THE PATTERNS OF INTERNATIONAL POLITICS AND OF INTERNATIONAL LAW*

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The principal aim of this paper is to relate the normative structure of international law to the underlying patterns of political behavior that have characterized the modern state system. The political constraint upon the normative structure of the law is only one of many; there are also economic, social, and ethical constraints, among others. Nonetheless, it provides many insights into the changing substantive content of the law and also illustrates the way in which theory helps to provide an understanding of subject matter.

A systematic study of the structure of the international society has been attempted elsewhere by one of the authors.[1] Two different models of international systems delineated there have particular relevance to the present topic. These are the "balance of power" system, a model of the international politics of the eighteenth and nineteenth centuries, and the "loose bipolar" system, a model of present-day international politics. The two models, though no doubt less complex than the actual patterns of action, suffice to demonstrate important differences in system structure and behavior that can be related to normative standards.

A model of the international society, like the model of any kind of system, attempts to relate some of the system's variables in some systematic way. In a social system, one may look at the kinds of members, the role functions they perform, the conditions under which they do so, and the conditions necesssary to the system's stability.

I. THE "BALANCE OF POWER" INTERNATIONAL SYSTEM

Certain striking characteristics of the "balance of power" international system are immediately evident. In the first place, the members of the international society are nation-states, unlike the loose bipolar system, in which there are also blocs, like NATO and the Warsaw Pact countries, and universal organizations like the United Nations.

In this system the nation is the focus of solidary sentiments for its citizen-subjects. It is the protector of the values, of the economic prospects, of the health and physical safety of the individual. Within it he *belongs* and outside of it he is an alien. But the nation itself must depend largely upon its own ability to survive. This is not unrestrictedly true for all nation-states as further modifications will demonstrate. Yet it is a central assumption upon which the behavior of important participants in the "balance of power" system depends.

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[1] See Morton A. Kaplan, *System and Process in International Politics*, John Wiley and Sons, 1957.

The failure of Spain toward the close of the period of colonial conquests had a devastating effect upon Spain's internal life. The demise of the Austro-Hungarian Empire shattered Austrian national life and threatened Austrian viability. The recent decline of Britain and France has an easily traced effect upon their internal societies and upon their ability to protect themselves. On the other hand, the unification of Germany, in the nineteenth century, except for the political misuse of German power, turned Germany into a flourishing and prosperous country. All Americans are aware that whether American destiny was manifest or not the policy of national expansion was essential to the present importance and prosperity of the United States. Today the European Common Market rests upon the belief that only a new supranational organization can bring back past glories. But in the eighteenth and nineteenth centuries, the nation was the essential unit. If one nation did not pursue its possible gains in the international system, another would do so, to the advantage of its own citizens and probably to the detriment of the citizens of the first.

The relationships of nations to one another in such a system must be competitive, suspicious, and primarily instrumental. Considerations of interest and expediency must be paramount. The first rule of conduct for each nation must be to seek security for itself. It will be ready to move from one alliance to another whenever this provides more security.

Since changes in national productivity of an unexpected nature might disturb the "balance," each nation will strive for a margin of security for itself. For this reason nations will enter coalitions, partly to gain prizes of some sort or other, such as territory, resources, shipping facilities, and so forth, and partly to prevent any other nation or combination of them from becoming powerful enough to pose a decisive threat.

Coalitions in a "balance of power" system will tend to become fragile when they become too strong. If too successful, they might eliminate defeated nations and thus threaten the interests of the weaker members of the successful coalition, whose security would then become precarious. Also, weak coalitions might make large offers to a powerful nation that was not aligned with other nations, or even to a member of the opposed coalition, not for gain but to protect themselves against loss. Moreover, different issues might give rise to different alignments. Therefore it is characteristic of the "balance of power" international system that previously uncommitted nations or even members of its own coalition swing into the "balance" against the predominant coalition. So the Russian-British-French entente was consolidated by 1907, and Italy later split off from the Triple Alliance.

Restraint in victory is also a characteristic of the "balance of power" international system, not necessarily for any reasons of altruism, but because restraint protects the interests of the members of the international society. Each strong nation has an interest in maintaining the existence of other strong nations in order to be confident of future allies in case of disagreements or clashes with its present allies. The restoration of France after the defeat of Napoleon

was at least partly responsive to this need. Even the support given to German unification and to Italian nationalism had some relationship to this aim.

The "balance of power" system was dependent, among other things, upon the maintenance of a minimum number of large and strong nations. A system of three such would probably have been inherently unstable. It might be possible in a three-nation system for the nation defeated in a war to combine with the weaker of the victorious nations against the stronger victor. But the risks would be great and the opportunities to undo mistakes minimal. Such a system would place a high premium on striking first, on taking advantage of opportunity, on forming combinations, and on betraying allies. In a three-nation system, under conditions of conventional capabilities, turmoil and strife would be the rule; and the number would soon be reduced.

