Breaking Out: The Proliferation of Actors in the International System

Anne-Marie Slaughter

Anne-Marie Slaughter, a professor of international law at Harvard, examines how international law is changing to accommodate transformations in the global political economy. International law classically applied only to sovereign states and assumed the states were essentially monolithic. In contrast, she observes, the international scene is now populated by proliferating actors and legal norms that cannot be captured by classic international law. Law is no longer the product only of the acts of the sovereign states, but rather of an increasing number of actors. In particular, states themselves are disaggregating into their component parts—courts, regulatory agencies, legislatures, and chief executives—all of whom are taking their place alongside nongovernmental organizations, corporate entities, and actors in the international legal order. Examples now even include supreme courts of different nations exchanging ideas and opinions on constitutional and human rights issues.

This new perspective—quite different from earlier interpretations of the global political economy—can be used both as description and as prescription. As prescription, it serves as a model of how the system ought to operate. The model puts law as the key discourse for legitimating the system and provides for a set of legitimate actors who can produce the law.

Introduction

The central phenomenon transforming both public and private international law in the 1990s is the proliferation of actors in the international system above, below, beside, and within the state. Public international law has witnessed a resurgence of international and supranational organizations as actors in their own right, together with a veritable explosion of nongovernmental organizations (NGOs) advancing their own causes by pushing, challenging, and monitoring states and seeking recognition as autonomous international actors. Parts of states have also joined the fray, from regional, provincial, and even local governments to regulatory agencies, courts, and legislative committees, all interacting with their foreign counterparts in ways that challenge our very conception of the state.

On the private side, multinational corporations, now reborn as transnational corporations (TNCs), bestride a global economy in which state borders are virtually invisible to capital flows and less and less of a barrier to commerce. Globalization seems a virtually inexorable force, which states can accommodate, perhaps regulate, but not stop. The emergence of global economic law has swept away traditional distinctions between public and private international law (many of which have been dissolving for many decades), given rise to customized international dispute resolution systems that coexist with both national and supranational tribunals, and highlighted a new generation of soft law produced, or at least voluntarily adopted, by TNCs themselves.

This proliferation of international actors has both caused and accompanied debates about the decline of the nation-state as a basic organizing unit of domestic and international life. Few developments could be more important for the social construction of international legal rules than a change in the relevant "actors" doing the construction, actors who are themselves constructed both as entities and agents (Meyer and Jepperson 1997). The elemental assumption that states are the sole sources and subjects of international legal rules dictates the scope and content of those rules. To take only one example, international legal rules governing the use of force flow from the state-to-state paradigm of cross-border aggression. The result is Art. 2(4) of the UN Charter, requiring states to "refrain from the use of force in their international relations." In an international legal system in which the rule makers were the individuals—civilians and soldiers alike—directly affected by violence organized for the purpose of defending, splitting, creating, or reshaping a state, the rules would likely look quite different. Obligations might devolve on all leaders of armies, militias, armed bands, or irregular forces, requiring them to use force in any dispute

only as a last resort and in conformity with basic guarantees of human rights.

Before abandoning the state and embracing the search for its replacement(s), however, it is important to realize that we have been here before. The 1970s witnessed a flourishing literature on transnational and transgovernmental actors in political science; the age of transnational law dawned a decade earlier in 1958. The same debates about the excessive state-centrism of the analytical frameworks employed by international law and international relations, about allegedly declining state power, about the relationship of transnational actors to the state and to international organizations, and about the nature and strength of transnational society were fully aired. Indeed, Charles Kindleberger announced in 1969 that "the nation-state is just about through as a economic unit" (1969: 207).

So why now again? Is the proliferation of international actors in the 1970s and again in the 1990s simply a function of an unusually (and temporarily) benign security climate created either by a bipolar or unipolar state system? Or was the resurgence of apparent state primacy in the 1980s a temporary reversion that cannot obscure a larger and longer-term trend toward a new global architecture that could take decades or even centuries to achieve?

Such questions will ultimately collapse into deeper assumptions and assertions about the cyclical or teleological nature of history—a debate that far exceeds the scope of this essay. Within a far more limited frame, however, it is instructive to canvass possible reasons for the apparent revival of transnationalism and transgovernmentalism through the 1990s until the present, at least before September 11. A range of factors present themselves: technological, geopolitical, intellectual, and social. Some of these factors bear directly on the social empowerment of actors charged with "making" international rules by shining a spotlight on different areas of international life and interpreting the practices and principles revealed. To the extent that these factors prove to have causal significance, predictions about the social construction of legal rules in the international realm will depend on domestic social trends in powerful countries.

