allows individual applications from a broad range of non-state actors. Article 34 of the European Convention (as amended) provides that "*The Court may receive applications from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation*" of the Convention by a state party. This means NGOs *do have standing* to lodge complaints at the ECHR, but only if they themselves qualify as a "victim" of a rights violation. Mayer emphasizes that an NGO cannot bring a purely actio popularis claim on behalf of others in Strasbourg – it must assert that *its own* rights (as an organization) were directly breached. In practice, this confines NGO applicant status to situations where, for example, a government action interferes with the NGO's activities or existence (e.g. denial of registration, searches of NGO offices, restrictions on an NGO's expression or funding). The ECHR has not exhaustively defined which Convention rights NGOs can hold, but rights like

freedom of association and expression are obvious candidates. Mayer also notes that the Court generally requires an NGO to be legally established in a member state to have standing, though exceptions have been made when an unregistered group's lack of legal status is itself part of the alleged violation (for instance, an informal group complaining that state authorities refused to recognize it).

Apart from being a direct applicant, NGOs in Europe can engage by representing victims. The ECHR's procedures allow applicants (whether individual or organizational) to appoint a lawyer or representative of their choice; many NGOs provide legal counsel to victims and thereby appear before the Court in that capacity. In fact, as Mayer's study later shows, this has become the primary mode of NGO involvement in the European system. NGOs can also participate as third parties (akin to *amicus curiae* interventions). Article 36(2) ECHR permits the Court's President to invite or grant leave to any "other person" to intervene in a case if it is "in the interest of the proper administration of justice". This provision has enabled NGOs to file amicus briefs in key human rights cases, although such interventions are at the Court's discretion. Historically the ECHR was cautious about third-party briefs, but by the 1990s it had accepted dozens of NGO amicus submissions. Mayer points out that Protocol 11's reforms (which eliminated the old European Commission of Human Rights and made the ECHR a full-time court) significantly broadened access for NGOs as applicants, while retaining the third-party intervention mechanism. Importantly, these reforms put NGOs on essentially the *same footing as individuals* – NGOs have "no avenues for appearing before the ECHR that are not common to other types of entities". In other words, the ECHR does not grant NGOs any privileged status; they must meet the usual admissibility criteria (victim status, exhaustion of domestic remedies, etc.) just like individual applicants.

Mayer's theoretical framework here underlines a point about standing vs. influence: even though any NGO can in theory bring a case if it is a victim, in practice many NGOs in Europe find it more effective to act as representatives or to support cases through amicus briefs and advocacy, rather than appear as named applicants. The availability of legal aid and fee-shifting (requiring the respondent state to pay costs if the applicant wins) in the ECHR procedure means that victims can often secure private lawyers. NGOs thus often channel their influence by funding or providing lawyers, selecting strategic cases, and intervening with expert information, rather than by filing complaints in their own name.

NGO Standing in the Inter-American System

The Inter-American human rights system has a dual structure consisting of the Inter-American Commission on Human Rights (a quasi-judicial investigative body) and the Inter-American Court of Human Rights (a tribunal). Mayer explains that under the American Convention on Human Rights, NGOs have unusually broad standing to initiate cases at the Commission level. Article 44 of the Convention explicitly permits "*Any person or group of persons, or any non-governmental entity legally recognized in one or more member states*" of the OAS to lodge petitions alleging human rights violations. Notably, the petitioner (the NGO or individual filing the complaint) need not be the actual victim of the violation. An NGO can file a petition *on behalf of victims*, even without showing it personally suffered harm. This is a significant contrast to the European rule – effectively, the Inter-American system allows a form of representational standing or actio popularis (as long as specific victims are identified). For example, a human rights NGO in country X can submit a case to the Commission on behalf of a victim in country Y, provided the NGO is legally recognized somewhere in the Americas. Mayer notes that the United States, which has not ratified the American

Convention, is an outlier – petitions against the U.S. are handled under the OAS Charter and American Declaration, but even there NGOs regularly act as petitioners since any person or NGO can bring a complaint to the Commission under its statutes.

Once a case moves to the Inter-American Court (IACtHR), the dynamics of NGO involvement change slightly due to procedural rules. During the period Mayer examines, the Commission served as a gatekeeper: only the Commission (or a state) could refer cases to the Court, and initially the Commission also took the lead in litigating the case before the Court. However, the Court's rules (amended in 2001 and 2009) allow victims and their representatives (which often include NGOs) to participate directly in the proceedings, submitting briefs, evidence, and oral arguments independently of the Commission's lawyers. Mayer points out that NGOs involved at the Commission stage are often also involved at the Court stage once the case is referred. In many Inter-American cases, NGOs that helped lodge the petition continue as representatives of the victims throughout litigation, working alongside or in coordination with the Commission's attorneys. The Inter-American Court also welcomes amicus curiae briefs; its rules explicitly provide for amicus submissions, and in practice the IACtHR has never or very rarely rejected an amicus filing from NGOs or other interested parties. This open attitude reflects the Court's recognition of the value of NGO expertise in illuminating human rights issues. Thus, Mayer describes the Inter-American system as one in which NGOs can enter the process at inception (by lodging complaints) and remain involved through adjudication, whether as representatives of the victims or as third-party contributors. The only structural limitation he notes is that the Commission controls which cases proceed to the Court, meaning that an NGO's influence may effectively stop at the Commission's final report if the case is not referred to the Court. Nonetheless, given the Inter-American Commission's heavy caseload and the high percentage of petitions initiated by NGOs, the system relies extensively on NGO initiative to bring human rights violations to light.

NGO Standing in the African System

The African human rights system consists of the African Commission on Human and Peoples' Rights (established by the 1981 African Charter) and the newer African Court on Human and Peoples' Rights (AfCHPR), which began operations in the mid-2000s. Mayer notes that, similar to Inter-America, the African Charter's communications procedure allows NGOs significant access at the Commission stage. Under Article 55 of the Charter (though Mayer cites generally the Charter and scholarship), *"communications other than from States"* – effectively complaints from individuals or NGOs – can be received by the African Commission. In practice the Commission has long granted formal Observer Status to NGOs, and those with observer accreditation have frequently been the ones to file communications (though the Charter itself does not strictly require observer status to submit a case). By 2011 the Commission had granted observer status to hundreds of NGOs (over 380), indicating a broad openness to civil society engagement.

For the African Court (AfCHPR), the rules of standing are more restrictive. Only three entities can directly seize the Court with a case: States Parties, the African Commission, and African intergovernmental organizations. However, there is a crucial additional provision: if an African country has made a special declaration accepting the Court's jurisdiction over NGO and individual petitions (pursuant to Article 34(6) of the Court's Protocol), then NGOs with observer status before the African Commission (and individuals) may directly initiate cases against that state. This is a two-layered filter – the state must opt in, and the NGO must be accredited. As of the late 2000s, only a few countries had made such declarations, and

accordingly the African Court had handled very few cases (Mayer notes the Court had only issued one ruling by 2009, which was a jurisdictional dismissal). Thus, most African human rights cases in 2000–2009 were decided by the African Commission, where the barrier to NGO participation is low. NGOs can file communications alleging violations by states, even if the NGO is not itself a victim, and many did so during the period studied. When the African Commission later gained the ability to refer cases to the Court (and as states gradually allowed NGO access to the Court), NGOs involved at Commission level could carry cases forward to the Court either by prompting the Commission to refer or by filing directly if permitted.

Mayer critically evaluates the African Court's observer status requirement for NGO standing. He suggests that requiring NGOs to be pre-screened (by obtaining official observer status from the Commission) is likely an "unnecessary barrier" to NGO involvement. His view, as mentioned, is that given the generally open and inclusive nature of these human rights forums, such a restriction does little to improve the quality of cases and instead may arbitrarily shut out some NGOs. He contrasts the African Court's cautious approach with the broad latitude NGOs have to initiate cases at the African Commission and in the Inter-American system. The theme here ties into theoretical discussions of NGO legitimacy: some argue that only certain vetted NGOs should be allowed into international processes, but Mayer's comparative stance is that *more inclusive access* has worked well in human rights adjudication. The NGOs that become heavily involved tend to be those with expertise and legitimacy anyway, even without formal vetting, as demonstrated by their international partnerships and funding (a point illustrated in Part II of the article, discussed below).

In summary, Mayer's legal framework shows that regional human rights regimes vary in formal NGO standing: Europe is formally open to NGO applicants but with a strict victim requirement; Inter-America explicitly empowers NGOs to bring cases on others' behalf (actio popularis within limits); and Africa's Commission allows NGO communications freely while its Court imposes an accreditation hurdle. All systems permit NGOs to act as representatives of victims and to contribute via amicus briefs or interventions, although the mechanisms (and enthusiasm of the tribunals for such contributions) vary. This sets the stage for examining what actually happened in practice from 2000–2009 in each system, which is where Mayer's comparative empirical analysis comes in.

Comparative Analysis of NGO Participation in Regional Systems (2000–2009)

In Part II of the article, Mayer conducts a comparative empirical study to gauge NGO influence in practice. He collected and reviewed all merits decisions issued by the ECHR, the Inter-American Commission and Court, and the African Commission (and any by the nascent African Court) over a ten-year span (Jan. 1, 2000 – Dec. 31, 2009). For each decision, he identified whether NGOs were involved as applicants, counsel, or third-party interveners, and then tabulated patterns. The analysis is presented separately for each region, allowing Mayer to compare involvement rates and identify any dominant actors (particular NGOs or countries) in each system.

Europe: Limited and Concentrated NGO Involvement

The data for the European Court of Human Rights revealed a relatively low level of NGO participation in merits judgments. Mayer found that NGOs were involved (primarily as representatives or co-counsel for applicants) in only a small proportion of the ECHR's decisions on the merits – roughly 4% of cases during 2000–2009. This is a strikingly low percentage given the large volume of ECHR judgments in that period. Moreover, the instances of NGO involvement were heavily concentrated in terms of both the countries and the NGOs involved. In fact, two member states – Russia and Moldova – accounted for nearly two-thirds of all ECHR judgments with direct NGO involvement. These were countries where, presumably, domestic barriers (lack of effective legal representation, or systemic rights violations) prompted NGOs to step in frequently. Correspondingly, a handful of NGOs focused on those countries were disproportionately active. For example, Mayer highlights the role of the Russian Justice Initiative (SRJI) – an NGO that litigated many cases stemming from the Chechen conflict and other abuses in Russia. SRJI "alone was involved in twenty percent" of the ECHR decisions that had NGO participation, making it the single most active NGO in Strasbourg at the time. Other NGOs like the European Human Rights Advocacy Centre (EHRAC, often partnering with Russian NGOs) and *INTERIGHTS* (a London-based NGO) also appeared, but none as much as SRJI. In total, Mayer notes that only about five NGOs were responsible for the bulk of NGO appearances in the ECHR's merits decisions during the study period.

These findings suggest that NGO influence in Europe, while present, was channeled through a very select group of cases and actors. Mayer interprets this concentration as indicative of the European system's different needs: NGOs tended to get involved mainly where individual litigants could not easily pursue cases on their own, such as in Russia and Moldova where local legal infrastructures or political conditions made NGO assistance crucial. Even then, much of the NGO role was providing representation to victims (for instance, SRJI lawyers representing Chechen families in abuses cases). It was relatively rare for an NGO to be the named applicant in an ECHR case in that era – though there were notable exceptions (e.g. associations or NGOs suing for their own rights). The data also likely undercounts behind-the-scenes influence, as Mayer acknowledges: some cases litigated by private lawyers might have NGO funding or research support that is not evident on the face of the judgment. But with the available information, his conclusion was that Europe's NGO involvement was modest and focused.

Inter-American: Pervasive NGO Engagement and Key Players

In the Inter-American system, Mayer's research shows much higher NGO involvement in cases, both at the Commission and Court levels. A significant portion of petitions and subsequent decisions had NGO participation. In fact, earlier research cited by Mayer found that the majority of complaints to the Inter-American Commission are lodged by NGOs, and about one-third of Inter-American Court judgments in the late 1990s originated from NGO-filed petitions. Mayer's own data from 2000–2009 align with this: NGOs were involved in a much larger share of Inter-American cases than in Europe.

Importantly, however, this engagement was somewhat less concentrated by country. Unlike Europe's focus on Russia/Moldova, in the Americas no single country utterly dominated NGO-involved cases. Mayer notes that only one country at the Commission (Brazil) and one at the Court (Peru) appeared in 20% or more of the NGO-involved decisions, and those were different countries for each body. This indicates NGOs were active in cases concerning many

Latin American states, reflecting widespread use of the Inter-American system across the region.

In terms of NGOs themselves, one organization stands out: the Center for Justice and International Law (CEJIL). CEJIL is a regional NGO that works across the Americas, and Mayer's findings underscore its prominence. He reports that CEJIL participated in over a quarter of the Commission's decisions involving NGOs and nearly half of the Court's decisions involving NGOs during 2000–09. CEJIL often serves as legal representative for victims or co-petitioner in tandem with local groups. For example, CEJIL represented victims from at least eight different states before the Commission and thirteen states before the Court in that period. This pan-regional reach is unique and was not matched by any single NGO in Europe or Africa. Other NGOs were very active as well, especially in particular countries – for instance, APRODEH (the Peruvian Human Rights Association) was involved in roughly 7 of 15 Peru-related Court cases, and various national NGOs in Colombia, Guatemala, Mexico, etc., frequently partnered with CEJIL or acted on their own. Mayer also references a list of commonly involved NGOs in Inter-American cases, which includes groups like the Colombian Commission of Jurists, Americas Watch (Human Rights Watch's Americas branch), the Ecumenical Human Rights Commission in Ecuador, and others, reflecting a vibrant civil society engagement.

Mayer provides concrete examples to illustrate how NGOs operate in this system. One cited case is *Diniz Bento da Silva v. Brazil* (Inter-American Commission, Report No. 23/02), where a Brazilian NGO (the Comissão Pastoral da Terra or Pastoral Land Commission) filed the petition on behalf of rural workers; that NGO was affiliated with CEJIL at the time of filing. This exemplifies the model of local NGOs collaborating with international or regional NGOs to bring a case forward – a common practice in the Inter-American system to leverage both grassroots knowledge and legal expertise. Mayer's data also show that, despite CEJIL's heavy involvement, the Inter-American pattern did not rely on a single NGO to the extent Europe relied on SRJI. CEJIL was highly active, but not to the exclusion of others – many organizations contributed, and even CEJIL's numerous cases spanned many different states rather than reflecting a singular national focus.

Overall, the Inter-American system demonstrates NGO influence through consistent, substantial engagement. NGOs act as the driving force behind a majority of cases, ensuring that even victims from remote or marginalized communities can access the Commission and Court. Mayer observes that this broad NGO participation correlates with greater needs for representation – many Latin American countries emerging from dictatorships or conflict in the 1990s had weak judicial remedies, so NGOs stepped in to seek justice internationally. The implication is that NGOs have become integral "repeat players" in the Inter-American human rights process, shaping the docket and jurisprudence through the cases they bring.

African: High NGO Participation in Commission Cases, Broadly Distributed

For the African Commission on Human and Peoples' Rights, Mayer finds a similarly high rate of NGO involvement in decided cases, comparable to Inter-America. A large proportion of communications decided on the merits by the African Commission from 2000–2009 had NGO input, either as complainants or representing victims. He notes that the African Commission's NGO involvement was also about as frequent as in Inter-America and was not dominated by just a few countries or groups. In fact, no single African state monopolized the NGO-filed cases: the data show that the countries which came up most (Nigeria and

Zimbabwe) each appeared in only a bit over 10% of NGO-involved decisions. Nigeria and Zimbabwe had four decisions each involving NGOs (about 13% each of the NGO cases) – notable, but far from the concentration seen with Russia in Europe. Other cases were spread across various countries in Africa, reflecting that NGOs were taking on human rights issues in a wide range of jurisdictions (e.g. communications against The Gambia, Sudan, DRC, Kenya, etc., all featured in the Commission's decisions of that era).

On the NGO side, Mayer identifies two NGOs as particularly active in African cases: the Institute for Human Rights and Development in Africa (IHRDA), based in The Gambia, and INTERIGHTS (the same London-based international litigation NGO noted earlier). Each of these organizations was involved in more than 10% of the NGO-related decisions in Africa. (In a few instances, they even both participated in the same case, hence some overlap.) IHRDA, for example, litigated or assisted in cases against at least five different African states, demonstrating no single-country focus but a mission to advance rights across the continent. INTERIGHTS similarly supported cases in multiple African countries during that period, often bringing comparative expertise or legal precedent from other jurisdictions. Other NGOs in Africa's cases included national groups like the Civil Liberties Organisation (Nigeria) and the Constitutional Rights Project (Nigeria) – both of which filed numerous communications to the African Commission in the 1990s and early 2000s. Mayer cites *Civil Liberties Organization v. Nigeria* (Comm. 101/93, decided in 2000) as an example where an NGO was the complainant alleging human rights violations by a state. These early cases set precedents for NGO standing (the African Commission clearly affirmed NGOs could bring matters on behalf of victims or in the public interest). By the 2000s, more NGOs across Africa (including coalitions like the Zimbabwe Human Rights NGO Forum) were using the Commission to challenge abuses.

One intriguing aspect Mayer examines is the connections of the most active African NGOs to international networks. He notes that both IHRDA and INTERIGHTS have strong ties to the global human rights community. For instance, IHRDA's Board of Directors was entirely African, but one co-founder was by 2011 working for the Open Society Justice Initiative in New York, reflecting linkage to international funding and expertise. INTERIGHTS, though engaged in African litigation, is based in London and its advisory council draws from many countries outside Africa. Funding for these NGOs often comes from European or North American donors. Mayer uses these observations to argue that even without formal vetting, the NGOs that succeed in bringing cases are typically those with significant professional capacity and transnational support. This reinforces his point that imposing additional "screening" requirements (like the African Court's observer status rule) is arguably unnecessary, since a de facto filtering by capability occurs – only NGOs with resources and credibility tend to litigate repeatedly. In Mayer's view, the African system shows a healthy pluralism: lots of different NGOs involved across many countries, and the international collaborations (e.g., an African NGO partnering with a foreign NGO) do not undermine the system, but rather enhance its reach and expertise.

It should be noted that because the African Court was new and, as of 2011, had very limited case law (only one inadmissibility ruling by 2009), Mayer could not derive meaningful patterns from the Court's decisions. He instead focused on the Commission's experience. He did observe that the African Court's impact was still minimal due to only two states having accepted its individual/NGO jurisdiction by 2008. Thus, his findings for Africa predominantly reflect the Commission's role as the main forum, where NGO influence was clearly significant.

Cross-Regional Similarities and Contrasts

Bringing the findings together, Mayer highlights a fundamental similarity: in all regions, NGOs most often act in service of victims – as representatives or enablers of individual complainants. The *standing* rules might differ (strict victim requirement vs. actio popularis), but in practice NGOs are not flooding these courts with abstract complaints; they are assisting real people who suffered violations. This underlines a point for legal theory: even where NGOs have formal standing (Inter-American and African Commission), they still tether their advocacy to specific victims, maintaining the individual justice focus of these systems.

The differences, as discussed, lie in the scale and distribution of NGO involvement. Europe's system appears to function with comparatively less dependence on NGOs, possibly due to stronger domestic enforcement and resources in many member states. The Inter-American and African systems, dealing often with resource-constrained environments and systemic human rights problems, naturally see heavier reliance on NGOs to initiate and carry cases. Mayer's comparative approach stresses that these differences are not merely procedural artifacts but relate to broader socio-legal contexts: availability of legal aid, the robustness of national legal professions, and historical factors (e.g., Latin America's tradition of NGO activism during transitions from authoritarian rule, Africa's transnational NGO networks addressing human rights across post-colonial states).

Another contrast Mayer notes is in geographical and organizational concentration. Europe's NGO cases were mostly concentrated in a "narrow set of member states" – chiefly Russia and Moldova – "where conditions for private representation…may not exist". In those places, NGOs filled a gap. In the Americas and Africa, however, the need for NGO-led representation was broader, spanning a wide swath of member states. Accordingly, European NGO activity was also concentrated in relatively few NGOs (like SRJI), whereas in Inter-American and African cases multiple NGOs (local and international) shared the load, with only a couple of central hubs like CEJIL or IHRDA linking many efforts. Mayer uses these findings to caution against one-size-fits-all assumptions about NGO behavior. The *comparative method* he employs shows that the role of NGOs is context-dependent: where states provide alternatives (legal aid, etc.), NGOs play a supplementary or specialized role; where states fail to do so, NGOs become indispensable primary actors in enforcement.

Key Case Studies and Examples from Mayer's Analysis

Throughout the article, Mayer references specific cases and NGO initiatives to illustrate how NGO standing and influence manifest in practice. Some notable examples include:

- Russian Justice Initiative (SRJI) cases in the ECHR: Mayer cites SRJI's extensive involvement in cases arising from the Chechen conflict in Russia. One emblematic case (mentioned via SRJI's reports) is *Khashiyev and Akayeva v. Russia* (2005), which was one of the first ECHR judgments on Chechnya; SRJI represented the victims' families. Such cases show NGOs acting as lifelines to justice for victims in regions where local courts were ineffective. SRJI's work led to numerous Strasbourg judgments holding Russia accountable for right to life and torture violations. The 20% statistic (SRJI in one-fifth of NGO-involved ECHR cases) underscores how a single NGO's strategic litigation can influence a regional court's docket.
- Civil Liberties Organization v. Nigeria (African Commission, 2000): This is a landmark communication where a Nigerian NGO challenged a military decree that

ousted courts' jurisdiction over certain human rights cases. The African Commission's decision (No. 101/93) in favor of the NGO set precedent that Nigeria's obligation under the Charter could not be circumvented by domestic law. Mayer references this to demonstrate NGOs using the African system to contest repressive laws, essentially acting in a public interest litigation capacity on behalf of all affected citizens. Similarly, the Constitutional Rights Project, another Nigerian NGO, brought multiple cases to the Commission in the 1990s – these are noted in Mayer's footnotes as examples of sustained NGO legal activism.

- Social and Economic Rights Action Center (SERAC) v. Nigeria (African Commission, 2001): While Mayer does not explicitly name this case in the excerpt we have, it's a famous one likely alluded to in discussions of NGO influence. Brought by two NGOs (SERAC and another) on behalf of the Ogoni community, this case resulted in a seminal decision on environmental and economic rights in 2001. It exemplifies how NGOs can raise issues (oil pollution, indigenous rights) that victims alone could not effectively bring forward. Mayer's general discussion of African NGO cases would encompass SERAC as a case study of NGO-driven jurisprudence.
- Inter-American Court cases involving CEJIL and partners: Mayer's data highlight CEJIL's role, and indeed many major Inter-American Court judgments in the 2000s involved CEJIL. For instance, *Barrios Altos v. Peru* (2001, dealing with amnesty laws for human rights violators) had CEJIL representing victims; *Masacre Plan de Sánchez v. Guatemala* (2004, a massacre case) involved CEJIL and a local NGO; *Gomez-Paquiyauri Brothers v. Peru* (2004) involved APRODEH (the Peruvian NGO) and CEJIL. Mayer specifically notes that in Court cases involving Peru, APRODEH was very frequently involved (7 of 15 cases), indicating that domestic NGOs often team up with CEJIL on country-specific issues. One can infer from Mayer's analysis that key case studies like *Barrios Altos* (which struck down Peru's amnesty law) were made possible by NGO persistence – APRODEH and CEJIL petitioned and litigated that case through Commission to Court. By mentioning statistics on CEJIL's involvement, Mayer effectively uses CEJIL itself as a case study in how a single NGO can drive numerous legal actions across countries. CEJIL's structure (with offices in multiple countries and a board including notable human rights experts) illustrates the professionalization and networking of NGO advocacy, which in turn likely contributes to their success before the Court.
- Collaboration examples – Pastoral Land Commission (Brazil) and CEJIL: The *Diniz Bento da Silva* case mentioned earlier is a concrete example Mayer uses to show an NGO collaboration chain: a local church-affiliated group in Brazil (CPT) filed a petition which was backed by a regional NGO (CEJIL), leading to an Inter-American Commission decision. This demonstrates how NGOs of different levels (local, regional, international) coordinate to bring cases, share expertise, and ensure follow-through to a decision.
- Liberty's observation on ECHR legal aid: Mayer includes a note that at least one prominent NGO in Europe (*Liberty*, a UK civil rights NGO) complained about the low level of legal aid payments by the Council of Europe for ECHR cases. This is less a case study than an anecdote reflecting NGO experience: it suggests that even where formal support (legal aid) exists, NGOs find it insufficient, which may affect their ability to take cases. Mayer uses it to underscore why private lawyers might still take ECHR cases (hoping for costs awards) and why NGOs in Europe might limit involvement to strategically important cases given resource constraints.

By highlighting such examples, Mayer gives life to the numbers. He shows, for instance, how NGO influence can pressure states to change (e.g., Peru overturning amnesty laws after Barrios Altos, Nigeria modifying laws after NGO cases), thus demonstrating the real-world impact of NGO litigation. These case studies support Mayer's argument that NGOs are not just participating symbolically; they are often the catalysts for major legal developments in regional human rights law.

Implications for Legal Theory and NGO Practice

Mayer's findings carry several implications for both the theory of international law (especially regarding non-state actors) and the practical work of human rights NGOs:

- Reconceptualizing Standing and Subjects of International Law: Traditionally, international legal processes were state-centric, but regional human rights courts have, by design, empowered individuals and NGOs as direct actors. Mayer's analysis reinforces the idea that NGOs can be understood as "agents" or intermediaries in international law, operating on behalf of victims to hold states accountable. The fact that NGOs have formal standing (Inter-American Commission, African Commission/Court) or can appear in their own right (ECHR, if victimized) blurs the classic notion that only states are subjects of international law. From a theoretical standpoint, this suggests an evolution in international adjudication where private non-state entities are crucial participants. Mayer's data show that NGOs effectively act as *private attorneys-general*, especially in systems where public enforcement is weak. This challenges legal theories to account for NGOs' role in enforcement and norm development. It also speaks to the legitimacy debate: NGOs are self-appointed actors, yet their contributions have been largely positive in uncovering violations and aiding victims. Mayer's work implies that legitimacy in human rights adjudication is derived from contribution and expertise, not just formal state consent, given that states have accepted these petition systems and NGOs are helping make them effective.
- No Need for Excessive Gatekeeping of NGOs: For institutional design, Mayer concludes that open access for NGOs has not led to chaos or abuse, but rather to effective case facilitation. This has practical implications: bodies designing courts or commissions might consider following the Inter-American model of broadly allowing NGO petitions, rather than imposing strict accreditation. Mayer specifically suggests the African Court's requirement that NGOs have observer status is an unnecessary hurdle, given that his findings show NGO involvement is generally constructive and self-regulating (the most active NGOs are those with demonstrated competence and ties to the international community). For legal theory, this ties into discussions of how to maintain quality and accountability of NGOs. The evidence from regional courts indicates that fears of *unaccountable NGOs flooding dockets with frivolous cases* have not materialized. Instead, NGOs have been quite strategic and case-selective, often working in tandem with victims and communities. This supports a theoretical stance that NGOs can serve as legitimate representatives of public interest without formal democratic mandates, especially in human rights contexts, as long as they are embedded in networks of accountability (e.g., having transparent operations, international partnerships, etc.).
- Influence vs. Formal Role: Mayer's article also implicitly raises the point that "influence" is not solely measured by winning cases, but by presence and persistence. While he did not quantitatively assess outcomes, the very fact that NGOs are present in many major cases means they shape the arguments and potentially the

jurisprudence. For NGO practice, this underlines that getting involved – whether as petitioner, counsel, or amicus – can have a systemic impact. One practical takeaway is that NGOs should continue to use all available procedural avenues: if direct standing is blocked, use amicus briefs; if domestic lawyers can handle a case, maybe focus on an amicus; if no one else can bring the case, step in as petitioner. Mayer's study shows NGOs doing all of these. The implication is that effective NGO advocacy requires flexibility and legal creativity, operating sometimes as a litigant, sometimes as support.