On the other hand, a greater number of large and important nations promise a greater opportunity to counter any individual alliance. Numbers of uncommitted nations would be available to redress the "balance." The opportunity to attract a member from one alliance to another would be relatively great. With a large number of great nations, there is a premium upon delay and moderation. Whereas with three nations, it is better to eliminate the opponents before they can combine against oneself, with a larger number it is better to preserve them so that they can combine with oneself in the future. With a large number of major nations, it is easier to find a coalition to prevent major change. In the First World War, for instance, America and Japan were available to restore the "balance" of Europe. Numbers gave time for thought and time for action and provided the nations needed to carry out the actions.

In such a system, any nation may at some time have an interest in conquering other nations. But there will be more nations—provided there is a minimally large number of them—having a contrary interest in preventing this. It would hardly be surprising therefore to discover in such a system that national "sovereignty" becomes an enforceable norm of the system, for it reflects essential needs of the "balance of power," and is compatible with the organization of domestic politics around the unifying concept of the nation. Each nation is an independent unit, not subject to conquest, amalgamation or other forms of political domination by other nations; each nation preserves for itself maximum flexibility with regard to alignments; each nation is organized territorially on the basis of existing culture groups. Any permanent international organization, or, indeed, any joint institutional arrangements such as we have today would be an unwarranted and undesirable drag on the flexible diplomacy that maintains political stability among the great nations in the "balance of power" system. The members of the system have a joint or cooperative interest in maintaining the system's norms. And, although in one sense each is "free" to violate the norms, each has an interest in protecting the norms from violations by others.

Additional factors tended to support this state of equilibrium. One we have already emphasized was nationalism. The growth of unifying sentiments of loyalty toward the nation gave the nation-state a strength and coherence that

other forms of political organization had lacked. The struggle for national independence did not, of course, interfere with the suppression of minorities, as in Hungary, where they existed as isolated islands within a larger geographical area. These minority problems, however, did create a domestic instability which affected the role of such nations internationally, and as a result produced international instability; the recurrence of the Balkan problem is the prime example. But where nationalism was effective domestically it tended to limit expansive international objectives. It is implausible for politicians to preach the values of national independence for themselves without according it to others. Nationalism tends to differentiate beyond the area which it can unify, increasing the difficulties of conquest by force. Hitler's pan-Germanism had no appeal to non-Germans. One may limit national independence of minorities to "civilized" countries; one may accept the suppression of minorities within a nation; one need not refine or stereotype the qualities of the nation-state so far as to insist upon cultural self-determination of a Wilsonian sort. But the existence of national identity as the focal point for sentiments of loyalty at home is bound to legitimize it for others on principle, and in fact to increase the problems of conquest and annexation of all save border areas of mixed cultural content, like the Sudetenland.

Another factor contributing to preserving the "balance of power" system stemmed from the difficulty, increased by the ideology of nationalism, of any attempt by one nation to extend control over another. Consider the situation at the end of the Franco-Prussian War. Suppose that Bismarck had desired to establish German hegemony over France, how successful would he have been? Even apart from direct intervention by other nations on behalf of France, many considerations would have militated against a German attempt at hegemony. Given the state of technology of the period, the answer is, it would have been very difficult for Bismarck. Factories in the remote provinces of France would have been capable of producing weapons quite comparable in fire power to those used in the Prussian Army. Garrisoning major portions of France would have immobilized the Prussian Army in case military problems arose elsewhere in the world and would have placed a great strain upon the Prussian economy. Communication and transportation were not efficient enough to permit the central stationing of an occupation force for use in the provinces whenever disturbances broke out. To occupy a colonial area was one thing; to occupy metropolitan France was distinctly different. An attempt to occupy France permanently would have weakened Prussia relative to other potential enemies, and a seemingly successful conquest would also have stimulated others to enmity as a consequence of fear.

These factors tended to reinforce a social system in which the nation as an independent and "sovereign" entity played a key role. Still another factor gave particular support to a society of formally "equal" and "sovereign" nation-states. The "balance of power" system operated upon the basis of alliances designed to adjust immediate and short-term interests of the major nations. This required a willingness to consider any nation an acceptable role partner under appropriate circumstances.