As important as the actors constructing legal rules, however, is the conceptual framework within which that process takes place. The concept of a paradigm shift is overused and consequently disfavored, but what is required in international law is nothing less than a basic rethinking of what "the state" is. The vocabulary of "substate," "suprastate," "nonstate," even "infrastate" actors betrays an inability to escape some ur-conception of a unitary entity in which sovereignty resides, an entity that is actor, unit, building block, network node, or black box in various conceptualizations of the "world" or the "international system." Substitute "government" for "state," meaning executive, administrative, legislative and judicial institutions, and individuals for state "leaders" and "policymakers," and a whole host of new problems and prospects for international politics, economics, and society results. The "state" can no longer be demonized or dramatized as an impersonal force for good or evil. It is as near or far, as competent or bumbling, as transparent or opaque, as are domestically elected, appointed, or imposed government officials. This is a completely obvious point, once made, but the social construction of "the state" as the fundamental actor in international life has proven extraordinarily difficult to dislodge.

Section I briefly describes the perceived explosion of nonstate, substate, suprastate, and infrastate actors in the international system and their impact on public and private international law. Section II presents an overview of earlier literature on transnationalism and transgovernmentalism. In a spirit of sociological self-reflection, section III then offers a discussion of the analysis presented in section I, canvassing a range of possible reasons for the resurgence of these themes in the 1990s, both as the result of empirical differences among the phenomena observed and the interests and incentives of the observers. Section IV concludes with a discussion of the prospects for genuinely breaking the frame of actor-analysis in the international system and global society.

I. Sharing the Stage: The Nation-State and a Host of New International Actors

The state is out of fashion, or at least out of focus. The 1990s are the age of "the new medievalism," a back-to-the-future model of the twenty-first century. The term was originally coined by Hedley Bull (1977), who described "a secular reincarnation of the system of overlapping . . . authority" characteristic of pre-Westphalian Europe.[1] The 1990s version emphasizes not only the devolution of state power upward to supranational institutions and downward to regional or local governments, but also sideways to a fast-growing array of nonstate actors, both civic and corporate (Mathews 1996; Kobrin 1998). In response, however, the state

itself is changing, disaggregating into its component judicial, administrative, executive, and legislative institutions and thus itself becoming a multifaceted or perhaps even hydra-headed actor on the international scene.[2]

A. Nonstate Actors

1. NGOs

NGOs exert increasing influence on the making and implementing of international law in a wide range of issue areas, from human rights and humanitarian law to environmental law to trade and labor law (Clark 1995; Spiro 1995; Bramble and Porter 1995; Rubinton 1992; Tracy 1994; Sikkink 1993; Charnovitz 1996; Shell 1996; Grossman and Bradlow 1993; Strange 1994). They participate in international negotiations, implement international missions, and drive international litigation. They link up with one another in "transnational issue networks" (Keck and Sikkink 1995, 1997), creating a "global operating system" that can compensate for state incompetence in many areas (Lipschutz 1992). More fundamentally, they may be challenging states' hold on their citizens, by creating "new commonalities of identity that cut across national borders" (Spiro 1995: 45). Their proliferation lies at the root of the "power shift" away from the nation-state documented by Jessica Mathews (1996).

The legal implications of the growth of NGOs are only beginning to be felt. They are making a mockery of the old-fashioned and always highly stylized image of states as the only or at least the principal actors in the international system. NGOs seek increasingly formal status in international organizations and as recognized subjects of international law. They want litigation rights before international and supranational tribunals. Further, as Maria Garner (1991) argues, they may require their own international organizations to coordinate their activities. As they grow increasingly important and assertive, they pose troubling issues of accountability either to states or citizens (Spiro 1995: 51–54).

2. TNCs

On the private side, Peter Drucker argues that multinational corporations are giving way to transnational corporations. Whereas a multinational corporation is a national company with foreign subsidiaries that replicate the structure and production of the parent, a transnational corporation produces for a global market through specialized facilities located all over the world (1997: 168). Fittingly enough, the law governing these entities is transnational law, pioneered by Philip Jessup in 1956 and recently defined by Joel Trachtman as "the integrated body of domestic and international law that regulates both private persons and states, competition in both the market for private goods and the market for public goods" (1996: 35).[3] Trachtman argues that the entire discipline of international law has actually been redefined as transnational law (35; see also Koh 1996, 1997, 1998).

TNCs also generate their own law. In addition to a proliferation of voluntary corporate codes of conduct, regulating industries from software to telecommunications to credit cards, they also benefit from and hence often push for uniform standards through organizations such as the International Standards Organization (Roht-Arriaza 1995a, 1995b).[4] They can similarly design their own dispute resolution systems through the use of international commercial arbitration, choosing a site of arbitration and the law governing the dispute (Dezalay and Garth 1996). The generation of such options contributes to a fundamental decoupling of law from either physical territory or a particular polity, in ways that may foreshadow the growing portability of national law in a transnational society (Choi and Guzman 1998).

