

CONCLUSION: THE WORK OF TOMORROW

In November 1940, a few months after German panzers rolled into Paris and the Axis powers signed the Tripartite Pact, Salmon Levinson lay dying. It seemed his dream of outlawry was dying with him. John Dewey wrote a letter to his second wife describing “Sol” as “the man who started the Outlawry of War—poor man—though it will come to something sometime.”¹

Although it seemed impossible at that moment, Dewey was right. Levinson’s outlawry movement did “come to something.” It led to a global revolution. Less than a decade after Dewey wrote his lament, the Old World Order had given way to the New World Order, with all that the outlawry of war implies. Today conquest has largely ended, as has gunboat diplomacy. The crime of aggressive war, once a logical impossibility, is now one of the four crimes that can be prosecuted before the International Criminal Court in The Hague. And economic sanctions, once prohibited for neutral states, have become a common and crucial tool for enforcing international law.

Yet today the New World Order that Levinson helped launch is at risk. The postwar consensus on the illegality of war is under greater assault today than it has been in seven decades. By looking back, this book seeks to draw attention to these threats and to chart a path ahead.

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One source of risk comes from the rise of the Islamic State and other groups inspired by Qutb’s jihadist vision. The Islamic State has sought to undermine state control throughout the Middle East, while drawing the West into a confrontation that feeds its worldview and undermines the world order. The Islamic State’s videos of beheadings of Westerners are

meant to draw converts, but also to provoke a response that will bring about an apocalyptic conflict. In a video of the beheading of Peter (Abdul-Rahman) Kassig, a U.S. aid worker, his masked executioner declares, “Here we are, burying the first American crusader in Dabiq, eagerly waiting for the remainder of your armies to arrive.”² By attempting to goad the United States, United Kingdom, France, and their allies into responding in ways that undermine the legal order, the Islamic State seeks to accomplish through overreaction what it could never accomplish on its own—a weakening, even the end, of the modern international legal order.

To date, the provocation has not succeeded in drawing Western armies to fight on the ground, as the Islamic State clearly hopes.³ But it triggered another corrosive response: In 2014, the United States launched a massive air campaign against the Islamic State in Iraq and Syria. In order to justify this operation, it claimed that it was acting not only to defend Iraq (which was clearly justifiable), but also in its *own* self-defense (which was not).⁴ Unfortunately, the growing reliance on self-defense as a justification for using force—for this and other operations against terrorist groups around the world—threatens to make self-defense the exception that swallows the rule against war. Indeed, it was precisely this concern that led the authors of the Pact to omit an express exception for what they called “defensive wars” and the drafters of the U.N. Charter to adopt a right to self-defense only in cases of “armed attack.” If states can always invoke self-defense as a justification to use force, then the prohibition on war becomes meaningless.

Another, equally potent, challenge to the postwar consensus prohibiting use of force outside the Charter framework comes from the clash of the postwar commitment to humanitarian ideals and the prohibition on the use of force for the purpose of righting wrongs except when authorized by the U.N. Security Council.

At the time of this writing, the Syrian conflict has caused nearly a half million deaths. The conflict shows little sign of ending, though there remain glimmers of hope that diplomacy will produce a pause in the killing. President Bashar al-Assad has barrel-bombed and gassed his own people, contributing to an unprecedented refugee crisis. Because Assad has not consented to international intervention to aid his people, and Russia and China have refused to authorize Security Council action to address the humanitarian crisis, the carnage continues.

Many have wondered whether we should continue to abide by the rules of the system if the rules of the system allow such outrages. The potency of war can seem alluring. Indeed, it may seem like the Interventionists—Hugo Grotius, Nishi Amane, Carl Schmitt, and even Sayyid Qutb—were right: War is the only possible solution.

But to hold this view, one must be prepared to embrace all that it entails. If we treat the United Nations Charter like Carl Schmitt treated the Weimar Constitution, the exceptions to the prohibition on war will eventually destroy the New World Order and all it has accomplished. If the United States insists on the right to resort to war in violation of the Charter to address emergencies, it cannot stop others from arrogating to themselves the same powers—and that, in turn, threatens the entire system, which requires states to abide by the prohibition on war.