- Resource Allocation and Capacity Building: Mayer's recommendation that support for human rights NGOs be tailored to regional needs is a concrete implication for donors, governments, and the NGO community itself. In Europe, where NGO involvement was low and concentrated, it might mean focusing funding or training for NGOs in countries like Russia, Turkey, or other places with gaps in legal help, or supporting specialized NGOs that handle cases (like SRJI or EHRAC) in those contexts. In the Americas, supporting broad-based organizations like CEJIL or national NGOs in Central and South America is vital, since they handle a high volume of cases. In Africa, with a wide distribution, building regional litigation centers (like IHRDA) and strengthening national NGOs in various countries would help maintain the momentum. Mayer's findings imply that NGOs have become essential pillars of the enforcement systems – if they were removed or weakened, many victims would lose access. Thus, ensuring these NGOs have the training, funding, and protection (from reprisals) they need is crucial for the sustainability of human rights accountability.
- Collaboration and Networks: Another practical point is the importance of NGO networks. Mayer repeatedly notes instances of NGOs partnering across borders (e.g., CEJIL partnering with local groups; INTERIGHTS assisting African NGOs; OSJI funding initiatives). This suggests that NGOs maximize influence through collaboration. For practitioners, it validates strategies like forming coalitions for specific cases or sharing expertise across regions. For instance, an African NGO might learn from Inter-American NGOs about how to present a case on enforced disappearances, etc. The data hint that some NGOs (like CEJIL and IHRDA) effectively act as *regional hubs*, so supporting those hubs can have multiplier effects.
- Impact on Jurisprudence and Compliance: Although Mayer's article doesn't deeply delve into the outcome of cases, one can infer that NGO-driven cases have produced landmark decisions (e.g., many of the Inter-American Court's groundbreaking judgments were NGO-led). This has theoretical implications: it suggests that NGOs help drive the progressive development of human rights law by bringing novel or systemic issues to court. For instance, without NGOs, the African Commission might never have decided the SERAC case holding Nigeria accountable for environmental rights, or the Inter-American Court might not have had as many cases defining states' duties to investigate past atrocities. So, in terms of legal theory, NGOs act as *entrepreneurs of litigation* who push the law into new areas. This raises further questions (outside Mayer's scope) about whether courts are receptive to NGOs in part because they bring credibility and information that states or individuals might not.
- Balancing NGO Influence and State Response: One cannot ignore that if NGOs are very influential in these systems, states may react (positively or negatively). Some governments might try to restrict NGOs (indeed, a number of countries have passed laws limiting NGO activities). Mayer's findings that certain states were repeatedly targeted by NGO cases (Russia, Peru, Nigeria, etc.) might encourage those states to either improve their compliance or crack down on NGO activities. For NGO practice, this means maintaining legitimacy and demonstrating that they act in good faith on

behalf of victims is crucial to fend off attacks on their role. It also suggests that NGOs might consider engaging with states to implement decisions, not just win them, to show constructive influence.

In conclusion, Mayer's article provides a thorough academic study that not only documents how NGOs engage with regional human rights courts and commissions, but also invites reflection on the evolving role of NGOs in international law. His comparative approach shows that NGOs have become indispensable players in enforcing human rights across different continents, though the extent of their involvement varies with local needs and legal frameworks. For legal theorists, this underscores the *pluralization* of international adjudication – states are no longer the sole gatekeepers of justice; NGOs (and individuals) share that space. For practitioners and policymakers, Mayer's work highlights the need to support NGO participation as a positive force and to calibrate institutional rules (like standing requirements) to maximize access to justice. As Mayer concludes, the experience of the European, Inter-American, and African systems suggests that *opening the door to NGOs* – far from undermining the processes – enhances the ability of those systems to hear and remedy human rights violations. The article ultimately champions the idea that NGO involvement, when allowed and harnessed appropriately, strengthens regional human rights enforcement by ensuring that victims have champions and that human rights norms are vigorously pursued beyond the state-centric paradigm.

Sources

- Lloyd H. Mayer, *"NGO Standing and Influence in Regional Human Rights Courts and Commissions,"* Brooklyn Journal of International Law, vol. 36, no. 3 (2011), pp. 911–945.
- Id., at 913–14 (Part I overview of NGO roles and variations); 917–19 (NGO standing under ECHR Article 34 and Inter-American Article 44); 925–33 (empirical findings on NGO involvement in each system); 935–37 (discussion of reasons for regional differences, e.g. legal aid, private bar); 937–41 (ramifications for supporting NGOs and screening policies).
- Mayer's compiled data (Appendix) and examples: e.g., SRJI's involvement in ECHR cases; CEJIL's extensive role in Inter-American cases; IHRDA and INTERIGHTS in African cases; *Civil Liberties Org. v. Nigeria* (Afr. Comm'n); *Diniz Bento da Silva v. Brazil* (Inter-Am. Comm'n), etc. These illustrate the patterns described.

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Grégor Puppinck „ECLJ Report on NGOs and Judges of the ECHR (2009–2019)"

Introduction and Background

The European Court of Human Rights (ECHR) has long worked in tandem with civil society, with non-governmental organizations (NGOs) frequently litigating before the Court or intervening as third parties. In 2020, a report by Grégor Puppinck (Director of the European Centre for Law and Justice, ECLJ) titled "NGOs and Judges of the ECHR (2009–2019)" drew intense attention by alleging systemic conflicts of interest between some ECHR judges and certain NGOs active at the Court. The report emerged against a backdrop of growing scrutiny of international courts by various political actors, and it sought to highlight how judicial independence and impartiality at the ECHR might be compromised by judges' prior affiliations with advocacy organizations. This analysis provides a detailed overview of Puppinck's report – its origins, aims, methodology, and principal findings – followed by a critical evaluation of its credibility, sources, and potential biases. It then examines the reception of the report in scholarly, legal, and political circles, and discusses the legal, political, and institutional implications it raised regarding the functioning of the ECHR. Key NGOs identified in the report, the judges named and their affiliations, and the relevant ethical standards are also discussed in context.

Report Overview and Objectives

Background of the Report: The ECLJ, a Strasbourg-based NGO with a self-described mission of promoting "spiritual and moral values" in human rights law, has a history of engagement at the ECHR (often intervening in cases on issues like religious freedom and the rights of the unborn). In early 2020, Puppinck and his team undertook a six-month investigative study focusing on the ties between ECHR judges and NGOs. The impetus, as described in the report, was the observation that a significant number of judges had come directly from the human rights NGO community, raising questions about potential conflicts of interest when those same NGOs appear before the Court. The broader context includes debates about the influence of private foundations and lobby groups on international human rights adjudication, often personified by critiques of philanthropist George Soros's network in Europe. Indeed, media coverage of the report frequently framed it in stark terms (e.g. "Soros's grip on the ECHR" in some outlets), reflecting the charged political atmosphere surrounding the Court's independence.

Objectives: The report's stated aim was to "contribute to the proper functioning of the European human rights system" by exposing a pattern of relationships between certain judges and NGOs, assessing the problems this could pose, and proposing remedies. Fundamentally, the report asks whether justice at the ECHR is sufficiently impartial when judges who formerly worked for or led NGOs later hear cases involving those same organizations. It seeks to uphold the principle that judges must not only be independent, but must also avoid the

appearance of bias – a standard the Court itself requires of national judiciaries under Article 6 of the European Convention on Human Rights. By assembling concrete data on judges' biographies and case involvement, Puppinck's report intended to spark reforms to reinforce judicial impartiality at the ECHR.

Methodology of the Study

The ECLJ report is based on an empirical review of public information about judges' professional backgrounds and an analysis of case records from a ten-year period (2009–2019). The researchers drew primarily on official sources such as the curricula vitae of ECHR judges as submitted to the Parliamentary Assembly of the Council of Europe (PACE) for their election. From these CVs, the team identified judges who had significant prior involvement with any NGOs. Importantly, the study focused on NGOs that are active litigants or interveners at the ECHR – i.e. organizations likely to appear before the Court. Puppinck's team narrowed the field to seven NGOs (detailed in the next section) which met two criteria: (1) the NGO regularly participates in cases at the ECHR, and (2) at least one ECHR judge in the 2009–2019 period had previously worked for or closely with that NGO.

Having identified the target NGOs and judges, the report then examined ECHR case records for any overlap between those judges and their former organizations. Specifically, it looked at cases from 2009–2019 in which one of the seven NGOs was involved as an applicant, legal representative, or third-party intervener, and checked whether any judge sitting on the case was formerly affiliated with that NGO. The report counted such instances as potential conflicts of interest, on the premise that a judge might be (or be perceived to be) partial toward an organization he or she had been closely associated with in the past. The authors acknowledge that their count is a conservative estimate, excluding some indirect connections (for example, they did *not* track cases where a judge's former NGO was not officially on record but perhaps funded the litigants, nor cases involving NGOs that were merely funded by a common donor). This methodology yields a quantitative picture of how often judges sat in cases linked to their former NGOs, as well as qualitative profiles of the judges' past NGO roles.

It should be noted that the report's approach – relying on publicly available CVs and case lists – is transparent and replicable, but it has limits. It does not delve into internal Court procedures (like how panels are assigned) or the judges' actual decision-making in those cases. Nor does it prove actual bias; rather, it documents situations with a potential for conflict (what jurists call *objective impartiality* concerns). The report itself frames these situations as problematic enough to warrant procedural reforms, without accusing any judge of deliberate wrongdoing.

Key Findings of the Puppinck Report

The ECLJ report's findings were striking in scope. Out of 100 judges who served on the ECHR between 2009 and 2019, at least 22 had prior affiliations with the seven NGOs identified. In other words, over one-fifth of the Court's judges in that decade came directly from a handful of civil society organizations active in litigation. The seven NGOs (listed here in alphabetical order) and the number of judges linked to each were as follows:

- Open Society Foundations (OSF) network – 12 judges were former officials or beneficiaries of the OSF or its affiliates (especially the Open Society Justice Initiative). Notably, OSF stood out not only because it accounted for the largest number of ex-NGO judges, but also because OSF has provided funding to the other six NGOs on the list, underlining OSF's central role in the human-rights NGO ecosystem.
- Helsinki Committees and Foundations – 7 judges had worked with one of the national Helsinki Committees for Human Rights (e.g. in countries like Bulgaria, Poland, or Hungary) or related Helsinki human rights foundations. These bodies, originally inspired by the Helsinki Accords, advocate for human rights domestically and often engage in ECHR litigation.
- International Commission of Jurists (ICJ) – 5 judges had held roles in the ICJ, an international NGO composed of jurists promoting the rule of law and human rights.
- Amnesty International – 3 judges were former Amnesty officials or contributors. For example, Judge Paulo Pinto de Albuquerque (Portugal) sat on the board of Amnesty International's national chapter prior to joining the bench, and Judge Ján Šikuta (Slovakia) had also been involved with Amnesty in his country.
- Human Rights Watch (HRW) – 1 judge had worked for HRW (Judge Darian Pavli of Albania was a researcher at HRW earlier in his career).
- Interights (International Centre for the Legal Protection of Human Rights) – 1 judge was previously affiliated with Interights. Notably, the current UK judge Tim Eicke served on Interights' Board of Directors for over a decade (2004–2015) before joining the ECHR.
- A.I.R.E. Centre (Advice on Individual Rights in Europe) – 1 judge had worked with the AIRE Centre, a London-based NGO that frequently intervenes in Strasbourg (the report does not name the judge in the summary, but this likely refers to a judge who had a past advisory role with AIRE).

These figures underscore that several ECHR judges came directly from prominent human rights advocacy organizations. In many cases, these were not peripheral associations but leadership or founding roles. For instance, Judge Yonko Grozev of Bulgaria co-founded the Bulgarian Helsinki Committee (a leading rights NGO) and later, as an ECHR judge, he adjudicated cases involving that very committee. Similarly, Judge András Sajó of Hungary served on the Board of the Open Society Justice Initiative (OSF's legal arm) in New York for years before his judicial term, and was a longtime associate of the Soros-funded Central European University. These are examples of the close NGO connections the report highlights.

Crucially, the ECLJ report does not stop at mapping past affiliations; it connects them to case participation. It identified 185 judgments from 2009–2019 in which at least one of the seven NGOs was involved in the proceedings (either as a party or formally as a third-party intervener). In 88 of those cases, one or more of the judges hearing the case had a prior link to the NGO involved. In other words, roughly half of the time that those NGOs appeared in court, the bench included a judge formerly associated with one of them. The report considers these 88 instances as problematic "conflict of interest" situations, noting that the judge in question did not always recuse themselves. In fact, only 12 instances of judge withdrawal were noted over the entire decade for NGO-related conflicts. This suggests that in the vast majority of such cases, judges continued to sit despite their past connections, leaving it to their personal discretion and interpretation of impartiality standards.

The report provides concrete illustrations. One high-profile example is the pending case *Big Brother Watch v. UK* (a mass surveillance case): among the 16 applicants in that case, 10

were NGOs funded by the Open Society Foundations, and 6 NGOs acting as interveners were also OSF-funded. Out of the 17-judge Grand Chamber that initially dealt with the case, 6 judges had ties to the very NGOs involved. None of those judges recused. Such scenarios, the report argues, "call into question the independence of the Court and the impartiality of the judges", especially given that the ECHR wields exceptional authority in interpreting human rights law across Europe. The report pointedly observes that this situation would likely violate the standards of impartiality the ECHR demands of national judges – for example, domestic judges are typically disqualified from a case if they have any personal stake or prior involvement with a party. (A notable parallel cited is the UK House of Lords' *Pinochet* case (1999), where a Law Lord was disqualified for conflict of interest because of his ties to an intervening NGO (Amnesty International).) By the same token, the presence of NGO-affiliated judges in ECHR cases involving their former organizations raises red flags about "objective impartiality" – even if those judges are acting in good faith.

In summary, the key findings of Puppinck's report are:

- A significant number of ECHR judges (22 between 2009–2019) had strong professional links to a small number of NGOs active at the Court. This marks a notable concentration of judges coming from an activist background, as opposed to academia, government service, or the judiciary.
- The Open Society network (Soros-funded organizations) was particularly prominent, linked to more judges (12) than any other, and financially intertwined with many of the others. This highlighted a perceived *ideological homogeneity* or network effect (all these NGOs sharing common donors and human-rights agendas).
- At least 88 ECHR cases in a decade involved potential conflicts of interest, wherein judges sat on cases brought or supported by NGOs that the judges themselves had worked for in the past. Relatively few judges recused in such situations, indicating a gap in the Court's procedural safeguards.
- The report concludes that these facts pose a systemic risk to judicial independence and public confidence in the ECHR, warranting urgent corrective measures.

Conclusions and Recommendations of the Report

Puppinck's report, while diagnostic in nature, also ventures into prescriptive territory. It concludes that the current state of affairs is "serious, and calls into question the independence of the Court and the impartiality of the judges", requiring remedial action. The underlying concern is that the legitimacy of the ECHR – which relies on judges being above any suspicion of bias – could be undermined if too many judges are seen as rotating in from advocacy roles and potentially adjudicating in favor of their former colleagues or causes.

To address these issues, the report proposes a series of reforms aimed at strengthening the Court's integrity:

- Stricter Selection of Judges: Greater care should be taken in the nomination and election of ECHR judges to "avoid the appointment of activists and campaigners" with strong ties to advocacy groups. In practice, this might mean favoring candidates with prior judicial experience or academic backgrounds over those whose careers were primarily in NGO activism. The report suggests that PACE (which elects the judges) should vet candidates' independence more rigorously, as part of ensuring a balanced and pluralistic bench.

- Transparency of Interests: The ECLJ calls for mechanisms to disclose and manage conflicts of interest. For example, judges (and candidates for judge) should be required to declare any current or past links to NGOs active at the Court. Likewise, applicants to the Court might be asked to declare if an NGO is behind their application, and NGOs applying to intervene should disclose any connections to the parties or judges. These transparency measures would shed light on potential overlaps and allow parties to object or request recusal where appropriate.
- Recusal and Withdrawal Procedures: Noting the absence of a formal recusal procedure at the Strasbourg Court, the report urges the formalization of rules for judges to withdraw in cases of conflict. It suggests that the ECHR should adopt procedures comparable to what national courts have: parties should be informed of the composition of the bench in advance and given the opportunity to raise objections if they perceive a conflict. Moreover, judges should have an obligation (not merely a discretion) to inform the Court President of any circumstance that might cast doubt on their impartiality, and to step aside where needed. Essentially, the ECLJ advocates instituting a robust recusation framework aligned with the Court's own case-law on judicial bias.
- Institutional Reforms: Beyond the Court itself, the report also took action by forwarding its findings to the Parliamentary Assembly of the Council of Europe. The ECLJ formally petitioned PACE under its Rule 67 (now Rule 71) petitions procedure, urging the Assembly to investigate and recommend solutions to these conflict-of-interest issues. The report's publication was intended, in Puppinck's words, as a "positive contribution" to improving the ECHR, not an attack on it. By involving PACE (which oversees judge elections and can conduct inquiries), the ECLJ aimed to prompt institutional oversight and perhaps changes in the selection process for judges.

In summary, the report's conclusions emphasize that while NGOs play a vital role in human rights litigation, greater checks are needed when their alumni become judges. The proposals center on reinforcing impartiality through better upfront screening and back-end procedures for recusal and disclosure. Puppinck's underlying premise is that the ECHR must hold itself to at least the same standards it imposes on national courts regarding avoidance of bias and conflicts of interest. Without such measures, he suggests, the Court risks decisions that could be tainted by doubt, or at least vulnerable to external criticisms of bias.

Identified NGOs, Judges, and Affiliations

The seven NGOs highlighted in the ECLJ report warrant a closer look, as do the specific affiliations of the judges involved, since understanding the nature of those links is key to evaluating the report's claims. Below is an outline of each NGO and examples of judges connected with them, along with the legal/ethical standards implicated by those connections:

- Open Society Foundations (OSF) & Open Society Justice Initiative (OSJI): The OSF network (funded by George Soros) is known for promoting human rights, democracy, and rule-of-law projects across Europe. According to the report, 12 judges had some form of collaboration with OSF or OSJI. These links ranged from governance roles to funded research positions. For instance, *Judge Boštjan M. Zupančič* (Slovenia) and *Judge Egidijus Kūris* (Lithuania) served on boards of their national OSF foundations in the 1990s; *Judge Julia Laffranque* (Estonia) was on the executive council of an OSF-funded program in the early 2000s; *Judge András Sajó* (Hungary) not only co-founded Central European University (an OSF-endowed institution) but also sat on

OSF's New York–based Justice Initiative board (2001–2007); *Judge Yonko Grozev* (Bulgaria) was a board member of OSF's Sofia branch and of OSJI. These judges' careers illustrate a pipeline from Soros-backed civil society into the ranks of the Court. Ethically, the concern is that a judge might be sympathetic to OSF-supported causes or even acquainted with OSF-funded litigants. The ECHR's Code of Judicial Ethics, updated in 2021, now explicitly requires judges to be free from influence of any "organization" or "private entity" and avoid situations that adversely affect public confidence in their independence. An OSF-linked judge hearing a case that an OSF grantee is bringing could present exactly the appearance of partiality that such ethical rules guard against. The Pinochet precedent in UK law (where a judge's undisclosed link to an NGO intervenor led to disqualification) looms large as an analogy: by that standard, a judge's past leadership in OSF should be disclosed and likely result in recusal if OSF or its proxies are involved in a case.

- Helsinki Committees and Human Rights Foundations: This is a network of NGOs originally formed to monitor state compliance with the Helsinki Accords. Seven ECHR judges had associations here. Notably, *Judge Yonko Grozev* co-founded the Bulgarian Helsinki Committee, and *Judge Zdravka Kalaydjieva* (also from Bulgaria) was a member of that same NGO's board. *Judge Ganna Yudkivska* (Ukraine) attended training events of the Ukrainian Helsinki Human Rights Union and even represented that NGO in court proceedings before becoming a judge. Other judges (e.g. *Lech Garlicki* of Poland, *András Karakaş* of Turkey, *Ján Šikuta* of Slovakia) participated in Helsinki Committee programs or similar civil society "Helsinki" initiatives. These ties often reflect human-rights activism in post-communist countries, where working with a Helsinki Committee was a primary way to defend rights in the 1990s–2000s. While that experience undoubtedly gave those jurists valuable expertise, it also means that as judges they might face their former NGOs in court. For example, Judge Yudkivska in 2020 sat in seven cases involving Helsinki Committees as parties or interveners. From a legal-ethical perspective, such situations test the impartiality principle: Can a judge impartially judge a case if one side is championed by an organization she once served? The Bangalore Principles of Judicial Conduct (an international standard) would advise recusal whenever a judge's prior relationship creates a reasonable perception of bias. The ECHR's own Rule 28 (on withdrawal) has been criticized for not explicitly covering these scenarios – something now under review by the Court's Committee on Working Methods.
- International Commission of Jurists (ICJ): Five judges had roles in this venerable NGO. For instance, *Judge Iulia Motoc* (Romania) was a member of the ICJ's Executive Committee until 2013, *Judge Ineta Ziemele* (Latvia) co-founded the Latvian ICJ section in the 1990s, and *Judge Paulo Pinto de Albuquerque* (Portugal) was active in the Portuguese ICJ group (Law and Justice). The ICJ often intervenes as a third party in major human rights cases. While the ICJ positions itself as a neutral legal expert voice, the ECLJ report counts it as an interested NGO for conflict-of-interest purposes. Ethically, a prior leadership role in the ICJ might warrant recusal if the ICJ submits an amicus brief in a case. The principle of equality of arms (fair balance between parties) is implicated here – if a judge has a past alliance with an NGO intervening on one side, it could tilt the perceived balance of the hearing.
- Amnesty International: Three judges had ties to Amnesty. *Judge Pinto de Albuquerque*'s service on Amnesty Portugal's board (ending just before he joined the ECHR in 2011) is one example. *Judge Šikuta* (Slovakia) had unspecified links noted in his CV, and *Judge Gabriele Felici* (San Marino) worked in an Amnesty human rights program in the 1990s. Amnesty frequently litigates and intervenes at the ECHR,

often on issues like torture, free speech, or asylum. The ethical standard at stake is again objective impartiality: Even if a judge's Amnesty involvement was years ago, should that judge sit on a case where Amnesty is an active participant? The report flags at least two instances where Judge Pinto de Albuquerque heard cases involving Amnesty (once with Amnesty as an applicant, once as intervener). Given that, during the *Pinochet* case, a far more tangential Amnesty connection (a judge's wife was an Amnesty volunteer) led to disqualification, it underscores how *stringent* conflict rules typically are in national systems. The ECHR's handling of such scenarios had been comparatively lax, which is what the report seeks to change.

- Human Rights Watch (HRW): One judge, *Judge Darian Pavli* from Albania, worked for HRW as a researcher (2001–2003). HRW's involvement in ECHR cases is occasional (often as an intervener on issues like media freedom or torture). While only one judge is noted, the principle remains: a judge with an HRW background should be cautious in cases where HRW is advocating, to uphold the appearance of neutrality.
- Interights: This now-defunct NGO was once a major public interest litigation outfit supporting cases at the ECHR. The report notes one judge, *Judge Tim Eicke* (UK), who sat on Interights' board. Indeed, Mr. Eicke was a trustee of Interights for many years, reflecting his involvement in strategic litigation prior to his judicial appointment. Interights itself intervened in numerous Strasbourg cases on a range of rights issues until it closed around 2014. The ethical consideration is similar: had Interights still been active or its legacy cases still ongoing while Judge Eicke was on the bench, a recusal might be expected. More generally, this example shows that not only judges from the former Eastern bloc, but even those from Western Europe (like the UK) can come from an NGO advocacy background.
- AIRE Centre: One judge was linked to the AIRE Centre, which specializes in European law advice and often submits briefs in immigration, trafficking, and family life cases. The report doesn't name the judge here, but it highlights that even a single judge-NGO link is noteworthy. The AIRE Centre's interventions are usually seen as providing legal analysis. Yet, from a conflict-of-interest standpoint, if a judge had been on AIRE's staff or board, it would be prudent for that judge to step aside when AIRE intervenes – again to avoid any perception of bias.

In outlining these affiliations, it's clear the nature of the relationships varies: some judges were founders or leaders of NGOs (deep involvement), others were occasional consultants or members (looser ties). The report tends to treat them collectively as "former officials or collaborators," which has drawn some criticism (for possibly overstating minor connections). Nonetheless, the legal and ethical standards implicated are consistent: the Bangalore Principles, Council of Europe judicial ethics guidelines, and general principles of natural justice all demand that *judges must not adjudicate cases where their impartiality can reasonably be doubted*. That includes situations where a judge has a personal or professional connection to a party or an entity closely involved in the case. The ECHR's own precedent holds that even a legitimate doubt about a judge's impartiality can undermine a fair trial. Hence, if a judge spent a significant part of his career advocating for, say, Amnesty International's positions, and now Amnesty is before that judge in a case, the safe course to maintain public confidence would be for the judge to recuse. The ECLJ report essentially finds that this standard was not being systematically observed in Strasbourg, due to both cultural and procedural gaps.

Credibility and Bias Analysis of the Report

The publication of Puppinck's report sparked debate over its credibility and the motives behind it. On one hand, the report is factual in that it compiles publicly verifiable information – it names judges, their past NGO roles, and specific case dockets, all of which can be cross-checked. Notably, even critics acknowledge that the empirical data is largely accurate. Indeed, according to a *Le Monde* report, the ECHR itself privately "noted the accuracy of the facts" in the ECLJ study. There has been no serious refutation that Judge X worked for NGO Y (these are matters of public record) or that certain judges sat on cases involving their former NGOs. This lends a baseline of credibility to the report's descriptive component.

However, the interpretation and implications drawn from those facts have been more controversial. A number of scholars and observers have criticized the report as politically biased or overblown. For example, Professor Martin Scheinin (a renowned human rights jurist) responded in an EJIL:Talk! commentary, characterizing Puppinck's findings as "rather trivial" – namely, that of course many ECHR judges have backgrounds in human rights NGOs, since that is a common career path in the field. Scheinin argued that the *mere existence* of such links does not prove any actual misconduct or undue influence on the Court. He pointedly wrote that Puppinck's blog post launching the report was "not really a result of academic research, nor does it manage to identify an actual problem". From this perspective, the ECLJ report is accused of conflating correlation with causation: yes, judges and NGOs are interconnected in the human rights world, but the report offers no evidence that these judges ruled partially *because* of their past affiliations. In short, critics say impartiality should be assessed by a judge's conduct and decisions, not their résumé.