Some questions handled at the Congress of Vienna become clearer when interpreted in light of this principle. The quick acceptance of France as a full member of the Congress after the defeat of Napoleon is illustrative. (This may be contrasted with the treatment of Germany at Versailles.) But the difficulties over the fate of Napoleon reflected a genuine dilemma of the European statesmen of the time. If the nations had refused to deal with Napoleon, as some statesmen advocated, this would have reflected a degree of interference in the internal affairs of the nation-state inconsistent with the state system of the time. On the other hand, the revolutionary character of the Napoleonic system and Napoleon's refusal to limit his objectives made it virtually impossible to enter into short-term alliances, restricted to short-term interests. He challenged the "neutrality" of alignments and therefore the character of the state system itself. Neutrality of alignment—a marriage of convenience without emotional involvement—is difficult in a revolutionary period when state regimes become unstable and when considerable foreign popular support is available to the revolutionary nation.

Neutrality of alignment was an essential characteristic of the "balance of power" international system; otherwise the process of forming counteralliances would have been impeded and the system would have developed rigidities making for instability. The "feud" between Germany and France after the forced cession of Alsace-Lorraine, for example, was one of the major circumstances leading to the breakdown of the "balance of power" system and the eruption of virtually total war in 1914.

If hostility between nations could impede operation of the principle of neutrality of alignment, control of one nation by another would also frustrate the same principle. Independence of the nation therefore was a prerequisite of this system. And, although any nation might have an individual interest in violating this rule or principle, each nation had an even stronger common interest in supporting it against the encroachments of all other nations. Moreover, the appeal to other nations to prevent an encroachment would characteristically be phrased in terms of the legitimate value of national independence. In short, this was necessarily a guiding norm which the existing political circumstances supported against violation and which almost automatically guaranteed the outraged resentment of the community of nations against any violator. It was therefore a key to the legal code of the international society of the late nineteenth century. Fear of the revolutionary character of democracy, to be sure, coupled perhaps with a desire to maintain the old social order, did lead the Holy Alliance to proclaim a doctrine of collective intervention against democracy. Had the cases of application proved highly exceptional, this limitation might have been maintained. However, in the nineteenth century world, such an effort was inconsistent with more basic needs of the "balance of power" system. And this exception to the rule proved potentially so dangerous that it was abandoned, despite the fact that the collective element of the intervention was designed to minimize its unstabilizing effects.

Non-interference in the internal affairs of another nation characterized the "balance of power" international system. The aims of war must stop short of

such interference except when nations were confronted with the kind of dilemma Napoleon posed. Influence upon minor principalities, which often could not be avoided, represented such violations of the code that they were disguised lest the general principle be called into question. Even the troubles within the Ottoman Empire were treated with relative restraint. And British and French interference in Egypt—which was not at the heart of the European world—at least maintained the legal formalities. American dollar diplomacy restricted intervention to certain definite and limited objectives. Even so, it was difficult to accommodate these actions within the norms of the "balance of power" international system and the fiction of the dependent state had to be adopted to square the circle.

At least with respect to the major nations, the facts conformed fairly well with the legal norms. No nation had such predominance that it interfered with the internal life of other nations in any substantial way, whether by design or simply because of the immutable fact of its existence and weight in the international picture. Since most actions which had any influence upon citizens as such were settled within the territorial state by the government of that state, the myth of sovereignty as unlimited and indivisible jurisdiction was a fiction the logical difficulties of which did not affect its practical adequacy in explaining what took place; it was a fiction which each nation had an interest in maintaining and fostering. The absurdity of auto-limitation as an explanation of international law should not obscure the fact that the concept reflected the real needs which the community of nations had in protecting the myth of sovereignty.

Now the doctrine spawned from the basic idea of a sovereign state (however fictional, almost mystical, and useless for analytical or even descriptive purposes) was realistically more applicable to the large states than to smaller ones, for it was the former who made or redressed the "balance of power," whose independence was essential to the maintenance of the minimal number of states necessary to "balance," and whose equality within that system came moderately close to accurate description—not, of course, on a one-to-one basis, but in the ability of each to equalize the "balance." Its extension to a number of smaller states within Europe and Latin America (after the Monroe Doctrine, at least) served essentially the same purpose of preserving the status quo. The recognition of smaller states on terms of formal equality was not, as in the case of the great nations, primarily related to their utility as military allies or even to their direct impact on the political or military capabilities of the important actors. In effect, their "sovereign" status was guaranteed by the major nations, and for two reasons. In a system of flexible alliances it was not possible to agree upon any workable or viable division of smaller European countries; and the difficulty of acquisition by military force was considerable because of the difficulties of assimilating the conquered into different national cultures—it was scarcely worth the effort if others could be persuaded not to do so. Under such circumstances the best common policy usually was to neutralize the smaller states, and extending doctrine applicable to the major nations was well

suited to this purpose. Statesmen of minor European nations were quite aware that their independence was the product of a "balance" they could not directly alter, and which it was to their advantage to preserve. They could best avoid domination by any particular nation by insisting upon their rights as "sovereign" entities, while, for their own part, scrupulously adhering to the code. The stalemate among the great nations gave the minor nations considerable freedom of action so long as they invoked standards which were impartial. Their interest in preserving their independence and neutrality coincided with that of the great nations, and so was converted into a force for law and order. In Europe, at least, the "balance" was at all times sufficiently fragile to make minor statesmen "responsible."

