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The Strange Neglect of Normative International Relations Theory: Environmental Political Theory and the Next Frontier

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Introduction

Environmental Political Theory (EPT)² has traversed most of the concepts, ideologies and controversies of western political theory and produced a range of fresh and critical perspectives. Yet, apart from a few notable exceptions, it has been strangely neglectful of some of the core questions of international political theory (often referred to as ‘normative international relations theory’ to distinguish it from realist and other positivist theories).³ Perhaps the most fundamental and enduring of these questions is how to resolve, or at least manage, the tensions between international order and international justice. In the context of the system of sovereign states, this entails asking to what extent the principle of self-determination (by nation-states or other political communities)

¹ Thanks to Peter Christoff for helpful feedback on an earlier draft.

² Throughout this paper, I refer to EPT as if it were some neat and unified body of political theory, which it clearly is not. However, reflections on the development of the field must necessarily be pitched at a high level of generalisation. I also adopt this shorthand expression mainly in the interests of brevity of expression (while acknowledging the diversity, internal debates, and ragged edges of what is still a loosely defined field of inquiry). The same arguments apply to my shorthand reference to Global Political Ecology (GPE).

³ Significant exceptions include Kuehl (1996), Laferriere (1996) and Laferriere and Stoett (1999).

should be overridden by moral values that transcend particular communities. Hanging off this core question are a number of important subsidiary questions concerning the legitimacy and effectiveness of multilateralism and international law, the status and treatment of refugees and the appropriateness of intervention in the domestic affairs of states to promote security and human rights. All these questions have significant implications for global sustainability and may also be reframed with ecological considerations in mind. For example, what is the relationship between international order and environmental justice? Are environmental multilateralism and international law capable of delivering planetary sustainability? Is it desirable to develop a set of universal environmental human rights or broader ecological rights? How should we treat ecological refugees? Under what circumstances, if any, might it be appropriate to intervene in the domestic affairs of states in order to protect the local or global environment?

Curiously EPT has not grappled with these questions in any sustained way.⁴ To be sure, EPT has explored a number of important kindred transnational and global questions, most notably, concerning political economy, democracy and citizenship.⁵ And EPT's well-travelled international cousin, Global Political Ecology (GPE), has tackled some of these subsidiary and more practical questions directly, particularly environmental multilateralism and the ecological security debate.⁶ However, neither EPT nor GPE have entertained the more fundamental question concerning the tensions between international order and justice. And strangely, EPT and GPE appear content to respect the traditional disciplinary divide between domestic and international politics in terms of the way they have divided their intellectual labor. Scholars in EPT and GPE tend to appear at different conferences or on different panels at the same conference.

⁴ One significant exception is the discussion within EPT of environmental rights, some of which has focussed on regional and international rights rather than just domestic rights. The foremost theorist in this regard is Tim Hayward (2000 and 2005).

⁵ Recent examples include Paehlke (2003) and Dobson (2003).

⁶ Key Global Political Ecologists include Ken Conca (1994, 1995), Dan Deudney (1990, 1998), Paul Wapner (1996), and Mat Paterson (2000). These scholars have adopted much more critical approaches to the study of global environmental politics compared to neoliberal institutionalists, who have dominated the study of environmental cooperation over the past two decades.

Perhaps one of the reasons why EPT or GPE have not investigated the relationship between order and justice in the current context is because such a project requires coming to terms with the system/society of sovereign states. Yet this is a matter about which EPT and GPE are somewhat vague and uncomfortable – largely because the state system is considered to be structurally unsuited to addressing ecological problems in any concerted manner. Indeed, EPT and GPE have both routinely pointed to the lack of fit between the system of sovereign states and the requirements of enlightened planetary ecological management. Dividing up the earth’s land mass (aside from Antarctica) and its ocean perimeter into exclusive enclaves of territorial rule provides no ready means of dealing with transboundary and common ecological problems. Interstate rivalry also encourages the exploitation of national resources, including the squandering of scarce budget monies on military expenditure. The history of the state system is replete with examples of national interests prevailing over collective ones – a problem that is exacerbated in the post-Cold War order where there is only one hegemonic power with a material capability that vastly outstrips any rival. The current system of sovereign states has no means of forcing states to be ecologically responsible. In respecting the principle of exclusive territorial rule, it effectively upholds international order and stability at the *expense* of global justice – including global environmental justice. On this analysis, resolving the global ecological crisis requires a form of governance that is able, at a minimum, to facilitate a high degree of social cooperation and a fair distribution of wealth and opportunity – something for which the current system appears singularly unsuited. Small wonder that EPT and GPE prefers fundamental critique to problem-solving in the current global context.