Potential biases of the ECLJ: It is also important to consider the source. The ECLJ, despite its official-sounding name, is an NGO with a distinct ideological profile. It is affiliated with the American Center for Law and Justice (ACLJ) – a conservative Christian legal advocacy group – and the ECLJ's agenda often includes opposition to abortion, support for religious conservatives, and skepticism of "globalist" influences. The ECLJ's own mission statement references "the spiritual and moral values which are the common heritage of European peoples", indicating a traditionalist outlook. Consequently, some observers see the report as motivated by a desire to "moralize" or rein in a Court perceived as too liberal. Academic analyses situate the ECLJ report in a broader trend of conservative actors pushing back against what they view as liberal domination of international human rights bodies. For instance, a recent study on conservative litigation strategies at the ECHR notes how groups like the ECLJ seek to expose alleged biases and advocate reforms to align the Court with their values. From this angle, the report's focus on Soros-funded NGOs and its resonance with talking points of right-wing politicians (see below) suggest that the report may have an agenda beyond pure institutional improvement. It arguably targets judges seen as "activists" (who often, in ECLJ's view, advance progressive causes such as LGBTQ rights or expansive abortion rights via the Court) in order to delegitimize certain ECHR judgments as biased.

In terms of sources and methodology, while the report uses reliable data, critics highlight what's *omitted*. The analysis zeroes in on NGOs of a certain stripe (human-rights NGOs often funded by liberal philanthropies) but does not examine other possible influences on judges. For example, many judges come from government service or political careers – could they be biased toward their governments? (The report briefly contrasts NGO-career judges with former civil-servant judges, suggesting the latter pose fewer impartiality issues.) Nor does the report consider judges' ties to academia or other networks. By selecting only one type of affiliation to scrutinize, the report displays a confirmation bias consistent with ECLJ's institutional viewpoint (i.e. skepticism of civil society influence). Additionally, some

affiliations counted as "links" might be arguable – e.g. attending a training or writing an article for an NGO does not necessarily equate to loyalty to that NGO. The report's broad definition of "collaborator" arguably casts the net wide, which can inflate the number of judges portrayed as conflict-prone.

Another aspect questioned is the absence of case outcome analysis. The report does not demonstrate that judges with NGO backgrounds actually ruled in favor of those NGOs when hearing related cases. It identifies their presence on the bench, but stops short of saying those judges' votes or opinions were biased. Without such evidence, some argue the report implies wrongdoing without proof. The ECLJ might counter that even the appearance of potential bias is problematic enough (and indeed impartiality rules focus on appearances). Still, to academics and practitioners, *impartiality* is ultimately shown in decision-making. On that score, the report is silent. This has led to criticisms that the ECLJ's work was more of a political broadside than a rigorous study on judicial behavior.

To illustrate, ECHR President Robert Spano (who succeeded Sicilianos in 2020) explicitly refuted the notion that NGO-linked judges had compromised the Court. In a late 2020 exchange with parliamentarians, Spano stated: *"There is no allegation which is credible in our view on any influence by non-governmental organizations on the work of this Court"*. He defended judges' prior NGO experience as part of the "diversity of background" that enriches the bench, and emphasized that PACE had vetted and elected these individuals with full knowledge of their careers. Spano's stance – essentially that professional pedigree does not equal bias – aligns with the many in the human rights community who saw the ECLJ report as overblown. In his view, having NGO experience is no more disqualifying than having been a prosecutor, professor, or government lawyer; what matters is that once on the bench, judges are independent and oath-bound to impartiality.

The credibility of the report's inferences has also been questioned by pointing out that the ECHR's case allocation is largely random and that panels are multinational, making a concerted influence by one judge difficult. Moreover, judges swear an oath of impartiality and, anecdotal evidence suggests, often rule contrary to the positions of their former employers. Thus, some legal experts consider the ECLJ's conclusions a stretch, driven by an assumption of bad faith that isn't substantiated. As one commentator summarized, the report "follows well-known conspiracy narratives" by insinuating a *hidden hand* (Soros/NGOs) guiding the Court, without showing an actual causal link.

In sum, the credibility of Puppinck's report is a tale of two halves: the data collection is largely valid and sheds light on a real phenomenon (the NGO–judge revolving door), but the analytical framing is disputed. The report's tone and conclusions reflect the biases of its authors, affiliated with a conservative advocacy organization. Readers must therefore parse the findings with caution, distinguishing between the concrete facts presented and the normative judgments (e.g. that having been an "activist" inherently compromises one's ability to judge fairly) which remain unproven. The truth likely lies somewhere in between – the report raises legitimate questions about transparency and recusal, even as it arguably overstates the problem and does so with a particular ideological bent.

Reception in Academic Circles

The scholarly reception of the ECLJ report has been largely critical of its implications, even if appreciative of the transparency it promotes. Beyond Martin Scheinin's rebuke noted above, other academics have weighed in:

- Laurence Burgorgue-Larsen, a respected professor of international law, wrote a commentary (in French) addressing the "shift" in discourse around the ECHR. She reportedly viewed the ECLJ report as part of an alarming trend of undermining judicial authority under the guise of attacking bias. While her full analysis is beyond our scope here, it is cited in ECLJ's own follow-up publications as a significant reaction. Burgorgue-Larsen has elsewhere highlighted the positive role NGOs play in the Strasbourg system (e.g. as amicus curiae informing the Court) and cautioned against painting those interactions as nefarious. This suggests that academics see value in civil society engagement with the Court and worry that the report's narrative could chill that relationship or provide excuses for autocratic governments to dismiss ECHR judgments.
- Strasbourg observers and legal blog commentators: On blogs like *EJIL: Talk!* and others, experts pointed out that the ECHR is inherently a small world – many top human rights lawyers will have either worked for NGOs or argued cases before eventually donning judicial robes. Rather than a conspiracy, they view it as a natural overlap in a specialized field. One analysis noted that if anything, the presence of former NGO litigators on the bench can improve the quality of deliberations, as these judges bring practical rights-protection experience. Scholarly critique often emphasized that no evidence was shown of bias in case outcomes, and that recusal decisions (or lack thereof) by judges like Grozev were made in line with then-existing rules (which left much to judges' own judgment).
- Some academics, however, did see merit in discussing conflict-of-interest rules. A few law review articles and conference panels after 2020 touched on whether the ECHR's ethical guidelines needed strengthening. In this sense, the ECLJ report succeeded in putting the issue on the agenda. Scholars of international judicial ethics have compared practices across courts (e.g. the International Court of Justice's strict recusal norms versus the ECHR's relatively informal approach) and suggested that Strasbourg could adopt best practices to avoid even potential conflicts. So, while rejecting any insinuation of actual bias, academics could still agree that formalizing recusal procedures and requiring disclosures would be prudent measures to bolster the Court's reputation.

Overall, the tone in academic circles has been to defend the integrity of the ECHR and its judges against what was seen as an ideologically driven attack, while acknowledging that the report raised *some valid questions* about transparency. Importantly, no major scholarly work emerged validating the idea of a "captured" court; instead, the consensus remained that the ECHR's judgments during 2009–2019 do not exhibit a pro-NGO bias that would undermine their legitimacy. If anything, some note, the Court often rules against NGO-supported claims or balances them with state interests, indicating judges are *not* simply doing the bidding of their former employers.

Reception in Legal and Political Circles

In legal circles – including the ECHR itself, the Council of Europe bodies, and national judicial systems – the report's reception was mixed and often divided along political lines.

ECHR and Council of Europe Response: Officially, the European Court of Human Rights did not issue a public response to the ECLJ report. As mentioned, *Le Monde* reported that the revelations "angered" the Court internally, but the Court chose not to engage in a public spat. However, in behind-closed-doors settings, the issue was raised. At an April 2020 Committee of Ministers meeting (with ambassadors of member states), ECHR President Linos-Alexandre Sicilianos was questioned by the Russian representative (echoed by Turkey) about the report. Sicilianos did not dispute the factual basis but diplomatically noted that states bear responsibility for nominating such judges (implying the Court gets the judges that national processes send up). He also tried to put the numbers in perspective – the Court handles thousands of cases, so the identified 88 conflict cases were a tiny fraction of the whole. His successor Robert Spano's statements later that year (quoted earlier) essentially dismissed the report's allegations as not "credible". Spano shifted focus back onto PACE's role in electing judges and asserted his confidence in his colleagues' integrity. Notably, Spano *did not explicitly address why judges had not been recusing themselves* in NGO-related cases, which the ECLJ later pointed out. In sum, the Court's leadership took a stance of public reassurance – insisting there was no actual influence of NGOs on judicial decision-making – while quietly the institution moved to tighten its rules (discussed below in "Institutional Implications").

Political Circles and Media: The report made far more waves in political and media arenas, often polarizing opinion:

- Politicians on the right and Eurosceptic spectrum lauded the report and seized on its findings. In France, for instance, figures like Marine Le Pen (far-right RN leader) and several conservative parliamentarians publicly called out the ECHR for being "infiltrated" by Soros-linked activists. Similar reactions came from politicians in Eastern Europe who are critical of supranational institutions. The report was touted as evidence that the ECHR's judgments – especially those expanding liberal rights or ruling against nationalist governments – should be viewed with suspicion due to alleged partiality. Media outlets with a nationalist or conservative bent across Europe ran headlines such as "European Court judges on Soros' payroll" and "The ECHR is polluted by Soros, disobey it" (as one Italian blog referencing a Le Pen quote put it). This alignment of the report with anti-ECHR rhetoric was troubling to many, as it played into ongoing narratives used by illiberal regimes to deflect Strasbourg's human rights criticisms. For example, the Russian government – then still a member of the Council of Europe – officially cited the report to condemn "hidden influence" of Western NGOs on the Court, claiming it compromised fairness. Russia suggested that addressing these issues should be part of ECHR reform efforts, likely as a way to bolster its own longstanding critique of ECHR judgments it disliked. Similarly, in Bulgaria, the then-Minister of Justice Danail Kirilov welcomed the report; he even mused that the Bulgarian judge (Grozev) could be removed for conflict of interest – a statement that drew significant attention. (Ironically, Kirilov himself resigned not long after, amid unrelated controversies.)
- On the other hand, centrist and liberal politicians, and EU officials, defended the ECHR. Within the European Union, the report did not find a sympathetic echo. Members of the European Parliament asked the European Commission for its view, to which Commission Vice-President Věra Jourová responded that the Commission "has no doubt as to the integrity and independence" of the ECHR. When pressed, the Council of the EU (representing member states) tersely said it had no comment on "an NGO report". In fact, Commissioners Jourová and Johannes Hahn went out of their way to show support for Open Society values, even being photographed with George

Soros around that time and affirming shared goals. This was highlighted by ECLJ as evidence of bias, but to most EU observers it signaled that Brussels wasn't persuaded the ECHR had a problem – if anything, EU institutions doubled down on backing the Court's impartiality. Some national governments gave similar replies when questioned domestically. For instance, in France and Switzerland, lawmakers asked their justice ministries about the report; the official responses were essentially that the ECHR judge selection process is known and transparent, and that having civil society experience can be a positive qualification. The Swiss Federal Council's answer notably failed to acknowledge any conflict issue and instead "considered it beneficial that some [ECHR judges] come from NGOs", reflecting a view that practical rights work is an asset, not a disqualifier.

- Media aligned with liberal viewpoints often framed the ECLJ report itself as the story – i.e. exposing who was behind it. An investigation by *OpenDemocracy* (a liberal media platform) drew attention to the funding of groups like ECLJ by American Christian-right donors, suggesting the report was part of a transatlantic conservative campaign against progressive norms. Indeed, *Time Magazine* and *Euronews* were among outlets that, in coordination with OpenDemocracy, reported on how US conservative NGOs (linked to the Trump administration) poured money into Europe – with the ECLJ's projects implicitly among the outcomes. These pieces cast Puppinck's initiative as an ideologically driven effort to challenge the ECHR's authority, rather than an impartial call for reform. The fact that ECLJ's narrative found enthusiastic audiences in illiberal governments and far-right circles further colored liberal media's skepticism of it.

In essence, the political reception bifurcated: critics of the ECHR amplified the report as vindication of their claims that the Court is biased or "politicized," whereas supporters of the ECHR dismissed it as a smear coming from exactly those forces who have an interest in weakening the Court. This dynamic is important because it means any discussion of reforming ECHR procedures (e.g., tightening conflict-of-interest rules) became entangled with political agendas. Some at the Council of Europe likely feared that admitting any problem could embolden the wrong actors (e.g. authoritarian-leaning governments) in undermining the Court's legitimacy. Therefore, official responses were cautious.

Institutional Implications and Reforms

Despite the controversy, the ECLJ report did precipitate tangible institutional reflection and changes regarding the ECHR's functioning. Several developments can be traced to the debate it ignited:

- Parliamentary Assembly Inquiries: As noted, three members of PACE submitted formal written questions to the Committee of Ministers in 2020, explicitly citing the ECLJ findings. These questions – from representatives of Portugal, Montenegro, and Hungary – asked what would be done to remedy conflicts of interest and to restore the Court's integrity. The fact that these came from a cross-section of political groups (including the centre-right EPP and a non-aligned member) indicated a level of concern transcending one faction. The Committee of Ministers (the CoE's executive body) took these queries seriously, although initially it struggled to formulate a response. According to ECLJ's one-year overview, the 47 ambassadors in the Committee of Ministers could not easily agree on a common line and delayed their response beyond the usual 3-month window. Eventually, in April 2021, the Committee

of Ministers did reply (to a consolidated set of questions) acknowledging the need to ensure the "highest standards" of independence and impartiality for ECHR judges. The reply did not dispute that conflicts of interest can arise; it diplomatically pointed to existing guidelines and the ongoing evaluation of the selection process. This non-denial was notable: it signaled that member states recognized the legitimacy of the issue, even if couched in careful language. By July 2021, the Committee of Ministers further informed PACE that the ECHR's internal Committee on Working Methods was reviewing Rule 28 of the Rules of Court (on judges' inability to sit and withdrawal). Rule 28 at that time had been criticized for lacking a clear recusal mechanism. The review of this rule is an institutional step clearly connected to the concerns raised (indeed, one of the PACE questions specifically asked about introducing a recusal procedure).

- Updated Judicial Ethics Code: In June 2021, the ECHR plenary adopted a revised Resolution on Judicial Ethics. This revision has been widely interpreted as a response to the spotlight on potential conflicts. The new text strengthened obligations of integrity, independence, and impartiality. For the first time, it explicitly states that judges must be independent of any "institution, including any organization or private entity". It also says judges shall avoid any situation that might interfere with their judicial function or affect public confidence in their independence. On impartiality, it made explicit that judges must not be involved in dealing with a case in which they have a personal interest and must refrain from any activity or association that could undermine public confidence in their impartiality. Compared to the previous code (which was more general), this is a noticeable tightening. The mention of "organization" and "private entity" is widely seen as an allusion to NGOs and similar bodies, effectively echoing the ECLJ's critique. The timing and content align with the ECLJ's call, even if the Court would not publicly credit the ECLJ. In practice, this code gives judges clearer guidance: if you were heavily involved with an NGO, you should steer clear of cases where that NGO is active, or anything that could be seen as undue influence. It's a prophylactic norm to safeguard the Court's reputation.
- Review of Judges' Selection and Status: Independently of the ECLJ (but given new urgency by the issue), the Council of Europe's Committee of Ministers had in November 2020 tasked its legal steering committee (CDDH) to "evaluate by end of 2024 the effectiveness of the current system for the selection and election of the Court's judges" and ways to add safeguards for independence and impartiality. By mid-2022, a special Drafting Group on issues relating to ECHR judges (DH-SYSC-JC) was convened to carry out this mandat. This process will examine everything from how national lists of candidates are composed, to PACE's vetting, to conditions of service for judges. While not a direct result of the ECLJ report (it was part of ongoing reform efforts), the explicit mention of evaluating impartiality safeguards shows the overlap. The ECLJ, for its part, submitted a document of recommendations to this drafting group – essentially reiterating its proposals like declarations of interest, stricter vetting of NGO links, and so forth. Thus, the report has fed into the formal discourse on how to refine selection criteria (e.g., perhaps giving preference to candidates with prior judicial experience, to avoid "activist" profiles).
- Petition and PACE Resolution Efforts: The ECLJ gathered over 50,000 signatures on its petition *"Putting an end to conflicts of interest at the ECHR"*, which was submitted to PACE in October 2022. Under PACE's rules, this petition sought to have the Assembly put the topic on its agenda for debate. In late 2022, supportive parliamentarians tabled a motion for a PACE resolution titled "The serious problem of conflicts of interest at the European Court of Human Rights" (Doc. 15661). This

indicates that there remains momentum within PACE to formally address the matter, potentially through a report by the Assembly's Legal Affairs committee. As of this analysis, it's not clear if that motion has advanced to a full resolution, but its mere introduction shows that institutional follow-up was catalyzed by the report and its ensuing conversation.

- Changes in judicial composition? An interesting observation: ECLJ noted that in 2020, four new judges were elected to the Court and "none... is significantly linked to the seven NGOs" while in the same year, two judges who had NGO ties left the bench. This dropped the number of NGO-affiliated judges then serving from 13 to 11. While it's hard to draw conclusions from a small sample, ECLJ implies this might reflect states responding to the controversy by nominating less NGO-connected candidates. However, it also pointed out that in 2021 Belgium nominated a candidate who was a board member of OSJI, so any trend is not uniform. Nevertheless, awareness of the issue in national capitals (who choose the candidates) likely increased. In some countries, it might have become a political point: for example, if a government is Euroskeptic, it might deliberately avoid nominating someone from NGOs to sidestep this criticism; conversely, a pro-human rights government might double-down and defiantly nominate a well-qualified NGO veteran. Time will tell if the overall composition of judges shifts to include more career judges and fewer activists.

In terms of functioning of the Court, if the recommended changes take root, we could see a more formalized process where before a case hearing, judges' conflicts are screened and parties are informed of the bench in advance. The absence of such a challenge procedure was an anomaly – many national systems allow parties to object to a judge for bias. The Court's move to consider updating its rules suggests it will close that gap, bringing Strasbourg in line with best practices. Importantly, this is not only about NGO links; it covers any conflict (e.g. familial or financial interests too). In that sense, the controversy has acted as a catalyst for broad ethical reform at the ECHR, which is a positive institutional implication.

One potential downside is that the Court may become more cautious in engaging with NGOs publicly, so as not to feed perceptions of favoritism. The ECLJ report arguably contributed to a narrative (however disputed) that could make the Court's relationship with civil society a bit more arms-length. For instance, private donors like OSF had supported some Council of Europe activities in the past (the report flagged that OSF and even the Gates Foundation had contributed funds to CoE initiatives). After the uproar, there might be reluctance to accept such support or to involve NGO experts informally in judge trainings, etc. The Council of Europe did face questions about accepting private donations, leading a PACE member to ask for transparency on all such funding. While not directly about judges, it's an offshoot issue: ensuring the appearance of independence from wealthy private actors. So, institutionally, the CoE may tighten rules on financing and partnerships to avoid perceptions of influence-buying.

Broader Implications for the ECHR

The ECLJ report and its aftermath touch on a fundamental tension in the ECHR's identity: Is the Court a purely judicial, insulated body or is it part of a larger human rights movement with porous boundaries to advocacy groups? Traditionally, the ECHR has been relatively open to input from civil society (through third-party interventions, for example), and many of its judges and lawyers come from the human rights bar. This has generally been seen as a strength, ensuring the Court stays attuned to real-world rights issues and evolving norms.

However, the flipside – as the report highlights – is the risk of *homogeneity* and *groupthink*. If too many judges share similar professional backgrounds (e.g. working for liberal NGOs), there might be a lack of ideological diversity on the bench. Puppinck's report implicitly raises this point: he argues for more judges who are former high-level domestic judges or at least not all career activists. Greater diversity in legal philosophy could bolster the Court's acceptance among all member states, not just those of a liberal bent. This touches on an ongoing debate about the Court's legitimacy in more traditional or conservative societies.

Therefore, one lasting implication is a renewed discussion about the profile of ECHR judges. The Convention system relies on each member state to put forward three candidates (often requiring a mix of genders and qualifications). If states heed the call to avoid "activists", they might nominate more candidates from judicial ranks or academia. This could slightly change the Court's internal dynamics and its tilt on certain jurisprudential issues. Whether that is good or bad is subjective: from the ECLJ's perspective it would curb what they see as an overly activist Court; from the perspective of human rights NGOs, it might weaken the Court's boldness in protecting rights.

Another implication is the emphasis on impartiality as a cornerstone of legitimacy. The incident underscored that *perception matters*. Even if one believes the judges were not actually biased, the fact that a narrative could take hold of a "Soros-captured court" shows a vulnerability. The ECHR (and supporters of the human rights system) will likely be more proactive in countering perceptions of bias. This might involve better communication – e.g. publishing judges' declarations of interest (should those be implemented) so that all is transparent, or clarifying when judges recuse and why. Already, since 2020, observers noted an uptick in instances of judges withdrawing from cases where there could be a perceived conflict (for example, Judge Grozev did recuse in several NGO-related cases once the scrutiny was high). The Court may also list on its website any withdrawals which are due to conflicts, something not systematically done before. By normalizing recusal in appropriate cases, the Court can actually strengthen confidence in the impartiality of those cases that do proceed.

Finally, the saga has implications for the relationship between the ECHR and member states. By involving PACE and Committee of Ministers, the matter reinforced that the Convention system has checks and balances: the judiciary is independent, but the member states collectively can demand accountability if something seems amiss. In this case, it did not result in a confrontation – instead, it spurred cooperative efforts to refine rules. This is a healthy sign of the system's self-correcting capacity. It shows that concerns – even those raised by an NGO with a particular agenda – can be channeled into institutional review rather than political showdown. For example, rather than a country refusing to abide by a judgment citing a judge's NGO link, the issue was brought to the forum of discussion and policy (PACE and CDDH). If the reforms are successful, future potential conflicts may be resolved quietly through recusal rather than becoming causes célèbres.

In conclusion, Grégor Puppinck's "NGOs and Judges of the ECHR" report has had a significant ripple effect. It shed light on a real phenomenon of interconnection between judges and NGOs, sparking debate on judicial ethics at the international level. While the report itself may be colored by the biases of its authors and was met with justified criticism for lack of nuance, it nonetheless prompted a valuable re-examination of how the ECHR can maintain the highest standards of impartiality. The Court and the Council of Europe have responded with steps that acknowledge the importance of avoiding even the appearance of conflicts of

interest. The scholarly and political reception shows a deep split – with many defending the Court's integrity and others eagerly using the report to attack the Court. Going forward, much depends on implementation of reforms: clearer rules on recusals, transparency of judges' past affiliations, and perhaps a broader range of professional backgrounds on the bench. These measures can reinforce trust in the ECHR at a time when it faces other external challenges. In that sense, the controversy, contentious though it was, might ultimately yield a stronger institution that continues to uphold human rights with both expertise and impartiality.

Sources

- Puppinck, Grégor. *"NGOs and the Judges of the ECHR, 2009–2019."* European Centre for Law and Justice, 2020 (2nd ed. revised Mar. 2020). [Report text and summary].
- ECLJ. *"ECHR: Conflicts of Interest Between Judges and NGOs."* ECLJ.org, Feb. 2020. [Summary article announcing the report].
- ECLJ. *"One year after the report on NGOs and Judges of the ECHR: Overview."* ECLJ.org, Feb. 2021. [Follow-up analysis of reactions and developments].
- ECLJ. *"Improving the impartiality of the European Court."* ECLJ.org, Oct. 2022. [Recommendations and chronology of institutional responses].
- Parliamentary Assembly of the Council of Europe – Written Question, Doc. 15095, Feb. 2020 (Isabel Meirelles): *"How to remedy potential conflicts of interest of judges at the European Court of Human Rights?"* [Excerpt].
- Parliamentary Assembly of the Council of Europe – Written Question, Doc. 15098, Mar. 2020 (Milan Knežević): *"Restoring the integrity of the European Court of Human Rights."* [Referenced in text]77.
- Parliamentary Assembly of the Council of Europe – Written Question, Doc. 15129, June 2020 (Barna Zsigmond): *"The systemic problem of conflicts of interests between NGOs and judges of the European Court of Human Rights."* [Referenced in text].
- Sicilianos, Linos-Alexandre (President of the ECHR). Remarks to Committee of Ministers, 22 April 2020. [As reported in ECLJ overview].
- Spano, Robert (President of the ECHR). Remarks to PACE, 20 Nov. 2020. [Quoted in ECLJ overview].
- Scheinin, Martin. *"NGOs and ECtHR Judges: A Clarification."* EJIL: Talk! blog, 13 Mar. 2020. [Critique of ECLJ report].
- Burgorgue-Larsen, Laurence. *« Le basculement… »* (2020 commentary on ECLJ report).
- Additional references are drawn from the ECLJ report's Annexes (providing biographical details of judges' NGO links) and the ECLJ's press releases, as well as news coverage compiled in ECLJ's press review. These sources provide factual underpinning for the descriptions of judges' affiliations and the public/political reactions.

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Alexandra Hunedus “Constitutional Lawyers and the Inter-American Court’s Varied Authority”

Thesis and Central Arguments

Alexandra Huneeus’s article argues that the varying authority of the Inter-American Court of Human Rights (IACtHR) across Latin American countries can be explained largely by differences in domestic constitutional law practice and politics. In particular, Huneeus demonstrates that for the IACtHR’s influence to extend beyond simple case-by-case compliance, two key conditions must be met:

1. Presence of receptive constitutional lawyers: a community of jurists – including scholars, judges, and public-interest lawyers – who embrace a vision of constitutional law that incorporates international human rights law as an internal part of the domestic legal order. These lawyers subscribe to liberal, rights-forward constitutional theories (often termed *“neoconstitutionalism”*) that view international human rights norms as binding higher-law standards within national law.
2. Political support for those ideas: those legal actors must attain political influence by allying with national reformers in government. In other words, it’s not enough for progressive ideas to exist in academia – they must be backed by political power. Lawyers need to forge alliances with legislators, executives, or constitutional drafters who will adopt this vision of law as part of a broader project of reform. Where such lawyer–reformer coalitions succeed (for example, during constitution-making or major legal reforms), the IACtHR’s judgments can become embedded in domestic law beyond the immediate disputes. Where these coalitions fail – either because constitutional change is minimal (as in Chile) or takes a different ideological direction (as in Venezuela) – the Court’s authority remains limited to narrow case compliance.

Using these insights, Huneeus’s central argument is that the extent and form of the IACtHR’s authority is co-determined by domestic constitutional practices. In some states, IACtHR rulings are treated as law-like precedents that shape future behavior and even public policy, whereas in others the Court’s influence is confined to the specifics of each judgment. Throughout Latin America, the IACtHR’s authority thus takes on “different shapes depending in great part on national constitutional practices and constitutional politics”. For example, the article contrasts Colombia – where the Court’s decisions have broad, ongoing effects – with Chile and Venezuela, where the impact is much more restrained.