Although the "sovereignty" of these smaller states had, as in the case of the great nations, an obvious relation to "nationalism," it had little to do with any universalized principle of "self determination"—at least in Europe—until a much later period. Until Wilsonian idealism coincided with the break-up of the "balance" system, there was no inconsistency acknowledged between the sovereignty and independence of states and the existence of colonies and other forms of "dependent" states. The hegemony of the great nations over much of the world was simply taken for granted and remained undisturbed. Equality of rights and freedom from intervention were necessities only where they affected the political positions of the great nations; principally, therefore, in Europe. Military intervention or even lesser forms of interference in the administration of other states could not be tolerated where they had a direct effect on military capability. In other parts of the world intervention could be tolerated, and might, indeed, be indispensable to the pursuit of other objectives. The great nations had no hesitation in imposing their systems of values, their cultures, and in forwarding the interests of their nationals, in those parts of the world where intervention was tolerable to other great nations. Colonial claims were recognized and conceded on a *status quo* basis; further intervention was tolerated and incorporated into the doctrine of dependent statehood to minimize the potentially unfortunate feedback of intervention as a precedent invalidating the general rule in areas where it was necessary for the general rule against intervention to apply.

Doctrine with regard to the rights and duties of "states" accordingly became a matter of defining what constituted a "state," and here there was no reference to national self-determination as a principle. Inevitably the definition was tautological, for it included as one essential a capacity to enter into relations with other states—a capacity which depended upon its being a "state"—that is, upon its ability to act independently of any of the great nations. A new state came into being only with the acquiescence of the great nations, an acquiescence which might come from agreement among them not to intervene or from a geographical location such that intervention by a single nation would be opposed forcibly by others. An analogous situation occurred with regard to the recognition of new "governments" of old "states" whenever crowned heads fell before popular revolutions. Although the notion of popular sovereignty was

anathema to the various governmental elites, and there was a common interest in suppressing radical ideas, intervention constituted an even greater danger. One could support an existing government in various indirect ways, but such assistance had to stop short of measures which would threaten its independence.

Now it is clear that a doctrine authorizing or inhibiting forcible intervention or direct control of the political institutions of another entity—whatever its justification—is a limitation only upon the great nations. All states may be equally governed by the same general rule against intervention, but its bite is only against those who have the capacity to intervene. Similarly the appeal of those intervened against must be to those who have the capacity to protect them. Small states do not intervene against large states, whatever the provocation, and no rule of law is necessary to prevent it. Because the "balance of power" depended upon the large nations—and was the limit upon their independent acts—they occupied a special social position in the family of nations. The position of small nations depended upon how specific applications of policy affected the competitive position of the great nations. The great nations were, so to speak, the informal officeholders in the "balance of power" system. They would intervene, but not be intervened against. Legal norms were those which they promulgated or acquiesced in.

The special position of the great nations in establishing and enforcing international law meant that the law established could not run contrary to their felt interests or—to the extent a pluralistic system permitted—to the capabilities to each. To say this is not to say that the norms established were incompatible with the interests of small nations or, indeed, with the interests of individuals who were not citizens of one of the great nations. Undoubtedly there were advantages to being born an Englishman just as there are advantages to being born of a wealthy family. But the rules which the great nations promulgated at least had the merits of formal generality and equality. Englishmen did not have formal privileges internationally because they were Englishmen, any more than they did domestically because they were rich. True, such rules might have the defect that Anatole France sardonically noted in the law which equally forbids rich and poor alike to sleep in ditches and under railroad bridges. But formal equality, however unequal in fact, is preferable—at least to the small states—to formal inequality. Nor were the great nations, in theory or in fact, altogether outside or above the rules they put forward as binding on all nations. They put forward as rules governing the international community what they regarded as desirable for the world community and what they were willing to abide by themselves—provided others did likewise. Like all law, it was subject to change where conditions changed.