However, if the state system is fundamentally ecologically irrational, then the clear implication is that the global ecological crisis is likely to persist until the arrival of some kind of alternative, post-Westphalian order. Yet there are only a few intimations of such an order on the horizon (a point I shall develop a little further below). Nor are there any guarantees that alternatives to the Westphalian order will not reproduce many of the problems of the current order, or indeed those of the previous medieval order (Bull 1979). Alternative prescriptions to the Westphalian order from within EPT tend to oscillate between radical decentralization along bioregional lines (e.g. Sale 1985) and some form

of world federalism (e.g. Penz 1996). However, both reproduce a new set of tensions between order and justice rather than a resolution of these tensions. Bioregionalism prescribes a smaller-scale, confederal system that offers no greater prospects for environmental cooperation or redistributive politics between communities than the current international order, since the constituent units of the confederation have a right of veto (at least according to Sale's model). This communitarian arrangement provides order (based on the coexistence of self-determining bioregional communities) at the expense of justice (resource redistribution and environmental cooperation between communities).

Federal prescriptions are more appealing, yet they presuppose a set of shared understandings among the component units of the federation to enable a 'pooling of sovereignty' and a relatively harmonious division and allocation of political and legal authority according to functional competence (or what has become known as the principle of subsidiarity). Yet the problem that has always beset federal systems (and, as it happens, confederal bioregional ones) is that functional or bioregional competence bears no necessary relationship to the ethnic, religious, cultural or linguistic ties that bind human communities together and provide the kind of social ties and shared understandings that are required for successful social cooperation (whether according to a traditional religious or democratic order). A concerted effort to realize cosmopolitan environmental justice is likely to give rise to conflict and instability between communities.

In other words, the business of defending any kind of governance structure requires attending to the tensions between communitarian and cosmopolitan approaches to ordering political life; between respecting the right of political communities to be self-determining or somehow upholding universal norms against the wishes of particular communities (or indeed groups within such communities), which may or may not be democratic. According to Linklater (1998, 61), the dialogue between communitarians and cosmopolitans addresses 'the deepest moral question in international relations.' If this argument is accepted, then it seems high time that EPT and GPE intermingled and reflected on how the external and internal relationships between political communities ought to be mediated. In the current context, this requires grasping the proverbial nettle -

the current system of sovereign states - and engaging more directly with the normative debates surrounding its operation and future direction. Like the institution of the family, the modern system of sovereign states is often suboptimal and sometimes downright dysfunctional, but it has proved to be remarkably resilient, despite the dramatically changed conditions between the time of its birth in the 16/17th centuries and the early 21st Century. Whereas some state theorists (such as Saskia Sassen 1996) have emphasized the synergy between capitalism and the nation-state, the state system actually preceded both capitalism and nationalism. As Chris Brown (2002, 215) points out, ‘The Westphalian political structure and Westphalian political theory pre-dated the capitalist nation-state, and there is no reason in principle why they should not post-date them as well.’

The foregoing arguments are not intended to serve as apology for the system. Rather, my point is simply that the state-system is deeply entrenched in ways that go well beyond functionalist or utilitarian explanation. As Stephen Krasner has argued, institutions become entrenched when their environment adapts to them (including the distribution of power among different social groups); when they establish routines that are costly to change; and because of general path dependency. In the case of the state system, it has become difficult to conceive of alternatives because of its links with other social institutions and the fact that it has become a source of individual identity (Krasner 1988, 85 and 90). Chris Brown (2002, 39) has likened the state system to the ‘querty keyboard,’ which was designed for the typewriter but has nonetheless survived the computer age (even though the arrangement of keys was meant to slow down typing to prevent keys from sticking). There is doubtless a more efficient keyboard arrangement for the computer age, but the querty keyboard has survived because it became the industry standard and was effectively locked-in. The system of sovereign states has likewise become, for better or worse, the ‘industry standard,’ and deeply entrenched. While the modern state has often been pronounced dead or in decline as a result of the forces of globalisation, most theorists of globalization conveniently fail to observe that one of the most notable achievements of globalisation is the proliferation of states. Since the decolonization movement in the post-World-War II period, states have now spread to

virtually every corner of the earth. Some of these states have a precarious hold on their people and territory, but the state-form has been thoroughly globalised.