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Russia, once a crucial U.S. partner in the formation of the New World Order, poses another threat to the system. In Eastern Europe, Russia is cementing its control over Crimea and continues to foment unrest in Eastern Ukraine and Georgia. Russia prevented the Security Council from responding to the carnage in Syria while providing support to the Assad government as it slaughtered its citizens. Russia has even joined in the assault, bombing hospitals and schools and killing thousands of civilians. The paralysis of the Security Council in the face of such horrors has dealt a blow to the United Nations' legitimacy. And Russia is not the only state actively undermining the international legal order: China's attempts to assert sovereignty over disputed rocks and islands in the South China Sea, Iran's support for terrorist groups, and North Korea's repeated threats of military force against South Korea are also deeply corrosive.

In light of these assaults on the system, it is not unreasonable to ask whether the New World Order is simply too far gone to be saved. Why should the United States and its allies continue to support international institutions and the rules of the legal order if others not only refuse to do their share to maintain the system, but are actively working against it?

Rather than viewing these violations of the legal order as reason to abandon it, we should instead see them as reason to redouble our support for it. After all, the health of a legal system is not measured solely by the

moments when the law is broken. In 2014, for example, there were 1,165,383 violent crimes reported by law enforcement in the United States.⁵ But that does not mean that the laws against violent crimes in the United States are ineffectual. No rule is perfectly effective. What matters is not whether the law is sometimes broken. What matters is whether it is largely effective, even if imperfectly so. And what matters is the response when the law is broken. Violent crime has fallen significantly in the last two decades in the United States. And when there is a violent crime, the police investigate; if they find the offender, he or she is tried; and, if found guilty, sentenced.

The test, then, of the international legal system is not whether we can point to instances where the law is violated. We should instead look to whether the law has largely, if not perfectly, worked. To that, the answer is clearly yes—interstate war has declined precipitously and conquests have almost completely disappeared. Moreover, we should look to what happens when the law is broken. In the international system, the legal order is policed by outcasting, not by war. As we have shown, Russia continues to labor under extensive sanctions cutting it off from valuable trade with Europe and the United States in direct response to its actions in Crimea and Ukraine. And one hundred nations voted in support of a General Assembly resolution calling on states, international organizations, and specialized agencies not to recognize any change in the status of Crimea.⁶ States have likewise refused to accept Chinese territorial claims in the South China Sea, the United States chief among them, and the Philippines brought China to mandatory arbitration with U.S. support. The United States and the European Union are working to prevent the flow of money and foreign fighters into Islamic State-controlled territories. In each case, rule breakers faced consequences. And in each case, the United States has served an important—indeed, leading—role in policing the system.

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The success of the system depends on the willingness of the United States to continue to play a central role in maintaining the legal order in the face of these many challenges. Indeed, the greatest threat to the New World Order comes from those who wish to abandon this role and turn inward. Throughout the world, anti-internationalist sentiment is growing. In the United States, the bipartisan consensus in favor of global free trade that has

held strong since the mid-1930s is collapsing. Donald Trump won the presidency on an anti-internationalist platform that promised to restrict the movement of goods and people across borders. He has flirted with defunding the United Nations, pulling back U.S. support for NATO, ignoring the World Trade Organization, seizing Iraqi oil, and abandoning the policy of resisting Russia's annexation of Crimea with an array of outcasting tools. And he has used force against the Syrian government without Security Council authorization, in clear violation of the United Nations Charter.

The United States is not the only state with rising anti-internationalist sentiment. The unexpected vote by disaffected citizens in the United Kingdom to pull their country out of the European Union and the rise of anti-EU anti-globalist far-right parties (some clandestinely financed by Russia) in France, Germany, Greece, Hungary, the Netherlands, Sweden, Austria, and Slovakia pose a deep challenge to the legal order that the Internationalists built. The postwar consensus in favor of positive-sum peaceful cooperation instead of zero-sum military competition is at greater risk than ever.