During the nineteenth century the great nations came to share a similar economic philosophy, a similar regard for the individual, similar views as to domestic politics—the principal values of a common civilization, a common legal heritage, a common faith in laissez-faire economics. They were quite will-

ing to impose the essentials of this system on the world at large wherever it touched their interests, or the interests of their nationals. Among themselves there was little need to insist on such standards because each was committed to the belief that these principles served its national interest. There was—despite some notable exceptions—little desire to bring the benefits of European civilization to the non-European world; administration was the white man's burden. But the great European nations did desire to make the non-European world a safe place for Europeans to trade wherever trade was profitable. This involved various degrees of intervention in less technologically developed parts of the world: intervention to insist upon the payment of debts, to protect one's nationals or their property, to insure for one's nationals minimum standards of western justice. Depending on the circumstance—the willingness and capacity of local governments to insure these objectives—the forms of intervention varied from an *ad hoc* landing of troops (or the threat of a British gunboat) to various continuing forms of control: colonies, dominions, dependencies, protectorates, mandates, trusteeships, and so forth. Intervention was possible only where it did not affect to an important degree immediate interests of other great nations—but for much of the nineteenth century this took in much of the world. Since it was almost always justified by economic objectives widely shared as "right," since in general the areas administered were open to all for purposes of trade on formally equal terms, and since it did not appear to endanger the security of other major nations, intervention was tolerated. Since the intervention was justified on principle, the law was enforced. It was enforceable because it did not threaten the security of other major nations and did not appear to affect their political positions adversely.

Thus, despite the conflicts between the great nations, in behavior that might be analyzed in terms of a competitive game, these conflicts were moderated by a non-zero-sum cooperative supergame. The supergame established norms that bounded the play of the competitive game. The nations of the "balance of power" system thus had an interest in maintaining the integrity of the great nations; there was an interest in maintaining the integrity of the nation's sovereign jurisdiction over its internal affairs, for otherwise it would not be a free agent in its international dealings. Such a lack of freedom would interfere with the neutrality of alignment necessary for the stable operation of the "balance of power" international system. Even nations at war with one another were bound by common interests, for they might be allies at some later date and so had an interest in behaving in ways that would leave room for such future cooperation. At least minimal confidence in the possibility of that degree of future cooperation was required. Declarations of war, limitations of objectives in war, and rules governing the conduct of war all played a role in maintaining that confidence, that is, in maintaining a social structure within which the stable "balancing" of the system could be effected. The alternative was an unlimited and unstable war of all against all, in which all might be lost and in which all would have to contemplate precarious and dangerous futures.

II. THE BREAKDOWN OF "BALANCE OF POWER" SYSTEM

For reasons which cannot be discussed in full here the "balance of power" international system fell into unstable equilibrium toward the latter part of the nineteenth century and was replaced by the loose bipolar system after the Second World War. Perhaps one of the most important events making the old system unstable was the cession of Alsace-Lorraine after the Franco-Prussian War. The inflammation of national sentiment produced by this event made it impossible during the next eighty years for France and Germany to enter into alignment with each other. Hostility and suspicion between the two nations induced the formation of strong alliances directed against each other. But these alliances necessarily were somewhat rigid, for the almost automatic "balancing" and "counter-balancing" of the old system was precluded by the Franco-German hostility.

As a consequence, the interest of either party in preserving the other as a major nation or of limiting its objectives in war was also vitiated. The mechanisms making for equilibrium thus were gravely weakened. The range of special treaties, arbitration agreements, and the establishment of the Hague tribunal may be viewed as vague responses to the need for some other sort of mediatory mechanism to protect the interests of the nations. In the absence of the self-movement of nations, treaties and special agencies were designed to fill the old international role of the shifting of alignments.

After the First World War, the League of Nations was brought into being as a more generalized remedy. This development was in itself evidence of the growing rigidity and rapid decline of "balance of power" international system. In the eyes of its sponsors and under the influence of Wilsonian idealism, the League of Nations was viewed as a break with the "power politics" of the past. Collective security was to replace the insecurity of the system of national alliances. War was not yet renounced as an instrument of national policy. But the old diplomacy, condemned as insidious because it was secret and selfish because it was generated by a class-bound diplomatic service, was renounced. National self-determination was the order of the day and every nation was to be the legal equal of every other nation. The dynamic force for peace was to be found in the democratic sentiments of the free citizens of independent nation-states, whose interests were harmonious and whose energies for constructive peace would be mobilized by national independence and democratic political processes.

Not all nations subscribed to this new and fanciful view of the world. France sought vainly for security guarantees from England and the United States and, in desperation, constructed an ineffective *cordon sanitaire* around the defeated Reich. This was not to be. Attempts to enforce collective security via the projected Geneva Protocols were transmuted into the ambiguous Locarno Pact. The 1920s saw a ridiculous and possibly disastrous series of disarmament conventions, while eventually the United States sank its fleet and agreed to naval limitations that made little sense from the standpoint of security. Meanwhile

efforts to outlaw war eventuated in the supreme monument to human futility, the Kellogg-Briand Pact.