The remainder of this paper will be proceed in three parts. First, I sketch a brief history of the development of the Westphalian order (and its attendant political theory) in order to identify the most troubling features of this order from an environmental perspective. Next I track the most significant shifts that have taken place to the state system in the 20th Century, particularly since the end of the Cold War. Finally I draw out some of the implications of these shifts and suggest some points of normative engagement by EPT, focusing (by way of illustration) on the emerging norm of intervention. The question arising from this illustration is: what moral importance should EPT attach to the system of sovereign states, or at least the idea of self-governing communities?

Westphalia and the ‘sorry comforters’

The ‘Peace of Westphalia’ of 1648⁷ is typically taken to mark symbolically (if not historically) the end of the diverse and overlapping political authority of the medieval world and the beginning of the modern system of sovereign states based on exclusive territorial rule. In recognizing sovereignty in territorial terms, the Westphalian settlement ushered in an end to the nonterritorial and universal claims to rule of both empire and church.⁸ The European princes agreed not to interfere in each other’s territory on religious grounds, which was the concession that bought internal control and stability. To extend Chris Brown’s analogy, the principle of non-interference (‘querty keyboard’) was the design feature that brought an end to the religious wars (‘the sticking keys’). It made sense at the time. However, while it stopped princes from interfering in each other’s internal business, it did not stop them invading each other’s territory in order to

⁷ The Treaties of Munster and Osnabruck brought an end to the Thirty Years’ war in Germany. This religious and political war – which was intimately tied up with the Protestant Reformation and the Catholic counter-reformation as well as efforts to expand territory and prevent encroachments on existing territory within Europe – eventually led to the defeat of the Catholic Hapsburgs.

⁸ For a general discussion see Hinsley (1966); Philpot (2001) and Brown (2002).

capture land and wealth - and so began the business of attacking, defending and balancing (Philpott 2001, 76).

The Westphalia settlement specified the external dimensions of sovereignty, but not the internal dimensions. Sovereign rule could be exercised by means of a democracy, theocracy, or military junta. Only later, with the French and American revolutions, was it claimed to devolve to 'the People' or the 'nation,' expressed in terms of 'popular sovereignty' or 'national sovereignty.' As Barkun and Cronin (1994) point out, the idea of the externally recognised legitimacy of the territorially defined state to rule within its borders was to come into tension with the emergence of nationalism and the idea of the nation, which developed *after* the juridical understanding of the territorial sovereign state had emerged. For nationalists, legitimation of rule stems not from territorial boundaries but rather from the bonds that held together particular communities, defined by particular linguistic, cultural and social ties. Whereas *state* sovereignty emphasizes the territorial integrity of *borders*, *national* sovereignty emphasizes the link between authority and *peoples*. Bioregionalists actually have more in common with the former, the only difference being that borders are determined in accordance with ecological, not political, criteria.

The chief ecological problem with this model of territorial rule is that states are free to exploit their resources as they see fit. As Friedrich Kratochwil (1995, 25) and many others have pointed out, the template for this notion of *dominium* over territory came from Roman private law, which gave the property owner complete and exclusive control over their property. The minimal restrictions that applied to property did not inhere in the property right itself but were part of the Kratochwil calls 'the background conditions' in which the property rights were exercised. The modern customary law principle of state responsibility for transborder environmental harm - *sic utere tuo ut alienum non laedas* (use your own property so as not to injure that of another) – is derived from Roman law.⁹ Elsewhere (Eckersley 2004a, Chapter 8) I have suggested that such a formulation approached the problem of transboundary environmental harm as one of regulating the use of territorial rights, rather than protecting environmental victims or

⁹ *Trail Smelter* Case (United States v Canada) 3 R Int'l Arbitration Awards 1905. For a discussion, see Perrez (1996) and Shrijver (1997).

ecosystems per se. This has placed the onus on the victims to prove tangible damage, causation and a lack of due diligence – requirements that are always difficult in the case of complex environmental problems.

This right of exclusive territorial rule stands in stark contrast to the idea of multiple user rights (and obligations) over property, which characterized the medieval period. Under this system, rights were ‘unbundled’ and exercised as a form of stewardship in accordance with shared understandings of ‘right use.’ In contrast, the Roman property holder and the territorial state had complete and exclusive dominion over their land/territory and were not restricted by any shared notion of ‘right use’ concerning how land/territory was to be used or managed.