For the world order built by the Internationalists to continue, America and its allies must maintain their commitment to the rules and institutions that underlie it. The order initiated by the Peace Pact and reaffirmed in the United Nations Charter was grounded in an understanding that every nation would be more secure and prosperous if nations cooperated with one another in pursuit of their shared goals. The international institutions that have grown up since 1928, while imperfect, have brought seven decades of unprecedented prosperity and peace.

This did not happen on its own. When the world first outlawed war, putting an end to the Old World Order, it failed to create anything to take its place. It took the Internationalists two decades of painstaking efforts before the rules and institutions that could make the decision to outlaw war a reality were in place. Only then was Levinson's dream of a world in which war would no longer be used to resolve disputes between states finally realized. Without continuing U.S. support for those rules and institutions, that accomplishment is unlikely to last long.

It is not enough, moreover, to support the United Nations and related international institutions. Continued commitment to global free trade is also essential. The Internationalists came to understand that when war was

outlawed, something else had to take its place. In the postwar world, free trade has filled the vacuum. States can enrich themselves through cooperation, rather than coercion.

Free trade not only channels productive activity away from war making, it provides a legal tool for disciplining states who violate the rules. The tools of outcasting that replaced war as the central international law enforcement mechanism rely on robust global cooperation. If states withdraw from global cooperation or pull back from engaging the global economy, they lose their capacity to exert influence without force.

Reaffirming a commitment to free trade does not require ignoring the dislocation and pain it has caused. The turn in popular sentiment against free trade comes from real harm done to individuals and communities who have seen jobs, even entire industries, disappear. But rather than try to bring those jobs back, we should seek to better support those who have been hardest hit—helping them transition from less to more competitive sectors of the economy. We must also endeavor to spread the gains from trade more evenly. Initiatives to ease the pain of trade competition are the right thing to do, and they will help renew broad-based support for continued global engagement.⁷

Yes, engaging in more cooperation may mean giving up some control, *but it means gaining it, too*. The states that are parties to the World Trade Organization agree to allow goods into their country with minimal trade restrictions, but they gain the same access to markets around the world. This creates jobs and raises wages overall. Indeed, in the years between 1970 and 2000, manufacturing workers in open economies were paid between *three and nine times* as much as those in closed economies, depending on the region.⁸ Consumers also benefit from lower prices. And these effects are not limited to trade. The states that agreed to participate in the Paris Agreement on Climate Change in 2016, for example, accepted limits on their climate-harming activities, but in return they gained similar promises from other states to limit their own climate-harming activities. In the process, states made progress toward addressing a collective threat that no state—not even the most powerful—could address alone.

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As the world stands on the brink of renouncing the core commitments of the New World Order, this book serves as a reminder of what is at stake. The history we have told demonstrates that in a world of multiple sovereign states, there are a limited set of legal orders from which to choose. In one—represented by the Old World Order we described in Part I—all states agree that war is legal, a tool to right wrongs. In that world, conquest is permissible, aggression is not a crime, neutrals must stay impartial (thus economic sanctions against aggressors are illegal), and agreements may be coerced. In the second—represented by the New World Order that we described in Part III—all states agree that war is illegal, and refuse to recognize it as a source of legal entitlements, even when used to right wrongs. In that world, conquest is illegal, aggression a crime, economic sanctions are an essential tool of statecraft, and agreements cannot be coerced. In that legal order, moreover, trade plays an essential role not only as a source of beneficial collaboration but also as a collective tool for constraining illegal behavior.

The third option—represented by the period between the Peace Pact and the close of the Second World War that we described in Part II—falls between these two polar opposites. But this third option is in many ways the worst of all. Inherently unstable, it will generate chaos and disorder until a new, stable equilibrium arises.