B. Suprastate and Substate Actors

The new medievalist image owes a great deal to the conceptual fashioning of an alternative international architecture in which individuals become increasingly conscious of multiple identities as members of local, national, regional, and global communities and are prepared to answer to multiple overlapping regulatory authorities empowered by these different communities (see Franck 1996; Kobrin 1998). The leading model of this new architecture is purportedly the European Union, in which an individual can define herself as a Barcelonan, a Catalan, a Spaniard, a Mediterranean, and a European. The Spanish state, in turn, has ceded some of its functions down to Catalonia and others up to Brussels.

Other examples include growing regional consciousness in areas such as the Pacific Northwest in the United States and Canada; the increasing foreign affairs activity of the states of the United States, not only on trade issues but also concerning traditional national security

concerns (Shuman 1986–87, 1991), the visions of many Quebecois of a sovereign Quebec participating in North American regional affairs through NAFTA, and the revitalization of regional organizations from Latin America to Africa to East Asia. In many ways the growth of sub- and suprastate actors depends on one another, as the two ends of a channel of communication and authority that bypasses the nation-state.

C. Infrastate Actors: Government Networks

The proliferation of actors above, below, and beside the state is supposed to spell the death, or at least the serious decline, of state power (Ohmae 1995; Wriston 1993; Schmidt 1995), not only because the state can no longer police its borders, but more fundamentally because the information technology revolution means that networks are displacing hierarchies as the organizational form of the future (Mathews 1996). Yet governments, it is argued, are hopelessly hierarchical. They are thus consigned to imminent obsolescence in a globally networked world.

A closer look at the nature of recent state activity, however, reveals that governments are disaggregating into their component institutions and forming transgovernmental coalitions. The same institutions that make and execute laws and regulations and resolve disputes in domestic affairs are increasingly performing the same functions in international affairs. Moreover, they are interacting with their foreign counterparts to perform these functions, transnationally as well as nationally, or simply to improve their performance nationally (Slaughter 1997, 2000b, 2000c; Risse-Kappen 1995a; Picciotto 1997).

The result is government networks. Global rule of law norms are increasingly being constructed through transgovernmental legal relations, primarily among courts and administrative agencies. National courts are participating in transgovernmental judicial networks to an ever greater degree, both informally and through regional judicial organizations such as the Organization of the Supreme Courts of the Americas. On the administrative side, central bankers, securities commissioners, antitrust officials, environmental regulators, and trade officials are working actively with their foreign counterparts to create transgovernmental regulatory networks and organizations designed to implement common solutions to domestic problems that have spilled over national borders. These networks and organizations are prime sites for competition over national legal rules and frameworks for defining and addressing these problems. They are also sites for interaction between members of international institutions—courts and regulatory institutions—and domestic officials.

These networks produce a tremendous cross-fertilization of ideas and the gradual evolution of a transnational consensus on specific rules and approaches that can then be formally implemented as international treaties and/or national statutes. In addition, these transgovernmental networks offer considerable opportunities for the socialization of national judges and regulators as members of "rule of law communities" (Helfer and Slaughter 1997: 366–70; Slaughter 2000c), through the transmission and reinforcement of metanorms such as judicial independence, regulatory transparency, and public participation.

The emergence of government networks has potentially enormous implications for the social construction of international legal rules. The addition of infrastate actors to the above roster of actors holds out the prospect of supplanting rather than merely supplementing the state, although without abandoning the coercive core at the heart of state power. The result could be deep changes in the rule-initiation, rule-making, and rule-enforcement processes in the international system, through the transformation of the basic architecture of that system itself.

II. Transnationalism Redux

A. Previous Proliferation of Nonstate and Substate Actors

The widening of the conceptual or analytical lenses used to examine the international system may be a cyclical phenomenon. The decades since 1945 have witnessed at least one previous round of "transnationalism," from the late 1950s to the late 1970s. In a slim volume published in 1956, Philip Jessup defined "transnational law" as "all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories" (2).[5] Henry Steiner and Detlev Vagts later translated this concept into a casebook, collecting materials designed to bridge the gap between the domestic and international legal worlds (1976: xv–xvi).[6]

"Transnational" was designed to dissolve the reified distinctions

between public and private law and domestic and international law, expanding the traditional sphere of public international law—the law governing interstate relations—to include the rules governing the myriad private and public-private transactions accompanying the rapid expansion of global trade and investment and the accompanying emergence of multinational corporations. By focusing on relations "across" borders by the full range of actors within them, rather than relations "between" monolithic spheres, transnationalism shifted attention away from the sources and defining features of different types of law and toward efforts to frame and regulate a world in which borders were no longer barriers. It also, not coincidentally, allowed international lawyers to move away from the increasingly static and apparently irrelevant field of global government in an era defined and dominated by great power rivalry and stalemate and to reinvent themselves as pragmatic contributors to a growing global economy.

