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FROM AN ORDER OF FEAR TO ONE OF RESPECT

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Fear in the Western Liberal Tradition: Ricoeur's Response to Hobbes and Hegel

The predominant anthropology for the place of law in international relations, whether on the side of state sovereignty or international organization, or constitution, has been a radically subjectivist, individualist one. The state of nature, in which sovereign states still find themselves, is reinforced by predatory doctrines of pre-emption in the area of national security and of relentless expansion in the area of economic activity, itself continuously dominated by security interests.[1] This analysis may not be disputed by legal internationalists or constitutionalists. They continue to set themselves the task of harnessing the beast of the state, Aron's 'cold monsters,' into a disciplined framework. There is no reason or wish to obstruct or denigrate these internationalist, constitutionalist efforts. However, their limitations need to be both understood and complemented by a new anthropology of international law. This belief is itself fired by a suspicion that internationalist or constitutionalist endeavors face, ultimately, insuperable obstacles of value incommensurability and power/social fragmentation, but it is hardly necessary to provide final ontological proof of such a suspicion. Both major internationalist projects, the United Nations and the World Trade Organization, are in deep enough crisis, where it is apparent to the mildest observer that egotistical or subjective power considerations dominate the Western treatment of the non-Western world, as they have since the foundation of the rapacious modernity so well described by Tuck.[2]

The modern state of international law has its origins in the distinction between the immaterial subject and the material reality which it observes and analyses. Its gaze is one of fear and expresses a search for security. The name of modernity is fear. The subject of its 'modern' knowledge is a state which names but is not named, observes but is not observed, a mystery for which all has to be transparent. It is the

first problem of this theory of knowledge to find security, which lies in a unidirectional rational control and analysis of others by the self. In the Hobbesean theory of knowledge, there is no place for a reflexive knowledge of self, save for an analysis of the extension (special) of the power of the sovereign self (i.e. geopolitically) up to one's frontier.

The inspiration of the *ius naturale* is that we return to recognize the other as similar, as reflections of the self, images of the self to be found in others because we have a common origin. It is the forces of exclusion, which found state particularism, the opposite of mutual comprehension. Yet the enemy is not on the outside but within the self, an evil which each has to rework. State law creates frontiers but without a human space between them.

It is now well known that Hegel has taken Hobbes's challenge and responded with a theory of recognition, which attempts to overcome the amoral struggle of fear of death that underlies Hobbes's state of nature. As Paul Ricoeur points out, the question is to know whether in this state of nature there is a moral element in the person or subject that can be isolated as the desire for recognition. It is with an original contribution to a theory of misrecognition that Ricoeur will revisit Hobbes, through Hegel.[3] Ricoeur notes the three primitive passions of competition, mistrust, and desire for glory, that Hobbes highlights and remarks how none of these can be known in one person without reference to another. It is the structure of the denial of recognition that one finds most closely in mistrust and most profoundly in vanity.[4] Hobbes is opposing himself to the natural law tradition (including Grotius) that considered law as a moral quality of the person, by virtue of which he could claim legitimately to have or do certain things.[5] With Hobbes one has entered the arena of contract, where there is no element of moral constraint, but instead an entirely voluntary and sovereign precaution, a calculation recommended under the pressure of fear.[6]

Ricoeur notes how there is no relation of one person to the other in Hobbes. Each renounces his right (of self-preservation) to the now sovereign state on condition that the other does. The state enjoys a unity itself, but is not in a legal relation to any of its subjects. The sovereign state is constructed out of a naturalist premise that men are equal enough to be able to kill one another, and that the social contract has a meta-ethical quality, providing security but without supposing any ethical element in the subjects of the state. The dispossession of self is not justified through an expectation from another. There is identification with self (which Locke recognized) but not

with another who cooperates with oneself in a covenant. It was up to Leibniz to restore the other person to the idea of law, under the rubric that law's object is all that belongs to another person, that we can do for him, and that is within our power.[7] As Ricoeur concludes this part of his argument: it is not simply contained in the idea of law that we should not injure another, that we attribute to each what belongs to him, and finally, that we are pleased with the happiness of another. All of these mean also the joining of the self and the other in the very idea of law.[8]

The dynamic of the movement from distrust to consideration and from injustice to respect, coming from the Aristotelian concept of justice as equality, opens itself for Hegel through an institutional structure of recognition, inseparable from a negative dynamic, where each stage is an overcoming of a specific threat, where the level of injustice and recognition follow one another, so that, in Ricoeur's words, indignation takes the place in the Hegelian political philosophy founded on the demand for recognition, that fear of violent death has with Hobbes.[9] It is a matter of reorienting Machiavelli's and Hobbes's struggle for survival, based on fear, into a struggle for recognition based on respect. The relation to Fichte connects struggle and recognition in a link between self-assertion and inter-subjectivity.[10] Full recognition means accepting the other as an absolute. In turn, a crime has the object to deny the specific reality of another who has one fixed in a subordinate relation of difference, while the vengeful response participates in this fixation as a form of slavery. To be fixed in difference is slavery, while to be free of it is to be the master.[11] However, recognition makes equal what the crime renders unequal. It proceeds from the overcoming of exclusion. For Hegel, the legal relation is precisely that the self ceases to be singular and is recognized as being valuable immediately in his being, necessarily recognized and recognizing.[12]

For Ricoeur there is an answer to Hobbes insofar as one can find moral motives that can occupy at least some of the ground of the triad of rivalry, mistrust, and vanity, so as to find in conflictual interaction sources for parallel enlargement of individual capacities, understood as a human capacity to overcome self as identity (*ipseite*).[13] In a large argument, he makes a number of vital analytical distinctions. Discussing Axel Honneth's *Struggle for Recognition*, he says that recognition has two dimensions within the juridical sphere: the other person and the norm. As for the latter, recognition signifies, in the lexical sense, holding something to be valid; as for the former, the

person, recognition has to identify each person as free and equal to all others. This is recognition of the self in terms of capacity, a gradual enlargement of the sphere of rights recognized for persons and a consequent enrichment of their capacities, all within the institutional structure of a struggle for recognition.[14] Ricoeur has to insist that the notion of *identity* is given a differentiated moral and political significance that is not reducible to an argumentative practice demanded by an ethic of discussion.[15] The reason is that the concept of the person is not explained by norms or by discourse. Both presuppose the person, in relation to other persons.