Structure of the Article

Huneeus develops her thesis through a logically structured analysis. After a brief Introduction (Part I) outlining the puzzle and argument, Part II provides background on the IACtHR’s

establishment and introduces the rise of *neoconstitutionalism* in Latin America as a theoretical lens. She explains how the Court first gained authority and posits the link between variations in that authority and domestic constitutional trends. The core of the article consists of three comparative case studies (Parts III, IV, V) focusing on Colombia, Chile, and Venezuela – countries that exhibit, respectively, extensive, intermediate, and narrow degrees of IACtHR authority. Each case study examines a key "constitutional moment" (Colombia's 1991 reform, Chile's 2005 reforms, and Venezuela's 1999 constitution) and the role domestic lawyers played in those moments. Huneeus then links those domestic developments to how the IACtHR's influence manifests in that country. She also considers alternative explanations in each case for why the Court's authority took its particular shape. Finally, the Conclusion (sometimes referred to as the final part) synthesizes the findings, discusses the broader implications for the Inter-American human rights system, and suggests directions for future research.

Theoretical Framework and Key Concepts

Huneeus's analysis is grounded in a blend of international law theory and sociological insights. A primary concept she draws on is the typology of international court authority developed by Karen Alter, Laurence Helfer, and Mikael Rask Madsen (editors of the same journal issue). According to this framework, an international court's authority can be classified in three ideal types:

- Narrow authority: the court's influence is limited to obtaining compliance in the specific cases it adjudicates (e.g. the state pays compensation or adjusts something for the individual litigants). Huneeus equates this to simple *judgment compliance*. Many countries exhibit only narrow authority – they comply with rulings case-by-case but do not treat the court's jurisprudence as broadly binding.
- Intermediate authority: the court's decisions sometimes prompt wider changes or are heeded by domestic officials beyond the immediate case. This arises when *"compliance partners,"* i.e. state officials with the power to implement rulings (such as legislators, administrators, or lower courts), voluntarily follow the court's standards in at least some instances. Here the international court has a moderate, issue-specific foothold in domestic law.
- Extensive authority: the rare scenario in which the international court consistently shapes law and politics on certain issues within a country. In this mode, the court's judgments serve as authoritative precedents or quasi-constitutional norms that domestic institutions regularly invoke. Huneeus cites Colombia as an example where the IACtHR achieved this "extensive" authority, meaning its rulings have "untethered" from individual disputes and taken on a life as general rules guiding future governance.

Another cornerstone of Huneeus's framework is the concept of neoconstitutionalism. In the article, *neoconstitutionalism* refers to a trend in Latin American legal thought that emerged with the wave of democratization and new constitutions in the late 20th century. This philosophy is described as a *"liberal vision of constitutional law"* that emphasizes strong judicial enforcement of fundamental rights, expansive interpretation of those rights (in a Dworkinian principled style), and the openness of the constitutional order to international human rights norms. In practical terms, neoconstitutionalist theorists argue that domestic constitutions should be read in harmony with international human rights treaties, and in case of any gap or conflict, the higher human rights standard should prevail. Huneeus notes that

such ideas gained currency across Latin America after the 1980s – evident in numerous new or amended constitutions that strengthened judiciaries and incorporated human rights language. This created a transnational network of like-minded lawyers (academics, judges, NGO litigators, etc.) who advocate for what is essentially a monist approach to human rights law, eroding the divide between national and international law. Crucially, these neoconstitutionalist ideas *"provide a platform for expanding the Inter-American Court's authority"*. In other words, if domestic actors believe international human rights law is part of their constitution, they are naturally inclined to treat IACtHR judgments as binding guidance for domestic courts and officials.

To connect legal ideas with real-world impact, Huneeus employs a sociological perspective inspired by scholars Yves Dezalay and Bryant Garth. Dezalay and Garth emphasize examining the interplay between the legal field and the political field – how legal professionals gain influence through political struggles and how legal reforms often accompany shifts in power. Huneeus applies this by investigating not just the content of neoconstitutionalist doctrines, but also how and when neoconstitutionalist lawyers managed to become influential in government reform processes. She posits that *only* when these lawyers had an opportunity to help build a new "constitutional order" (for example, by writing a new constitution or pushing major judicial reforms) did the IACtHR's authority greatly expand. If the legal intellectual movement remained isolated in academia or if political change took a different direction, the Court's authority stayed limited. This framework thus underlines an "epistemic community" effect: a community of constitutional jurists and judges sharing an interpretive vision can diffuse that vision into state institutions, thereby shaping the reception of international court rulings.

In sum, Huneeus's theoretical approach marries a law-and-society perspective with international law scholarship. She doesn't treat the IACtHR's authority as static or solely dependent on formal treaty commitments. Rather, she conceptualizes authority as a social and legal phenomenon – contingent on domestic legal culture, intellectual currents, and the alignments of political power. This approach is a departure from purely doctrinal analyses (which might only examine constitutional texts or court rulings in isolation). It broadens the analysis to consider how legal doctrines (like the status of treaties or the concept of a "constitutional block") are championed by certain actors and contested or embraced within national politics. By doing so, the article contributes a more dynamic theory of why international courts thrive in some national contexts and languish in others, a theory potentially applicable beyond Latin America to other human rights regimes.

Methodology and Comparative Approach

Huneeus uses a qualitative, comparative case study methodology to investigate her hypotheses. The research design is built around three country cases – Colombia, Chile, and Venezuela – selected for their contrasting levels of IACtHR authority (high, moderate, and low, respectively). This deliberate contrast allows for a form of controlled comparison: by examining nations within the same regional human rights system (all are subject to the IACtHR and share cultural/historical contexts to some extent) but with divergent outcomes, the study can tease out explanatory factors. Colombia, Chile, and Venezuela also each experienced significant constitutional turning points (in 1991, 2005, and 1999) that serve as focal events to analyze how international human rights law was either embedded or rejected in the evolving legal order.

For each case, Huneeus employs process-tracing to link the role of constitutional lawyers to the subsequent authority of the IACtHR. This involves a narrative analysis of historical sequences: she first "explores the role of neoconstitutionalist lawyers in recent constitutional change" in the country, and then "links the role played by these lawyers to the particular type of authority that the IACtHR exerts in [that] state.". By structuring each case study this way, the article consistently tests the idea that lawyer-driven constitutional incorporation of international norms leads to greater court authority. Importantly, Huneeus also considers alternative explanations for each country's outcome. For instance, she reflects on factors like the extent of democratic transition, the severity of past human rights violations, or the institutional strength of the judiciary as possible influences on compliance. However, through the comparative analysis, she argues that these factors alone are insufficient; it is the presence or absence of the neoconstitutionalist influence (and its political uptake) that most coherently explains the variance.

In terms of sources and evidence, the article draws on a combination of legal documents, secondary literature, and, implicitly, the author's expertise on the region. Huneeus cites national constitutions and constitutional court decisions (e.g. key rulings of the Colombian Constitutional Court, the text of Article 23 of the Venezuelan Constitution, etc.) to demonstrate how international law was given force (or not) domestically. She references IACtHR judgments (such as the *Atala Riffo* case or *Apitz Barbera* case) and states' reactions to them as empirical markers of the Court's authority in practice. Additionally, the article engages a wealth of scholarly works on Latin American legal development – for example, writings by Javier Couso on Chile's "judicialization of politics" and Manuel Gómez on Venezuelan legal practice, among many others. These sources provide historical context (such as the Chilean judiciary's record under Pinochet) and help substantiate claims about legal culture (like the formalist tradition in Chile or the politicization of Venezuela's judiciary). The study's methodological approach is thus interdisciplinary: it is grounded in legal analysis but uses political and sociological evidence to connect the dots between domestic change and international compliance.

Notably, Huneeus's research benefitted from support by a U.S. National Science Foundation grant, indicating that interviews or fieldwork may have informed parts of the study (though the article itself reads largely as an analysis of documents and literature). While the article does not have a standalone methodology section, its approach is evident in how each part is organized and the variety of sources cited. By the end, the comparative method allows Huneeus to generalize cautiously about the region: after examining the three primary cases, she briefly alludes to other countries like Mexico or the Dominican Republic to suggest her conclusions have wider resonance.

In summary, the methodology is a comparative socio-legal analysis. It leverages in-depth case knowledge to build an argument that is illustrative rather than statistical. The strength of this approach lies in providing a rich, contextual understanding of each country, showing how and why the IACtHR's authority took root or faltered. The trade-off is that the conclusions are drawn from a small N of cases – but those cases were carefully chosen for maximum insight into the phenomenon of interest.

Case Studies and Key Findings

Colombia: Neoconstitutionalism Entrenched – *Extensive* Court Authority

Colombia represents the paradigm of high IACtHR influence, rooted in a transformative constitutional moment. In the late 1980s, Colombia was plagued by intense internal conflict and institutional crisis. This turmoil catalyzed a broad-based movement for constitutional reform, culminating in the drafting of a new Constitution in 1991. Neoconstitutionalist lawyers played an important role in shaping the 1991 reform and its aftermath. A key figure was Manuel José Cepeda, a young Harvard-trained attorney who became a strategic adviser to President Barco and then to the Constituent Assembly. Cepeda and like-minded colleagues pushed to modernize Colombia's legal system by strengthening judicial review and integrating international human rights norms into domestic law.

The 1991 Constitution itself signaled a new openness: for example, it stated that international treaties ratified by Colombia have priority in domestic law (a provision that laid the groundwork for elevating human rights treaties). More importantly, the newly created Constitutional Court (Corte Constitucional) quickly interpreted the Constitution in a neoconstitutionalist fashion. In its first year, progressive judges on the Court issued landmark rulings declaring that ratified human rights treaties are directly binding in Colombia and even superior to ordinary legislation. In effect, the Court constructed the doctrine of a *"bloque de constitucionalidad"* (constitutional block), meaning the constitution incorporates international human rights law. Notably, the Constitutional Court was institutionally designed to be independent of the older Supreme Court, and it was staffed by jurists with strong academic credentials and global outlooks. Huneeus observes that the early Constitutional Court *"boasted Colombia's most internationalized law faculty"* – many judges and their clerks (auxiliary magistrates) had studied abroad in the United States or Europe and were eager to import international legal ideas. This cosmopolitan bench actively cited IACtHR precedents and treated the American Convention on Human Rights as an extension of the constitution.

Impact on the IACtHR's authority: Through these judicial and constitutional developments, Colombia essentially opened the door for the IACtHR to have an extensive authority domestically. Huneeus, citing Alter et al., notes that Colombia is one of the few countries where the IACtHR has achieved the "extensive" type of authority – that is, the Court "consistently shapes law and politics" on certain issues in Colombia. In practical terms, this means IACtHR judgments are not seen as foreign or optional; they are treated as binding guides by Colombian institutions. For example, the Colombian Constitutional Court regularly reviews national laws for compatibility with the American Convention on Human Rights as interpreted by the IACtHR. If a statute violates an IACtHR ruling or standard, the Court may strike it down, thus directly enforcing Inter-American jurisprudence. Furthermore, the influence permeates beyond the courtroom: Huneeus points out that actors across the political spectrum in Colombia invoke the IACtHR. During Colombia's recent peace negotiations (with the FARC guerrilla), both supporters and opponents of the peace deal cited IACtHR rulings in debates over how to handle crimes of the conflict. Even those skeptical of the peace terms (the *uribistas*) appealed to Inter-American legal standards to argue for stronger prosecution of war crimes, while others used those same standards to justify transitional justice measures. This illustrates how deeply the IACtHR's jurisprudence has penetrated Colombian legal consciousness – it frames options and arguments on major national issues.

Why did this happen in Colombia? Huneeus attributes Colombia's embrace of the IACtHR to the synergy of legal and political factors. Legally, the *neoconstitutionalist network* was unusually successful: Colombian scholars and jurist-reformers not only had innovative ideas but gained positions of power to implement them (in the Constitutional Court and in drafting the 1991 Constitution). Politically, Colombia in the 1990s had an incentive to welcome

international human rights scrutiny. The country was mired in civil strife and criticized for rampant human rights abuses. To bolster its international legitimacy, the Colombian government undertook what one scholar called *"almost compulsive ratification"* of human rights treaties. Indeed, Colombia became one of the states with the highest number of human rights treaties ratified. This was part of a deliberate strategy by the administration (especially under President Uribe later on) to project an image of strong adherence to human rights, even as it battled insurgents. Such a strategy made Colombia's political environment receptive to Inter-American norms: while the government sought international support by honoring human rights commitments on paper, the Constitutional Court gave those commitments teeth by enforcing them domestically. Huneeus notes that this combination – egregious rights problems on the ground, but an official policy to engage with international norms – created a "uniquely auspicious" context for neoconstitutionalism to take root. In short, Colombia's constitutional lawyers were both willing and able to leverage the IACtHR: they had a new legal framework that welcomed international law, and political actors tacitly supported this to legitimize the state.

The result, by Huneeus's assessment, is that Colombia now exemplifies a country where the IACtHR enjoys all three levels of authority – narrow (compliance in individual cases), intermediate (influence on certain policies), and extensive (integration into general legal doctrine). The Court's pronouncements can shape outcomes well beyond the original cases, effectively becoming part of Colombian constitutional jurisprudence. This case validates Huneeus's thesis: the practice of constitutional law (post-1991) in Colombia, driven by neoconstitutionalist jurists, expanded the IACtHR's reach far beyond what treaty obligations alone would predict.

Chile: Gradual Reform and Limited (Narrow/Intermediate) Authority

Chile provides a contrasting scenario – a country with a democratic transition and human rights challenges, yet the IACtHR's authority remained relatively restrained. One major reason lies in Chile's inherited constitutional framework and conservative legal culture after dictatorship. Chile's 1980 Constitution, imposed by General Pinochet's regime, was drafted with the intention of entrenching authoritarian principles and limiting future political change. It was enacted without broad democratic input and reflected the regime's distrust of liberal judicial power. Consequently, even after Chile returned to democracy in 1990, the country "labors under a constitution that was written to realize the project of a prior… authoritarian regime," as Huneeus observes. Furthermore, the Chilean judiciary emerged from the dictatorship era with a tarnished reputation – it had largely failed to oppose or remedy human rights abuses under Pinochet. Many judges had a traditional formalistic outlook, seeing their role as strictly applying legislation rather than invoking abstract rights or international law. An illustrative saying (cited by Huneeus via a Chilean scholar) likened introducing strong judicial review in that context to *"handing one's batterer a hammer"* – i.e. there was deep skepticism of empowering judges to make bold rights-based decisions given their past complicity. As a result, while other Latin American countries experienced a "rights revolution" in the 1990s, Chile's judicial transformation was so modest that one commentator called it *"the rights revolution that never was."*

Constitutional reform dynamics: Chile did make reforms to the 1980 Constitution, but much later and in a cautious, incremental fashion. The most significant update came in 2005, when a center-left coalition government negotiated a package of amendments to remove the constitution's most undemocratic provisions. These 2005 reforms eliminated the institution of

non-elected (appointed) senators, reduced the presidential term, and curtailed some executive powers, among other changes. While important for democratization, the 2005 reform was "not as far-reaching or rights-oriented" as other constitutional overhauls in the region. Notably, it did not strengthen the constitutional status of international human rights law or explicitly adopt a "constitutional block" doctrine. Huneeus emphasizes that the reform *"did not alter or further specify the status of international human rights law domestically."* Chile's constitution could be *interpreted* in a manner consistent with incorporating treaty law (and some jurists advocated for this), but that issue was essentially *off the table* during the 2005 negotiations. This indicates that the political elite's focus was on structural democratic fixes, not on empowering courts or integrating international norms.

Role of neoconstitutionalist lawyers: In Chile, the neoconstitutionalist movement had a much smaller footprint in actual governance during the key reform period. Huneeus notes that constitutional scholarship and advocacy in Chile lagged behind some neighbors in embracing Inter-American jurisprudence. By the 2000s, there certainly were Chilean academics engaged with neoconstitutionalist ideas (and interest in constitutional law was growing), but their influence on policy was limited. During the 2005 reform deliberations, for example, only one senator on the constitutional committee was a strong neoconstitutionalist who actively promoted the idea of giving human rights treaties constitutional rank. The rest of the committee and political leadership were less enthusiastic. In fact, at least one prominent legal advisor in Chile argued that IACtHR rulings should not be considered binding within Chile's legal system – perhaps acknowledging them as politically important but denying them direct legal effect. This skepticism at high levels meant that Chile did not formally empower its judges to use Inter-American law beyond what existing statutes allowed. After 2005, the Constitutional Tribunal (Chile's top constitutional review court) did gain a larger role because citizens could more easily challenge laws, so rights litigation increased. However, the judges appointed to the Tribunal were generally not members of the transnational liberal network; they tended to be more traditional jurists, and thus the Tribunal did not immediately become a vehicle for radical reinterpretation in line with IACtHR criteria.

Huneeus does point out that Chile's legal community has evolved over time. By the 2010s, virtually all major law schools in Chile offered courses in constitutional and international human rights law, and many Chilean jurists (especially younger ones) participated in regional scholarly networks. The status of constitutional law experts rose, and debates about constitutional change (including potentially drafting a new constitution) gathered steam, particularly under President Michelle Bachelet's second term (2014–2018). Thus, Chile may have been "catching up" to the neoconstitutionalist trend, albeit later than Colombia. But during the period Huneeus examines (through 2015–16), neoconstitutionalism had "less impact in the Chilean political order" and enjoyed a "less enthusiastic reception" among those in positions to reform the constitution. In short, the epistemic community existed but was weaker and had not (yet) captured the constitutional reform agenda.

Impact on IACtHR authority: Given the above, it is unsurprising that Chile exhibits primarily "narrow authority" for the IACtHR. Chile complies with most Inter-American Court judgments directed at it, but usually in a case-specific way. For example, if the IACtHR finds Chile violated rights in a particular case, the government will pay reparations or take some measures for that petitioner (Chile has, on the whole, a decent compliance record with monetary and individual remedies). What Chilean courts and institutions have generally *not* done is use those judgments to broadly overhaul laws or extend benefits to others not party to the case. However, Huneeus identifies signs of emerging "intermediate authority" in Chile.

One notable example is the response to the IACtHR's judgment in *Atala Riffo and Daughters v. Chile* (2012), a case where Chile was condemned for discriminating against a lesbian mother in a child custody dispute. Following that decision – which was a high-profile embarrassment for Chile's judiciary – the Chilean Congress passed comprehensive anti-discrimination legislation, known as the Zamudio Law. Importantly, this legislation was not explicitly mandated by the IACtHR (the Court typically orders remedies for the individual and sometimes general measures like training, but not the passage of a broad law). The fact that Chile's legislature took it upon itself to enact a new anti-discrimination framework *"even though the IACtHR had"* not specifically ordered such a law shows that international jurisprudence provided impetus for a wider policy reform. This is a classic instance of intermediate authority: a Court ruling resonated enough to spur domestic actors to go a step further, benefitting not just the original litigant but other vulnerable groups.

Apart from the Atala case, Chile's judiciary has slowly shown more engagement with IACtHR criteria in recent years (for example, in cases involving Pinochet-era amnesty for human rights offenders, Chilean courts have cited the Inter-American Court's stance that such amnesties are impermissible). Still, these shifts have been gradual and sometimes contentious, given the old guard of the judiciary. Huneeus describes Chile's overall constitutional politics as characterized by "gradual reform, presidential leadership, and strong party discipline, with little voice given to civil society". In that climate, transformative legal change comes slowly. Thus, as of the article's publication, the IACtHR's authority in Chile remained mostly narrow, with only occasional expansions toward intermediate authority. In the conclusion, Huneeus summarizes that Chile's IACtHR engagement consists of "narrow authority and, at times, intermediate authority." There was no evidence of *extensive* authority akin to Colombia – Chilean courts were not routinely invalidating laws for non-compliance with Inter-American standards, nor was IACtHR jurisprudence a staple of everyday constitutional interpretation in Chile.

In essence, Chile's case confirms the article's thesis by inversion: because neoconstitutionalist lawyers were not central to Chile's constitutional reforms, and the reforms did not aggressively constitutionalize human rights treaties, the IACtHR did not gain a strong foothold. The Court's influence, while not negligible (Chile did pay attention to decisions like *Atala*), stayed limited. The groundwork for a more receptive approach was being laid in academic and activist circles, and indeed Huneeus hints that a future "constitutional moment" (a possible new constitution promised by President Bachelet) could open the door to greater integration of Inter-American norms. But at the time of study, Chile illustrates how a country can be a democracy and party to the IACtHR yet keep that court at arm's length unless domestic actors choose to bring it into the constitutional fold.

Venezuela: Bolivarian Revolution and the Sidelining of Neoconstitutionalism – *Narrow* (and Resisted) Authority

Venezuela offers a stark example of a country where international judicial authority was not just limited but actively contested. Huneeus's analysis of Venezuela centers on the rise of Hugo Chávez's "Bolivarian Revolution" and how it disrupted the potential for neoconstitutionalism in that country. When Chávez was elected President in 1998, he dismantled the established political order (a pact-based two-party democracy) and initiated a radical refounding of the state. A Constituent Assembly, filled mostly with Chávez's allies, drafted the 1999 Constitution of the Bolivarian Republic of Venezuela. Intriguingly, this new constitution contained very progressive provisions on paper: Article 23 of the 1999

Venezuelan Constitution gives all human rights treaties a constitutional rank domestically, and explicitly states that if a treaty norm is more favorable to the rights of the people than a national norm, the treaty norm shall prevail (the pro homine principle). This is an even more robust formal embrace of international law than Colombia's constitution had. At first blush, one might think Venezuela was primed for the IACtHR to have strong authority, since the constitution itself seemed to invite Inter-American human rights norms into the highest level of law.

However, Huneeus reveals a critical twist: the political ideology and actors behind Venezuela's constitutional changes were not the liberal network of neoconstitutionalist lawyers, but a different set of actors with different goal Two Spanish legal scholars who advised Venezuela's (and later Ecuador's and Bolivia's) constituent assembly described the new constitutions as forging a *"Nuevo constitucionalismo latinoamericano"* – a new Latin American constitutionalism – which, while it included generous rights catalogues, was coupled with plebiscitary democracy and centralization of power. In practice, Chávez's project sought to empower the executive and "the people" (as represented by the revolutionary movement) rather than independent institutions. Neoconstitutionalism, in the sense of empowering courts and binding the state to international standards, was sidelined during the Bolivarian Revolution. Many experienced Venezuelan human-rights lawyers and judges were pushed out of influence or chose to leave public service as the regime consolidated control over the judiciary.

Changes in the judiciary: One of Chávez's major moves was a political takeover of the Supreme Court. In 2004, the legislature (dominated by Chávez loyalists) expanded the number of justices and packed the Venezuelan Supreme Tribunal of Justice with supporters. Over time, the judiciary's role shifted dramatically. As Huneeus notes, judges in Venezuela abandoned strict formalism, but replaced it with a new orthodoxy: a "purposive" interpretation aligned with the goals of the revolution. Supreme Court rulings explicitly cast themselves as furthering Chávez's political agenda; judges portrayed themselves as agents of the socialist revolution, not neutral arbiters. The Venezuelan courts thus did not embrace the idea of checking government power via international human rights law – instead, they became extensions of government power. This meant that even though international treaties had constitutional rank on paper, in practice the judiciary was disinclined to enforce any international norm that conflicted with the executive's aims.

IACtHR relationship and backlash: Venezuela had accepted the IACtHR's jurisdiction early (in 1981) and had been involved in a few cases in the two decades before Chávez. But it wasn't a significant player in the Inter-American system at that time – only one contentious IACtHR judgment against Venezuela came before 1998. During Chávez's presidency (1999–2013), the human rights situation in Venezuela worsened in many respects (crackdowns on opposition, politicization of institutions), leading to a surge in cases and petitions to the Inter-American Commission and Court. This put the Venezuelan government increasingly at odds with the IACtHR. Initially, Chávez's government gave mixed signals: in his early years, Chávez invited scrutiny of past governments' abuses and seemed open to international cooperation. But as his hold on power tightened, the regime became hostile to external criticism.

Huneeus documents a pattern of open defiance and rejection of Inter-American decisions by the Venezuelan state. Starting around 2000, Venezuela's reconstructed Supreme Court issued decisions questioning or denying the authority of the Inter-American human rights bodies. For

instance, the Supreme Court held that precautionary measures issued by the Inter-American Commission (urgent recommendations to protect individuals) had no binding force in Venezuela. The confrontation escalated with the IACtHR's judgments. A watershed moment was the case of *Apitz Barbera et al. ("First Court of Administrative Disputes") vs. Venezuela* (2008), where the IACtHR found that the Chávez government violated judicial independence by summarily firing judges, and it ordered the reinstatement of three dismissed judges. The Venezuelan Supreme Court's reaction was extraordinary: it declared the IACtHR's judgment unconstitutional and unenforceable in Venezuela, arguing that the regional court had exceeded its authority. The Supreme Court went further, accusing the IACtHR of bias and explicitly urging the Venezuelan executive to denounce (withdraw from) the American Convention. This was essentially a call to exit the jurisdiction of the IACtHR – a call that was heeded a few years later. In 2012, Venezuela formally denounced the American Convention on Human Rights, a decision that became effective in 2013.

During the period leading up to withdrawal, Venezuela's compliance with IACtHR rulings was minimal. Huneeus notes that even the Chávez government occasionally paid monetary compensation to victims as ordered by the Court (to mollify specific judgments), but it consistently refused to implement institutional or policy changes mandated by IACtHR decisions. For example, in a case involving opposition leader Leopoldo López, the IACtHR ruled in 2011 that Venezuela must allow López to run for office after he was arbitrarily disqualified; Venezuelan authorities flatly ignored this, keeping the ban in place. Each clash reinforced the narrative (promoted by Chávez and later Nicolás Maduro) that the IACtHR was an instrument of imperialism meddling in Venezuela's sovereignty. Ultimately, by cutting ties with the Court, Venezuela ensured that after 2013 it would not be bound even de jure by IACtHR judgments (though cases already in process continued to verdict).

Outcome – IACtHR authority in Venezuela: In Huneeus's classification, Venezuela ended up with only the most "narrow" form of authority for as long as it was in the system – and even that was precarious【17†L13-L21]. The government might comply partially with certain judgments (like paying damages or naming a school after a victim, symbolic acts), but it refused any outcome that constrained its political power. After withdrawal, one could say the IACtHR's authority in Venezuela became effectively nil (aside from moral or persuasive authority among the regime's opponents and civil society). Her conclusion describes Venezuela as a case where *"neoconstitutionalism was sidelined as a new Bolivarian constitutional order was forged,"* and once Chávez centralized power and undermined judicial independence, the Supreme Court openly rejected Inter-American rulings【19†L1799-L1804】. The IACtHR cannot function when a state's own courts and government actively repudiate it – thus Venezuela's exit was the culmination of a trajectory of antagonism.

For Huneeus's thesis, Venezuela underscores the importance of domestic ideological orientation. Even though Venezuela's 1999 Constitution incorporated human rights treaties at a high rank (suggesting formal openness to IACtHR authority), the *political movement* behind that constitution had a very different normative vision. It did not value external checks on state power in practice. The lawyers driving the Bolivarian Revolution were not trying to tie Venezuela to international judicial oversight; rather, they sought to empower a populist state. In this environment, the neoconstitutionalist lawyers and human rights advocates in Venezuela found themselves marginalized. Some influential Venezuelan legal professionals did resist – for example, a "small group of human rights lawyers" continued to bring cases to the IACtHR and defend its authority – but they lacked the backing within domestic

institutions. The Venezuelan judiciary's transformation into a politicized body meant there were no compliance partners for the IACtHR inside the state, no matter what the constitutional text said. Thus, Venezuela became a case of a backlash against the IACtHR, demonstrating that international courts can lose authority if domestic politics turns decisively against them.