Political scientists embraced transnational relations somewhat later, in the late 1960s and 1970s, acknowledging the plethora of nontraditional actors in the international system and trying to relate them both to states and international organizations. The theoretical debate initially focused on whether to define transnationalism in terms of the identity of the actors or the nature of the activity. In an influential edited volume, *Transnational Relations and World Politics,* Robert Keohane and Joseph Nye defined transnational relations as "contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of government" (1972: xi).[7] Samuel Huntington responded to this idea, arguing that the definition of transnational relations should focus not on the actors involved in the process, but rather on the activity itself. He viewed transnationalism as a peculiarly American mode of expansion, based on "freedom to operate" rather than "power to control" (1973: 344).

A related issue concerned the role of "substate" or governmental actors in transnational relations. Huntington's view of the character of transnationalism included both public and private organizations as well as governmental and nongovernmental actors as participants in the "transnational revolution" (337).[8] Keohane and Nye instead distinguished between "transnational" and "transgovernmental" relations, defining "transgovernmental interactions" as interactions between governmental subunits across state boundaries, as opposed to traditional "interstate" relations in which "actors are behaving in roles specified or

reasonably implied by the formal foreign policy structure of the state" (1972: 383). These government units could be expected to act relatively autonomously from higher authority in international politics.[9] Keohane and Nye concluded: "Transgovernmental applies when we relax the realist assumption that states act coherently as units; transnational applies when we relax the assumption that states are the only units" (1977: 24–25).[10]

This distinction is linked to yet a third area of debate: how to integrate transnational relations into the traditional framework of interstate or international relations. Keohane and Nye, following Stanley Hoffmann, saw transnational relations as occurring "outside" state-to-state relations, developing as a separate path of communication between nongovernmental actors.[11] In this view, transnational relations challenge traditional state-centric analysis by augmenting the number and identity of actors in the international system, but do not alter the basic framework of interstate cooperation and conflict.[12] For others, however, the impetus to define and chronicle transnational relations was the perceived need to break out of the traditional framework, rejecting not only state centrism but also the sharp divide between international and domestic affairs. Theorists such as Karl Kaiser and James Rosenau argued that the emerging complexity of world politics required a new analytical framework, one that included elements of local, national, and international systems, permitted a focus on various actors acting across boundaries beyond state control, and accommodated a view of policymakers as acting against "state" interest (Kaiser 1971: 792–94; Rosenau 1966: 73–74; 1969).

If transnationalism posed a challenge to state-centric thinking, it also led analysts to question their conception of the state itself and of the long-term impact of transnational relations on state power. Transnational actors were alternately portrayed as slowly usurping the nation-state, coexisting with it, and acting as underlings who would ultimately strengthen it.[13] Keohane and Nye argued that whereas "transgovernmental" relations could transform traditional state-to-state communication by creating a multilevel interaction, "transnational" relations occurred outside the state. Karl Kaiser, on the other hand, identified three ways in which transnational relations would trigger responsive state action: (1) national reaction, in which a government will attempt to influence through intervention the part of the activity that takes place within the jurisdictional boundaries of the nation-state system; (2)

encapsulation, in which the creation of national policy completely controls behavior, thus cutting off all channels of transnational societal interaction; and (3) multinational regulation, which, on a permanent basis, coordinates policies with other affected governments and possibly makes use of international organizations (Kaiser 1971: 804–7; see also Kaiser 1972: 359).

A final issue addressed by many theorists in the 1970s was the definition of a transnational society. Hoffmann used the term to describe a "society" within a nation operating on a separate level from that of the state (1970: 402). Kaiser picked up on this definition of a "society" operating across state boundaries, arguing that transnational politics presupposes the existence of such a society (1971: 801). Transnational society was also viewed as an overarching concept that encompassed the emergence of world communication, emerging as part of an impressive achievement of growth in technology, communication, trade, and investment (Mendershausen 1969).[14]

III. Reinventing the Wheel?

The empirical observations and theoretical debates of the 1990s in both international law and international relations are in many ways little more than a recapitulation of the 1970s. Two questions thus arise: why again and why now? Has a particular academic fashion simply come around again? Have these actors been there all along and we are just noticing them again now? Or is the discipline actually responding to a new empirical trend, at least as a matter of relative level of activity? The answer, of course, is a bit of both, or rather a bit of all these factors. External empirical developments play a role, highlighting both the need for a reprise of 1970s scholarship and a new consideration of the ways in which the literature of the 1990s through the present differs from its predecessor. Equally important, however, are sociological factors flowing from the internal dynamics of both disciplines.

A. External Factors

Underneath the proliferation of actors in the international system are the great tides of peace or war among major global powers. The first flowering of transnationalism and transgovernmentalism was during

the major U.S./Soviet détente of the 1970s; the resurgence of the nation-state as the dominant actor in the international system coincided with renewed U.S./Soviet confrontation in the 1980s. It is thus not surprising that the post–cold war 1990s, in which the risk of major-power war seemed lower than at any time in the century, proved fertile ground for the flourishing of international actors lacking armies or even embassies.