At the same time there is, parallel to the idea of the person, the idea of responsibility, which expresses itself in indignation at the contrast between the equal formal distribution of rights and an unequal material distribution of goods, the humiliation felt where civil rights are denied, and the frustration felt at the absence of participation in the formation of the public will. Responsibility may pass through struggle, from humiliation and indignation onto a capacity to express oneself in a rational and autonomous manner on moral questions. Therefore, responsibility covers both the assertion of self and the recognition of the equal right of the other to contribute to the advance of rights and the law.[16] The process of critique reveals a new dimension of the person, that of understanding another world other than one's own, comparable to learning another language or understanding one's own language as one among others. Translation and the capacity for compromise, as a mutual recognition of situations of conflict, are always liable to be denounced as appeasement, particularly in the Hobbesean context where the person is not considered to have any moral dimension. However, for Ricoeur a capacity for compromise is part of the capacity of the person to recognize himself as a figure of passage from one regime to another, without accusations of relativist disillusionment or superficiality.[17]

The crucial and original question, which Ricoeur poses as against Hegel, Honneth, and Kojève, is directed to the idea of struggle itself. This is born of the desire to respond to the state of nature of Hobbes, itself already opposed to the thesis of the natural law school that human beings have a common sociable nature. It is opposition to classical natural law which grounds a determination to exclude every motive which is originally moral, in the way of coming out of the state of war of all against all. In Hobbes's world one does not even recognize the other as a partner in passions of glory, mistrust, and competition. Hegel's response is the element of the negative, the struggle,

which puts the stress on the forms of the denial of recognition but keeps as a mystery till the end the question of the being-recognized to which the whole process tends. Hegel has no final goal, identifying the nature of the person. If the final result of a successful struggle is to be *self-confidence, respect*, and *self-esteem*, the question remains, when will a subject consider himself to be truly recognized? Ricoeur's question is whether the demands for affective, juridical, and social recognition (the Hegel–Honneth triad) become a 'bad infinitive,' an indefinite demand. The question concerns not simply the negative sentiments of the lack of recognition, but also the new capacities that are conquered, and thus delivered over to an insatiable quest. Does the struggle for recognition not give rise to a new 'bad conscience' driven by an incurable sentiment of victimisation and an unattainable collection of ideal wishes?

The question is how to develop concepts of truce, without over-simplifying the ideas of struggle and of conflict, and without treating their moral dimension as illusory.[18] Ricoeur provides the framework in which one can understand the ethnic-nationalist and Marxist responses to the bourgeois capitalist Hobbesean state, while at the same time endorsing the realization that both offer chaotic responses so far as they rest at the purely formal level. The principles of friendly relations among states, the rights of self-determination of peoples and of economic development, have no clear point of objective realization and indeed promise endless struggle, which may as well be destructive. The forces at work are much more materially dense than the ethic of discourse that does not comprehend any theory of personality. They clearly escape a formal theory of legal development, which rests upon the will of the state as the law-giver, or even the trilogy of democracy, the rule of law, and human rights. For one thing, the latter concept is the Trojan horse in which endless, destructive struggle re-enters the scene.

It may be necessary to recap how these themes relate to a more familiar international law agenda. The legal idea of modernity, which underlies positivism, goes back to Hobbes and attempts to harness his idea of sovereignty. The idea of legal personality as the addressee of legal norms focuses only on the content and elaboration of norms and not on the quality of the subjects of the norms and their relations with one another. Legal positivism reflects upon *what has been produced by the will and never on the embedded context of the will*. In her study of Ricoeur, Molly Mann places Ricoeur in the context of what she calls the myth of constitutive autonomy in Kant and Rawls.

The idea that the individual is completely autonomous before entering into the social contract assumes that individual associations with one another remain uncertain and revocable. She writes that in tracing out the philosophical history of the principle of autonomy, Ricoeur works to undermine the fiction of the self-foundation of the contractual, specifically Hobbesean state and of the Kantian will by arguing that morality must necessarily return to the dialogic and social dimension marked by ethics.[19] Ricoeur argues that the fictions of contract and autonomy are intended to compensate for forgetting the foundation of deontology in the desire to live well with norms and the ethics of discursive argument. Instead, these cannot be confined to themselves apart from the issue of personality. Ricoeur means, as Mann says, that there is no way an ahistorical contract can be binding on an historical community, if we do not have recourse to the solicitous mediation of others that is continually fostered in the institutions of society.[20] The process of acculturation is both historical and ethical. Mann quotes also Dallmayr's comment on Ricoeur, that 'being human is not something "given" (by nature or reason), but rather a practical task requiring steady cultivation in social contexts.'[21] So the dynamic of international legal argument and the normative development of international law is to be found in the embedded historical contexts of the individuals and communities they are both supposed to ground. On their own the legal arguments and norms cannot even be understood and must appear as an endlessly inconclusive circular and self-defeating game.

The introduction of the contextual dimension not merely grounds intelligibility in a hermeneutic understanding of intentionality. It also grounds normative reasoning on the principle that law as justice can only be found where one recognizes that contractualist theory cannot 'substitute a procedural approach for every attempt to ground justice on some prior convictions concerning the good for all, the common good of the *politeia*, the good of the republic or the *Commonwealth*.'[22]

This radical thesis can be immediately illustrated by returning to the theme of fear and the drive to pre-emptive attack, which, as Tuck has highlighted, grounds Hobbes's theory of the state of nature and of international relations. The monological, self-constituting nature of the social contract of Hobbes is possible and necessary only if we remove ourselves from that cultural history which expresses our will to live together. [23] Ricoeur responds with the question, to both Rawls' constitutive autonomy and Kant's autonomy of practical reason, concerning the problem of motivation and instruction. Any arguments of

justice or distribution have to be tied to the essential convictions of society.[24] A collective recognition practice, capable of achieving a collective reconciliation, requires 'a wise deliberation, in the tradition of Hegel, for whom the recognition and reconciliation of difference is the central task of the modern state.' Mann ends on the note that these social bonds 'form a dialectical circuit that is at once the foundation and the project of civilisation.'[25]

THE GROUNDS OF FEAR IN BOTH CULTURAL ARROGANCE AND INCOMMENSURABILITY

Perhaps the most concrete way of illustrating the role of interacting recognition practices for international law and relations is to tackle directly the problem of cultural incommensurability, the supposed absence of a common measure between cultures, which, according to Paul Keal, in his study,[26] has been a crucial element in the development of relations between European and non-European peoples. From Keal's perspective Europeans generally made no attempt, or else failed to understand, non-Europeans in their own terms. However, this apparently political issue can reach a philosophical level, when it is formulated, as Keal does, following Anthony Pagden's account,[27] as a matter of an attempt to understand the practices of others by translating a variety of experiences from an alien world into the practices of their own.[28] The idea of incommensurability has been developed most sharply in relation to the so-called issue of *Orientalism*.

The issue, where it is related to the Ottoman Turks, to the so-called Eastern Question is immensely involved. Perhaps the most authoritative English language international law/international relations study of European – non-European relations in historical perspective is Gerrit Gong's, *The Standard of "Civilisation" in International Society*, a doctorate undertaken at Oxford University under the supervision of Hedley Bull. Gong becomes unwittingly embroiled in controversy by beginning his consideration of relations with the Ottomans with a quotation from the Middle East specialist Bernard Lewis. According to Lewis, Ottoman military might and traditional learning underscored the Ottoman sense of the 'immeasurable and immutable superiority of their own way of life' and caused them 'to despise the barbarous Western infidel from the attitude of correct doctrine reinforced by military power.'[29] Gong takes this quotation as authority for his own immediate remark that it was this sense of Ottoman superiority that made the 'infidel Turks' (which he puts in

quotation marks, perhaps ironically) a threat to Christian and European civilization.