If the efforts following the First World War to compensate for the rigidities of the dying "balance of power" system responded to a genuine need of the international community, the means employed were in utter conflict with the requirements of the situation. If the system of alliances before the war was rigid and therefore made it difficult to prevent any war from becoming a war to the finish, it at least encouraged effective action. The weakness of collective security, however, lay in its fatal tendency to fragment the opposition to an expanding nation. It placed an emphasis on collective action within a formal organization when it was to the advantage of some not to act at all and of others to reply upon still others to act for them. Unlike the situation in Korea in 1950, when the United States felt obliged to act since no other nation had the capability, the relative equality of the great nations in the interwar period foreclosed the fixing of responsibility upon a single great nation. In the absence of an alliance that assumed responsibility automatically, therefore, every nation looked to some other nation to act. In the absence of formal agreement in advance, it was difficult to arrange effective action when trouble broke out. In the absence of clearly delineated aims clearly related to the national interest, the reasons for procrastination seemed stronger than the reasons for action. And collective security turned into collective insecurity.

The complete roster of disappointments does not need to be called; it includes Ethiopia, the Rhineland, Manchuria, Austria, the Sudetenland, and so on. If the failure of the League cannot justly be ascribed to a single cause, it would nevertheless be a serious mistake to underestimate the degree to which the fragmentation resulting from the collective security system was decisive. But other factors also entered in. The refusal of Britain and France, until too late, to cooperate with the Soviet Union (assuming the Russians would have moved) was a fresh violation of a cardinal rule of the "balance of power" system, namely, neutrality of alignment. The failure of French and British leaders to recognize the need to move against expansive nations was an element. And so did the pacifism which regarded war as an inherent evil and alliances as the prelude to war. The actions of the British Labour Party in calling for a halt to Nazi aggression at the same time that its members opposed increased arms budgets in Commons illustrates the curious schizophrenia of the period.

The transition from the "balance of power" to the loose bipolar system, from the First World War to the close of World War II, did not produce any variations with reasonable prospects for stability. Nor did the period produce standards of international law which had reasonable prospects for acceptance. The instability and transitional character of the international social structure in the period were directly responsible for the confusion and instability in the standards of law. No law without support; no support without a social structure that can provide support. But law is usually ineffective within nations too, during periods of rapid and revolutionary change. Law, by its very nature, con-

serves the values of a going or past social system. And when the values are themselves in transition, the system of law gives way to political or quasi-legal activity. Revolutionary Communist tribunals were the product of the effort to build a new social system, not the conservators of an existing social system. What was legal in Hungary during October 1956? The answer necessarily depended on who won. But, even so, both sides found it difficult if not impossible to abide by the procedures of any established system of law. When the direction of change is visible one may at least hope to discover the seed of the new law in the innovations of the legal process. But when the transitions fluctuate in several directions in rapid succession, order appears lacking.

Thus the period from 1870 to 1945, with brief interludes, was a period in which conflicting standards of law were asserted by nations which acted within a changing and transitory social structure. There was inconsistency between geographic regions and lack of regularity within regions, at least with respect to the more important political aspects of international law. Some of the norms that depended upon economic values fared better. But it cannot be said that the period of transition came to an end with the conclusion of the Second World War in 1945. The structure of international action still lacked the consistency which permits, if it does not guarantee, social stability. Many of the beliefs and activities of the time were founded on premises divorced from political reality and therefore divorced from the means whereby legal norms gain support from the community of nations.

For example, the Nuremberg trials could only be justified on the assumption that the use of force for aggressive purposes was really outlawed; that the nations of the world had no conflicting interests of a scope great enough to prevent agreement upon a standard outlawing aggressive war, and that sufficient consensus existed to make the trials of aggressive leaders an objective process not merely dependent upon the wills of the victorious parties.

The old concept of "just" wars had been rejected in the age of the modern nation-state, beginning with the Renaissance, precisely because it was incompatible with the effective limitation of war. After the Thirty Years' War the nations of the seventeenth century state system wanted to regulate the conduct and conclusion of wars; they therefore gave up the effort to judge the justness of wars, an effort that would have interfered with more important goals. Given the difficulties of getting warring parties to agree who had a just motive, the attempt to impose such a standard interfered with the limitation and regulation of the war process. Each nation asserted the justice of its cause and insisted on its right to use the means necessary to bring the war to a favorable conclusion. The "balance of power" system required for its stability standards independent of the justice of a cause, and the members of the system had an interest in endorsing such standards.