The end of the cold war also led to the expansion of a community of liberal democracies that reaches across continents and cultures. Peace and liberal democracy are two of the preconditions for Keohane and Nye's conception of complex interdependence, which is additionally marked by "multiple channels of contact connect[ing] societies," multiple levels of communication among government units, and a collapse of any meaningful distinction between foreign and domestic affairs (1977: 25–27). Bruce Russett actually defined *transnationalism* in the 1990s as based on a claim that "individual autonomy and pluralism within democratic States foster the emergence of transnational linkages and institutions—among individuals, private groups, and governmental agencies" (1993: 26). Risse-Kappen also emphasizes this dimension of transnationalism, arguing that transnational relations should be expected to "flourish in alliances among democracies" because the separation of state and society characteristic of democratic systems renders democratic governments "less able to control the transnational activities of their systems" (1995a: 37; 1995b: 294; see also Hoffman 1970).

A third major factor is the information technology revolution, providing the capacity for transnational communication to actors as far-flung as Commander Marcos of the Zapatistas, human rights groups from Nigeria to China, and child labor activists in India and Pakistan. Globalization has been the work of many decades, but the emergence of electronic communication and now the Internet has dramatically expanded transnational networking opportunities for corporations, criminals, and civic associations of all kinds. In many cases governments have simply followed suit; in others, the rollback of the regulatory state has led government officials to form partnerships with private actors in ways that create new opportunities for transnational cooperation and communication.

Fourth, the 1990s were a decade of restructuring and reinventing government, both domestically and internationally. Widespread disillusionment with the United Nations resulted less from a perception of its paralysis due to political conflict than from a sense of generalized

incompetence due to excessive bureaucratization and mismanagement. Many domestic governments engaged in major restructuring during the same period: privatizing, consolidating, rationalizing, and reducing their functions. In this context, ideas about both public-private partnerships and networks were likely to fall on particularly fertile ground.

Finally, the revolution of 1989 in Central and Eastern Europe and later in the Soviet Union itself spotlighted the crucial transformative role of groups operating in domestic civil society, groups that had somehow escaped the smothering embrace of the state and survived to undermine it. Religious, cultural, and political organizations thus emerged as crucial sites of resistance to a deformed or oppressive state, just as Robert Putnam was reminding both academics and policymakers of the critical role played by civic associations of all types in building and supporting a well-functioning and accountable state. Whereas much of the focus in the 1970s was on the potential threat posed by multinational corporations to national regulatory control and democratic decision making, as vividly documented in Raymond Vernon's *Sovereignty at Bay*, many of the nonstate actors prominent in the international system of the 1990s had much more positive associations. Indeed, it is striking that in international legal debates the proposals for integrating nonstate actors into international lawmaking processes and organizations focus almost exclusively on civic rather than corporate actors, a bias frequently built into the very definition of *NGO*.

B. Internal Factors

Other differences between the academic and policy debates of the 1970s and the 1990s regarding the proliferation of actors in the international system are more easily traceable to changes within the disciplines of international law and international relations than to external developments. The line between internal and external, of course, is in many ways an artificial one, as the ways in which external phenomena are perceived and interpreted depend heavily on the identity and preconceptions of the perceivers. Nevertheless, at least for heuristic purposes, it is possible to identify distinct categories of psychological, institutional, and sociological factors that could both spur a revival of the debates of the 1970s and lend them new direction and animation.

The first factor relates to the changing face of both international law and international relations in terms of a new generation of scholars

hired in the late 1980s and 1990s. Many of these scholars, including many women and minority candidates long excluded from the sacred precincts of national security studies, on the one hand, and from public international law, on the other, harbored strong criticisms of the dominion of state-centric analysis (Charlesworth 1993: 1; Kennedy 1988: 1). They saw it as reinforcing an obsession with guns, bombs, and the configuration of great powers on the political side and with the law governing the use of force, arms control, and traditional international organizations on the legal side. Issues of social and economic justice, the treatment of women, minorities, and indigenous peoples, and environmental and human rights concerns were all relegated to the margins. Conversely, an emphasis on actors other than the state challenged the hegemony of analytical frameworks, the focus of which was the special concerns of a limited group of government officials charged with the conduct of foreign policy, and instead opened the door to the study of a wide range of issues much more likely to be of concern to a host of nonstate actors.

A second and related factor intersects with the more general perception, outlined above, of groups and organizations operating in domestic civil society as sources of resistance and potential political transformation. This new generation of scholars may have been quicker to perceive the range of political and social interests not adequately represented in domestic decision-making processes and hence almost entirely excluded from international negotiations and rule making. This perception would have led not simply to a focus on the issues being championed by NGOs, but on the role of NGOs themselves as voices for individuals and groups excluded at many levels of governance. From this perspective, an emphasis on nonstate actors, as well as sub- and suprastate actors, is a kind of appeal to grassroots democracy in the international system. It also harnesses the potential for far-reaching social transformation, broad and deep enough to counterbalance the changes being wrought by economic globalization.