Yet, as is well known, Lewis is a cardinal target for Edward Said's critique of *Orientalism*. In his *Orientalism, A Reader*, Macfie identifies how Said treats such a style of argument as an essentalizing of a so-called Ottoman mind, an Arab mind, an oriental psyche, etc.[30] Said argues that this is not merely an imaginative phenomenon but also 'part of an integrated discourse, an accepted grid for filtering the orient into the Western consciousness and an integral part of European *material* civilisation and culture – that is to say, an instrument of British, French and later American imperialism.'[31] In turn, Lewis is taken to object that Said is responsible for an ignorance of historical fact, capricious choice of countries, persons, etc. He is himself firmly wedded to a traditional (realist) approach to the writing of history, while Said bases his approach on the work of what are usually regarded as postmodernist scholars, including Jacques Derrida (deconstruction), Antonio Gramsci (cultural hegemony), and Michel Foucault (discourse, power/knowledge).[32] Inevitably, it is bound to be virtually impossible to agree upon epistemological terms of debate between these two positions.

I am sympathetic to a modified form of the 'Orientalist debate' taken from Sadik Jalal Al-'Azm, 'Orientalism and Orientalism in Reverse,' introduced by Macfie.[33] This author identifies that the cardinal assumption of all Orientalism is 'the insistence on the essentialist separation of the world into two halves: an Orient and an Occident, each with its inherently different nature and traits . . . Orient and Occident fundamental ontological categories'.[34] He picks up on Said's critique of Lewis, explaining Muslim political phenomena in Western categories as being as accurate as a description of a cricket match by a baseball correspondent. Al 'Azm comments:

> In other words, the vast and readily discernible differences between Islamic societies and cultures on the one hand, and European ones on the other, are neither a matter of complex processes in the historical evolution of humanity nor a matter of empirical facts to be acknowledged and dealt with accordingly. They are, in addition to all that, a matter of emanations from a certain enduring Oriental (or Islamic) cultural, psychic or racial essence, as the case may be, bearing identifiable fundamental unchanging attributes. This ahistorical, anti-human and even anti-historical 'Orientalist' doctrine, I shall call *Ontological Orientalism*.[35]

Methodologically, this approach requires that one consider Ottoman-Turkish and so-called European relations historically in terms of

possibly recurring patterns of behavior, attitudes, and even concrete problems that, for all their tendency, are not immutable ontologically and therefore capable of modification, forcibly through events and also consciously, through negotiation.

At the same time, a possibly modified postmodernist approach will recognize that there are collective, if not immutable, actors, whose mutual relations are in large, but never quantifiably definable, measure a matter of reciprocally modified perceptions of the self and the other. Collective identities may dissolve almost completely. Bearing in mind this possibility can only help to understand the nature and limits of the apparent consistency of collectively formed identities. However, such developments of total dissolution in international history are infrequent and anyway always a matter of what Fernand Braudel calls the *long duration*. In the meantime the standard of value with which one has to work is the quality of mutual interpretation. Al 'Azm notes how Said recognizes that it is impossible for any culture, be it Eastern or Western, 'to grasp much about the reality of another, alien culture without resort to categorisation etc., with the necessarily accompanying distortions.' Domestication of alien cultures in terms of one's own is inevitable.[36]

One needs to be realistic about the varieties of possibility of distortion that occur. Since Hegel's *Phenomenology* we have the paradigm of *the master-slave struggle*. Alex Honneth has elaborated at length on this as Ricoeur has noted. The question is whether conflictual, mutual (mis)interpretations can have developmental and positively transforming consequences. In my view the most historically sound working assumption or starting point for European–Ottoman-Turkish relations is that they have been mutually defining since the beginning of at least the thirteenth century and especially in the relatively short key period since the failure of the second siege of Vienna at the end of the seventeenth century. I think that how to characterize these relations in all their complexity is best illustrated by George Steiner in *After Babel, Aspects of Language and Translation*.[37] This is not to favor the subjective and postmodern over hard material facts, but merely to recognize the primacy of consciously held ideas, especially about desirable social organization, in any deliberate negotiating process. Steiner's close readings of varieties of translations allows one to be much more specific about the stages of negotiation among cultures, and the evaluative significance of each stage, in a context which 'concentrates to a philosophically dramatic degree the human bias towards seeing the world as symbolic, as constituted of relations

in which "this" can stand for "that", and must in fact be able to do so if there are to be any meanings and structures.'[38]

Steiner outlines four stages of the hermeneutic motion. In his own words, he says the first motion is a donation of trust, which remains ontologically spontaneous and anticipates proof, often by a long and arduous gap. The translator gambles on the coherence and on the symbolic plenitude of the world. After trust comes aggression, a move of incursion, which is extractive. The postulate is that all cognition is aggressive, an inroad on the world.[39] While this process comprehends by encirclement and ingestion, it is still to be distinguished from the third movement which is actual incorporation, in the strong sense of the word, that the import is domesticated into the native semantic field.[40]

This is where the trouble starts, to put it banally. Steiner notes that 'the act of importation can potentially dislocate or relocate the whole of the native structure. The Heideggarian "we are what we understand to be" entails that our own being is modified by each occurrence of comprehensive appropriation . . . Where the native matrix is disoriented or immature, the importation will not enrich . . . It will generate not an integral response but a wash of mimicry . . .'[41] This can lead to a negative reaction, where 'the native organism will react, endeavouring to neutralize or expel the foreign body.' This is an explanation of the romantic movement, especially of nationalism. Acts of translation may incorporate alternative energies, or we may be mastered and made lame by what we have imported.[42]

So the hermeneutic motion requires a fourth stage, where it mediates into exchange and a restoration of parity. Steiner insists that 'the enactment of reciprocity in order to restore balance is the crux of the *metier* and morals of translation. But it is very difficult to put abstractly.'[43] Steiner follows Hegel and Heidegger, 'that being must engage other being in order to achieve self-definition. Existence in history, the claim to recognizable identity (style) are based on relations to other articulate constructs.'[44] Steiner concludes his definition of the task of the translator with the words: 'He is *faithful* to his text . . . only when he endeavours to restore the balance of forces, of integral presence, which his appropriative comprehension has disrupted. Fidelity is ethical, but also, in the full sense, economic. By virtue of tact, and tact intensified is moral vision, the translator-interpreter creates a condition of significant exchange. The arrows of meaning, of cultural, psychological benefaction, move both ways.'[45]

PERSONALITY AS DEMARCATION OF BOUNDARIES OR PERSONALITY EMBEDDED IN RELATIONSHIPS: TOWARDS NEW POSSIBILITIES OF INTERNATIONAL LEGAL DISCOURSE

Steiner's apparently very abstract typology of international relations can ground a new approach to international law once it is realized that international legal order can no longer be usefully conceived as an abstract social contract, viz. the definition of the law as the rules consented to by states, themselves abstract entities whose existence is certified by the mere fact that they are identifiable as addresses of the already mentioned norms. This way of thinking has to be seen for what it is – a way of thinking, a product of Kant- and Rawls-like abstracting of the individual from any context and attributing to him an unlimited autonomy to formulate contract-like rules on any subject. It is an optional way of looking at international society chosen by a specific historical group of self-styled, Western-educated international lawyers who please themselves to 'look at things in such a way.' It is impossible to ask whether their perspective has any 'reality' as answers will only be circular.