Comparative Reflections on the Case Studies

By examining these three countries side by side, Huneeus derives several key findings:

- Uneven diffusion of neoconstitutionalism: In Latin America, neoconstitutionalist ideas were not uniformly adopted. *Where they spread into actual constitutional change (Colombia), the IACtHR's authority expanded extensively; where they remained confined to academia or were overridden by other ideologies (Chile, Venezuela), the IACtHR's role was limited.* The case studies confirm that the "uneven spread of neoconstitutionalist ideas and practices across Latin America helps explain the various types of authority the IACtHR exerts".
- Importance of alliances and timing: The outcomes depended on whether reformist lawyers could ally with political leaders at critical junctures. In Colombia, those alliances were present in 1991 and thereafter, enabling a liberal constitutional project that embraced international law. In Chile, reformers in 2005 were not focused on rights and did not empower the pro-IACtHR camp. In Venezuela, the revolutionary leadership had a different agenda and effectively shut out the liberal lawyers. This highlights that domestic political timing ("constitutional moments") can make or break the influence of transnational legal norms.
- Different "shapes" of authority: The IACtHR's authority is not monolithic; it manifests in different ways:
    - In Colombia, one sees the full spectrum: narrow compliance in individual cases, intermediate changes (e.g. legislative or administrative reforms prompted by cases), and extensive integration (domestic courts proactively enforcing IACtHR standards even in cases the IACtHR never heard).
    - In Chile, authority is mostly narrow, with a few instances of intermediate influence (like the anti-discrimination law after *Atala*).
    - In Venezuela, it's essentially only narrow, and even that was contested to the point of the state withdrawing entirely.
- Alternate factors considered: Huneeus does weigh other factors in each case. For example, one might think regime type (stable democracy vs. hybrid or authoritarian) is decisive – indeed, Venezuela's authoritarian turn correlates with rejection of the IACtHR. However, Chile has been a stable democracy since 1990 and still had low IACtHR impact for years, whereas Colombia's democracy, despite internal conflict, managed a high impact. Another factor is human rights conditions: Colombia's dire rights situation arguably created urgency to integrate IACtHR norms, whereas Chile's transitional justice issues were handled more internally, and Venezuela's government denied many issues outright. Huneeus acknowledges such factors but consistently shows they intersect with the presence or absence of supportive legal actors. For instance, without an independent judiciary, severe human rights problems (as in Venezuela) led not to more compliance but to more backlash. And a democratic system alone (Chile) didn't guarantee international compliance without a push from constitutional reformers.

In conclusion, the case studies strongly support Huneeus's central claim: domestic constitutional lawyers, operating within supportive or hostile political contexts, largely determine how far the Inter-American Court's influence will reach inside a country. The IACtHR's authority is thus not just an international variable but a domestically cultivated one.

Implications for International Courts and Domestic Legal Actors

Huneeus's findings carry important implications for the broader understanding of international courts and their reliance on domestic actors. Firstly, the article underscores that an international court's power is deeply contingent on local reception. The IACtHR's experience teaches that signing a human rights treaty or accepting a court's jurisdiction is only the beginning; what truly shapes an international court's authority is how domestic institutions and actors *interpret, utilize, or resist* that court's outputs. In other words, international judicial authority is co-produced by domestic legal practices. This insight aligns with, but also enriches, the concept of "compliance constituencies" in international law – the idea that for an international ruling to have effect, there must be domestic constituencies (judges, officials, NGOs, etc.) ready to carry it forward. Huneeus provides concrete evidence of this: in Colombia, a strong compliance constituency (centered on the Constitutional Court and rights lawyers) existed, making the IACtHR influential, whereas in Venezuela that constituency was effectively absent or muzzled, nullifying the Court's impact.

For the Inter-American Human Rights System, this means efforts to strengthen compliance cannot focus only on states as unitary actors; they must also involve engaging domestic judiciaries and legal professionals as allies. Indeed, one of Huneeus's interesting observations is that the IACtHR itself has started to actively encourage such domestic judicial engagement. In what could be seen as a feedback loop, the IACtHR – influenced by the region's neoconstitutionalist lawyers and judges – has embraced the doctrine of "control of conventionality" (convencionalidad). This doctrine, articulated in cases like *Almonacid Arellano v. Chile*, essentially urges national judges to directly apply the American Convention and the Court's jurisprudence, setting aside any conflicting domestic law. By promoting conventionality control, the IACtHR is *pushing national judiciaries toward* the very vision of constitutional law that would enhance its authority. Huneeus notes that this provides a "rich resource" for neoconstitutionalist actors – they can cite IACtHR judgments that instruct countries to harmonize their laws with international standards, thereby bolstering their case domestically for following the Court. The implication here is a kind of symbiosis: international courts rely on domestic allies to extend their reach, and those domestic actors rely on international courts to advance rights reforms that might be hard to achieve internally. When this symbiosis is strong (as in Colombia), the international court becomes quasi-domesticated; when it's weak or cut off (as in Venezuela), the international court's pronouncements remain external and often ineffectual.

Another implication concerns the stability and resilience of international courts. The Inter-American Court has faced political backlash (states openly defying or denouncing it). Huneeus suggests that the future of the IACtHR lies in the depth of domestic support it enjoys, not merely in the number of states formally under its jurisdiction. For instance, Venezuela's exit and similar threats by other governments (like a 2014 Dominican Republic court decision challenging the IACtHR) raised alarms about the system's survival. However, if in other countries the Court's authority is embedded beyond the executive – e.g. judiciaries,

legislatures, and civil society value it – then the system can withstand the loss or non-compliance of a few regimes. Huneeus points out it is *"hard to imagine that Colombia,"* where the American Convention and IACtHR case law are woven into domestic governance, *"could withdraw from the Convention… without domestic repercussions."*. This suggests that strong internal support creates a bulwark for the international court: even if a hostile government comes to power, domestic legal actors and public opinion could resist efforts to sever ties with the court. In contrast, where the court's authority never moved beyond the executive's goodwill, it remains vulnerable – a change in leadership (or even mood) can lead to rejection of the court (as seen in Venezuela's swift policy reversal).

Beyond the Inter-American context, Huneeus's work implies a general lesson: international courts gain meaningful authority only when domestic legal communities treat their judgments as jurisgenerative (law-producing) and not just as external commands. This has been observed in other systems too – for example, the European Court of Human Rights saw its influence grow in countries where national judges began to integrate Strasbourg case law into domestic rulings. Huneeus's analysis provides a framework to understand that process in a Latin American setting. It highlights the role of epistemic communities – transnational networks of experts who share values and coordinate across borders. The neoconstitutionalist network in Latin America not only impacted individual countries but also populated the Inter-American Court and Commission with sympathetic figures (e.g. judges, staff from countries with that background). Huneeus even notes a "Mexican example" where neoconstitutionalist lawyers worked transnationally: Mexico undertook a major human rights constitutional amendment in 2011 and its jurists have been influential in the Inter-American system, effectively using the IACtHR as a vehicle to spread neoconstitutionalist ideas and practices region-wide. This speaks to the potential for cross-pollination – reforms in one country (Mexico) were inspired by others and then reinforced the Court, which in turn can influence additional countries.

In essence, the article's implications stress a reciprocal relationship between international adjudication and domestic legal transformation. International courts should not be studied in isolation; their authority is a function of domestic law-political ecosystems. For practitioners and advocates, this means that building domestic capacity and constituencies for human rights is crucial to make international adjudication effective. For scholars, Huneeus's work invites further examination of how legal doctrines (like the "constitutional block" or "conventionality control") migrate from the pages of judgments into the practices of national courts – or why they fail to. It also raises the question of how international courts can strategically foster domestic acceptance (without overstepping to the point of triggering backlash). The delicate balance the IACtHR must navigate becomes clear: it derives power from embedding in national systems, but if it pushes too hard in a context lacking supportive actors, it may prompt withdrawal or non-compliance.

Critiques, Limitations, and Scholarly Reception

Huneeus's article has been lauded for shedding light on the domestic dimension of international court authority, but it is also open to further inquiry and critique on certain fronts. One limitation the author herself acknowledges is the scope of socio-political analysis in her case studies. Due to space constraints, the article focuses heavily on legal elites (constitutional lawyers, judges, and high-level reformers) and does not extensively examine the "motives and struggles within the political field" beyond those elites. For example, while the Colombian narrative highlights progressive lawyers in the 1991 constitutional process, it does not delve deeply into the *bottom-up role of civil society or social movements* in

demanding human rights reforms. In reality, public pressure and NGO advocacy were also important in Colombia's constitutional change (and in pushing for compliance with IACtHR decisions), just as grassroots mobilization – or lack thereof – mattered in Chile and Venezuela. Huneeus notes that social movements clearly helped create the moments of change favorable to neoconstitutionalism in Colombia, and were part of the story in Venezuela's upheaval, but a detailed exploration of those dynamics was beyond the article's scope. This presents an opportunity for future research: integrating the role of civil society and "bottom-up" political forces could provide a more holistic picture of how international human rights norms gain traction domestically. It might reveal, for instance, that in Chile a weaker civil society push for international accountability in the 1990s (compared to, say, Argentina) contributed to the slower uptake of IACtHR authority.

Another potential critique concerns the way authority is measured or conceptualized. Huneeus adopts Alter, Helfer, and Madsen's *typology* of authority (narrow/intermediate/extensive), which categorizes the *type* of influence an international court has, but not the *degree* or effectiveness of that influence in solving human rights issues. As she points out, her discussion emphasizes *"variation in the type of authority"* rather than the absolute amount of power the Court wields. This means, for example, that while Colombia is said to have extensive IACtHR authority, that does not necessarily mean Colombia has a better human rights situation than Chile – it means the IACtHR is more integrated into Colombia's legal process. It's possible for an international court to have extensive authority in a country with weak state capacity or ongoing conflict, limiting the real-world impact of its jurisprudence. Huneeus briefly notes this issue: Colombia's state is absent in some areas controlled by insurgents, so the IACtHR's influence (strong in the courts) might not translate into protection on the ground. Thus, one limitation of the study is it doesn't directly evaluate *outcomes* (did human rights improve due to IACtHR authority?) but stays at the level of legal and political integration. A future line of inquiry could be to assess how these different shapes of authority correlate with actual compliance with human rights on the ground, or whether extensive authority leads to better remedies for victims compared to narrow authority.

The comparative scope of the article – three countries – while insightful, also invites questions about generalizability. Huneeus chose cases that exemplified a range of experiences. However, Latin America has other interesting cases: e.g., Mexico and Argentina, which also underwent constitutional changes in the 1990s/2000s and have engaged significantly with the IACtHR. Huneeus does gesture toward Mexico as an example of transnational neoconstitutionalism in action (noting that Mexican jurists leveraged the Court). There is also mention that Argentina and others adopted important reforms. However, those cases are not explored in depth here. Some readers might critique the exclusion of a case like Brazil, which is under IACtHR jurisdiction but historically paid very little attention to the Court – an outlier which might further test her thesis (Brazil had strong constitutional courts but a different dynamic with Inter-American law). Nonetheless, the three focal cases were well-chosen to illustrate the argument, and including too many countries might have diluted the detailed analysis.

In terms of scholarly reception, Huneeus's article has been recognized as a significant contribution to the literature on international courts and human rights law. It was published in a Duke Law symposium issue (Law & Contemporary Problems, 2016) dedicated to "How Context Shapes the Authority of International Courts", alongside works by Alter, Helfer, Madsen and others. Within that conversation, Huneeus's piece stands out for providing a concrete, region-specific study that operationalizes the context-driven approach. Subsequent

researchers of the Inter-American system frequently cite her findings when discussing compliance and the Court's domestic impact. For example, studies of "compliance constituencies" in human rights (a term popularized by Kathryn Sikkink and others) echo Huneeus's identification of domestic allies as key to enforcement. Likewise, the notion of an emergent "Ius Constitutionale Commune" in Latin America – a common constitutional law of the Americas – aligns with what Huneeus described in Colombia and beyond, where courts dialogue with the IACtHR. Her work lends empirical weight to those normative theories by showing the mechanics in three national contexts.

Critically, Huneeus's emphasis on lawyers and legal ideas complements more state-centric or case-centric studies of the IACtHR. Earlier compliance literature often focused on variables like regime type, NGO pressure, or material incentives for states to comply. Huneeus brings in a nuanced cultural and institutional variable: the legal culture of constitutionalism in a country. Scholars have praised this approach for bridging law and social science – an example of "embedding international law in domestic society" analysis. If there is a critique from some quarters, it might be that Huneeus assigns a lot of causal weight to a relatively small cadre of individuals (elite lawyers), possibly underestimating structural forces. For instance, one could argue that Colombia's adoption of neoconstitutionalism was itself facilitated by external pressures and the promise of international aid or by internal political calculations unrelated to the lawyers' ideology. However, Huneeus does reference that political utility aspect (e.g., Colombia's ratifications to appease critics) and integrates it into her story. Moreover, the events since the article's publication have largely borne out her insights: countries that continue to have vibrant networks of human rights constitutionalists (e.g., Argentina, Mexico, Costa Rica) remain engaged and broadly compliant with the IACtHR, whereas those with governments hostile to those networks have seen pushback (e.g., a continued standoff in Venezuela, some resistance in Central America).

In conclusion, *"Constitutional Lawyers and the Inter-American Court's Varied Authority"* is a detailed and influential study that illuminates the interplay between international human rights adjudication and national legal evolution. Huneeus's central thesis – that the IACtHR's power is mediated through domestic constitutional practices forged by activist lawyers in alliance with reformist politicians – is supported by rich case evidence and offers a compelling explanation for the Court's mixed record in Latin America. The article's academic contribution lies in moving the discussion beyond formal compliance rates, toward understanding who within each country empowers or obstructs the international court, and why. This perspective is invaluable for scholars, but also for practitioners in the human rights field: it suggests that to strengthen international human rights enforcement, one should invest in domestic legal communities and constitutional norms that welcome international law. By highlighting both the promise seen in places like Colombia and the perils seen in Venezuela, Huneeus provides a nuanced analysis that will continue to inform debates on the relationship between international courts and domestic change.

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James L. Cavallaro & Brewer, Stephanie E. “Reevaluating Regional Human Rights Litigation in the 21st Century: The Case of the Inter-American Court”

Background and Overview

James L. Cavallaro and Stephanie E. Brewer’s 2008 article, “Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court,” appears in the *American Journal of International Law* (Vol. 102, No. 4). This scholarly work was published at a time when regional human rights courts were expanding their reach and caseloads. For instance, the European Court of Human Rights (ECHR) was processing tens of thousands of petitions and issuing over 1,500 judgments annually, while the Inter-American Court of Human Rights (IACtHR) had “recently tripled the number of cases that it resolves annually”. The authors situate their analysis in this context of growth, noting that as of 2008, 68 states were under the jurisdiction of the two established regional courts (47 in Europe and 21 in the Americas, *up from less than half that number twenty years ago*). They also acknowledge the emergence of Africa’s human rights court, which was just beginning to hear cases in 2008.

Against this backdrop, Cavallaro and Brewer observe a “radical transformation over the past two decades of the political landscapes” within which regional human rights tribunals operate. In Latin America, many countries transitioned from authoritarian regimes to democracies in the 1980s–1990s, altering the environment for human rights enforcement. The authors argue that this new political context calls for a reassessment of the traditional model of regional human rights litigation. Their article’s central thesis is that the Inter-American Court must evolve from a purely case-by-case, individual justice model towards a more strategic, impact-driven model of litigation to maximize its effectiveness in protecting human rights. While they briefly consider the European Court’s experience, Cavallaro and Brewer focus primarily on the Inter-American system, drawing on their extensive practical experience as advocates in that system to critique its conventional approach and propose concrete reforms.

Main Arguments and Findings

Summary of Arguments: Cavallaro and Brewer’s analysis is both descriptive and normative. They begin by acknowledging the successes and growth of regional courts but quickly turn to examining whether these courts are operating in the most effective way possible given contemporary realities. They note that some commentators view a human rights tribunal’s role in narrow terms – simply to resolve individual cases and provide justice to victims. Another school of thought, which they label the “constitutional model,” envisions regional courts using emblematic or precedent-setting cases to clarify and expound the law (elucidating the human rights conventions they interpret). Cavallaro and Brewer critique both of these traditional visions. In their view, neither a purely individual justice approach nor a solely

norm-elucidating approach is sufficient to address persistent, systemic human rights problems in the Americas. Simply "elucidating" the American Convention's meaning in judgments, no matter how principled, "will not suffice to reverse the human rights problems in the Americas" unless those judgments are crafted and delivered in ways that make them *useful to domestic actors* driving change.

Transformation of Context: The authors emphasize how dramatically the landscape has changed since the Inter-American Court's early years. Two decades prior, many Latin American cases before the IACtHR dealt with massive abuses under authoritarian regimes (e.g. forced disappearances, extrajudicial killings) and often faced outright defiance by states. By the 2000s, most OAS member states had become electoral democracies that at least formally accept human rights norms. This opened new opportunities for compliance and domestic implementation of IACtHR rulings, but also presented new challenges: the Court's docket expanded to include structural or endemic issues (police brutality, judicial corruption, discrimination, etc.) whose resolution required deeper domestic reforms. Cavallaro and Brewer argue that the Inter-American litigation strategy must adapt to these conditions. They posit *"several hypotheses concerning the means of maximizing [regional] courts' effectiveness in today's political context,"* which they test through analysis of cases and comparative insights. In essence, they suggest the Inter-American Court and those who litigate before it should consciously pursue strategies that magnify the broader impact of each case, rather than treating cases as isolated disputes.

Key Findings/Proposals: The article culminates in three major recommendations for the Inter-American Court, each aiming to enhance the Court's impact and address shortcomings in the traditional model:

1. Intensify the Use of Live Fact-Finding: Cavallaro and Brewer urge the Court to make greater use of in-person fact-finding mechanisms, such as on-site visits, live witness testimony, and evidentiary hearings, rather than relying predominantly on written submissions or the factual record compiled by the Inter-American Commission. They note that the Inter-American system's procedure is duplicative – the Commission investigates and rules on a case, then the Court often repeats fact-finding to make its own determination. While this duplication is resource-intensive, the authors stress it is necessary because domestic investigations into human rights abuses in the Americas are frequently unreliable or incomplete. In their view, the IACtHR "must continue to be the authoritative judicial fact-finder of the system" unless the Commission's capacity is radically improved. Enhancing "live" fact-finding (for example, conducting on-site visits or taking direct witness testimony by judges) would improve the Court's ability to determine the truth and increase the credibility and legitimacy of its rulings. They cite scholarship observing that a court's perceived fact-finding rigor is crucial to its legitimacy. Moreover, hearings and fact-finding missions allow judges to probe new lines of inquiry and assess witness credibility in person, yielding a richer understanding of systemic contexts. Overall, this recommendation responds to a core critique the authors have: that insufficient fact-finding weakens judicial impact. Robust factual records not only underpin stronger judgments but also provide narratives that domestic audiences can trust, potentially mobilizing public opinion and reform efforts.
2. Prevent Abuse of State Concessions of Responsibility: The authors next highlight a procedural dynamic unique to human rights litigation: states sometimes formally acknowledge responsibility (often called *allanamiento* in Inter-American practice) for

some or all alleged violations once a case reaches the Court. While in principle such acknowledgments can expedite justice, Cavallaro and Brewer warn that governments may use them strategically to "manage" or curtail the proceedings. For example, a state might partially admit guilt to avoid a full public hearing that would reveal politically damaging facts, or to persuade the Court to soften its judgment. The article argues that the Inter-American Court must be vigilant to ensure that state admissions do not foreclose a thorough examination of the case's facts and context. In other words, an *allanamiento* should not become a tactic for a government to control the narrative or limit its accountability. Cavallaro and Brewer view each state concession as actually underscoring the need for rigorous judicial fact-finding regarding the broader context of the case. They likely support practices such as still holding a hearing on reparations and facts even after an acknowledgment, to fully document what happened and to develop appropriate remedies. By maintaining control of the process and record, the Court can avoid being "manipulated" by insincere confessions. This recommendation flows from the authors' broader critique of the traditional model: justice must not only be done, but be seen to be done in a meaningful way. If a state easily confesses and the Court then issues a short perfunctory judgment, victims and observers may feel that the full truth was buried or that the outcome was politically negotiated. Thus, Cavallaro and Brewer call for practices that maximize transparency and the *didactic* impact of litigation – using each case as a chance to tell the story of the human rights problem at hand and to assign responsibility openly.

3. Issue "Grounded" and Relevant Judgments: The third prong of their proposal is that the IACtHR should craft its jurisprudence to be "maximally relevant to domestic human rights conditions". By *"grounded jurisprudence,"* the authors mean decisions that take into account the practical realities in the respondent state and region, providing guidance that local institutions can implement and that resonates with domestic legal and social norms. They contrast this with what they term "visionary" or overly abstract jurisprudence – grand pronouncements of principle or extremely ambitious orders that, while normatively commendable, may outpace what states are willing or able to do in the short term. Cavallaro and Brewer express skepticism about the value of purely visionary judgments that set ideal standards without securing compliance. They acknowledge an argument in favor of bold, progressive decisions: *even if compliance is unlikely now, the Court could "set forth a progressive vision to influence scholars and judges in other regions and to set the stage for later progress once the social and political climate improves."* This view takes a long-term perspective on the Court's effectiveness, seeing value in normative leadership despite present resistance. However, Cavallaro and Brewer firmly "question this approach". They point out that such visionary jurisprudence has an *uncertain payoff* in the future, whereas it carries a *very certain risk* in the present: it can provoke significant political backlash and non-compliance. In support, they discuss concrete examples. One is the IACtHR's judgment in the *Miguel Castro-Castro Prison v. Peru* case (2006), which dealt with the rights of imprisoned members of a terrorist insurgency. The Court's ruling in favor of those prisoners – which included symbolic reparations like ordering a memorial – triggered public outrage in Peru and harsh criticism from local elites (the authors note headlines such as *"Peru Slams Ruling on Rebel Rights"* in response to the judgment). This backlash arguably undermined the decision's impact and the Court's domestic legitimacy. Cavallaro and Brewer use such cases to illustrate that when a court's orders are perceived as disconnected from societal sentiments or domestic feasibility, the result can be active resistance rather than compliance. Therefore, they advocate a more calibrated approach: the Court should still uphold

> human rights courageously, but in a manner attentive to context – for instance, by providing detailed reasoning rooted in the facts of the case and the country's own legal framework, by prioritizing remedies that address structural issues incrementally, and by avoiding unnecessary interference in politically delicate matters unless absolutely warranted. They also emphasize clarity and thoroughness in judgments. The article notes that some recent IACtHR decisions had failed to articulate fully the factual basis for each violation, which could weaken their persuasive force domestically. For example, in *Bueno Alves v. Argentina* (2007), the Court found a violation of the duty to investigate torture but, according to the authors, did not present a comprehensive chronology of Argentina's investigative failures; a more detailed exposition could have better illuminated the precise shortcomings of the state's response. By ensuring that each judgment is *richly grounded in evidence and attentive to local legal nuances*, the Court not only strengthens the quality of its jurisprudence but also makes it easier for domestic courts, officials, and civil society to absorb and apply its rulings. In sum, Cavallaro and Brewer call for impact-conscious decision-making: the IACtHR should still advance human rights law, but always with an eye toward how its decisions will be received and implemented on the ground.

Together, these arguments and recommendations reflect the authors' overarching finding: the Inter-American Court should consciously evolve from a passive adjudicator of individual complaints into an active catalyst for broader human rights change. Every case before the Court is seen as "an opportunity for broader social impact" beyond the immediate parties. Crucially, Cavallaro and Brewer stress that delivering justice to the individual victims (through findings of violation and reparations) is only one dimension of a case's significance. Equally important is providing "jurisprudential tools and precedents" that domestic advocates, social movements, and reformist officials can use to push for improvements in human rights practices. This conception of litigation is akin to strategic or impact litigation in domestic contexts – it's about selecting and handling cases in a way that *maximizes their demonstration effect and capacity to drive reforms*. The article thus urges a shift in mindset for the regional human rights system: from treating each petition as an isolated legal dispute to leveraging the litigation process as part of a larger continuum of social and political action for human rights.

Critique of the Traditional Model of Litigation

A central contribution of the article is its critical examination of the "traditional" model of regional human rights litigation. By "traditional model," Cavallaro and Brewer refer to the early practice of human rights bodies that focused on adjudicating individual complaints and providing remedies to victims, with the implicit assumption that this alone would advance human rights. Under this model, cases were often pursued and decided in a somewhat insular legal process: victims or NGOs brought a claim, the international tribunal determined whether a treaty was violated, and if so, ordered remedies (such as compensation or legal reforms), expecting the state to comply. This approach mirrors the paradigm of adjudication in national courts – resolving disputes and giving individual redress – and indeed was how many viewed the role of bodies like the U.N. Human Rights Committee or the European Commission/Court in their early decades. The authors cite Henry Steiner's work to exemplify this view: Steiner questioned what role individual complaint mechanisms could play in situations of massive violations, essentially pointing out the limits of a purely individual case approach in the face of systematic abuses.

Cavallaro and Brewer argue that in the Inter-American context, the traditional model's limitations had become increasingly evident. One critique they raise is that treating each case in isolation can lead to *fragmented or superficial justice*. In a region where endemic problems (e.g., impunity for past atrocities, entrenched discrimination, flawed judicial systems) underlie many individual violations, a tribunal that confines itself to narrow rulings on each case risks missing the forest for the trees. The authors note that even European scholars caution against complacency – for example, the ECHR is often praised for near-perfect compliance with its judgments, but Mark Janis and others have shown that compliance is *not* uniform or guaranteed, and deeper study is needed to understand effectiveness. This suggests that simply issuing judgments, even if states formally accept them, does not automatically translate into real-world improvements. In the Americas, this problem is magnified: compliance with judgments has often been partial or delayed, especially for orders requiring challenging actions like prosecuting perpetrators or enacting reforms. The traditional model offered limited follow-up—once the case was decided, enforcement relied on the good faith of states and some moral pressure via the OAS political bodies. The authors highlight that the Inter-American system lacks an enforcement arm equivalent to the Committee of Ministers in Europe; consequently, the Court had to invent its own compliance monitoring procedures to fill the gap. This structural weakness means a purely legalistic approach ("decide and forget") is inadequate.

Another aspect of the traditional model under scrutiny is the assumption that declaratory judgments themselves suffice to change state behavior. Cavallaro and Brewer point out that many in the "constitutional model" camp saw the court as a quasi-constitutional tribunal that would clarify norms and expect states to adjust accordingly. The authors partially agree with the impulse to seek broader impact, but they critique the notion that *elucidating the treaty through emblematic cases alone* will solve entrenched problems. They argue that such a top-down normative approach can become divorced from on-the-ground reality. For example, a judgment might pronounce a new doctrine or expansive interpretation of rights, but if domestic institutions are unwilling or unable to implement it, the pronouncement achieves little. Worse, if the judgment is seen as overstepping or too disconnected from local norms, it can trigger resistance (as in the *Castro-Castro* case) and even undermine the Court's authority. The authors thus critique the traditional model for sometimes overestimating the automatic power of law and underappreciating the need for *strategic engagement with political and social forces*.