Finally, both international relations and international law have witnessed the substitution of economics-based rationalism for politics-based realism as the mainstream of the discipline. Many prominent international relations scholars are locked in a debate between rationalism and constructivism; in law generally, and increasingly in international law, it is law and economics versus various types of interpretivism, constructivism, and critical theory. In this context, a focus on

networks of nonstate actors resonates with conceptions of social movements built on epistemic communities, "principled issue-networks" motivated by moral causes instead of material incentives (Sikkink 1993; Keck and Sikkink 1997). It offers a conception not only of the world, but of human action, that is likely to seem intellectually and even spiritually refreshing in the face of relentlessly rational calculation. Even networks of governmental actors offer the possibility of shared communities based on professional norms and values that may in some cases trump narrower conceptions of national interest. These are associative qualities that are not inherent in the study of nonstate and infrastate actors, but they may explain much of their appeal.

IV. Really Rethinking the State

In the end, the question is whether actors other than the state are a constant in the international system, who periodically become more or less prominent due to shifts in structural conditions such as great power war or peace, or whether the second half of the twentieth century marks the beginning of sea change from internationalism to globalism, a transformation of Westphalian proportions. No neat date will mark this transformation in the way 1648 purportedly marks the beginning of the Westphalian state system, but the conditions of "absolute" territorial sovereignty were similarly decades if not centuries in the making (Krasner 1992: 1). It may be impossible to know, but some of the differences between the literature of the 1970s and the 1990s suggest a deepening trend rather than a purely cyclical debate. More fundamentally, the preconditions now exist for a genuinely fundamental reconceptualization of the state as an actor in the international system, in ways that could provide an intermediate point between internationalism and globalism.

A. Differences That Make a Difference?

The discussions of the 1990s arguably improve on the earlier literature in a number of small ways, but two more significant differences stand out. First is an increased emphasis on the relationship between the state itself and actors other than the state. Alongside the often hyperbolic rhetoric about the "end of the nation-state"—and even the more sober insistence that an increase in power for nonstate actors necessarily spells a decrease in state power—is a growing recognition that state and nonstate actors are necessarily interdependent. Risse-Kappen argues: "Rather than diminishing state control over outcomes, TNAs (transnational actors) seem to depend on a minimum of state capacity in the particular issue-area in order to be effective. TNAs need the state to have an impact" (Risse-Kappen 1995b: 294). The weaker the state domestically and internationally and the weaker international institutions, the less relevant are TNAs. Similarly, states need TNAs to achieve economic growth, to gain new policy-relevant ideas, to create international institutions, and to monitor regime compliance.

Second, the emphasis by Mathews and others on the critical importance of communications technology as a precondition for effective networking means that the debates of the 1990s addressed a profound revolution in organizational form that will create previously unimaginable options for the way in which government services are delivered and functions are performed. Judicial, regulatory, and even legislative networks may make it possible to decouple the making, administration, and enforcement of bodies of rules from any defined physical space or territorially defined population (Ruggie 1993). Transnational communities may be able to choose genuinely transnational government. Governmental institutions may be able to link up with both their subnational and supranational counterparts, creating vertical as well as horizontal networks in ways that ensure local or international surveillance of important domestic issues without requiring the devolution of primary decision making to the supranational or subnational level.

Focusing on the links between state and nonstate actors and on the technological possibilities for reinventing transnational as well as domestic government moves the debate beyond the increasingly false dichotomy of internationalism versus globalism. The critical question is no longer whether the state is being superseded, but rather how its functions and modes of exercising power are changing in an international system that combines international and global elements. That question, in turn, sets the stage for really rethinking the state itself, as a disaggregated rather than a unitary actor.

B. Erasing the Line between the Domestic and the International State

Decades of challenges and critiques notwithstanding, the state is remarkably difficult to dislodge not only as the primary actor in the international system, but also as a unitary actor. The language tells the

tale. Even ardent transgovernmentalists refer to state institutions such as administrative agencies or government ministries not as *infra*-state actors but as *sub*-state actors. The "state" thus floats as a brooding omnipresence "above" the government. Government entities can somehow be "additional" actors, but they cannot actually constitute the state itself as an international actor. The result is that the increasing chorus of claims made on behalf of transnational, supranational, and even transgovernmental actors helps entrench a particular myth of the state itself.

The disaggregated state is a constellation of the government institutions performing executive, administrative, judicial, and legislative functions. Each of these institutions can and often does act quasi-autonomously in the international system, typically in relations with either their counterpart or coordinate branches of government abroad. "Quasi-autonomous" action is not meant to suggest that these institutions do not represent their national interest, only that they represent a particular conception of national interest that is shaped by their particular institutional/professional interests, values, and goals.