It is impossible to add a discourse theory ethic to such formalism, except perhaps to insist on a very rigorous exclusion of coercion in the conclusion of agreements, something the international legal order has not been willing to do. Coercion under the Vienna Convention on the Law of Treaties means no more than the threat or use of physical force. It is of no operable significance, and one does no more than mention Hitler's coercion of the President of the rump Czech state in March 1939. Nonetheless, once one can rethink the grounds of international legal personality the possibilities of a discourse ethic can easily arise. As I have argued elsewhere, a social-realist perspective will go beyond the definition of the state in analytical terms (*elements of government, territory, population*), and offer a minimum of political sociology with respect to the collective, territorial-based elements that still dominate international society. It is not a matter of essentializing ideal entities, but simply a matter of realizing certain relative constancies in this society. Indeed, it is precisely the instability of these identities, their dynamic to expand and contract, interacting more usually negatively than positively with others which creates the whole drama within which international law operates. Ontological insecurities of states and nations determine the parameters of disputes about such issues as recognition of territorial title, rights of peoples claimed to secession, minority rights, attempts to suppress 'terrorism', etc.[46]

In this context each group, and indeed each individual, sees itself as a subject and the others as objects, while also being objectified by how others see us and how we see ourselves as trained by those in authority to see ourselves.

One should have to abandon the abstractions of statehood for the political sociology of democratic nations, as a framework of epistemological reference. So, for instance, the US is an historically situated, territorially-based people (subject), not a population (object) with inherited traditions, prejudices, strivings, and aspirations, which all contribute to the style and content of its behavior. The positive dimension of phenomenology is that one does not react to such an entity in terms of a reductionist ideology critique, which treats it as an object, but instead aims to provide a pathway to de-objectification, through an understanding of the self – here a collective self – embedded also in relations with one another. This may open up the possibility, in relations characterized by grave inequalities and coercive power, of disentangling the contradicting intentionalities of the collective entities in relations with one another.

Once this context is accepted, it is possible to give concrete shape to a discourse ethic in international legal relations, and who better to undertake this than Jürgen Habermas himself. He has put the question whether one can any longer think of the development of an international legal constitution in the light of the conduct of the US since 9/11 and does this particularly in terms of the unilateralist behavior of the country and the contradictions which this represents in terms of its traditions. He is realistic about what has to change if one is to take up again a path of constitutionalization. The whole argument is an exercise in contemporary history, while being as well a normative critique from his idealist perspective of uncoerced communication. In his study *Hat die Konstitutionalisiering des Völkerrechts noch eine Chance?* Habermas addresses directly the challenge of the Iraq invasion of March 2003. One super power which thinks itself strong enough to enforce its will sets itself above the basic international law norm on the prohibition of force, while, at the same time, the United Nations does not break up. This, for Habermas, is an ambiguous situation.[47] What is especially interesting in this context is the manner in which Habermas sees the crisis of international law as both a negative dialectic of the relations of the US with the rest of the world and as negative contradictions within American collective identity. This concretizes his critique of the violent character of the US's approach to international law. Habermas notes dramatically the diplomatic

silence over the future of international law; a rhetorical weakening of the legal concept of armed attack, the threat of the Carl Schmitt-style division of the world into *Grossraumordnungen* of various powers.[48]

While one might dream of a change of policy with a change of government, in fact what the practice suggests is a power that uses its military, technological, and economic superiority to create a geostrategically suitable world order in accordance with its religiously shaped concepts of good and evil. Habermas contrasts Kant's concept of impartially promulgated and applied norms that could have the effect of rationalizing political power, with the hegemonic unilateralism that takes decisions, not following established procedure, but through insisting on its own values. This latter is not an ethical alternative to international law but a typical imperial variant of international law.[49] Whether international law is understood as a state-centered system that expresses the multilateral relations of states or the hegemonic law of an imperial power that incorporates it into its national law, these understandings of the relation of law and power do not remain untouched by the normative self-understanding of the state actors. For this reason the relationship does not have a purely descriptive character. Following the Kantian model of the significance of a democratic constitution and the capacity to behave with a long-term view of its interests, such a state should respond in future to the growing power of other Great Powers not with pre-emptive strikes, but with a timely re-establishment of a political constitution of the state community.[50]

However, for the moment, that is clearly not the character of the US. President Bush, with a good conscience, enforces a new liberal world order, because he recognizes thereby, as a world standard, the spreading of American values. Replacing the law of the international community with the American ethos means that from then on what is called international law is imperial law.[51] At the same time, given the huge power asymmetries at present, whatever political decisions a single superpower makes are going to appear ambivalent. The conceptions of national interest and of global interest are bound to become mixed.[52] The September 2002 national security doctrine and the January 2003 State of the Union address denouncing the UN prohibition of force ('The course of this nation does not depend upon the decision of others') show a profound contempt for one of the most important achievements of mankind, a clear intention to replace the civilizing power of universalist legal proceedings with the determination to use military force to give an American ethos a claim to universality.[53]

This latter fact has to mean there is no prospect that international and intercultural dialogue can serve to correct any US misapprehensions or self-delusions. Habermas stresses the cognitive disasters that must accompany US partisan unilateralism. No matter how carefully it may proceed, the well meaning hegemon, taking decisions about self-defense, or humanitarian intervention, or the setting up of a tribunal, when it comes to weighing up all the relevant aspects of a decision to take, can never be sure whether it distinguishes its own national interest from the general interest. The inability is a question of the logic of practical discourse and not of goodwill. Each proposition coming from one side as to what is rational for all sides can only be put to the test when it is left open to a discursive procedure of opinion and will-formation. Egalitarian decisions depend upon ongoing argumentation, where they are inclusive and require the participants to take over mutually one another's perspectives. This is the cognitive sense of impartial decision-making. From this perspective, a unilateral proceeding, calling upon supposedly universal values of one's own political culture, is clearly ethically deficient. This is not helped if the superpower is a democracy, because its own citizens suffer the same cognitive limitations as their government. These citizens cannot pre-empt the interpretations, which the citizens of other political communities put on universal values and principles from their own local perspective and their own cultural context.[54]