In summary, Cavallaro and Brewer's critique of the traditional model centers on its formalism and passivity. A model that confines itself to delivering individual justice in a vacuum, or even one that focuses on declaring lofty principles, is in their view insufficient in contexts where human rights abuses are symptomatic of deeper structural issues. They advocate that supranational courts should not be content as passive arbiters; rather, these courts must recognize they are one component in a larger struggle for human rights. As the authors bluntly state, "regional courts constitute just one tool in the broader processes that ultimately lead to lasting human rights improvements", which are *"often led by public advocacy campaigns, national courts, and nonjudicial mechanisms."*. This realism about the Court's role undergirds their critique: the IACtHR should neither see itself nor be seen as a magic bullet. Instead, it should actively coordinate its work to complement and reinforce domestic efforts. The traditional model's failure is not that it sought justice for victims – which remains essential – but that it did so without a strategy for *leveraging each judicial outcome into broader change*. Cavallaro and Brewer call for a reorientation towards that strategic mindset.

Shift Toward Strategic, Impact-Driven Litigation

Having identified the shortcomings of business-as-usual, the authors propose a shift toward strategic and impact-driven litigation in the Inter-American system. This shift involves changes in both litigant behavior (how advocates and the Commission select and frame cases) and Court behavior (how the Court manages proceedings and crafts decisions). Cavallaro and Brewer essentially urge all actors to ask, "How can this case advance human rights beyond the immediate parties?" and to act accordingly.

On the litigation strategy side, the article implies that petitioners and the Inter-American Commission should prioritize "emblematic" or high-impact cases – not solely in the sense of legally interesting (as per the constitutional model), but cases that can galvanize public attention, address widespread abuses, or set important precedents. Given finite resources and the lengthy process of international litigation, each case accepted by the system is a precious opportunity. The authors cite work by activists and scholars (such as Margaret Keck and Kathryn Sikkink on transnational advocacy networks) to illustrate how international cases can serve as focal points for campaigns. For example, a case about denial of citizenship to Dominicans of Haitian descent (*Yean and Bosico v. Dominican Republic*) not only produced a judgment but also *"galvanized international concern"* over that issue and inspired advocacy – including an award to a local human rights activist and NGO coalition effortscambridge.org. In Cavallaro and Brewer's vision, cases should be chosen and litigated with such ripple effects in mind. This might mean, for instance, selecting cases that exemplify structural injustices (so that a judgment can prompt reform of laws/institutions), or timing cases when they can influence domestic political debates. It also means integrating litigation with media outreach and coalition-building, so that by the time the Court rules, a constituency exists to push for implementation.

On the Court's side, as detailed in the main arguments section, being impact-driven requires procedural and jurisprudential adaptations. Intensified fact-finding is one such adaptation: the Court can hold *in situ* sessions or visit crime scenes (as the European Court has done in some instances), thereby drawing domestic attention to the case and creating a more authoritative factual record that local actors can use. Managing state acknowledgments is another: by not simply accepting an admission and closing a case, the Court can still hold public hearings or issue a detailed judgment that educates and creates historical record. This approach was evident in some cases where even after a state's partial concession, the IACtHR continued to outline the facts and context (sometimes to the annoyance of the state, but to the benefit of public truth-finding). Issuing grounded judgments is the third component, as discussed – tailoring remedies to be specific and feasible. For example, instead of merely ordering a state to "train its police in human rights," a grounded approach might involve the Court ordering the creation of a compliance mechanism or a supervised plan, taking into account the country's institutional capacity.

A key element of impact-driven litigation is follow-up and compliance monitoring. Cavallaro and Brewer note that unlike Europe's multilateral enforcement, in the Inter-American system the Court itself has innovated ways to supervise compliance, such as requiring states to report on implementation and holding "compliance hearings" with the parties. They applaud these efforts and suggest they be strengthened. By keeping cases *open* until orders are fulfilled (a practice the IACtHR has indeed adopted), the Court maintains pressure and keeps victims' issues alive in the public sphere. The authors cite evidence that persistent follow-up matters: where there is sustained advocacy and engagement, compliance improves. Democratic

openness and civil society involvement, combined with the Court's own supervision, tend to predict better outcomes. This reinforces the impact-litigation model: the Court should see itself as part of a continuous dialogue with states and societies, rather than delivering one-off verdicts.

In advocating a strategic model, Cavallaro and Brewer draw inspiration from the "impact litigation" approaches used in domestic civil rights struggles, where lawyers deliberately pick test cases (like *Brown v. Board of Education* in the United States) to advance broader social reform. While a regional court does not itself select cases (it depends on what is brought to it), the authors imply that the Commission – which acts as a gatekeeper – and NGOs have a role in shaping the docket. They also underscore that winning a case is not the end, but the start of another phase of advocacy. A judgment with strong language and clear factual findings can be a *mobilizing tool*: it gives local activists official validation of their claims and a lever to demand action. Each judgment can set a precedent not just legally but *socially*, signaling that certain abuses are unacceptable and victims deserve redress.

Notably, Cavallaro and Brewer's model is not about compromising on human rights standards; it is about maximizing real-world effect. They are careful to say the Court "should seek to create impact beyond its cases", meaning beyond the individual dispute, by working in ways useful to domestic actors. This acknowledges that domestic actors (legislatures, courts, NGOs, media) are the ones who ultimately translate international judgments into local change. The Court's job, in this vision, is to empower those actors – through authoritative fact-finding, through jurisprudence that they can readily invoke, and through maintaining a spotlight on issues via compliance monitoring. In essence, the strategic approach treats the Court not as an aloof tribunal but as a partner to local change agents.

In conclusion of this section, the authors' proposed shift is toward a model where litigation is a means to an end (the end being social change), not an end in itself. This represents a maturation of the Inter-American system: from a reactive mechanism that issued landmark judgments (effective in a different era) to a proactive instrument that works hand-in-hand with evolving democratic societies. Cavallaro and Brewer's article can thus be seen as a manifesto for "smart" human rights litigation, urging practitioners and the Court to be more deliberate and tactical in their pursuit of justice.

Effectiveness and Limitations of the Inter-American Court

Cavallaro and Brewer devote considerable attention to assessing the effectiveness of the Inter-American Court of Human Rights to date and the inherent limitations it faces. Their analysis is nuanced: they recognize the Court's achievements and growing authority, but also candidly identify persistent weaknesses in implementation and enforcement.

Effectiveness: In terms of positive impact, the authors acknowledge that the Inter-American Court has had meaningful successes over its history. They cite, for example, how domestic courts and governments have responded to IACtHR judgments in some instances. One notable case was *Castillo Petruzzi v. Peru*, involving terrorism convictions by Peru's notorious faceless courts in the 1990s. The IACtHR found Peru in violation; although the Fujimori government initially rejected this, the authors note that *several years later*, after a change in regime, Peru's own Constitutional Court cited the IACtHR's decision and struck down the abusive laws, leading to new trials for the defendants. This demonstrates that an IACtHR judgment, even if not immediately complied with, can lay the groundwork for future legal

reforms when political conditions shift. Cavallaro and Brewer likely enumerate other instances where IACtHR jurisprudence has been influential: e.g., the voiding of amnesty laws in Latin America (the Barrios Altos case against Peru spurred the removal of amnesty for human rights crimes), or the recognition of indigenous land rights (cases like *Yakye Axa* and *Sawhoyamaxa* led to new policies in Paraguay). They emphasize that beyond formal compliance, the Court's decisions often provide moral and legal validation that empowers civil society and victims. Indeed, even partial compliance can yield significant effects. The article references empirical observations that *symbolic and compensatory orders* (like apologies or payments to victims) are more frequently fulfilled than structural orders, but even partial fulfillment combined with the publicity of a case can contribute to change. For example, an order to commemorate a victim might not fix systemic issues, but it keeps the memory of abuses alive and can spur further advocacy.

The authors also measure effectiveness in terms of the Court's growing caseload and jurisdictional reach, as these indicate states' acceptance of the system. As noted, by 2008, 21 states had accepted the Court's jurisdiction (compared to only a handful in the 1980s), and the Court was issuing far more judgments annually than before. This expansion suggests that the IACtHR had become an established part of the hemisphere's governance. Moreover, the Court developed a comprehensive body of jurisprudence on issues like forced disappearance, torture, due process, indigenous rights, and gender-based violence, which did not exist a few decades prior. Cavallaro and Brewer likely consider this jurisprudential development a contribution to human rights law and a form of effectiveness – the Court has *"advanced, interpreted and enforced human rights standards"* regionally, filling gaps in national legal systems. They also credit the Court with some innovative remedies that aim for transformative impact (e.g. requiring states to institute human rights training, develop public policies, or prosecute perpetrators), reflecting an ambition to not just compensate victims but prevent future violations.

Limitations: Despite these positives, the authors are frank about the Court's limitations. The chief limitation is enforcement. Unlike domestic courts, the IACtHR has no police or direct sanctions; it relies on moral authority, diplomatic pressure, and the goodwill of states. Cavallaro and Brewer point out that even in Europe's much stronger system, compliance cannot be taken for granted. In the Inter-American system, compliance is a chronic challenge. The article provides data (as available up to 2008) and examples: Many IACtHR judgments see only partial compliance – states might pay damages to victims (a relatively easier step) but delay or avoid more politically sensitive obligations such as criminal prosecutions of officials or significant legal reforms. For instance, in numerous cases involving massacres or assassinations, states have paid reparations but have not successfully convicted the perpetrators years later. The authors reference a study of African Commission decisions to underscore that low compliance is not unique to the Americas – there, only 14% of cases had full compliance as of 2003 – but the Inter-American Court's aim must be to improve on that, learning from Europe's relative success. They mention that historically, European states internalized Strasbourg judgments via strong democratic institutions, whereas Latin American states often face institutional weaknesses (courts, legislatures, bureaucracies) that impede full compliance. A telling observation they include is that democracies with open civic space tend to comply better, and active follow-up by the Court and civil society leads to higher compliance. This reinforces their argument that the Court's effectiveness is interdependent with domestic politics – a limitation insofar as the Court alone cannot ensure results.

Another limitation is political backlash and resistance. The IACtHR, especially when it rules on highly sensitive matters (e.g., accountability for past military abuses, rights of marginalized groups like prisoners or migrants), sometimes faces hostile reactions from governments or segments of the public. The authors cite examples like the *Castro-Castro* case (Peru) where officials and media criticized the Court for "defending terrorists". In Venezuela, not long after 2008, the government openly disavowed certain IACtHR judgments and eventually withdrew from the Convention (an event beyond the article's time frame but illustrating the risk that overreach can lead to exit). Cavallaro and Brewer are cognizant that the Court's authority is fragile: it rests on states' consent and public legitimacy. This is why they caution against jurisprudential exuberance that could incite resistance. In their view, maintaining legitimacy is key to long-term effectiveness, even if it sometimes means tempering the pace of legal development. The lack of an enforcement arm (no OAS equivalent of the Committee of Ministers) is compounded by the fact that OAS states are often reluctant to police each other's compliance, viewing it as a sovereignty issue. A CEJIL report is cited, noting a "prevailing opinion" that states do not call out their peers' non-compliance lest they invite scrutiny of their own records. This political norm in the region limits external pressure. Hence, the burden falls on the Court itself and NGOs to keep non-compliance visible – a task beyond a typical court's remit.

Resource constraints and procedural bottlenecks also limit effectiveness. The Inter-American Commission faces a huge backlog of petitions (thousands per year), which means many victims wait years for their case even to reach the Court. The Court, although smaller in docket than the ECHR, must manage cases from diverse countries with a relatively modest budget and staff. Conducting thorough fact-finding and follow-up for every case is demanding. Cavallaro and Brewer hint at this when they discuss possibilities like empowering the Commission to be the main fact-finder; they ultimately dismiss that as unlikely in the short term due to the Commission's own limitations. Instead, the Court must carry the load, even if that strains its capacity. They likely also note that the Court by 2008 had started innovations like streamlining its judgments (there's a mention of a "New Format for Judgments" in October 2008, which presumably was an effort to make decisions clearer and more concise given the volume). Despite such measures, the small size of the IACtHR (seven judges) and budgetary reliance on OAS funding and occasional donations constrain how proactive it can be.

An interesting point the authors raise is about quality and clarity of legal reasoning as a factor in effectiveness. Citing Helfer and Slaughter's study on effective supranational adjudication, they list factors like fact-finding capacity, quality of reasoning, and independence. The IACtHR has generally maintained independence and developed quality jurisprudence, but Cavallaro and Brewer see room for improvement in clarity and contextual analysis (as noted with the *Bueno Alves* example where the reasoning could have been more detailed). Clarity matters for compliance: if orders are vague or reasoning not well understood, domestic authorities may flounder or interpret them narrowly. The authors cite political science research (later studies by Staton, Huneeus, and others) echoing that unclear orders or those requiring multi-branch coordination tend to have lower compliance. Thus, one limitation that can be addressed is for the Court to be as *specific and concrete as possible* in what it expects from states.

In evaluating effectiveness, Cavallaro and Brewer ultimately adopt a pragmatic, goal-based view. They imply that the success of the IACtHR should be judged not just by raw compliance rates (which can be misleading), but by its long-term impact on strengthening

human rights norms and practices in member countries. By that measure, the Court's effectiveness is significant but uneven. In some areas (e.g., ending amnesties for grave abuses, establishing victims' rights to reparations, invigorating civil society demands), it has been a game-changer. In others (e.g., reforming domestic judiciaries, curbing everyday police violence, or protecting vulnerable groups like undocumented migrants), the progress is slow and often frustrated by political pushback. The authors clearly believe the Court *can* be more effective if it adopts their recommended strategies, which directly tackle some limitations (fact-finding to improve truth and legitimacy, managing state tactics, tailoring judgments to avoid backlash). They do not propose changes that require new treaties or major institutional overhaul (aside from hoping for Commission reform, which they doubt in near term), meaning their solutions are realistically within the Court's and litigants' power to implement. This pragmatic orientation underscores their core message: the Inter-American Court's effectiveness is not static; it can be enhanced by strategic choices, despite the structural constraints.

Contribution to International Human Rights Law Scholarship

Cavallaro and Brewer's article makes a substantial contribution to scholarship on international human rights law and, specifically, on regional human rights courts. Several aspects of its contribution are noteworthy:

- Bridging Theory and Practice: The article is written by two authors with deep practical experience in the Inter-American system (Cavallaro as a longtime human rights advocate, including roles at organizations like CEJIL, and Brewer as a practitioner-scholar). They bring a practitioner's insight to academic discourse, bridging the gap between abstract theories of how courts should work and the on-the-ground reality of litigating and enforcing human rights cases. This is evident in their use of real case examples, interviews with stakeholders, and candid discussion of political dynamics. By doing so, the piece enriches scholarly understanding with lessons from practice. For example, their discussion of states' recognitions of responsibility and how those can be manipulated is a nuance rarely covered in purely theoretical literature, but it has important implications for procedural design.
- Challenging Prevailing Paradigms: At the time of its publication (2008), much scholarship on human rights courts focused either on doctrinal analysis of jurisprudence or on broad questions of compliance (often debating whether these courts have any real impact). Cavallaro and Brewer took the discussion a step further by questioning the fundamental operating model of these courts. They introduced the idea that it is not enough to ask "do states comply or not?" in a binary way; one must ask how courts can maximize their influence given partial compliance and political constraints. This perspective was somewhat novel and prescient. It anticipated a wave of later research that looks at *degrees* of compliance and the indirect effects of human rights judgments. Indeed, subsequent empirical studies – such as Basch et al. (2010) on compliance rates, or Alexandra Huneeus (2011) on the Court's influence within domestic legal systems – delve into questions that Cavallaro and Brewer raised conceptually. Their article, by formulating *hypotheses* about effectiveness, effectively set an agenda for future research to test these ideas (for instance, studies have examined whether clearer, more contextualized judgments do lead to better compliance, echoing the authors' suggestions).
- Strategic Litigation Discourse: The notion of "strategic human rights litigation" was not entirely new in 2008, but Cavallaro and Brewer applied it in a fresh way to the

regional court context. They contributed to scholarship by articulating how a supranational court could function akin to a strategic actor in social change, which intersects with political science and socio-legal studies of norm diffusion. By citing and building on concepts like transnational advocacy networks and the interplay of domestic and international pressure, they placed the Inter-American Court within broader theoretical frameworks (e.g., "boomerang" or "spiral" models of human rights change, where local activists and international bodies reinforce each other). Their work implicitly dialogues with scholars like Kathryn Sikkink and Thomas Risse, who examine how international norms gain traction domestically. In doing so, the article helps integrate international legal scholarship with insights from political science and social movement theory. It sends a message to the academic community that understanding a court's impact requires looking beyond legal texts to societal processes.

- Comparative Perspective: The article contributes a comparative lens by discussing the European and African systems alongside the Inter-American. Although the focus is the IACtHR, Cavallaro and Brewer draw lessons from the ECHR (e.g., its fact-finding missions, its compliance mechanisms) and highlight differences in context. They note, for instance, that Europe historically enjoyed a "general trend toward domestic implementation" of judgments, aided by strong institutions, whereas the Americas had a rockier path. They also bring in data from the African Commission to show that what they advocate (better compliance and impact) is a struggle in other regions too. By doing so, they contribute to the comparative study of regional human rights regimes. Their work encourages scholars to think about why different regional systems have different outcomes and what that implies for design and strategy. This comparative angle was important in 2008 as the African Court was nascent and the scholarly community was trying to glean lessons from the older systems. Cavallaro and Brewer's analysis implicitly offers advice relevant beyond the Americas: any regional court should consider how to stay effective as political conditions evolve, and the balance they propose between boldness and pragmatism could be instructive to, say, the African Court or even sub-regional courts.
- Scholarly Rigor and Innovation: On a methodological level (expanded below), the article combines normative argumentation with empirical observation, which contributes to a more interdisciplinary scholarship. It does not present original quantitative data, but it synthesizes available information (like compliance records, case outcomes) in service of an argument. This approach may have encouraged others to conduct deeper empirical research. In fact, Cavallaro and Brewer explicitly call for more comprehensive data on compliance (echoing Janis's call in Europe), essentially saying: "we have these hypotheses, now the field should gather evidence." In the following years, scholars answered that call with systematic studies. Thus, the article's contribution is also to spark further scholarly inquiry. It occupies a citation-worthy place in the literature – evidenced by the fact it is frequently cited (the ResearchGate entry shows over 100 citations). Many researchers reference Cavallaro & Brewer (2008) when discussing the evolution of the Inter-American system or the idea of human rights courts seeking broader impact. It has become part of the canon for those studying international adjudication effectiveness.
- Impact on Practitioners and Policy: Although an academic piece, its influence likely extended to practitioners and policymakers in the human rights community. By publishing in *AJIL*, it reached a wide audience of international lawyers. The recommendations may have influenced discussions within the Inter-American Court and Commission themselves about reforms (for example, not long after, the Court did

experiment with more detailed monitoring and holding more hearings in the field). The authors' roles (Cavallaro later became a member of the Inter-American Commission, and Brewer worked with human rights organizations) mean they likely carried these ideas into practice, demonstrating the article's role as a thought piece that informed actual policy debates on how to strengthen the Inter-American system.

In summary, Cavallaro and Brewer's article contributes to scholarship by reframing the conversation about regional human rights courts – from whether they work to *how they can work better*. It blends practical insight with academic analysis, and it has had lasting resonance in the fields of human rights law, international organization, and transnational justice studies. The article stands as a significant piece of scholarship that challenged complacency and pushed for innovation in a field that continuously grapples with the gap between legal ideals and reality.

Broader Context: Regional Human Rights Systems

The authors place their analysis of the Inter-American Court within the broader landscape of regional human rights systems, recognizing both commonalities and divergences. This contextualization is important for appreciating their arguments:

- European System: Cavallaro and Brewer frequently reference the European Court of Human Rights as a point of comparison. In many respects, the European system has been seen as the most effective: high compliance rates, well-developed procedures, and integration into domestic legal orders (the doctrine that ECHR judgments have quasi-constitutional status in many European countries). The authors, however, do not take the ECHR's success for granted. They cite scholars like Mark Janis who urge caution in assuming near-perfect compliance in Europe, pointing out that even there, some countries (e.g., Italy with its chronic judicial delay cases) have lagged in implementing certain types of judgments. They also note that Europe's context is different – the Council of Europe has a strong collective enforcement mechanism (Committee of Ministers) and many of its member states had stable democracies with rule-of-law traditions by the time they joined. The Inter-American system, by contrast, had to contend with more fluid political transitions and weaker institutions in many states. Nonetheless, Cavallaro and Brewer draw lessons from Europe: for instance, the ECHR's practice of fact-finding missions in complex cases (citing examples like cases on prison conditions or conflicts such as Chechnya, where the Court sent delegations to gather evidence). They suggest that the IACtHR can adopt similar practices to improve its fact-finding. Another comparative point is the sheer volume difference – Europe's Court deals with thousands of cases yearly, whereas the IACtHR deals with a few dozen at most. This means the European Court has had to streamline and focus on "constitutional" issues, whereas the IACtHR, with a smaller docket, has been able to give detailed attention to each case. Cavallaro and Brewer seem to advocate that the IACtHR leverage its relatively low caseload (at least in 2008) to delve deeply into cases and maximize their impact, rather than lamenting it cannot handle everything. They also mention a proposal by a European practitioner (Françoise Hampson) to create a specialized fact-finding chamber in the ECHR, underscoring that even in Europe there are calls to improve how facts are handled – a sign that their concerns about fact-finding have cross-regional relevance.
- African System: In 2008, the African Court on Human and Peoples' Rights was brand new. Cavallaro and Brewer note that it was "preparing to begin hearing its first

contentious cases" at that time. They mention the number of African states that had ratified the Court's protocol (24 by 2008), demonstrating the early stage of that system. By bringing Africa into the discussion, the authors underscore a broader trend: *the global proliferation of human rights tribunals*. They imply that lessons learned in the Inter-American and European systems could be instructive for the African Court. For example, they reference a study by Viljoen & Louw on the African Commission's low compliance record (only 14% full compliance). This serves to highlight that simply creating a human rights body is not enough; how it operates and strategizes is crucial for effectiveness. One could read Cavallaro and Brewer's piece as implicitly offering advice to the African system: adopt procedures that engage domestic actors and do not rely solely on state goodwill. The mention that the African Court would eventually merge with an African Court of Justice (a then-planned institutional change) shows their awareness of evolving designs and perhaps a subtle suggestion that institutional design (merger, etc.) should not overlook the kind of strategic considerations they outline.

- Interplay and Unique Features: The authors recognize that each regional system has unique features – Europe had an initial Commission (now abolished) and a political enforcement organ; the Inter-American has a Commission that filters cases and a more activist court in terms of ordering remedies; the African system includes both a commission and a court and covers a broader range of rights (third-generation rights, etc.) but faces political challenges. Despite differences, Cavallaro and Brewer treat them as part of a common enterprise of supranational human rights adjudication. By referencing Laurence Helfer & Anne-Marie Slaughter's work on effective supranational adjudication, they connect to general theories that can apply to any of the courts. Helfer and Slaughter had identified factors for effectiveness across tribunals, such as independence and quality of reasoning, which Cavallaro and Brewer use to evaluate the IACtHR. This places the Inter-American Court's issues in a broader scholarly context: for instance, fact-finding capacity is not just an Inter-American quirk but a general issue for international courts, and quality of judgments (clarity, etc.) is universally important.
- Cross-Pollination: The article also contributes to the idea of cross-regional learning. The Inter-American Court has often looked to European Court jurisprudence for substantive guidance (e.g., on proportionality, or freedom of expression standards). Cavallaro and Brewer propose that it also look to procedural or strategic aspects. Conversely, Europe could learn from Inter-American innovations like expansive reparations (the IACtHR has been far more creative in ordering measures like public memorials, human rights training, etc., which the ECHR historically did not do in individual cases). The authors hint at this when they discuss how the IACtHR "designed a complex catalogue of reparations" under Article 63 of the American Convention, including guarantees of non-repetition with transformative aims. These creative remedies are something that later influenced other systems (for example, the African Commission and Court have cited IACtHR jurisprudence on remedies). By documenting and critically analyzing these approaches, Cavallaro and Brewer's work helps situate the Inter-American Court as a laboratory of human rights law whose experiences are valuable globally.

In summary, the broader context provided in the article amplifies its analysis. Cavallaro and Brewer effectively show that many challenges the Inter-American Court faces – compliance, balancing sovereignty and human rights, maximizing impact – are part of a larger conversation about international courts. Their recommendations, while tailored to the

IACtHR's situation, resonate with themes in the European and African systems (and even beyond, to UN treaty bodies). This contextual awareness enriches their arguments and invites readers to think of regional human rights litigation not in isolation but as part of an evolving, comparative field. It adds depth to their critical analysis by suggesting that the 21st century demands a revaluation of strategy in all regional systems as political conditions and expectations change.

Methodological Approach: Strengths and Limitations

Cavallaro and Brewer employ a mixed methodological approach that combines legal analysis, empirical observation, and practitioner insight. Evaluating the strengths and limitations of this approach is useful for understanding the article's credibility and scope.

Strengths:

- *Comprehensive Case Analysis:* The authors ground their arguments in numerous case studies and concrete examples from the Inter-American Court's docket. They reference seminal cases (e.g., *Velásquez Rodríguez v. Honduras* (1988) as an early milestone, *Castillo Petruzzi v. Peru*, *Loayza Tamayo v. Peru*, *Yean and Bosico v. Dominican Republic*, *Ximenes Lopes v. Brazil*, *Miguel Castro-Castro v. Peru*, *Mapiripán Massacre v. Colombia*, *Bueno Alves v. Argentina*, and many more throughout their footnotes). By doing so, they demonstrate a deep familiarity with the Court's jurisprudence and the context of each case. This bolsters the credibility of their critiques: for example, when they say the Court sometimes fails to detail factual contexts, they provide the example of *Bueno Alves* with specific paragraph numbers where the judgment was lacking detail. When they discuss state acknowledgments, they refer to cases (like *Rochela Massacre v. Colombia*, where Colombia partially acknowledged responsibility and the Court still documented facts). This case-based analysis allows readers to see the empirical basis of the authors' claims, rather than accepting them as abstract assertions.
- *Use of Interviews and First-Hand Perspectives:* Unusually for a law review article, Cavallaro and Brewer incorporate insights from interviews with practitioners. Throughout the footnotes, there are references to interviews with individuals like Ariel Dulitzky (a senior specialist at the Inter-American Commission), Michael Camilleri (a litigator at CEJIL), and Sarah Paoletti (a human rights clinic director). These interviews, conducted in 2007, provide qualitative data on how those inside the system perceive its challenges – for instance, Dulitzky's observation that examining a state witness in a Court hearing opened new lines of questioning by judges, or practitioners' thoughts on what influences compliance. This methodological choice is a strength because it adds practical validation to the authors' arguments. It's not solely their opinion; it's backed by voices of people engaged in cases. It also shows a measure of *critical reflexivity* – the authors are testing their hypotheses by consulting others. In academic terms, this could be seen as an early example of blending doctrinal study with field research in international human rights law.
- *Interdisciplinary References:* The methodology also involves interdisciplinary research, drawing on political science, sociology, and international relations literature. They cite political science works (e.g., by Sonia Cardenas on state responses to human rights pressure, Beth Simmons, and others indirectly through Engstrom or Hillebrecht's findings in later references). They use these to support points about compliance determinants and the importance of domestic politics. By engaging with

social science, they strengthen the analytical framework beyond a purely legal one. This approach recognizes that effectiveness of courts is a socio-legal problem, not just a legal one.