The disaggregated state is neither dismembered nor diffuse. It is not disaggregated into ever smaller parts, but only into the component institutions that perform familiar government functions. It is no more or less cohesive than domestic government. The point is simply that rather than speaking with many voices at home and one voice abroad, the state or government is the same in both spheres. At various times and in various situations it will still be necessary for a nation to speak with one voice. But the task for analysts, policymakers, and scholars will be to define precisely when, as the exception rather than the rule.

Disaggregating the state redefines the components of the international system in terms of common governance functions rather than reified units of power. The result is to create a different space for the making and enforcement of international rules. First is the shift in the rule makers themselves and the type of rules they make. If the participants in the rule-making process are not states but parts of states, then the form and ultimately the substance of the rules themselves are likely to change. Regulators working closely with one another across borders conclude memoranda of understanding rather than treaties or even executive agreements—memoranda that are informal, general, and flexible statements of the parameters for ongoing cooperation and conflict resolution. These understandings will coexist alongside more traditional international legal rules, whether conventional or customary, but are ultimately likely to circumscribe the areas in which more traditional rule-making is necessary.

Second is the improved opportunity for enforcement even of traditional international legal rules. The European Union model of partnership between national courts and a supranational tribunal can be expanded to other regional and even global tribunals (Helfer and Slaughter 1997). The key element of such partnerships, which can also be forged between supranational tribunals and other national government institutions such as parliaments and administrative agencies, is the harnessing of the coercive power of national governments in the service of international rules. States have, of course, long been subject to a general obligation to implement the international agreements they conclude, but the likelihood of such implementation has depended either on a further calculation of strategic advantage vis-à-vis other states or on the relative power of the executive versus the legislature. Disaggregated implementation offers the prospect of using international agreements as leverage or sources of advantage in internal struggles among different governmental institutions. The approach is particularly promising in the myriad regulatory areas in which the content of the rules involved directly overlaps or supersedes existing domestic law.

The third major implication of redefining the state in terms of its component government institutions is the potential for the creation and regulation of global communities without global government. Courts around the world, for instance, may constitute a "community of law."[15] The purpose of such a community might be to enforce a particular global or regional agreement; more generally, however, it might be simply to promote adherence to the core values embodied in a common, albeit broadly defined, conception of the rule of law. Similarly, national regulators and even legislators in any substantive area, from environmental protection to competition policy, could effectively constitute a common regulatory space by virtue of their repeated interaction, shared goals and values, and a deepening sense of obligation to one another to maintain and enforce rules applicable in their respective jurisdictions (Slaughter 2000a). Gentlemen's agreements among kings, prime ministers, and presidents, from the Concert of Europe to the G-7, can now extend well beyond heads of state and ripen into much more than temporary and shifting alliances.

These are distant visions. The exuberance and energy inherent in the possibility of designing a new international architecture based on

new actors and new forms of organization will certainly dim in the face of practical problems and political battles. But the blueprint for that new system will not be drawn up at a successor conference to San Francisco, in which formal state delegations negotiated a new world government—complete with executive, legislature, and judiciary—with states as subjects. Such a constitutional moment will be superseded by myriad smaller plans and decisions of the entire panoply of suprastate, substate, nonstate, and infrastate actors.

The state will be left standing, but it will be a very different state. Its components will network up, down, and sideways with their functional counterparts wielding governmental authority at all levels of political organization. They will also interact with the same range of nonstate actors transnationally as they do domestically. They will engage in both conflict and cooperation. And they will gradually construct a very different body of international rules.

NOTES

1. Mark Movsesian (1996) documents the use of the term *neomedievalism* or *the new medievalism* by a number of other scholars (see Spiro 1995). Christoph Schreuer describes the international system as a "multilayered reality consisting of a variety of authoritative structures" (1993: 453), while Anne-Marie Slaughter describes and challenges "the new medievalism" as an alternative paradigm to liberal internationalism (1997: 183–84).

On the political science side, James Rosenau describes a tendency toward decentralization and away from centralization of the past—which includes both nation-statism and transnationalism (1990: 13; see also Barkin and Cronin 1994; Cerny 1995).

2. For example, I have described the "disaggregation of the state" and the resulting quasi-autonomous interaction of distinct government institutions in relations among liberal democracies: "The state is not disappearing; it is disaggregating into its separate, functionally distinct parts" (1995: 522–28; quote from 1997: 184). Renaud Dehousse remarked that "the conventional (unitary) vision of the state ignores the centrifugal effects of integration, which have led to a fragmentation of state structures and the emergence of functional networks among the institutions of governance in the various member states" (1997: 39), and likewise Sol Picciotto further commented that "officials whose powers and policies have been developed within the hierarchy of the national state have increasingly developed horizontal cross-border contacts with their counterparts in other states" (1997: 1038–39).