IMPERIAL PERSONALITY AND A PHENOMENOLOGY OF BROKENNESS OF RELATIONSHIPS

A phenomenological grasp of the consequences of unilateral enforcement of supposedly universal liberal values of democracy and the rule of law stresses the inevitably solipsistic aspect of such behavior. In his study of the US invasion of Iraq Manuchehr Sanadjian offers to explain that the massively self-destructive pillage of all public institutions following the US-led invasion was the symbolic Iraqi way of rejecting liberation as a gift from outside. During Saddam Hussein's dictatorship Iraqis negotiated a space for themselves professionally through their engagement in such national institutions as schools, hospitals, museums, libraries, power stations, etc., which they gratuitously destroyed afterwards. This was their way of damning the status of liberated conferred upon them by their occupiers.[55] In his phenomenological analysis, the author shows how such a unilateral juridical exercise of power can only become the right of the ruler to

rule. 'By making the mediating institutions dysfunctional the Iraqis closed a major area for the total exchange between themselves and the Americans and the British . . . The distance from which the American and British forces watched the extravagant destruction of public functions was a reflection of their disengagement with the Iraqi people.'[56]

The use of extreme violence by the Americans and the British de-subjectivized the Iraqis as national agents, turning the relationship between the invaders and the occupied into one of asymmetrical power imbalance to which Iraqis responded with a non-discursive, disaffiliating use of force.[57] Not merely the self-destructive disposal of public property showed the Iraqi disengagement, but also 'the predominantly private reception of the remains of the victims of the former regime's violence obstructed the representation of these remains as the evidence of the crime committed by the state.'[58] The introduction of a devastating military power in the relations between nations, by making power irreversible, i.e. recognizing no right to oppose it, meant there could be no distinction between power and right. It would only be the creation of a political space that 'would have civilised the fear of the other by fostering a shared sense of community in which divisions and conflicts were confronted and recognised through efforts to eliminate them via recourse to the notion of the right of (wo)men to be equal.'[59]

The same phenomenological description determines the quality of military occupation and explains the violations of prisoners' rights. In Sanadjian's words, the 'disturbing liberty with which the detainees had become the object of their interrogators' sadistic gaze reflects the absence of politics outside of which the fear of the other will remain as uncivilised . . .'[60] The military occupation creates a gap from the Iraqi people too large for politics to bridge. What one sees, instead, is a neocolonial ethnicization – Iraqianization – of the Western occupation.[61] Indeed, predicting the narrowness of the list of charges that would be brought against Saddam Hussain when he was eventually brought to trial, Sanadjian describes the situation phenomenologically: 'The inability to verify – to objectify – the crimes committed by the former ruler was the symptom of the lack of political community that is sustained by a set of shared values on how to address the divisions and conflicts among the members of the community through recourse to a universal notion of rights.'[62]

Strikingly, the massive anti-war protest marches in mid-February 2003 were also a collective enunciation of disidentified subjects.

Without recourse to the narrative of a universal victim to encompass them all, these protestors 'rejected their position as the beneficiary in the policy of military intervention, whether to protect them from Iraqi threat or to uphold standards of humanitarian behaviour. This anti-political rejection was as closely associated with the patterns of militarisation as the fetishised liberty that had become the object of a forced, hierarchical gift.'[63] However, this separation from the political space is not as severe as the nihilistic drive to mutual annihilation, 'designed to make the self immortal through physical destruction of the other'.[64]

The form of the unilateralism needs to be further demarked as an essential part of understanding the so-called legal conviction of the Americans and the British. These remain oblivious of their transgression, because of their self-identification as agents of good. The fusion between expansion of a power base and universalization of ethical values also brings with it an expanding economy of global violence in which power is inevitably freeing itself from institutional constraints, meaning – concretely – that the Iraqis can see that their borders become redundant against an imperial power that recognizes no limits, and indeed their borders become projections of global disorder and paranoia.[65] This is a further consequence of the militaristic abolition of distance between political communities. In this context of militarized destruction of distance the role of democracy, rule of law, and human rights is completely problematic. Iraqis who become cosmopolitan are taking refuge from a humiliating experience of being a national. They deny any national agency by belonging to a more universal religious and ethnic community beyond national borders. Marxist theory, following Gramsci, realizes that to become internationalist, without being mediated through a national agency, is thereby to become chauvinist.[66] The specifically chauvinist character of this internationalism is that it excludes the other from a universal representation, which can only be national when it is heterogeneous. This is inevitable because they come into play on the Iraqi scene only after the population of Iraq has become disposable.[67] Its political space has been militarized. However, this is not only happening in Iraq. It is a global feature of contemporary capitalism that the state perpetuates its status as the giver of the gift of liberty, which is sustained as a fetish, through a hegemonic order 'in which the state subsumes the multiple, often incompatible interests operating in society . . . to buttress up a new global form of sovereignty in a 'shrinking world' in which the sovereignty of the state has become increasingly untenable.'[68]

One comes back again, full circle, to the nature of unilateralism. The guardians of power have been relieved of reliance on the opinion of the many as the power base in their own constituencies. Bush and Blair have a compelling truth that is platonically indifferent to the national constituency in the face, instead, of a paranoid global space. As Sananjian concludes this stage of his argument:

> a paranoid space characterised by unstable boundary between subject and object militates against the formation of politics as a domain of contested representations, where distance is maintained through representatives and the represented. The erosion of this distance is conducive to prophetic calls to restore the order by a variety of Truth-tellers.[69]

The combination of the neo-conservatives in the US and the cosmopolitans in Iraq 'purportedly seeks an order in which the individual is granted the status of citizenship beyond the limits imposed by the state . . . What their cosmopolitanism harbours is chauvinism, that is to say a homogeneous universality from which even the internal other is excluded.'[70]

CAN AN INTERNATIONAL ORDER OF HUMAN RIGHTS BANISH ALIENATION? WAYS TO AN INTERNATIONAL LAW OF DIPLOMACY AS TACT IN THE FACE OF PERPLEXITY

The restoration of political space has to come from a dissipation of the frenzy of chauvinist cosmopolitan ideology of the rule of law and democracy in favor of a more agnostic return to mutual distancing in international relations. This in turn is possible if one recognizes the not-to-be removed character of alienation and uncertainty in human relations. The difficulty appreciated so clearly by postmodernist theorists is that international disorder and anarchy – the problem for the very existence of international law – has been *constructed*, since the time of the celebrated but irrelevant Treaty of Westphalia, around the transfer or projection of what Der Derian has called self-alienation from within the state community, nation, or whatever, onto the international plane.[71] The very problem international law used to face was how or why collective entities in international society construct themselves against one another. This is what postmodern international relations theory has so effectively explored. Inquiry into the nature of the *domestic/foreign* binary opposition is the starting point of *Postmodern Readings of World Politics*.[72]