The Nuremberg trials are incomprehensible, apart from their function in satisfying world opinion by the punishment of the fascist leaders, if the *ad hoc* tribunals employed to hear the cases were expected to function as the standard method for trying such cases rather than as an expedient designed to meet

immediate needs; in short they were comprehensible only if the reasons which led to the demise of the concept of the just war no longer operated. To make sense, these tribunals had to represent a development toward an ordered world community in which the use of force by national authorities without sanction from some international body was outlawed and in which effective tribunals for punishing transgressors were established (or alternatively a world in which nations had no joint or cooperative interests—a world represented by a zero-sum game). Such an ordered world community did not exist, could not exist under the conditions then prevailing, and had not existed at the time of the offense.

The United Nations represented the effort to create such a world. The United Nations represented a concession, in the minds of its authors, to the realities of international politics. They recognized that the major military capabilities of the world would be controlled by the United States, the Soviet Union, and Great Britain. It would take military force to keep the peace. Therefore, the main responsibility was given to the new superpowers to keep the peace. The United Nations rested upon the hypothesis that the great nations would unite to keep the peace and therefore upon the corollary that the peace was to be kept against the encroachments of the smaller nations while the defeated fascist nations would be prevented from ever again building military machines with which they could threaten the peace of the world.

There is much to be said for the view that at least the European aspects of the Second World War were a direct consequence of the aggressive and even insane ambitions of Adolf Hitler. There is somewhat less to be said for the view that dictatorships are naturally aggressive, and even less for the view that the disarmament of Germany and Japan would eliminate the focal points of world danger. But the view that international conflicts of interest stem primarily from the psychologies of national leaders and from the cultures of particular nations is a great oversimplification of the situation.

Specific conflicts of interest may stem from any of the aforementioned sources. But it must be recognized that the international society is, in part at least, a competitive—and not necessarily peacefully competitive—society. The lives of individuals and the existence of social institutions are bound primarily to the largest unit of effective and inclusive organization. Within this organization hopes are satisfied, values fulfilled, and lives lived. Within it loyalties are organized and to it loyalties are pledged. For most of modern times, this largest and most effectively inclusive organization has been the nation. The greatest danger to any nation must stem from some other nation and the greatest deprivation most individuals can sustain must follow from the defeat of their nation by an enemy nation.

The United Nations was founded upon the hypothesis that the great nations would cooperate in keeping the peace through the machinery of international organization. But two great nations were eliminated by defeat and disarmament (Germany and Japan). China had never been a great nation effectively, whatever it may some day become under Communist rule. France had

lost its greatness in defeat. And a few years were to demonstrate the reduction of England to second-class status. In effect, two "superpowers" remained, the United States and the Soviet Union. But each of these two nations constituted the greatest potential danger to the other. No substantial political or economic change could occur anywhere in the world without affecting their relative positions. Nor could any barrier to change be maintained without influencing their relative positions. In short, these two nations were placed in facing positions in perhaps the greatest conflict of interest the world has ever known. Almost any dispute would range them on opposite sides. Yet the peace of the world was supposed to rest upon their harmonious cooperation. Perhaps the expansive goals of Stalin worsened this condition. But one must come to the conclusion that the organizing concept of the United Nations was hopelessly inadequate.

In effect, two gravitational poles for world political organization came into being. They were in necessary conflict with respect to many important problems. Moreover, other nations inevitably must be attracted to one or another of the poles, for many would find their greatest safety against the encroachments of one in the protective shelter of the other. It took a long time to recognize this, for all were not as prescient as Winston Churchill in his Fulton speech. Nor did the awakening come all at once; and perhaps it came at all only for extraneous or not quite relevant reasons.

The story need only briefly be sketched here, for these sketchy details are already well known. Developments in Eastern Europe led to great anger in the West. When the rebellion in Greece and the threat against Turkey appeared to endanger the strategic position of the United States, the Truman doctrine was enunciated. A major objective of the Marshall Plan was to reduce the danger of Communism in Western Europe and, in accordance with this objective, the steel capacity of Western-occupied Germany was increased enormously. By the end of 1947, and possibly in response, the Cominform was organized, ambitious economic plans for Poland and Czechoslovakia were organized, and, early in 1948, the *coup* took place in Czechoslovakia.

One may view the process as one of successive responses and counter-responses. Russian control of Eastern Europe and the war in Greece constituted a threat to the West. The Truman Doctrine looked like a military threat to the Communist bloc and the Marshall Plan threatened the unity of the Communist Nations. Cominform and Czechoslovakian *coup* seemed to herald the threat of imminent war, although there is now considerable evidence that war was the last thing Stalin wanted then.

It was not the threat of war that endangered the West—at least until 1955—but the attractive power of the Communist bloc. It was not the visible Cominform, which probably never undertook any major activity, but the organizational character of the Communist bloc that constituted the true danger. Once a nation joined that bloc, it would find it difficult to leave, the example of Yugoslavia to the contrary notwithstanding. It would be attached by party controls, that is, by the power of Moscow to intervene between competing na-

tional Communist factions to maintain control and also by the fact that the national Communist regime would find it difficult if not impossible to remain in power without the support of the Soviet Union. In this way the external unity of the Communist nations is maintained.