Tracing the evolution of the global legal order over the course of four centuries teaches us that international law is a *system* and the rules rise or fall together. It is not possible to pick and choose the rules one at a time. The key rules of the system have a necessary logical connection to one another. (If war is legal, conquest is not far behind.) Nor is it possible to follow one set of rules sometimes, and another set at others. The world cannot juggle two inconsistent legal orders for very long. Sooner or later they will clash and come crashing down.

For all its problems, the New World Order is better than the Old. It is better to live in a world where war is not a permissible mechanism for righting wrongs, even if that means some wrongs remain unaddressed. It is better to live in a world where conquest is not recognized than in one where it is. It is better to live in a world where treaties produced by gunboats can be torn up than in one where they are binding. It is better to live in a world where those who wage aggressive war can be convicted in a court of law than in one where they cannot. It is better to live in a world where states can use

economic sanctions to punish aggressors without fear of being drawn into a war as a consequence. In short, it is better to live in the New World Order, with all its real, sometimes terrible, drawbacks, than to go back to a system where war is legal or to a chaotic in-between.

Despite the many challenges, there is reason for optimism. While it is true that things can change for the worse, they can also change for the better. And whether and how they change is largely up to us. We can update the rules to respond to global challenges—as have those who have endeavored to create ever more inventive and creative mechanisms for outcasting rule breakers—or we can disregard them. The choice is ours.

Many have argued that the world is best explained by reference to state power. Law is just words on a piece of paper, incapable of true influence. We reject this account not because states or those within them care more about law than power. Instead, if this book shows anything, it is that the choice between law and power is a false one. *Real* power—power useful for achieving important and lasting political objectives—does not exist in the absence of law. Law *creates* real power. States can reach their goals only if others recognize the results of their actions. As the Japanese found out in 1931, it was not enough to occupy Manchuria if no one treated Manchuria as Manchukuo. Russia is relearning this lesson today in Crimea. It can claim Crimea, but if the rest of the world does not recognize the claim, tourists from everywhere but Russia will vacation elsewhere, ATMs will run dry, and the economy will wither away. China is discovering the same lesson in the South China Sea. It can occupy islands but they are worth little as long as the rest of the world refuses to recognize them.

The account of the world that rests on state power is fatalistic, leaving little room for human agency. But the story of the transformation of the Old World Order to the New demonstrates that even as law shapes power, ideas—and those who develop and spread them—shape the law. Brute force, like rushing water, must be controlled and channeled. Dams need to be built, canals dug, and pipes laid. Those who shape the laws are the hydraulic engineers of the political world. To be effective, they must channel power.

The example of the Internationalists offers a hopeful message: If law shapes real power, and ideas shape the law, then we control our fate. We can choose to recognize certain actions and not others. We can cooperate with those who follow the rules and outcast those who do not. And when the rules no longer work, we can change them.

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The Internationalists were transformative figures. They were transformative because of their ideas—and because they were willing and able to use their ideas to change the world.

This is the final lesson we can learn from the Internationalists—from Salmon Levinson, James T. Shotwell, Sumner Welles, Hersch Lauterpacht, and all those who supported their efforts along the way. None of these men is a household name. None held high political office. None found his task easy. None, moreover, was able to accomplish much on his own. But each had a conviction about the way the world should be organized. And each was willing to fight for years, even decades, against long odds to take small steps along the path to constructing a new global order grounded in the rejection of war. The Internationalists worked with one another and with a vast array of grassroots groups, politicians, academics, government bureaucrats, and international colleagues to make progress.

Their example teaches us that we have an opportunity and a burden. Each of us, even those far outside the halls of government, has the capacity to make a difference. We all bear responsibility for the world in which we live. Together we can and must continue to support institutions that have kept the peace, adapt them to changing circumstances, and develop new ones that will further reduce violence.

Aristide Briand understood that renouncing war would not end war. When world leaders gathered at the Quai D’Orsay in August 1928, Briand spoke words that remain true today: “Peace is proclaimed: that is well, that is much. But it still remains necessary to organize it. . . . That is to be the work of tomorrow.”