Arguably there has been a significant modification of this paradigm, recognized by some followers of Michel Foucault. One contribution of Foucault, which has recently been developed by Hardt and Negri in *Empire*,[73] has been to dissolve the sovereign Hobbesean power, which had projected alienation abroad, into a struggle of 'all against all,' as a seamless web across the whole of humanity. Nijman follows Foucault's argument that if power is not sovereign, who then participate in the struggle for it? She presents an extremely lucid exposition of Foucault's answer, taken from *The Order of Things*.[74] Nijman notes how, for Foucault, the struggle for power is supposed to be a struggle of all against all. There are no immediately given subjects of the struggle, e.g. the proletariat on the one hand and the bourgeoisie on the other. She quotes Foucault: 'We all fight each other. And there is always *within* each of us something that fights something else.' So, ultimately, the individual itself is a fragmented unit composed of 'sub-individuals,' which is radically different from the coherent subject envisaged by modernism. She concludes with a very clear grasp of the implications of what Foucault is saying: 'The bottom line is thus that Foucault considered the human body, "the locus of a dissociated Self", which adopts the illusion of a substantial unity. And not only this, but we are also all destined to fight each other and ourselves and so, without the constituent subject, the world is ready to come apart.'[75]

The seminal, if under-appreciated, international relations critique that builds on Foucault's genealogy of knowledge is Der Derian's work. After mentioning Nietzsche and Foucault, he continues: 'Infused by their work, a genealogy of diplomacy is, in short, an interpretation of how the power of diplomacy, in the absence of sovereign power, constituted and was sustained by a discursive practice, the *diplomatic culture*.'[76] Der Derian devotes a whole chapter to the theme of alienation, taking as his starting point Nietzsche's axiom 'for us the law "each is furthest from himself" applies to all eternity – we are not "men of knowledge" with respect to ourselves.'[77]

Der Derian sets out a standard psychiatric definition of alienation as 'disturbance of the whole personality, e.g. failure of identity formation, adoption of false roles under external pressure, alienation from one's true self or from one's personal or cultural background.' At the same time he note the *Oxford English Dictionary* introduces the interpersonal dimension of alienation, as: 'To convert into an alien or stranger . . . to turn away in feelings or affection, to make averse or hostile, or unwelcome.'[78] Alienation is a word that designates separation, whether

from the self or from the other, and a phenomenology of the alienation that undoubtedly exists among states is the true and ultimate starting point of a study of international legal personality. The question is whether there is a way to mediate this alienation. Der Derian argues that such has been the function of diplomacy, recognizing and leaving unresolved the permanency of alienation as a diffuse human experience. Anti-diplomacy is described by Der Derian as any ideology, whether the French Revolution, fascism, Bolshevism (or, for that matter, contemporary liberal market economy) that claims to be able to put in place a perfect philosophy that will remove rather than merely mediate the phenomenon of alienation, not recognizing it as an ineradicable feature of the human condition.[79]

It is an anti-diplomatic world in which we find ourselves at present, with the Western, self-styled liberal democracies waging an at times violent struggle to impose their vision of the world on the whole of humanity, in the precise sense that they expect thereby to banish the sense of alienation completely from human experience. Der Derian, writing in 1987, provides an accurate description of the consequences of the desire to make human rights the ultimate goal of international law and society. The whole contemporary edifice of international law, the trend towards a so-called global constitutionalization, the primacy of individual human rights, etc. is based upon a demonization of collective and community life in favor of an absolutization of the autonomy of the individual person,[80] whose sacral character lies precisely in the fact that it remains completely immune from scrutiny. This is how international law itself *misunderstands itself and thereby remains alienated from itself* at present.

Der Derian tries explicitly to avoid the religious origins of the language of alienation in the idea of man's separation from God.[81] I think the main strength of his work is diagnostic or heuristic. The following remarks accurately describe the present crisis of an international society confronted by an anti-diplomacy of liberal democracy (which I equate with his term 'revolutionary' in the quotation which follows) that hopes to remove the phenomenon of alienation from the rest of humanity, without recognizing and negotiating its presence within itself:

> the systemic hermeneutic of alienation . . . might help explain the link between *intra* and *inter*-estrangement, that is the dynamic of how the conduct of diplomacy under revolutionary regimes shifts from the mediation of estranged states to the mediation of the universal alienation of humanity . . .[82]

Instead, one needs to recover and guard a measure of, as it were, healthy estrangement to reduce the tension of the present crisis. IPL must somehow be reconceived to reflect an acceptable level of mutual distance and unknowing. This is where the concept must be systematically related to the contemporary philosophical debates about the nature and consequences of mutual recognition and misrecognition.

These debates themselves only make sense in the context of a material definition of the personality of the state as an historical cultural community, the descriptive analysis of which has also to be evaluative. The most helpful categorizations here are from Barry Buzan, in terms of mature and immature political societies, embedded in state structures. The definition and application of international legal rules can be understood, across the board in terms of a phenomenology, to a greater or lesser extent, of maturity and immaturity.[83] At the same time his definition of (im)maturity extends to relations among states, for instance India and Pakistan, or the US and the Soviet Union during the Cold War. Clusters of relationships cover a mixture of (im)mature relations. This concrete concept of alienation is less abstract than Der Derian's. How far two states define themselves against one another depends on the circumstances. The state practice needs to be illustrated more fully and shown to be related to clusters of recognizable international legal rules. At the same time, such a descriptive, analytical framework of essentially sociocultural relations needs to be complemented by a normative phenomenology of desirable degrees of density of relations among states. Such an ontology of the desirable limits of community among states[84] provides the final picture of how far it is possible to develop and apply legal rules among states.

Buzan identifies precisely the problem of defining ideas of 'threat' and 'security' in a manner which is decisive for international law. The international law concept of threat of force or use of force is purely directed against the physical territory and 'physical' institutions of the state, in particular its government officials. This is to ignore the vital element of the character of the state, itself dependent upon distinctions between the idea of the state, the institutions of the state, and its physical base.[85] Whether a state such as the US feels 'threatened,' e.g. by the Soviet Union, in the time of the Cold War (1982) will depend crucially upon the part played by anti-communism in the construction of the idea of the US. This type of inherent instability continues to be built into many of the world's 'troublespots,' particular Israel/Palestine and India/Pakistan. It is difficult to see how 'threats' to security can be eliminated in these areas without a fundamental

change in the idea, and, at the same time, the institutions and physical base of these states. The viability of legal rules based on reciprocity, such as mutual recognition, of equality and non-intervention is put into question in these cases.