3. Joel Trachtman points out that alternative terms that have been used to describe the body of law he wishes to denote include "law of nations" (Janis 1991: 371) and "world law" (Berman 1995).

4. "The voluntary law of individuals and groups in transnational society" has also been described as the first level of "law among liberal states" (Slaughter 1995: 522).

5. In note 3 of the first chapter, Jessup cites Joseph Johnson as one of the originators of the term in an address of June 15, 1955, to the Harvard Foundation.

6. Steiner and Vagts built on Jessup's broad definition and focused on topics including aspects of national legal systems dealing with principles and procedures for decision making that have been specifically developed to regulate problems with some foreign element. The relevant participants in transnational activity include private individuals or firms; national courts, legislators, or treaty-makers; governmental instrumentalities; international officials; and regional and international organizations (1976: xvii).

7. Keohane and Nye identify a separate subset of "international interactions" as "the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an intergovernmental organization" (1972: xii).

8. In Huntington's view, transnational organizations shared three basic characteristics: (1) they are large, hierarchical, centrally directed bureaucracies; (2) they perform a set of limited, specialized, somewhat technical functions; and (3) they perform functions across one or more international boundaries. Examples of such organizations range from aid missions to military bases to corporate investments (1973: 347).

9. Keohane and Nye included the increased communication between governmental agencies and the business carried on by separate departments with their counterpart bureaucracies abroad in their definition (1974: 41–42). By contrast, a meeting of heads of state at which new initiatives are taken was still the paradigm of the state-centric (interstate) model (1974: 43–44).

10. Transgovernmental interaction among central banks and finance ministers of industrialized countries was as significant in economic policy formation as intergovernmental interaction (Russell 1973).

11. Stanley Hoffmann locates transnational relations "outside" traditional, that is, interstate, world politics (1970: 401).

12. Keohane and Nye quote Arnold Wolfers: "The United Nations and its agencies, the European Coal and Steel Community, the Afro-Asian bloc, the Arab League, the Vatican, and a host of other nonstate entities are able on occasion to affect the course of international events. When this happens, these entities become actors in the international arena and competitors of the nation-state. Their ability to operate as international or transnational actors may be

traced to the fact that men identify themselves and their interests with corporate bodies other than the nation-state" (Keohane and Nye 1972 quoting Wolfers 1962: 377; see also Keohane and Nye 1974: 39–40; 1977: 33–34).

13. Huntington, for example, discussed the position of the "new globalists" who argued that the transnational organization stands to challenge the existence and effectiveness of the nation-state in the future (1973: 363). However, he asserted the contrary view that national governments may be strengthened by the presence of transnational organizations if they are able to control and dictate access (355–56). Similarly, Hoffmann contended that there would be no "superseding of the nation-state" at the global level, although there would be considerable development of international and regional institutions and pursuit of international policy (1970: 410). Keohane and Nye questioned the traditional notion of international organizations as existing "above" the state and argue that they could have their greatest impact in aligning their activities with subunits of governments (1974: 50–62; see also Keohane 1978: 931).

14. Raymond Vernon focused on the huge increase in international trade and connection between national economies—while warning of the danger of U.S. dominance in these emerging relationships (1972).

15. I have elsewhere defined a "community of law" as a web of relations among subnational and supranational legal actors capable of interacting directly with one another, in which the interaction is consistent with the incentives of individual participants and the participants are aware that they are operating in a nominally apolitical context (Helfer and Slaughter 1997: 368–69). A community of law could also arise solely among national courts interacting horizontally across borders in an effort to resolve common problems or promote common values.

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Transnational Advocacy Networks and the Social Construction of Legal Rules

Kathryn Sikkink

Kathryn Sikkink, a political scientist at the University of Minnesota, complements the perspective provided by Anne-Marie Slaughter by examining the increasingly important role of networks of nongovernmental organizations in producing international norms. Sikkink shows how NGOs and other kinds of international advocates form networks and develop strategies to challenge states in favor of new international norms—that may then ripen into law. Examples include international human rights and efforts to deter violence against women. Sikkink suggests the conditions that allow these advocacy networks to become successful in both building and enforcing international norms and some of the problems associated with this particular political strategy. The reliance on law, she suggests, may indeed succeed in empowering and legitimating the transnational networks that promote these norms.

She also has some caveats for this emerging approach. The power to influence international agendas is unevenly distributed. In addition, she points out, legal rules exclude as well as empower, and the processes of fighting for new rules can marginalize some groups while empowering others. Sikkink thus describes a process akin to that posited by Slaughter—geared to an international focus of a range of actors on developing and enforcing legal norms that will apply around the globe. As a political scientist, however, she raises more questions about how power will be distributed in this kind of global political economy.