Modern day property rights are nothing like the indivisible rights of Roman times – they have become thoroughly divisible or ‘unbundled.’ Nowadays property rights (whether in land, or intellectual property) are increasingly understood as a changing set of rights and responsibilities rather than absolute dominium. The same might be said for the sovereign rights of states as a result of the evolution of environmental multilateralism. However, the rights and obligations created by environmental treaties only bind those states that are parties to the treaty. Thus, contrary to many analyses, undertaking environmental treaty obligations does not entail any abdication or restriction of sovereignty – it is a voluntary *exercise* of sovereignty.

Nonetheless, the analogy with Roman property rights partly obscures restrictions and qualifications that attended the early modern state (such as protectorates and spheres of influence) (Kratowil 1995, 30). Sovereign rights were never absolute or asocial (despite the claims of Jean Bodin and Thomas Hobbes) but rather were modified by changing ‘background conditions’ (Kratowil 1995, 26). The entire system of sovereign states depends on equal mutual recognition, and exactly what is recognized (in terms of rights and obligations) rests on intersubjective understandings that have changed over time. In their relations with each other, the European states observed a range of protocols and conventions (such as diplomatic immunity) and were united by a range of different shared understandings. As Geoffrey Stern (2000, 78) explains:

In addition to international law, diplomacy and the balance of power, the framework of order established in the wake of Westphalia had an additional prop. Despite their insistence on sovereign independence, the rulers of eighteenth century Europe and their courtiers and servants were linked to one another by ties of blood and a common culture. They generally spoke French, continued to identify themselves as Christians and accepted the principles of royal legitimacy and dynastic succession.

With the proliferation of states to virtually every corner of the globe, it is now much harder to identify a relatively thick common culture of the kind that existed in 18th Century Europe, although globalisation (particularly in growth of trade and rapid communication networks) has created new kinds of cultural connections between communities. Nonetheless, the system created a very rigid territorial division between inside and outside, creating coercive legal systems on the inside and a consensual one on the outside – which is why the state system is characterized as anarchical (meaning no state is subjected to any higher authority without its consent). This division still makes it difficult even in the 21st Century for a single state or group of states or even the international community to *justify* ‘intervening’ in the domestic affairs of a state.

The most developed account of the morality of states in the early modern period was Emeric de Vattel’s *Law of Nations*, written in 1758. Vattel’s articulation of the norms of the European society of states included the principle of equal recognition (which enabled coexistence), the right to enter into treaties and the obligation to observe them, the obligation not to intervene in the domestic affairs of another state, the right of self-defence and the duty not to invade another state. Vattel’s account recognized the equality of sovereign states however big or small, and with that the importance of preserving a balance of power to check the growth of hegemonic power. This, in turn, provided a justification for pre-emptive action to prevent excessive concentrations of power (Brown 2002, 32-33). War under these circumstances was not immoral, although it was to be circumscribed by the principles of just war: *ius ad bellum* and *ius in bello*

Although state practice did not always accord with Vattel’s account of these basic Westphalian norms, the norms were (in the language of constructivists) nonetheless *constitutive* of the society of states insofar as they established the roles, identities, rights and obligations of the recognized actors. And the early society of state theorists who

articulated and reflected on these norms – such as Vattel – were more or less accepting of them. It was not until the Enlightenment that a more critical, cosmopolitan perspective developed that rejected the idea that *raison d'état* should triumph over moral considerations. These early ‘society of states’ theorists such Hugo Grotius, Pufendorf and Vattel were described by Kant as ‘sorry comforters’ (Reiss 1991, 103) who would ask that we become resigned to interstate rivalry, war and suffering, as if humans have no moral capacity in their international dealings. In contrast, Kant believed that the powers of human reason and the rule of law could deliver a ‘perpetual peace’ among a pacific federation of independent states that would ‘seek to end all wars for good’ (Reiss 1991, 104). Although Bentham, who coined the term international law, justified the state sovereignty on utilitarian grounds, his consequential ethic also provided a strong basis for criticizing the system.