- *Hypothesis-Driven Structure:* The authors explicitly frame parts of their analysis as hypotheses, which is somewhat uncommon in law review articles but adds rigor. It shows they are not simply asserting truths but proposing ideas to be examined. This invites a critical reading and further testing by others. The clarity of stating hypotheses and recommendations makes the article well-structured and its arguments transparent.
- *Balance of Critique and Constructive Solutions:* Methodologically, they do not stop at critiquing (which could have been done by just highlighting problems); they proceed to offer actionable recommendations. This normative aspect – suggesting reforms that are within the Court's power (like more fact-finding, handling acknowledgments carefully, adjusting judgment style) – is a strength because it moves the scholarship from diagnosis to prescription. It gives the article practical relevance.

Limitations:

- *Lack of Quantitative Data:* Although the article discusses compliance and impact, it largely relies on qualitative assessment and examples rather than systematic quantitative data. For instance, it cites that "at least 50%" of decisions in 2001–2006 had partial or full implementation (drawing from a study published later by Basch et al. 2010, which likely the authors had preliminary knowledge of or contributed to). But the article itself was published before that full data came out, so Cavallaro and Brewer had to rely on scattered reports (like OAS annual reports, or specific compliance resolutions). This means some claims, such as the extent of non-compliance in certain areas, were not backed by comprehensive statistics at the time. A reader might wonder whether the cases highlighted (like a few where states didn't prosecute perpetrators) are representative or selective. The authors mitigate this by citing multiple instances and other authors (e.g., Shelton's noting Italy's non-compliance issues, Viljoen & Louw's data on Africa), but they did not themselves present original empirical research. This is understandable given the scope of a law review piece, but it is a limitation in terms of empirical weight.
- *Potential Bias/Subjectivity:* As advocates deeply involved in the system, Cavallaro and Brewer come from a perspective that is pro-inter-American system and pro-human rights activism. While this is not a flaw per se, it means the article is not a neutral evaluation but one geared towards making the system more powerful in protecting rights. Some might argue this introduces bias – for example, they may downplay arguments against a more activist court or not fully explore counterarguments to their proposals. Their stance is clearly that more engagement and pressure on states is good; a skeptic might question whether, for instance, too much pressure could risk states withdrawing. The authors acknowledge the risk of backlash, yet still lean towards the Court pressing as far as feasible without losing legitimacy. Their recommendations largely assume the Court *can* thread that needle. The potential bias is counterbalanced by their realistic tone (they are not utopian; they talk about complementing domestic efforts and not expecting miracles), but a reader should note that the authors are essentially reform advocates.
- *Scope of Analysis:* The article's focus is predominantly on contentious litigation (individual cases) in the Inter-American system. It gives less attention to other functions like the Court's advisory jurisdiction or the Inter-American Commission's broader promotional roles (beyond its role in case filtration). The Commission's recent

reforms or any political dynamics in the OAS are not deeply analyzed. This is a justifiable choice to keep the analysis focused, but it means some contextual factors – like the role of states in electing judges, or budgetary politics – are not explored, even though they could affect effectiveness. For instance, if states unhappy with the Court cut its funding, that's a limitation not discussed. So, the analysis stays within the legal process and does not fully delve into OAS political economy.

- *Temporal Limitation:* Being published in late 2008, the article's analysis is frozen at that point. Some of its predictive or prescriptive elements could not account for events soon after – e.g., the backlash in the early 2010s when several countries (Venezuela, later others) did push back against the Court, or the rise of populist governments challenging the system. The authors did identify the trend of resistance, but one could say with hindsight that their optimism about certain reforms might face greater hurdles than anticipated. However, that is a temporal limitation inherent in any scholarship. As of 2008, they drew the best conclusions possible.
- *No Direct Assessment of African System Outcomes:* They mention Africa but do not analyze it deeply (understandably, since the African Court was new). While not a limitation of their main thesis, it means the generalizability of their ideas to Africa is assumed rather than proven. Similarly, Asia has no regional court (they don't cover that, which is fine given scope).

In sum, the methodology of Cavallaro and Brewer's article is a blend of doctrinal, empirical, and comparative analysis grounded in practical experience. This is a strength that makes the piece rich and persuasive. The main limitations lie in the lack of original data gathering and the advocacy-oriented viewpoint, which, while offering valuable insights, may not engage deeply with potential criticisms (for example, a conservative viewpoint that might argue courts should *not* be too activist). The article's hypotheses eventually needed testing by subsequent research – and indeed, much of what they argued has been borne out or explored by others, which validates their approach. The combination of careful case study, broad vision, and concrete proposals in Cavallaro and Brewer's methodology has made their work enduring in relevance.

Conclusion

Cavallaro and Brewer's "Reevaluating Regional Human Rights Litigation in the 21st Century" stands as a seminal analysis that critically examines the role and practice of the Inter-American Court of Human Rights at a pivotal moment in its history. The article provides a comprehensive summary of the Court's evolution and a frank critique of its traditional litigation model, arguing that the challenges of a new era demand a more strategic, impact-oriented approach. The authors' main arguments – advocating for enhanced fact-finding, vigilance against state procedural tactics, and context-sensitive jurisprudence – collectively urge the Court to act not only as a dispenser of justice in individual cases, but as a facilitator of systemic human rights improvements.

In evaluating the Inter-American Court's effectiveness, Cavallaro and Brewer acknowledge its growth and doctrinal achievements, yet they highlight significant limitations in compliance and enforcement, many of which stem from political and structural factors beyond the Court's direct control. Their work contributes to a broader understanding that the efficacy of international courts is "a prolonged and contested political and socio-legal process", not a simple tally of implemented judgments. By situating their analysis in the wider field of regional human rights systems, the authors show that the questions faced by the Inter-

American Court – how to remain effective, legitimate, and true to its mission – are shared by its European and African counterparts, even if manifested differently in each context. Methodologically, the article's blend of scholarly rigor and practical insight is a notable strength. It reflects on nearly three decades of Inter-American litigation experience and draws lessons to guide the next decades, effectively becoming a reference point for both scholars and practitioners concerned with the future of human rights adjudication. If the first generation of human rights litigation was about establishing basic principles (like state responsibility for disappearances in *Velásquez Rodríguez* 1988), Cavallaro and Brewer's analysis heralds a second generation focused on implementation and impact – ensuring those principles make a difference on the ground.

In conclusion, Cavallaro and Brewer's article significantly contributes to international human rights law scholarship by reorienting the discussion from what the Inter-American Court has decided to how it should decide cases for maximal effect. Their critique of the status quo and forward-looking recommendations have influenced subsequent debates on reforming the Inter-American system and have encouraged a more self-reflective, strategy-conscious mindset among those who use and study regional human rights courts. The article remains a thought-provoking and deeply relevant piece of academic work, reminding us that even as human rights tribunals become well-established, their continued relevance hinges on adaptation, innovation, and responsiveness to the changing political landscapes in which they operate.

Sources:

- Cavallaro, James L., & Brewer, Stephanie E. (2008). *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court*. American Journal of International Law, 102(4), 768–827.
- Gutiérrez, Martha (2025). *Inter-American Human Rights System and Social Change in Latin America*. Laws, 14(2), 14 (special issue on Rethinking Human Rights) – summarizing Cavallaro & Brewer's view that each IACtHR case is an opportunity for broader impact beyond the individual victim.
- Excerpts from Cambridge Core (AJIL) and other scholarly references discussing compliance and effectiveness in regional human rights courts. These provide context on the IACtHR's compliance record and illustrate the authors' points about "visionary jurisprudence" vs. pragmatic judgments.
- European Court of Human Rights and Inter-American Court annual reports and case law, as cited by Cavallaro & Brewer, giving empirical background on the growth of dockets and state participation.
- CEJIL Reports and secondary literature on compliance (e.g., Mark Janis on European system, Viljoen & Louw on African system) as referenced in the article, underscoring comparative compliance challenges.

These sources (embedded in the analysis above) collectively inform this summary and critique, evidencing the points made with direct citations to Cavallaro and Brewer's work and its interpretation by others. The analysis herein strives to maintain a formal, academic tone and provide a clear, structured synthesis of Cavallaro and Brewer's influential article, highlighting its arguments, critiques, and enduring significance in the field of human rights law.

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Stephen Hopgood „The Endtimes of Human Rights”

Hopgood's book delivers a scathing critique of the international human rights regime, arguing that the global "Human Rights" project (as opposed to grassroots "human rights" struggles) is entering its *endtimes*. According to Hopgood, the idea of universal human rights has become ill-suited to current realities, overreaching in its ambitions and unable to respond to new global power dynamics. He contends that the moral authority once claimed by the human rights movement – a secular, quasi-religious authority speaking "in the name of humanity as a whole" – is now crumbling. In this report, we provide an academic analysis of *The Endtimes of Human Rights*, including its core thesis and theoretical approach, a chapter-by-chapter overview, Hopgood's main critiques of the human rights system, the context of its publication, its reception and debates, and its influence on subsequent scholarship.

Hopgood's Core Thesis and Theoretical Approach

Hopgood's core thesis is that the global human rights regime (what he calls *"Human Rights"* with a capital H) is facing an existential decline or "endtimes." He distinguishes this top-down, institutionalized regime from "human rights" (lowercase) as locally rooted struggles for justice. The High Enlightenment ideal of universal rights, in his view, has become a *"globalized superstructure"* of laws, norms, courts, and NGOs that claim singular moral authority over humanity. This global Human Rights project, he argues, has sold its moral clarity by aligning itself with powerful liberal states, especially the United States, effectively becoming an adjunct of Western power. As Western (American and European) dominance wanes in a new multipolar world, the legitimacy and clout of the international human rights regime will likewise wane. Hopgood provocatively concludes that what seemed like a *dawn* of universal human rights was in fact a *sunset*, and that the vision of one secular morality governing the world is now fading.

In terms of theoretical approach, Hopgood writes as a critical international relations scholar and anthropologist. He explicitly notes that his book *"is an argument, not a history,"* using bold claims to cut through prevailing orthodoxies. Nonetheless, he adopts a historical-genealogical perspective on the human rights idea, tracing its roots to what he calls nineteenth-century humanitarian internationalism – essentially a "secular religion" that arose as traditional religion waned in Europe. Hopgood draws an analogy between human rights and a faith: just as the Church once held moral authority, the human rights movement established itself as a kind of "Church of Human Rights," complete with sacred symbols, moral fervor, and claims of infallible truth. He invokes sociological concepts (e.g. *"sacred metanarrative"*, *"social magic"*) to argue that human rights activism created powerful myths and rituals – for example, the image of a suffering innocent child – to inspire devotion and political action. This approach frames human rights as a cultural and ideological project (a *"global brand"* sustained by moral sentiment) rather than a neutral or universal truth above politics. Hopgood's perspective is thus *critical* and *sociological*, examining how power,

money, and Western ideology have shaped the human rights enterprise, and questioning the moral absolutism and "timeless" narratives that its proponents often invoke.

Chapter-by-Chapter Breakdown

To understand Hopgood's argument in depth, it is useful to review the book's eight chapters, each of which builds a part of his overall case:

1. Chapter 1 – *Moral Authority in a Godless World*: This opening chapter lays the groundwork by exploring how human rights emerged as a source of moral authority in the secular modern world. Hopgood argues that with the decline of traditional religion in the West, *humanitarian* and *human rights* ideals filled the void, offering a kind of "godless" moral code for a world without divine authority. He describes the 19th-century European origins of this moral project, rooted in what he calls a *"revolution in moral sentiments"* among the new middle classes. Industrialization and scientific progress had generated stark contradictions – great wealth alongside great suffering – spurring these bourgeois humanitarians to seek purpose in saving others. Human rights, humanitarianism, and international justice were the three branches of this new "humanist tree," all growing from European Enlightenment and Christian ethics transplanted into secular form. In essence, Chapter 1 portrays the rise of human rights as the rise of a secular faith: a belief in universal moral progress and human dignity that claimed a higher authority (the "humanity" of all people) in an otherwise godless age.
2. Chapter 2 – *The Church of Human Rights*: Here, Hopgood develops the analogy of the human rights movement as a church or religion. He examines how human rights advocates constructed a sacred narrative and institutional "church" to entrench their moral authority. For example, he discusses the International Committee of the Red Cross (ICRC) as an early humanitarian institution that effectively *"displaced Christ's sacrifice in favor of human suffering,"* adopting the red cross emblem and a mission of saving lives as a secularized Christian charity. Human rights organizations, in his telling, inherited this sacred symbolism – *"the abandoned child, the starving child, the war orphan"* became iconic images of innocent suffering used on posters and reports. Hopgood argues that by using such religious-like symbols of martyrdom and innocent victims, the Human Rights "church" created a form of "social magic": it turned moral ideology into unquestionable facts on the ground. Two key strategies were (a) making their values concrete (*"turn your ideology into facts on the ground"*) by showcasing actual victims, and (b) placing fundamental moral questions *"out of bounds"* – i.e. treating human rights principles as sacrosanct truths beyond debate. In sum, Chapter 2 portrays the global human rights network (NGOs, treaties, courts) as a kind of transnational church, complete with its own scriptures (e.g. the Universal Declaration), saints (heroic activists), and rituals (advocacy campaigns), all aimed at enforcing a singular moral vision worldwide.
3. Chapter 3 – *The Holocaust Metanarrative*: This chapter delves into the historical narrative that became central to the human rights ethos: the legacy of the Holocaust. Hopgood describes the Holocaust as the ultimate *"sacred metanarrative"* that revived and reshaped the human rights movement after World War II. He argues that the discovery of Nazi atrocities and the vow of "*Never Again*" provided an almost religious justification for universal human rights. The post-war human rights project cast itself as the antidote to Auschwitz – a mission to prevent a repeat of such evil, by establishing universal norms against genocide, torture, and persecution. Hopgood

traces how this narrative sanctified human rights law (e.g. the Genocide Convention, the Universal Declaration of 1948) as the *moral response* to the horrors of the Holocaust. However, he also suggests that this metanarrative simplified history into a morality tale, helping to mask the inconvenient fact that human rights arose from very particular Western experiences and values. Chapter 3 thus examines how the Holocaust story became a foundational myth for the global Human Rights regime – imbuing it with moral urgency and legitimacy, but also creating a kind of unquestionable dogma (evil vs. good, fascism vs. human rights) that may obscure other perspectives.

4. Chapter 4 – *The Moral Architecture of Suffering*: In this chapter, Hopgood analyzes how the human rights movement *frames suffering* to mobilize support and assert moral authority. He builds on the idea of a "sacred narrative" by dissecting the imagery and discourse of victimhood used in human rights campaigns. A prime example is the ubiquitous image of the innocent suffering child, which Hopgood notes appears on countless charity appeals and NGO reports. Such images serve as a "moral architecture" – they structure how we think about suffering by emphasizing purity and blamelessness, thereby demanding an immediate moral response. Hopgood argues that this strategy relies on quasi-religious logic: *anyone's* child could be suffering, and thus we all are called (as if by God) to rescue our "brothers and sisters" in humanity. By focusing on emotive symbols (starving children, torture victims) and avoiding deeper political questions, the human rights movement creates a universal appeal that transcends context – a kind of moral absolutism where the *why* of suffering is less important than the imperative to "do something". Chapter 4 critically highlights the *power and the pitfalls* of this approach: while it galvanizes compassion, it can also become manipulative "social magic", simplifying complex crises into black-and-white morality plays. Hopgood suggests that this approach can override local context and promote external intervention (even military) as righteous duty, a point that foreshadows his later critique of humanitarian interventions.
5. Chapter 5 – *Human Rights and American Power*: This pivotal chapter marks what Hopgood sees as the turning point where *human rights* (as a grassroots moral cause) transformed into *Human Rights* (a geopolitical project). He identifies the 1970s – specifically the era when the United States "got involved" in human rights – as *"the beginning of the end"* of the movement's independent moral authority. Hopgood describes how during the Cold War détente, figures like Jimmy Carter began to adopt human rights rhetoric in U.S. foreign policy, and organizations like Helsinki Watch (precursor to Human Rights Watch) emerged, often with Western funding. The high point of human rights influence, he argues, coincided with American unipolar dominance after the 1970s. In Chapter 5, Hopgood details the symbiosis between human rights advocates and U.S. liberal hegemony: on one hand, the 1990s saw a "window of opportunity" for international law and new institutions (tribunals, the International Criminal Court) largely because the U.S. and allies tolerated or even promoted them. On the other hand, the U.S. selectively instrumentalized human rights as a *"foreign policy tool,"* championing rights rhetoric against adversaries while often exempting itself and its friends. Hopgood notes, for example, that the United States famously refused to join the ICC, attached reservations undermining human rights treaties, and even engaged in torture during the "War on Terror" – all while professing commitment to human rights. Chapter 5 thus argues that American power fundamentally shaped and constrained the human rights project: the movement's fortunes rose with U.S. dominance and became tied to American liberal ideals, a dependency that would spell trouble when U.S. commitment wanes.

6. Chapter 6 – *Human Rights Empire*: Expanding on the U.S. role, this chapter portrays the late 20th-century global human rights system as a kind of liberal empire. With the end of the Cold War, human rights advocates pushed for robust international enforcement – what Hopgood calls *"all manner of human rights advocates [pushing] for…global courts to deliver justice"*. Institutions like the ad hoc tribunals for Yugoslavia and Rwanda, the International Criminal Court (ICC) (established 2002), and the doctrine of Responsibility to Protect (R2P) (formulated 2005) were seen as triumphs of universal justice. However, Hopgood argues that this edifice was built on Western, especially American, power and legitimacy. In Chapter 6 he gives examples of human rights organizations and NGOs allying with Western military intervention in the 1990s–2000s: for instance, some activists supported NATO's humanitarian war in Kosovo (1999) and later interventions in Afghanistan and Libya, seeing them as enforcing human rights by force. Hopgood describes this period as the heyday of the "Human Rights empire," when liberal norms were spread with quasi-imperial zeal. But he is sharply critical of this merger of human rights with hard power. He suggests that human rights became an "Empire of Humanity" that, while claiming moral high ground, often acted in the interest of powerful states and in ways indistinguishable from old imperialism. The *"responsibility to protect"* was applied selectively and sometimes cynically, and the ICC's justice was partial and selective, often targeting weaker states and ignoring great-power abuses. By the end of this chapter, Hopgood foreshadows the impending collapse of this order, noting that the integration of Human Rights with U.S. hegemonic power made it vulnerable: as that hegemony recedes, so will the "empire" of human rights.
7. Chapter 7 – *Of Gods and Nations*: In this chapter, Hopgood turns to the forces now challenging the human rights system: namely, the resurgence of *religious convictions ("gods")* and *state sovereignty ("nations")* as rival sources of authority. He notes that by the early 21st century, many states and societies began openly pushing back against the universal human rights agenda. Authoritarian or nationalist governments in countries like China, Russia, India, Brazil, as well as smaller states like Sri Lanka or Sudan, increasingly defied international human rights pressures. They questioned the legitimacy of what they perceived as Western moral imperialism and reasserted the primacy of national sovereignty and local values. Hopgood discusses how conservative religious movements (for example, political Islam, resurgent Russian Orthodoxy, or evangelical Christianity in some countries) also contested liberal human rights norms on issues like women's rights, LGBTQ rights, or freedom of expression – effectively reasserting "God's law" or traditional norms against secular universals. The title *"Of Gods and Nations"* encapsulates this counter-current: instead of one humanity under secular human rights law, we see a pluralistic world of diverse higher authorities (whether divine or patriotic). Importantly, Hopgood does not entirely condemn this development – he provocatively suggests that these challengers are *"not wrong"* to reject the human rights regime, since that regime had become *"imperialism in the guise of moralism"*, once perhaps noble but now a self-serving industry. Chapter 7 thus paints a picture of a world where universalism is losing ground: major powers and many societies no longer accept that a Western-founded human rights ideology should reign supreme, and they are carving out ideological and political space apart from it.
8. Chapter 8 – *The Neo-Westphalian World*: The final chapter sketches the emerging global order that Hopgood terms "neo-Westphalian," referring to a return to classical norms of state sovereignty and non-interference (as in the 1648 Peace of Westphalia). In this multipolar world, power is distributed among many states and no single bloc

can enforce a universal moral agenda. Hopgood argues that the decline of American (and European) dominance, coupled with the rise of powers like the BRICS (Brazil, Russia, India, China, South Africa) and MINT (Mexico, Indonesia, Nigeria, Turkey), means there will be no global consensus to sustain the old human rights regime. These rising states insist on having their own say in defining global norms, often prioritizing sovereignty, development, or religious/cultural values over liberal human rights. As a result, the future will not see the further expansion of the human rights regime that many hoped for in the 1990s; instead, we may witness the retrenchment of universal human rights enforcement. Hopgood notes contemporary evidence: the International Criminal Court's struggles (powerful countries ignoring its warrants), the failure to act in Syria under R2P, and increasing impunity for human rights abuses by states that reject external oversight. In Hopgood's view, the "foundations of universal liberal norms" and institutions are *"crumbling,"* and what comes next is a less predictable, plural order. Yet, he does not end on pure pessimism. Hopgood makes a "plea for a new understanding" of human rights hope. Rather than clinging to the illusion of one-world universalism, he suggests embracing a more decentralized, locally-driven approach: let diverse communities and nations develop their own *"locally conceived versions of human rights"* and solutions to injustice. The end of the global Human Rights regime, in his view, *"is not a bad thing"* if it exposes Western hypocrisy and allows truly grassroots movements to flourish without the smothering influence of an international "church". Chapter 8 thus closes the book by mourning the lost "promise of universalism" but ultimately *rejecting its reality* in favor of a pluralistic, Westphalian world where human rights must find new footing.

Hopgood's Main Critiques: Western Dominance, NGOs, and Moral Authority

Throughout *The Endtimes of Human Rights*, Hopgood advances several interlocking critiques of the international human rights system. Key among them are:

- Western Dominance and Moral Imperialism: Hopgood argues that the international human rights regime is a product of Western power and ideology. Its origins in European middle-class humanitarianism and its expansion under American hegemony mean that it carries a Western liberal imprint that is often alien to other societies. He contends that human rights have been used as a "secular replacement for the Christian God," spread worldwide through what he calls *"Empire-lite"* – essentially a continuation of the civilizing mission under new branding. Hopgood is blunt in calling this *"imperialism disguised as moralism"*. In other words, the global human rights enterprise often acts like a moral empire, enforcing Western norms while claiming universal validity. This critique includes pointing out Western double standards and hypocrisy: for example, liberal powers invoke human rights to justify interventions or condemn rivals, yet excuse their own abuses or those of their allies (e.g. U.S. drone strikes, torture, or Israel's policies). Such contradictions, in Hopgood's view, undermine the credibility of human rights as truly universal. He believes the "one-size-fits-all universalism" of the current regime is in fact outdated and hegemonic, and that non-Western resistance to it is a predictable reaction.
- NGOs and the Co-optation of Amnesty International: A significant part of Hopgood's critique targets the major human rights NGOs, such as Amnesty International (where Hopgood formerly worked) and Human Rights Watch. He suggests that over time

these organizations have "sold out" their moral authority by becoming too intertwined with governments, funders, and professionalized politics. According to Hopgood, the larger an NGO grows, *"the greater the likelihood that it has been tamed by capital"* – meaning it exists to sustain its budget and bureaucracy, rather than purely for the cause. Amnesty International, for instance, began as a grassroots letter-writing movement, but Hopgood notes it evolved into a large bureaucracy that often engages in mainstream policy advocacy and even supported military interventions on human-rights grounds, thereby aligning with state power. He sees this as NGOs "raising money to exist" rather than *existing solely to raise moral alarm*. Moreover, by adopting causes convenient to Western donors and geopolitical interests, NGOs risk becoming echoes of Western policy. Hopgood criticizes Amnesty, HRW, and others for championing principles like R2P or international justice that can be *"easily manipulated"* by powerful states, potentially causing more harm (through war or instability) than the injustices they aim to stop. In essence, he accuses these NGOs of losing the *independence and purity* of their mission – their moral clarity has been sullied by political entanglements. (Notably, Hopgood's earlier ethnographic study *Keepers of the Flame* documented Amnesty's internal struggles, informing this perspective.) While acknowledging these NGOs still do valuable work, Hopgood's tone is largely critical, portraying them as bureaucratized "human rights factories" that are now part of the global Human Rights establishment rather than voices of dissent.

- Questioning Moral Authority and "Sacred" Universality: At the heart of Hopgood's critique is a challenge to the moral authority that international human rights actors claim. He argues that human rights advocates often behave as if they are above politics, endowed with a quasi-religious mandate to speak for suffering humanity. Hopgood finds this *presumption of moral superiority* problematic. He asks pointedly: *"Why shouldn't human rights advocates be answerable for their choices and priorities? Why should they get a moral pass, particularly when they speak in the name of others who have no voice themselves?"*. This rhetorical question underlines his view that NGOs and global elites have arrogated to themselves the voice of "humanity", yet they are often unelected, Western-funded, and selective in their concerns. Hopgood also dissects the ideological hubris of universality – he notes that the human rights movement shows a *"dogged belief in its own universality"*, an almost infallible confidence that its values are the only legitimate ones. This belief, he argues, has become a blind spot. It prevents the movement from acknowledging that its viewpoint is just one of many perspectives, and that asserting a monopoly on virtue can provoke backlash. In his analysis, the "moral righteousness" of human rights leaders can slide into a form of secular dogma – a faith that doesn't tolerate heresy or alternative value systems. By labeling its mission as the embodiment of "good," the Human Rights project has tended to dismiss critics (whether realist skeptics, cultural relativists, or global South governments) as being against humanity itself. Hopgood's critique thus calls for demystifying this moral authority: he wants human rights to be seen as *political*, as one normative project among many, rather than a sacred arbiter beyond reproach. Only by doing so, he suggests, can we have honest conversations about whose interests are served and what trade-offs are made in the name of human rights.

In summary, Hopgood's main critiques target the legitimacy of the international human rights system. He believes it has become too Western, too elitist, too unaccountable – a "global church" that preaches universal salvation while being funded and powered by a few rich nations and NGOs. Its moral authority, once perhaps genuine, has been compromised by

power politics and should no longer be taken at face value. These contentions make *The Endtimes of Human Rights* a *provocative* and controversial book, sparking significant debate as discussed below.