Equally decisive are internal weaknesses in the idea of the state as such. When the population has no common interests, purposes, and ideas the society or population of the state will be liable to internal divisions which will automatically lead other states to treat the physical base of that state as a legal vacuum, making it prey to various levels of intervention. A mature anarchy in the relations of states supposes that the states are themselves mature as distinct from immature. By mature Buzan means 'well ordered and stable within themselves.'[86] Only mature states can support strong common norms for the system as a whole. The idea of international law expresses this mature anarchy, mutual recognition of sovereign equality, the right of national self-determination, the sanctity of territorial boundaries, the resolution to settle disputes without recourse to force, and, most importantly, refraining from interfering in the domestic affairs of other equal states. Any state that does not reach the necessary level of maturity automatically falls out of this net of reciprocity, and the vacuum of physical space that it represents is not filled by international law. So the international lawyer has to make his way through a web of ideas, expressing political culture, more or less unevenly within and between states, and it is this alone that supports a law based upon reciprocity.

Yet the inherent vagueness of this project seems incompatible with the idea of law itself. How can political society, especially at the international level, rest exclusively upon an unraveling of ideas? Where is the place for physical power, interests, and the anonymity of vast spaces? Plessner provides a way to complement the apparent romanticism of Buzan's 'mature anarchy.' This latter concept is, surprisingly, also formal in the sense that it does not do more than register a certain balance or stability achieved at a national level, without precisely pinpointing how this has been achieved. Plessner's perspective is especially wary of a tradition of German political romanticism, which believes that political community can be based upon a union of convictions of its members.[87] He takes up a theme similar to Der Derian's, that the function of diplomacy is to negotiate and mediate human alienation. For Plessner the supreme form of diplomacy is law, and its function is also to negotiate the difference between the conviction and sincerity of the private sphere and the inevitable indifference and indeterminacy of the public sphere,

reversing the value priority frequently accorded to community (*Gemeinschaft*) over society (*Gesellschaft*) in German society. 'Each sphere has its specific authorities for making decisions: community governs itself according to insights and love, society according to game-legitimated struggle and tact.'[88]

He defines the law in terms of the need to negotiate the two:

> The state is the systematization of the public sphere in the service of the community and the epitome of measures protecting the community in the service of the public sphere. . .The method of this integration between the demand for lack of restraint and the demand for restraint, both of which are supported equally by human nature, is *law (Recht)*. In this idea are united what is proper, which corresponds to a natural integration through conviction, the voice of insight and heart, and what is legally justified (a balancing out [*Ausgewogen*]), which is equivalent to an agreement arising from different directions of forces as a conclusive resulting position . . .[89]

What Der Derian would designate as alienation, Plessner characterizes as the unavoidability of force, of being bound inescapably to the laws of reserve, cunning, and insincerity, however much humanity may yearn for an ultimate transcendence of force through insight and sympathy.[90]

So, Plessner recognizes that force is part of the fate or destiny latent in the distribution of power, while at the same time stability and security require a diplomacy that does not humiliate a person by demonstrating publicly that his conviction is of no consequence. Without a threat, even if latent, no one will treat reaching an agreement as necessary, while a use of force that goes beyond cunning, tact, and shrewdness, to lies, extortion, and means which cut off the individual from all use of his freedom, fails to achieve a balance between the public sphere, where conviction has no place, and the private sphere, where it is dominant.[91]

At any rate a Habermas-style dialogue of unrestrained communication to achieve Kantian goals, whereby each individual must be treated as an end and not a means, to achieve a world republic based upon ideals of democracy, the rule of law and human rights, is precisely the kind of romantic nonsense that ignores the political nature of the human condition. Plessner comes round to a very much refined idea of state necessity or reason of state in terms of the inevitably decisionist element in any application of law – quite the contrary to Habermas:

> Praxis means coping with things in the medium of ephemeral approximations and on the basis of an experience that can not be made

methodologically unambiguous, of an experience of tact calibrated indi-
vidually. Practical competence refers to an essentially never risk-free
endeavour that must have a certain amount of luck if it should be suc-
cessful. Therefore a congress of politicians cannot achieve unanimity
through reciprocal convictions as the principle releasing their initiative
even if wanted- not only because it is composed of unrealised functionar-
ies, that is, because it does not contain persuadable beings who are open
in principle, to insight, but also because the object of the judgment and
entire conduct of such beings is practical. As Bismarck said: 'There arises
in every congress, when the discussion of a theme must come to an end,
the necessity to play heads or tails to decide the outcome – so necessary is
it that there should be someone who finally says: 'It has to be this way!'
Already this element of risk implicit in decisions of a public nature suffices
in order to guide action according to maxims of greater security and not
according to principles of the trust in reason.'[92]

It is probably not necessary to elaborate too much on anthropological
differences between Plessner and Der Derian because they do not
affect conclusions about the role of law and diplomacy. However,
some mention may be made of the theses that Plessner develops to
favor a law of distance and tact. Plessner's starting point is that the
human soul 'does not support judgements regarding its nature, but
defends itself against every determination and formulation of its indi-
vidual being. . . . The dual character of psychological being pushes
towards and, at the same time, pushes away from being fixed and
determined. We want ourselves to be seen and to have been seen as
we are; and we want just as much to veil ourselves and remain
unknown.'[93] A consciousness that strives, from within the depths of
its unconscious, to mobilize and organise into a unified position
requires an unrestrained honesty before itself.[94] To which Plessner
adds decisively: 'Of what use is, however, an invisible obedience
within one's own inner being [*Innern*] when the appearance of the
conforming deeds can be accorded a false meaning?'[95] Against the
ironically destructive perspective of the indeterminate number of
persons unknown to each other, who, with limited opportunities, can
only establish acquaintance, the human must mask himself with a
form. Offensive indifference and coldness must become an enobled
reserve. 'The person generalizes himself and objectifies himself
through a mask behind which he becomes invisible up to a point
without fully disappearing as a person.'[96] While the objective still
remains, to ensure respect for one's, hopefully, surging capacities,[97]
'the clamor for uncorsetted dress deserves to find echo only with

extremely good figures.'[98] The goal is to achieve validation of the self through a reciprocal respect at the social level, which rescues one from the despair of one's interiority.[99] However, finally, Plessner comes down against the idea of alienation having to be eliminated, at least at the social level. Civilization requires the play of ceremony and prestige, the 'unrealization of the natural person as the unrealization of some kind of meaning.'[100] Radical moralists always adopt an accusatory tone, ridiculing the masking of public life. 'Their value rigorism is calculated for seriousness and relentlessness.'[101] However, Plessner rejects the putative estrangement of the objective body and the spirit/soul: 'dualism, the core argument of social-revolutionary radicalism, is rejected as not true.'[102]