As we shall see, many contemporary critics of the state system have drawn on these cosmopolitan, Enlightenment ideas (most notably, David Held on Kant and Peter Singer on Bentham). For the moment, it is enough to say that the Westphalian system succeeded in surviving the early cosmopolitan critiques. Indeed, capitalism, nationalism, post-colonialism have all adapted to its basic template. It was not until the end of the First World War that the first significant modifications took place. This was also the period that saw the emergence of International Relations as a distinct discipline, and with that the development of a disciplinary divide between IR and political theory. Moreover, for most of the latter half of the 20th Century, normative IR theory has very much remained the poor relation of that species of IR theory that came to be dominated by realism (and later the rational choice theories of neo-realism and neoliberal institutionalism). Indeed, it is fair to say that international political theory has only really come of age in the post-Cold War period.

The United Nations and Beyond: Towards conditional sovereignty?

The two most significant renovations to the Westphalian system in the 20th Century were the doctrine of collective security and the international human rights discourse. The idea of collective security – which emerged in the wake of both world wars - was much more ambitious than the previous arrangement of alliance security, in which groups of states

formed alliances with each other, principally against possible external threats. Despite the failure of League of Nations, the ideal of collective security was resurrected in the United Nations, albeit with the injection of a heavy dose of realpolitik in the form of the veto power (enjoyed by the US, UK, France, the Soviet Union and China) on the Security Council.¹⁰ Despite these renovations (or perhaps because of them) the Security Council has enjoyed only intermittent success in upholding the norms of collective security, largely due to the failure of the permanent members on the Council to speak with one voice. However, what is more interesting for our purposes is the different way in which the League of Nations and the United Nations sought to mediate between the demands of order and justice. Whereas the League had been built on the twin principles of collective security and national self-determination (championed by Woodrow Wilson) the United Nations, sought to uphold the twin principles of collective security and the cosmopolitan norm of universal human rights. The Holocaust had focused attention on the idea of the inherent dignity of each and every individual human, irrespective of creed, culture or ethnicity. As Mary Midgley (1999, 173) has put it, the rise to power of the Nazis ‘altered the colour of the sky for everyone’ (p. 173).

Indeed, the international human rights discourse is typically taken to represent the most significant challenge to state sovereignty, and it underpins the emerging (yet still fragile and contested) doctrine of humanitarian intervention as well as the new International Criminal Court. These significant developments have boosted the arguments of critics of the current order to the effect that we must now think of sovereignty in conditional terms, that recognition of sovereign statehood should be conditional on the observance by all states of certain minimal standards of human decency (with significant consequences in the case of recalcitrant states). Whether EPT is willing or able to exploit this opening remains to be seen.

Most of the contemporary international political theorists who seek to reach beyond the Westphalian system and fashion a post-Westphalian system that they believe is better adapted to our more interconnected and globalised world – Thomas Pogge

¹⁰ The system of collective security is laid down in Chapter VII of the UN Charter (particularly Articles 39-51). However, these provisions are qualified by Article 51 which preserves ‘the inherent right of states to individual or collective self defence,’ at least until the Security Council has taken necessary measures.

(1992), David Held (1995), Andrew Linklater (1996, 1998) and Henry Shue (1997) – are heirs of Kant or at least Enlightenment cosmopolitanism, albeit in different ways and to different degrees.¹¹ Linklater (1996), for example, looks forward to a post-Westphalian state that no longer has monopoly control of the instruments of violence, the power of taxation or the loyalty of its citizens. In contrast, those political theorists who continue to defend the nation-state as a self-determining entity (David Miller 1995) or the more general principle of the right of ‘self-determination of the tribes’ (Michael Walzer 1994) have strayed very little from the mostly communitarian template that underpins Westphalia (although Walzer focuses on political communities or ‘tribes’ rather than nation-states). The main differences between these approaches turn on how ‘thick’ or ‘thin’ ought be the moral norms that regulate inter-community relations. Whereas Held argues that individual human rights should be upheld by a global democratic public law and International Court, Michael Walzer defends a minimal, transcultural normative code that seeks to respect the right of self-determination of particular communities (which may not be states, or democratic). As Walzer (1994, 64) explains, moral minimalism ‘*leaves room* for the tribes - and so for... particularist versions of justice and criticism’. He considers this minimal principle to provide a better basis for international justice than upholding human rights. While he does not rule out forceful intervention entirely, it is reserved for extreme situations.¹²

Realists and Marxists may be placed in a special ‘ultra-skeptical category’ in this regard. Realists believe that order is achieved by a balance of power rather than through international law, which they see as merely a tool for the powerful. Justice and morality are seen as irrelevant to international politics, which is characterized by anarchy. Marxists likewise prefer to unmask regulative ideals and normative arguments to find material capabilities and interests at work (in this case, capitalist ones). Common to this realist/materialist approach is the view that the legal order is ideologically self-validating rather than genuinely legitimate. Both approaches offer very cold comfort for those seeking greater international environmental cooperation.