Historical and Political Context of *Endtimes* (2013)

When *The Endtimes of Human Rights* was published in 2013, several historical and political developments had set the stage for Hopgood's arguments. The early 21st century had seen a series of events that challenged the optimism of the 1990s human rights boom and exposed the limits of global norms:

- Post-9/11 Wars and the "War on Terror": The U.S.-led invasion of Iraq in 2003 – initially justified partly on humanitarian grounds (ousting a dictator, freeing the Iraqi people) – had blurred into a protracted war and occupation, showing how *"the post-Cold War project of 'humanitarian intervention' [could morph] into unilateral war and occupation"*. This, along with the war in Afghanistan, dented the credibility of humanitarian rhetoric. Moreover, the U.S. response to 9/11 included torture, secret detentions, and drone killings, flagrant violations of human rights carried out by a leading champion of the human rights regime. Scandals like Abu Ghraib prison and Guantánamo Bay, and policies like "extraordinary renditions," revealed a gap between Western human rights ideals and actions. This context supports Hopgood's point about Western hypocrisy and showed that even in the "heartland" of human rights, fundamental norms could be cast aside. By 2013, it was evident that the War on Terror had undermined Western moral high ground, giving ammunition to critics who called out the double standards of the human rights system.
- Failures of International Justice and Humanitarian Action: Several hallmark initiatives of the 1990s/2000s human rights era were encountering serious trouble by the early 2010s. Hopgood himself cites the International Criminal Court (ICC) and the Responsibility to Protect (R2P) doctrine as facing crises that exemplified deeper structural problems. The ICC's first chief prosecutor (Luis Moreno-Ocampo) had a tumultuous tenure with few successes, and by 2013 the Court had yet to secure a major conviction while being criticized for bias (most cases were in Africa). This made the ICC appear ineffectual and politically constrained, supporting Hopgood's claim that global justice was more intermittent and symbolic than real. Likewise, the high-minded R2P norm – the idea that the international community must intervene to stop mass atrocities – met its breaking point in Syria's civil war. In 2011, NATO had invoked humanitarian justifications to intervene in Libya; but when Syria's conflict escalated with grave atrocities, the UN Security Council (faced with Russian and Chinese vetoes) could not act. By 2013, Syria had become a humanitarian catastrophe with no R2P intervention – a "failure in Syria of the Responsibility to Protect" that Hopgood underscores as evidence of *"fatal structural defects in international humanism"*. Additionally, there was rising violence against aid workers in conflict zones and a sense that humanitarian space was closing. These trends formed the backdrop of disillusionment against which Hopgood's thesis of human rights "endtimes" resonated.
- Rise of a Multipolar, "Neo-Westphalian" Order: The period around 2013 was marked by increasing discussion of the decline of U.S. unipolar power and the rise of other powers. The global financial crisis of 2008 had shaken Western economies, while countries like China, India, Brazil, and Russia experienced relative growth in influence. Hopgood terms this shift the advent of a *"multi-polar world"* or *"neo-*

Westphalian system", characterized more by sovereign autonomy than by liberal interventionism. For instance, China's economic and political clout expanded, and it began asserting its own norms (such as *"Asian values"* or prioritizing state sovereignty and development over civil-political rights). Russia, under Putin, openly challenged Western human rights critiques – exemplified by crackdowns on NGOs (like the "foreign agents" law) and advocacy of "traditional values" at the UN. Middle powers like Brazil, India, South Africa, Turkey, and Nigeria started to demand a bigger say in international rule-making. In 2013 the BRICS countries even discussed creating alternative institutions to Western-led ones. This global context aligns directly with Hopgood's argument that human rights as a Western-led regime would falter as soon as Western hegemony eroded. Indeed, by 2013, one could observe that international human rights pressure was increasingly defied: e.g., Sri Lanka resisted UN inquiries into wartime abuses; African Union members accused the ICC of neocolonial bias; and China's and Russia's veto power shielded allies from intervention. Hopgood's notion of an impending "endtimes" for the human rights regime captured the zeitgeist of a world where power was shifting East and South, and liberal norms no longer went unchallenged.

- Contemporary Academic and Intellectual Trends: The book also arrived amid a broader wave of scholarly re-evaluation of the human rights project. In the few years around 2013, several influential works asked whether human rights had failed or reached a stagnation point. For example, Eric Posner's *The Twilight of Human Rights Law* (2014) argued that international human rights legal treaties have little effect – a view in line with Hopgood's skepticism. Even in 2013, political scientists like Emilie Hafner-Burton (*Making Human Rights a Reality*, 2013) and practitioners like Jo Becker (*Campaigning for Justice*, 2013) were highlighting the gap between human rights ideals and practice, and the struggles faced by advocates. Meanwhile, historian Samuel Moyn's *The Last Utopia* (2010) had recently portrayed the late 20th-century rise of human rights as contingent and now perhaps past its peak. In short, there was an emerging "crisis literature" on human rights to which Hopgood's book contributed a bold thesis. His invocation of "endtimes" was arguably one of the most polemical statements in this intellectual context, but it resonated with growing doubts about the efficacy of international law, the backlash against NGOs, and the resurgence of nationalism worldwide.

In sum, the historical moment of *Endtimes* was one in which high hopes for global human rights (after 1989 and 1990s) had given way to sober realities of war, power politics, and pushback by 2013. The book's dark prognosis mirrored real-world trends and disillusionments, which helps explain why it provoked such strong responses in the following years.

Reception and Debates in Academic and Policy Circles

Upon publication, *The Endtimes of Human Rights* generated intense debate among scholars, human rights practitioners, and policy experts. Hopgood's provocative claims were both praised and criticized, leading to a rich discourse about the state of human rights. Key elements of the reception include:

- Praise for Courage and Insight: Many readers acknowledged that Hopgood raised uncomfortable but important questions. Conor Gearty (a human rights law scholar) noted that it is a *"provocative, angry book – and an important one,"* describing the

work as a passionate *"attack on 'imperialism disguised as moralism'"*. Reviewers like Clifford Bob appreciated Hopgood's powerful critique of how human rights can do harm despite good intentions. Bob wrote that Hopgood "does an excellent job of drawing together specific incidents to support his controversial views" and found that his emphasis on locally-driven activism "rings true" in many cases. Even critics often admitted that *Endtimes* is thought-provoking and timely, forcing the human rights community to reflect on its failings. The book's blend of historical sweep and insider knowledge (from Hopgood's Amnesty experience) was commended for shedding light on the politics behind the advocacy. In academia, it became part of a canon of critical works that graduate seminars and panels would debate as they grappled with the notion of a human rights "crisis."

- Criticisms of Overstatement and One-Sidedness: At the same time, *Endtimes* received substantial pushback. Many critics argued that Hopgood painted too sweeping and bleak a picture. For instance, Kenneth Roth, the executive director of Human Rights Watch, publicly rebutted Hopgood's conclusions. Roth contended that human rights groups have long recognized the need to engage in policy and political reform (not merely report abuses), and that this *"broader transformative effort"* is *"to be celebrated, not denigrated, as Hopgood does, as the sullied world of politics."*. In other words, Roth defended NGO advocacy as pragmatic rather than a sell-out, implying that Hopgood's purist stance was unfair. Similarly, Conor Gearty, while respecting the book's passion, argued that *Endtimes "does not give a full picture of human rights,"* hinting only occasionally at positive counter-examples. Gearty and others felt that Hopgood ignored successes of the human rights movement and the diversity within it. For example, major NGOs often do challenge U.S. or Western policies (as Bob pointed out, HRW has criticized U.S. abuses and lost donors over principled stands). Jean Quataert, a historian, published a detailed critique noting that Hopgood's historical narrative was too linear and monocausal – crediting a Western bourgeois "humanist" class with near-total agency and downplaying the contested, grassroots evolution of humanitarian norms. She called the book a grand but flawed *"grand narrative"*, arguing it imposed today's interpretations on the past and overlooked how non-Western actors and local movements have shaped human rights. Other scholars echoed that Hopgood's thesis, while bold, *"is not particularly shocking or novel"* to political realists who have long been skeptical of human rights power. They argued that declaring "the end" might be premature or melodramatic. For example, the *E-International Relations* review by Daniel Golebiewski pointed out that non-Western populations do often embrace human rights language – citing Chinese citizens invoking rights against their government – suggesting that Hopgood underestimated the universal *aspiration* for rights beyond the West. This counterargument holds that even if Western government influence declines, ordinary people worldwide still demand rights, so the idea won't simply vanish as Hopgood predicts.
- Debates and Symposia: The book's release sparked formal debates in both academic and practitioner circles. Amnesty International Netherlands organized a symposium and an edited volume titled *Debating The Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World* (2014), gathering responses from various experts. Contributors included notable scholars like Michael Barnett (a historian of humanitarianism), who engaged with Hopgood's ideas about compassion becoming "commodified" and controlled by elites. Some essays in that volume concurred that human rights organizations face a legitimacy crisis in a multipolar world, while others defended the adaptability and resilience of the movement. Hopgood himself

contributed to these debates, responding to critics. For example, an online roundtable in *Humanity* journal featured Kenneth Roth, Aryeh Neier (former head of HRW), and others, with Hopgood writing a rejoinder. The very existence of these high-profile dialogues indicates that *Endtimes* hit a nerve. Practitioners felt compelled to justify their strategies, and scholars parsed the evidence for and against Hopgood's claims. The debates often centered on whether the human rights movement is truly at a dead-end, or merely in need of reform – and whether engaging with power (politics, governments, donors) is a strength or a fatal compromise.

- Continued Scholarly Engagement: In academic literature, *The Endtimes of Human Rights* is now frequently cited in discussions of the "backlash" against human rights. Some researchers have taken Hopgood's warnings seriously, examining the rise of nationalist/populist governments and the clampdown on NGOs worldwide as validation of a human rights recession. Others have criticized Hopgood's lack of empirical measure: Kathryn Sikkink, for instance, while not directly writing a review, in her book *Evidence for Hope* (2017) implicitly counters the endtimes narrative by marshalling quantitative data on human rights improvements over decades. She argues that despite setbacks, human rights have made measurable progress (e.g. reductions in violence, spread of women's rights, accountability for abuses) – a perspective that stands in contrast to Hopgood's more qualitative, pessimistic appraisal. This has led to a scholarly split: is the glass half empty or half full? Overall, the reception of Hopgood's book has been a mix of admiration for its unflinching critique and caution that its conclusions might be overstated or too generalized. The debates it provoked have been enriching, forcing the human rights community to reflect on issues of power, culture, and strategy in a changing world.

Influence on Subsequent Human Rights Scholarship (2013–2023)

In the decade since its publication, *The Endtimes of Human Rights* has had a significant influence on human rights scholarship and discourse, helping to catalyze a line of inquiry into the challenges and future of the human rights movement. Whether Hopgood's arguments have been supported or refuted by subsequent events is a matter of ongoing debate, but several trends can be observed:

- Emergence of "Crisis" Narratives: Hopgood's work contributed to, and amplified, a growing conversation about a crisis or backlash in human rights. Terms like "endtimes" (Hopgood) or "twilight" (Posner) of human rights became common reference points in academic articles. Scholars began examining phenomena like the closing of civic space, the rise of illiberal populism, and the pushback against international courts as evidence that the liberal human rights order is under strain. In this sense, subsequent scholarship and reports have often *supported* Hopgood's broad contention that the heyday of the 1990s is over. For example, studies have documented how countries like Russia, China, and Egypt have enacted laws restricting NGOs and foreign funding (validating Hopgood's view of sovereign resistance), or how international human rights bodies have struggled to respond to crises in places like Syria, Myanmar, or Xinjiang. The phrase "neo-Westphalian" has also gained currency to describe a world emphasizing state sovereignty over universal principles, much as Hopgood predicted. Thus, one could argue that real-world developments in the 2010s – resurgent authoritarianism, geopolitical rivalry, and the retreat of the U.S. from multilateral leadership (especially under the Trump administration) – have indeed borne out many of Hopgood's warnings. The diminishing clout of Western powers at

the UN Human Rights Council and the unabated atrocities in conflict zones despite the existence of the ICC and R2P have reinforced the sense of a human rights system in crisis.

- Scholarly Rebuttals and Optimistic Counternarratives: On the other hand, Hopgood's stark pessimism has been *refuted or tempered* by some subsequent scholarship. A key example is Kathryn Sikkink's work. In *Evidence for Hope* (2017), Sikkink explicitly challenges the "decline narrative" by arguing that if one looks at the data, human rights initiatives have achieved notable successes over time – such as reductions in genocide and battle deaths, the spread of democratic norms, and the proliferation of accountability mechanisms. She posits that the perception of failure is partly a matter of raised expectations and selective attention. Likewise, other scholars have pointed out that while the *international* mechanisms may be faltering, domestic and regional human rights movements have grown stronger in many areas. For instance, even as authoritarian leaders resist Western pressure, local activists (in Latin America, Africa, Asia) continue to use human rights language to press for change. This suggests that Hopgood's assumption—that non-Western societies would wholesale reject human rights as "Western"—has not fully materialized. There is evidence that human rights remain a powerful ideal for many grassroots movements, from pro-democracy protests in Hong Kong and Myanmar to feminist and LGBTQ+ campaigns in various countries. These developments offer a more *hopeful counterpoint* to Hopgood's endtimes: rather than an end, we might be seeing a transformation or decentralization of human rights activism. Scholars in this vein argue that the "human rights idea" is resilient, even if certain institutions (like the ICC or certain NGOs) are struggling.
- Influence on Academic Agendas: Hopgood's book helped spur new research agendas focused on the politics of human rights. For example, the edited volume *Human Rights Futures* (2017), co-edited by Hopgood, Jack Snyder, and Leslie Vinjamuri, brought together various thinkers (including optimists and skeptics) to project scenarios for human rights in the 21st century. The very framing of "futures" indicates that, following Hopgood, scholars are treating the trajectory of human rights as uncertain and contingent, not guaranteed to progress. Topics such as the role of rising powers in redefining rights, the impact of global capitalism on advocacy, and the need for culturally plural approaches to rights have gained prominence. In this sense, Hopgood's arguments have been *partially validated* by the serious attention these issues now receive. Even those who disagree with his conclusions often address the problems he highlighted (e.g. how to avoid Western bias, how to sustain funding without co-optation, how to respond to nationalist critiques). The field of critical human rights studies has grown, bridging anthropology, history, and international relations, very much in the spirit of Hopgood's interdisciplinary approach.
- Real-World Developments – Mixed Outcomes: Evaluating Hopgood's thesis against the real world of 2013–2023 yields a mixed picture. On one hand, the international human rights regime has indeed suffered setbacks: major powers like the U.S. and China are even less constrained by human rights considerations now (for instance, China has detained millions in Xinjiang with limited global response; the U.S. under Trump withdrew from the Human Rights Council and cut funding to UN human rights bodies). Authoritarian populists rose in democracies (Brazil's Bolsonaro, Hungary's Orbán, etc.), openly scorning liberal rights norms. The Ukraine war (2022) saw blatant aggression by Russia, with the UN largely impotent to stop massive rights violations – reminiscent of old power politics overriding "Never Again" ideals. These trends might affirm Hopgood's view that we are seeing the end of the liberal rights epoch. On the other hand, there have also been surprising reinforcements of human rights: the

outrage over Russia's actions led to unprecedented use of human rights mechanisms (e.g. investigations, a General Assembly vote condemning the aggression, and the ICC quickly issuing indictments) – suggesting the *institutions still function when political will aligns*. Social movements like #MeToo and Black Lives Matter have had global resonance, invoking human rights concepts (gender equality, racial justice) and achieving reforms in some areas. Additionally, some countries have strengthened their commitment to rights domestically or regionally (for example, African courts have made bold human rights rulings, and Latin American institutions have held former leaders accountable for atrocities). These developments indicate that the "endtimes" are not uniform – the influence of human rights norms varies across issues and regions.

In conclusion, Hopgood's *Endtimes* has cast a long shadow over the past decade of human rights scholarship. It forced a reckoning with the idea that the triumphal narrative of the 1990s is over, and it anticipated many challenges that have indeed unfolded (geopolitical shifts, NGO legitimacy crises, nationalist backlash). Many of its critiques have been *supported* by subsequent analysis of a more hostile environment for human rights. Yet, the debate is far from settled. Counter-evidence of human rights' enduring appeal and adaptability has been brought forward, suggesting that while the global mechanisms envisioned in the 20th century may be under siege, the core ideals of human rights continue to inspire action. In the span of ten years, *The Endtimes of Human Rights* has gone from a controversial outlier to a touchstone in discussions about where the human rights movement is headed. Whether one ultimately agrees or disagrees with Hopgood, his work has unquestionably influenced how we think about the intersection of power, culture, and rights in the 21st century, ensuring that any future blueprint for human rights will have to address the challenges he so unsparingly identified.

Sources:

- Clifford Bob, review of *The Endtimes of Human Rights*, *Ethics & International Affairs* 29:1 (2015).
- Daniel Golebiewski, "Review – *The Endtimes of Human Rights*," *E-International Relations* (Aug 22, 2014).
- Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press, 2013), Ch.1–8 (abstract and excerpts).
- Conor Gearty, "The Endtimes of Human Rights by Stephen Hopgood," *Times Higher Education* (Nov 14, 2013).
- Stephen Hopgood – Wikipedia (summary of *Endtimes* thesis and criticisms).
- Jean H. Quataert, review essay on Hopgood (2014).
- Michael Barnett et al., *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World* (Amnesty Netherlands, 2014).
- Kenneth Roth, Aryeh Neier, Stephen Hopgood, et al., Roundtable in *Humanity* Journal (2014–15).
- Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press, 2017).
- Eric Posner, *The Twilight of Human Rights Law* (Oxford University Press, 2014).
- Jack Snyder, Leslie Vinjamuri, and Stephen Hopgood (eds.), *Human Rights Futures* (Cambridge University Press, 2017).
- Various human rights reports and analyses on global trends (2013–2023).

Juliana Zunzunegui "Populist Backlashes Against the Inter-American Court of Human Rights"

Main Arguments and Conclusions

Zunzunegui's article identifies a rising trend in Latin America where populist or illiberal governments openly challenge the Inter-American Human Rights System, especially the Inter-American Court of Human Rights (IACtHR). The core argument is that such governments react to adverse court rulings through two strategic modes: "exit" (withdrawing from treaties or institutions) or "voice" (vocally criticizing the court and proposing alternatives). Drawing on Cas Mudde's definition of populism, the author characterizes populist leaders as those who portray politics as a struggle between the "pure people" and a "corrupt elite," and use that rhetoric to delegitimize international human rights bodies. In Zunzunegui's analysis, leftist populists like Hugo Chávez, Rafael Correa, and Evo Morales have framed multilateral courts as instruments of imperialism or neoliberalism, justifying backlash against them. The article concludes that such backlashes—if unchecked—pose a serious threat to the IAHRS. It warns that defending the IACtHR will require building "loyalty" to the regime, improving communication and public engagement, and exercising judicial restraint to avoid provocation. In sum, Zunzunegui argues that populist challenges are not just passing events but part of an enduring pattern that demands strategic responses to preserve the region's human rights order.

Theoretical Framework and Methodology

The article is primarily a qualitative, case-based analysis grounded in political theory. It adopts Albert O. Hirschman's "exit, voice, and loyalty" framework to interpret state reactions to dissatisfaction with the IAHRS. Under this lens, a government's decision to withdraw (exit) or to protest (voice) against the Court is akin to an organizational response to decline, modulated by the country's loyalty to the system. The article also invokes the concept of "contested multilateralism" (as discussed by Morse and Keohane) to explain how coalition-building and threats of exit can be used to create alternative institutions. In defining backlash itself, Zunzunegui draws on existing scholarship: citing Erik Voeten, backlash is a "more drastic" state action targeting the court's authority, and referencing Courtney Hillebrecht, who identifies four classic forms of backlash (withdrawal, alternate mechanisms, restrictions, doctrinal challenges). In practice, Zunzunegui's methodology is comparative-historical: she surveys specific Latin American episodes of backlash and interprets them through these frameworks. There is no empirical data analysis per se; instead, the work synthesizes secondary sources (court decisions, leaders' rhetoric, and academic analyses) into a coherent interpretive narrative. This scholarly approach is rigorous in its engagement with theory, though it relies on qualitative inference rather than quantitative evidence.

Case Studies of Populist Backlash

The article examines several Latin American examples where populist leaders have challenged the IACtHR, illustrating the "exit" vs. "voice" typology:

- Venezuela (Exit): Hugo Chávez's Venezuela provides a paradigmatic "exit" case. The article notes that between 2008 and 2012 a series of IACtHR rulings triggered Venezuelan backlash. In September 2012 the Chávez government formally denounced the American Convention on Human Rights – in effect withdrawing from the Court in 2013. Chávez continued a harsh rhetorical assault: calling the Inter-American Commission and Court "ignorant," "a true mafia," and "unworthy". His successor Nicolás Maduro escalated this policy by withdrawing Venezuela from the OAS (2017) and the IACHR. Zunzunegui interprets these actions as part of Chávez's "anti-imperialist crusade" – he viewed multilateral human rights bodies as obstacles to his Bolivarian Revolution.

  Figure: Hugo Chávez at a public rally (2012). The Venezuelan president is depicted wearing national colors, symbolizing his populist leadership. Zunzunegui highlights Chávez's anti-IAHRS rhetoric – e.g. labeling the Court "an instrument of the empire" – as central to the "exit" strategy of backlash.

- Bolivia and Ecuador (Voice): By contrast, Morales's Bolivia and Correa's Ecuador represent "voice"-style backlash. Neither country formally left the IAHRS; instead, their populist presidents publicly denounced the system. For instance, in June 2012 President Evo Morales explicitly called for eliminating the IACtHR, and in 2013 compared the Inter-American Commission to "a military base". Likewise, Rafael Correa criticized Commission rulings on freedom of speech, characterizing IAHRS institutions as "vestiges of neoliberalism and neocolonialism" that needed reform. The article notes that both Correa and Morales floated the idea of creating a new regional human-rights body to replace the traditional OAS-based system. These actions fit Hirschman's concept of using "voice" – loud protest and proposals for alternatives – rather than exiting altogether.

The article also situates these examples in a broader regional context. It cites more recent events (post-2019) where other populist leaders challenged the IAHRS: for example, Daniel Ortega's decision to withdraw Nicaragua from the OAS and Nayib Bukele's criticism of the IACHR in El Salvador. Although these occurred after the main study period, they underscore the persistent nature of such backlashes. Together, the case studies illustrate both legal dynamics (treaty denunciations, institutional withdrawals) and political rhetoric (anti-imperialist and anti-elite discourse) used by populists to justify distancing from international law.

Theoretical Insights and Mechanisms

Zunzunegui's use of Hirschman's framework yields several insights about the dynamics of backlash. As the article explains, loyalty is a key variable: a regime with low loyalty to the

international system is more prone to "exit," whereas one with higher loyalty may opt for "voice" instead. For example, Chávez's Venezuela (a relatively resource-rich state led by a vehemently anti-imperialist populist) chose the high-stakes path of exit, whereas smaller economies like Bolivia and Ecuador resorted to protest without leaving the system. Zunzunegui notes that Venezuela's oil wealth allowed it to withstand sanctions, thereby lowering the cost of confrontation.

The author also connects the backlash to wider regional trends. The term "post-hegemonic regionalism" is invoked to describe a series of leftist regional projects in the 2000s and 2010s that sought alternatives to U.S.-led institutions. Populist leaders sometimes led coalitions (e.g. UNASUR, ALBA) that embodied counter-hegemonic aspirations. In this view, the backlash against the IACtHR was part of a broader pattern of "contested multilateralism," where dissatisfied governments threaten to leave or create new bodies as leverage. This analytical perspective links the legal moves (withdrawal) to narratives of sovereignty and imperialism: by framing international courts as "mafia" or "military bases," these regimes could claim domestic legitimacy for defiance.

Finally, the article emphasizes the legal instruments populists have used. In concrete terms, Chávez "denounced" (formally withdrew from) the American Convention on Human Rights in 2012, which by 2013 removed Venezuela from the Court's jurisdiction. Such treaty withdrawals are legally dramatic, erasing a state's obligations under the system. Other tactics mentioned include cutting funding or bureaucratic support for the courts (though the article mostly focuses on the voice/exit distinction rather than financial measures). In all, the theoretical framework frames populist backlash as both a political strategy (rhetoric and coalition-building) and a legal maneuver (withdrawing treaty ratifications or membership).

Critical Evaluation

Zunzunegui's analysis has several strengths. It synthesizes theory and empirical examples effectively. By applying Hirschman's exit/voice typology, the article provides a clear lens to interpret diverse phenomena. The integration of contested multilateralism and post-hegemonic regionalism offers useful context. The author supports the narrative with ample citations to speeches, court decisions, and scholarship (e.g. Voeten, Hillebrecht), showing scholarly rigor. The case study narratives (Venezuela, Ecuador, Bolivia) are described in detail, grounding the theoretical claims in concrete political events. Importantly, the article extends its contribution into normative territory by discussing how to "save" the regime – for example, endorsing strategies of public communication and careful jurisprudence (citing Steininger and Helfer). This signals an awareness of practical policy questions, making the work relevant to both academics and practitioners of human rights law.

On the other hand, there are some weaknesses and limitations. First, the focus on left-wing populists may overlook how right-wing populism interacts with the IAHRS. The article briefly notes figures like Bolsonaro in passing, but does not analyze recent examples (e.g. Brazilian or Mexican populists) in its core case studies. Similarly, the analysis does not empirically measure "loyalty," relying on qualitative judgment about each country's motivations. The Hirschman framework, while illuminating, may oversimplify complex political calculations: factors like international pressure, domestic judicial independence, or civil society mobilization are not deeply examined. Methodologically, the piece is essentially a *literature-based essay*; it does not provide original statistical or comparative data. Some arguments rest on the author's interpretation of speeches and decisions, which could be

challenged by alternative readings. Lastly, the discussion of legal dynamics could be expanded: for example, the consequences of treaty withdrawal for human rights enforcement are noted but not analyzed in depth. In sum, while the article provides a coherent narrative, it is largely exploratory and would benefit from further empirical testing and broader case coverage.

Implications for the IAHRS and International Human Rights Law

The article underscores important legal and political dynamics affecting the IAHRS. It implies that popular backlash endangers the authority and reach of international human rights law in the region. When states withdraw from the American Convention or the OAS, it creates legal blind spots: victims in those countries can no longer seek relief from the Inter-American Court, and domestic courts are freed from international oversight. Politically, aggressive rhetoric by leaders (e.g. calling the Court "a true mafia") erodes public support for human rights norms. Zunzunegui's analysis suggests that these moves are not isolated incidents but part of a persistent pattern driven by populist ideology, which has implications beyond the Americas: it resonates with global debates about the legitimacy of international law.

For the IAHRS itself, the article's recommendations have practical relevance. It highlights how institutional resilience can be strengthened. For example, Steininger's proposal to employ skilled communicators aims to build "communities of practice" that foster loyalty to the system. Helfer's advice to pursue a long-term jurisprudential strategy and to "choose battles cautiously" suggests that the Court should calibrate its interventions to avoid provoking blowback. These proposals acknowledge the political environment: by engaging civil society and modulating its case selection, the IACtHR might mitigate the backlash.

In a broader sense, the article implies that international human rights law must contend with populism as a structural challenge. The fact that governments on both left and right (e.g. Ortega, Bukele) have attacked human rights bodies means that defenders of the system must adapt continually. Zunzunegui concludes on a cautionary note: populism is "an enduring dynamic" that will not vanish, and each election risks new conflict. This insight reminds scholars and practitioners that interpreting international law cannot ignore domestic politics. Ultimately, the article contributes to understanding how legal institutions are politicized and what it might take – legally and politically – to preserve their integrity in the face of populist pressures.

Sources

Zunzunegui's article provides all the analysis above. The summary and critique draw directly on its arguments and examples. All quotations and data are cited by section and line from the YRIS publication.