Once again Plessner sets out very clearly what this means for the relationship between law, ideal values, and effectiveness. The experience of law (*Rechtsleben*) is central to social life. 'Individuals conduct themselves in accordance with their inner judgements and intuitions of fairness and see themselves betrayed by jurisprudence and the practice of law without thereby understanding that law as an objective order must satisfy two requirements: the requirement of legality (correctness); and the requirement of manageability, feasibility and general validity.'[103] There is a twofold fracture, between the norm and the situation and between the private and the official person. So all agreements eventually concluded reflect the public sphere as a place where unattached persons meet through the distance of value, not a freedom from value but a constant and insoluble tension between norm and life.[104] The balance between what different opinions regard as human dignity and 'factual necessities' is not possible to harmonize according to a natural evaluative standard. 'The art of transaction or diplomacy enters precisely here to reach conditions for an agreement that could be as useful, decent and advantageous as possible.'[105]

So all idea of law must rest upon an anthropology of the person, and that person must be recognized as opaque. This is not to say one is offering yet another version of a liberal ideology, of freedom, the rule of law and democracy, etc., which, sooner or later, has to be enforced against alternative ideologies, supposedly authoritarian or totalitarian. Rather, this idea of law is an epistemology of human experience, a call for inter-disciplinarity in the application of law. Law is not merely context-dependent. It is always directed beyond itself. It has to give shape and to manage what Plesser would call legal tact – the more or less (im)mature anarchy of more or less (im)mature societies. The limits of the tasks are clearly set by Der Derian and

Plessner. While there is so much to be learned, there is also so much that cannot be learned, that remains opaque, *where mistakes and misjudgments will always be made*. Each international lawyer has his own contribution to make provided he is willing to engage in such an adventure of discovery and misunderstanding. Tact in the face of perplexity has to take the place of fear in the face of the unknown and apparently threatening.

Notes

1 This has been the argument of chapters 4–6.
2 R. Tuck, *The Rights of War and Peace, Political Thought and the International Order from Grotius to Kant*, 2001.
3 Paul Ricoeur, *Parcours de la reconnaissance* (2004) 241.
4 Ibid., 242.
5 Ibid., 245.
6 Ibid., 246.
7 Ibid., 249–51.
8 Ibid., 251.
9 Ibid., 255.
10 Ibid., 258.
11 Ibid., 260–3.
12 Ibid., 267–8.
13 Ibid., 274.
14 Ibid., 288–9.
15 Ibid., 298.
16 Ibid., 292–3.
17 Ibid., 307.
18 Ibid., 315–18.
19 Molly Mann, 'Ricoeur's Dialectic of Solicitous Giving and Receiving: Instruction, Recognition and Justice,' 20–1: Paper Presented at the Colloquium, 'Thinking the Present,' University of California at Berkeley, May 2005, http://www.criticalsense.berkeley.edu/mann.pdf.
20 Ibid.
21 In *Paul Ricoeur and Contemporary Moral Thought*, ed. John Wall, (1992); Fred Dallmayr, 'Ethics and Public Life,' in ibid., 221.
22 Mann, Ricoeur's Dialectic, 23, quoting Riceour, *The Just* (2000) 37.
23 Ibid., also Ricoeur, ibid., 56.
24 Ibid., 25.
25 Ibid., 26.
26 Paul Keal, *European Conquest and the Rights of Indigenous Peoples* (2003), 56 ff.
27 Anthony Pagden, *European Encounters with the New World* (1994).

28 Quoted by Keal, *European Conquest*, 62 from Pagden, *European Encounters*, 36.

29 Gong, quoting Lewis, in *The Standard of "Civilisation" in International Society* (1984) 108.

30 A. L. Macfie, *Orientalism, A Reader* (2000), 4.

31 Ibid.

32 Ibid., 3 and 5.

33 Ibid., item 24, 217–38.

34 Ibid., 225.

35 Ibid., 230.

36 Ibid., 221.

37 Second edition (1992).

38 Ibid., 312–435, Chapter 5, 'The Hermeneutic Motion'.

39 Ibid., 213–313.

40 Ibid., 314.

41 Ibid., 315.

42 Ibid., 315.

43 Ibid., 316.

44 Ibid., 317.

45 Ibid., 318.

46 A. Carty, 'Scandinavian Realism and Phenomenological Approaches to Statehood and General Custom in International Law' 14, *EJIL* (2003) 817, at 820.

47 In Jürgen Habermas, *Der gespaltene Westen* (2004) 113 at 146.

48 Ibid.

49 Ibid., 147.

50 Ibid., 148.

51 Ibid., 180.

52 Ibid., 180–1.

53 Ibid., 181–2.

54 Ibid., 183–4.

55 Manuchehr Sanadjian, 'Fetishised Liberty, the Fear of the Other and the Global Juridical Rule in Iraq,' *Social Identities* 10 (2004) 665 at 666.

56 Ibid., 666.

57 Ibid., 668.

58 Ibid., 670.

59 Ibid., 671.

60 Ibid., 673.

61 Ibid., 673–4.

62 Ibid., 675.

63 Ibid., 677–8.

64 Ibid., 679.

65 Ibid., 678–9.

66 Ibid., 681.

67 Ibid., 682.

68 Ibid., 682.

69 Ibid., 683.

70 Ibid., 684.

71 See, generally, James Der Derian, *On Diplomacy, A Genealogy of Western Estrangement* (1987).

72 The sub-title of the volume edited by James Der Derian and Michael J. Shapiro, *International/Intertextual Relations* (1989). See especially the chapters by Richard and Ashley, 'Living on Borderlines: Man, Poststructuralism and War,' and William E. Connolly, 'Identity and Difference in Global Politics.'

73 M. Hardt and A. Negri, *Empire* (2000).

74 M. Foucault, *The Order of Things, An Archeology of the Human Sciences* (1970).

75 J. Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (2004) 377–8.

76 *On Diplomacy*, 4.

77 Quoted ibid., 8.

78 Ibid., both quotations at 13.

79 *On Diplomacy*. See chapters 7 and 8, on Anti-diplomacy and Neo-diplomacy.

80 Nijman, *The Concept of International Legal Personality*, esp. chapter 3.

81 Ibid., 15.

82 Ibid., 26.

83 Barry Buzan, *People, States and Fear* (1982).

84 Following Helmut Plessner's *The Limits of Community, A Critique of Social Radicalism* trans and introduction, Andrew Wallace (1999).

85 Buzan, *Peoples, States and Fear*, esp. chapters 2 and 4.

86 Ibid., 96–8.

87 Plessner, *The Limits of Community*, the translator's introduction, Wallace, esp. 9–16.

88 Ibid., 174–5.

89 Ibid., 174; italics in the original.

90 Ibid., 193.

91 Ibid., 156.

92 Ibid., 177; italics in the original.

93 Ibid., 109.

94 Ibid., 111.

95 Ibid., 129.

96 Ibid., 131–3, quotation at 133.

97 Ibid., 139.

98 Ibid., 143.

99 Ibid., 144.

100 Ibid., 146.
101 Ibid., 146.
102 Ibid., 147.
103 Ibid., 150.
104 Ibid., 151.
105 Ibid., 152.