¹¹ The exception to this claim, of course, are contemporary utilitarians who are, of course, also profoundly cosmopolitan (e.g. Peter Singer (2002)).

¹² Indeed Michael Walzer’s *Just and Unjust War* (1977) provides a considered defence of the current international legal rules concerning the appropriate use of force.

Where, then, should EPT stand in this broadly sketched debate between cosmopolitans, communitarians and skeptics? Do the depths of cultural diversity and, in some cases, cultural incommensurability among nations mean that we should respect the traditional distinction between domestic and international politics, or does globalisation introduce a new license to intervene or otherwise interfere to uphold cosmopolitan green norms? If so, what should these norms be, or how should they be decided and implemented? Should we, following Walzer, respect the particularistic conceptions of environmental justice that emerge within particular political communities? Or should we declare ourselves ‘eco-skeptics’ (whether realist or Marxist) and scoff at the very idea of international environmental justice in a system of sovereign states and global capitalism?

New Norms of Ecological Intervention or Muddling through with Multilateralism?

One way of confronting these questions is to explore the analogy of encroachments upon sovereignty in defence of human rights norms. The international human rights regime has challenged the Westphalian order by effectively telling states how to treat their nationals. If a cross-cultural consensus (at least among a significant number of states) can be developed to uphold human dignity and the bodily integrity of the person, why not work towards the building of a cross-cultural consensus to uphold environmental integrity as the basis for all human societies? Why not tell (and in some cases coerce) states how to treat their environments?

If we deal first with the issue of coercion rather than persuasion, what would be the repercussions of ‘ecological intervention’ for international order? If it is accepted that genocide or ‘crimes against humanity’ provide a basis for intervention in the domestic affairs of states (and in some cases trial by the new International Criminal Court), what kinds of ecological harm might amount to ‘ecocide’ or ‘crimes against nature’ of a kind that could justify forceful intervention and possibly trial by a new environmental division of the International Criminal Court?

The main problem with this argument is that very few categories of environmental harm lend themselves to this analogy – which in itself is telling. It is hard to accept the idea of military intervention to stop people driving cars or throwing away plastic bags, or to prevent the building of a new coal-fired power station, despite the harmful long-term

consequences of such activities for the world's climate and ecosystems. However, serious and irreversible kinds of ecological harm might warrant intervention when all other reasonable efforts have failed. For example, the extinction of species might be considered a form of ecocide on a par with genocide. Indeed, hardcore non-anthropocentric EPT might wish to argue that the extinction of an entire species is far more serious than the death of particular populations. Could this provide a justification for military intervention or at least ecological peacekeeping by special UN forces (wearing green helmets or berets?) to prevent, say, widespread land clearing and other forms of major habitat destruction that is destined to give rise to a major spate of extinctions?

Perhaps. I suspect, however, that the circumstances would be extremely limited. The idea of ecological peacekeeping in the case of a failed state might just be palatable to EPT, particularly if the intervention has the support of local populations. Ecological emergencies such as giant oil spills or nuclear accidents (such as Chernobyl) might also warrant the intervention of an international ecological emergency or tactical response force run on para-military lines. However, I suspect that most EP theorists (as distinct from many environmental NGOs) would be squeamish about the general idea of coercive intervention, just as they are squeamish about ecoauthoritarian states or coercive conservation practices generally.¹³ Let me briefly run four arguments why the idea of intervention in defence of biodiversity might be resisted.

First, we are much further from a cross-cultural consensus on biodiversity and other environmental questions than we are on fundamental human rights claims (such as those against torture or genocide). We know from the history of human rights claims that in the absence of a widely *shared commitment* by states any institutional renovations to sovereignty are likely to be a dead letter or else become a cause of great controversy and conflict. The mechanisms for upholding human rights also generally remain weak, and require the cooperation of states. One significant exception here is the European Convention on Human Rights and the European Court of Justice. The reason why the European system of human rights enforcement is strong may be partly explained by the

¹³ See Lipschutz and Conca (1993) in this regard.

common history and close cultural ties of the Europeans. As it happens, the EU is also a leader in the area of environmental multilateralism, both internally and externally. This suggests that attempts to develop cross-cultural environmental norms are most likely to succeed where there are common ties - if not language, then history, geography, culture and/or trade - which suggests that regional cooperation is more likely to be successful than international cooperation.

Second, the case for ecological intervention sketched above is likely to be especially contentious politically since the most concentrated areas of biodiversity in the world lie in tropical forests that are found in some of the poorest countries of the world. Efforts to extend the idea of the 'commons' or 'common heritage of mankind' (used advisedly) to include biodiversity have met with strong resistance from most states precisely because biodiversity (unlike the atmosphere and the oceans) lies within rather than beyond the territory of states. In this case, intervention is likely to attract the now familiar charge of ecological imperialism.

Third, a parallel can be drawn here with the ecological security debate. Many environmental NGOs and security analysts have sought to raise the political status of ecological problems to matters of 'high' rather than 'low' politics by classifying them as 'security threats.' However, political elites have mostly remained unmoved or else they have appropriated the discourse of ecological security to accord with more conventional ideas of national security. Here GPE has made a valuable contribution to the debate in warning of the dangers associated with enlisting military discourses to serve non-military ends. Military threats and environmental threats are, as Daniel Deudney points out, of a different order and therefore should be dealt with by different agents and processes. Building on Deudney's critique, Mark Imber (1994, 19) has argued that there are very few ecological problems constitute a genuine *crisis* in the sense of involving a high level of threat, a short period of warning *and* the need for rapid response. And short term, highly technical and military responses are rarely able to tackle the underlying causes of environmental problems.

This brings us to the fourth point. Ensuring sustainable natural resource use and the integrity of ecosystems is more likely to be achieved by negotiating fairer international trading and credit rules and better environmental treaties rather than

enlisting military intervention. The extensive investigation of ecological democracy by EPT is itself testimony to its predilection for consensual rather than coercive politics. Muddling through with multilateralism therefore emerges as the preferable path to global sustainability.

The foregoing conclusion does not necessarily mean the sovereignty cannot be 'greened' in the absence of any formal or juridical encroachment. It can also be gradually greened by consensual means. Elsewhere I have argued that the proliferation of environmental treaties and environmental summitry has seen the gradual greening of the rights and responsibilities of states under international law (Eckersley 2004a). This has largely occurred through shifts in the constitutive discourses of sovereignty that flesh out the meaning of sovereignty in particular environmental domains and contexts. That is, the issue specific environmental regimes, declarations and strategies that have proliferated as part of the evolving processes of environmental multilateralism have gradually redefined the rights and responsibilities that are attached to sovereign statehood, which have produced new discourses on the underlying purpose of the state. Whereas international law was once made by and for only states, today nonstate actors (particularly scientists, corporations environmental international organizations and NGOs) and increasingly playing a role as authors and addressees of international law.

According to John Ruggie (1993), multilateralism has provided an evolving, 'supplementary structure' of international rule that has gone some way towards compensating for the limitations of an exclusively territorial structure of rule. Indeed, Ruggie regards the modern international polity - the complex layers of multilateral norms and institutions that govern international society - as 'an institutional *negation* of exclusive territoriality' or the 'unbundling of territoriality.' Moreover, this institutional negation of territorial rule cannot be explained in purely functional terms (as neoliberal institutionalists seek to do); it is also driven by arguments concerning justice and identity. Relative material capability and national interests are always implicated in multilateral negotiations, but international law cannot be *reduced* to power and interests (Eckersley 1994b). A crucial point of engagement for EPT is to explore how the regulative ideals of communicative justice at the international level might be developed to ensure that moral

arguments plays a relatively more significant role vis-à-vis power and interests in multilateral negotiations

However, there are many challenges that stand in the way of more effective environmental multilateralism and this suggests another point of engagement for EPT. Two significant challenges concern the role of hegemonic states and the parlous situation of weak and failed states (or what Jackson (1993) wrongly calls ‘quasi-states’). American unilateralism (most spectacularly in the areas of climate change diplomacy, trade policy and defence policy) undermines multilateralism in profound ways and demands a serious investigation of how a ‘responsible green hegemon’ might conduct its international affairs. The problem of weak or failed states has major implications for both security and the environment. Columbia, for example, is simultaneously one of the poorest, most corrupt and most biodiversity rich states in the world. This represents one of the rare situations where ecological peacekeeping might be warranted. More generally, however, the problems of poverty and ‘underdevelopment’ are best met with new forms of green development assistance, new trade concession (e.g. ‘development boxes’) or improved market access, credit relief, capacity building and green technology transfer. In place of the traditional Westphalian ethos of self-reliance and reciprocity EPT has the opportunity to articulate new norms of international environmental assistance. This in turn presupposes membership of a common community with asymmetric obligations that require much more extensive obligations on the part of the rich world to help the poor world.

These opportunities and developments suggest the need to rethink the idea of ‘intervention’ as part of a continuum of environmental diplomatic interactions and influences that might begin with simply leading by example and providing practical assistance (development assistance and technology transfer; provision of advice and expertise; debt forgiveness; improved market access) to other states. Such practices help to build momentum for multilateral negotiations and agreements over specific strategies and treaties, which lead to the diffusion and local appropriation of global and regional environmental norms. Ironically, effective coercive measures, including (‘ecological intervention’, ‘ecological peace keeping’ and sanctions) depend on a consensus. That is, such measures can only be effective against a background of shared understandings about

appropriate state behaviour (as the Bush administration has discovered in relation to its intervention in Iraq).

One way of interpreting these developments might be to say that the communitarian institutional form of Westphalia can be made to serve more cosmopolitan (green) norms. Indeed, Kant himself drew back from the idea of a world government and defended instead a pacific federation made up of individual republics through which the common good was to be realised. Drawing on Charles Beitz's (1994) distinction between moral and institutional cosmopolitanism we might say that *moral* cosmopolitanism is being enacted through institutional communitarianism. In contrast, David Held's case for a global democratic public law seeks to bring moral cosmopolitanism into alignment with institutional cosmopolitanism.

Conclusion

I have suggested that EPT needs to grapple with the environmental, legal and political challenges thrown up by the Westphalian system. Indeed, it seems to me a form of escapism not to engage in practical ethical debates about environmental multilateralism and the changing rights and responsibilities of states for fear that EPT may become implicated in propping up an unpalatable system. This, in turn, demands a confrontation with the deeper questions concerning the nature of political community and the proper relationships between communities.

According to Andrew Linklater (1998), cosmopolitanism has fallen on hard times in recent years. Cosmopolitan liberal thought in particular is often associated with Western imperialism. With the exception of Held, it is now arguably weaker in its aspirations. Much recent social theory - feminism postmodernism communitarianism and postcolonialism - has pointed to the potential for domination that is inherent in all universalising perspectives, including liberalism. Yet as Linklater also points out, 'Seldom does the intellectual retreat from cosmopolitanism and the wider project of the Enlightenment lead to a celebration of ethnic particularism or patriotic loyalties which disavow all forms of answerability to others' (1998, 47). In this sense, a certain resonance with the Kantian principle of respect for others is still present in the work of

those opposing cosmopolitanism who defend the principle of respect for difference or self-determination of the tribes (since this is offered as a universal principle).

For Linklater, we can avoid the unpalatable opposition between moral absolutes and incommensurable moralities by encouraging open and respectful dialogue between differently situated others and communities. This, he argues, will enable a widening of the boundaries of community while also respecting difference. I would join with Linklater in supporting a kind of ‘thin cosmopolitanism’ which seeks ‘the development of wider communities of discourse which make new articulations of universality and difference possible’ (1998, 49).

I am therefore not suggesting that EPT should play the role of a ‘sorry comforter’ since there are plenty of reasons why we should criticize the Westphalian system it, and some scope for reaching beyond it. The irony, however, is that as the members of the European Union gradually point beyond the Westphalian order, many developing countries seem to want to defend the traditional order more vociferously. In this respect, reaching for a post-sovereign or post-national world seems only to be possible from a position of security. Such a goal is thinkable for a European but unthinkable for an Israeli or Palestinian.

Beyond Europe, then, the best prospects seem to lie in working with the existing hard-ware (the state form) and focusing on the soft-ware, such as greening the emerging ‘post-Washington consensus’ (to cite but one example). Understanding the distortions and processes of bargaining and consensus formation in a multilateral context emerges as one of the most significant points of engagement for EPT. Happily, then, this brief investigation of international political theory has led us back to some of the enduring questions entertaining by EPT: environmentalism pluralism vs. environmental monism, the role of the discourse ethic and the problem of cultural incommensurability. Exploring these questions in the international context would, I believe, bear considerable fruit.

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