On the other hand, if the Western nations were to behave as they appropriately had in the "balance of power" period, on the basis of immediate interest, they would be fragmented and the Communist bloc would gain a decisive influence in international affairs. Only a unity based upon long-term rather than upon short-term advantage could suffice to maintain the interests of the Western nations. If this unity was purchased by a false belief in the threat of imminent war, it nevertheless constituted a response to a real need in the new loose bipolar international system.

NATO, that unprecedented organization which established a supranational command and joint military facilities in peace time, a new kind of supranational organization, was the Western response to the Soviet bloc. Although efforts were made to relate NATO to the United Nations, clearly NATO represented a break with previous conceptions of the role of the United Nations in the world community. Perhaps for reasons of public opinion or perhaps because the formulators of policy did not themselves clearly see the revolutionary consequences of their actions, efforts were made to mute or to camouflage indications of the change. But it represented an adequate and necessary step to a potentially stable structure of international relations.

The new loose bipolar system during its early stages reflected the development of the new supranational blocs. There was a sharp gravitation toward the two poles of international influence. The devastation of the world after the Second World War, the economic impoverishment of large areas of the world, the economic power of the United States, Soviet conventional military capabilities and American monopoly of atomic weapons, disorganization in newly independent ex-colonial areas, and the Korean War aided and affected this development. With economic recovery in Western Europe, continued colonial unrest and the growth of governmental experience in the new nations, the stalemate in Korea, approaching Soviet nuclear parity, and the consolidation of Communist control in China, the situation achieved relative stability and some stresses in the opposite direction began to appear. The position of the uncommitted nations was strengthened and the members of the two blocs began to exercise somewhat greater independence in policy.[2]

The normative law that characterized the "balance of power" system could hardly be expected to survive unchanged during its period of instability and failure. The Hague tribunals and the League of Nations had provided sufficient evidence that the old system was collapsing and represented efforts to patch up the old system and to maintain its normative rules. But it was not really possible to keep in their fullness the rules governing non-interference in the internal

[2] This story has been told in detail in William Reitzel, Morton A. Kaplan, and Constance G. Coblenz, *United States Foreign Policy: 1945–1955*, Washington, The Brookings Institution, 1956.

affairs of other nations, limitations on objectives, rules governing declarations of war and practices in occupied territory, and so forth, for these rules were too directly related to a system in which neutrality of alignment was a major characteristic. These were rules for dealing with opponents who might soon be allies. Even the rules governing the treatment of prisoners of war, so recently sanctified in treaty, no longer had as much support as earlier. They would still be observed when national and cultural values supported them or when the other side could take measures in reprisal and one still wanted to protect one's own nationals. But this last reason stemmed from expediency rather than from an interest in a normative rule. These changes in international normative law, like the political changes that gave rise to them, prepared the way for the new bipolar system.

III. THE BIPOLAR INTERNATIONAL SYSTEM

The loose bipolar international system—composed of two major blocs, a large number of uncommitted nations, and a universal organization like the United Nations—came into being as a consequence of the events recounted in the previous section. It differed from the "balance of power" international system in many important respects that have consequences for the operation of international law. In the first place, the blocs are more than alliances; they have supranational characteristics. In the second place, the system is not stabilized by the almost automatic operation of immediate interest that leads to the formation of alliance and counter-alliance. In the loose bipolar system alignment must be on the basis of long-term interest and the blocs become stable patterns of alignment within which conflicts of short-term interest tend to be subordinated. Since the members of the blocs lack an interest in maintaining the independence of the members of the opposing bloc in order to maintain the possibility of future combinations or coalitions, the particular motives for limitation of objectives and non-interference in the internal affairs of other nations that operated in the "balance of power" system do not operate in the loose bipolar system. Indeed, apart from the positive motivations to intervene, the negative factor of the concentration of capabilities in the leading members of the blocs makes it difficult if not impossible to refrain from intervening. Almost any decision of the United States or the Soviet Union must have important consequences for the other members of their blocs and for uncommitted nations.

Interdependence is especially great in the modern world. The United States cannot ship wheat to Yugoslavia without affecting the Canadian wheat farmer. It cannot ship arms to Pakistan without effect upon the Indian budget and Indian politics. American aid programs affect the internal politics of the country to which they are addressed regardless of the terms of the program. And the absence of aid also has its effects. Interference does not have to be overt, for the knowledge that the activities of a nation will affect the judgment of the American Congress in voting funds will itself have an influence. There is no way to avoid this influence with the best will in the world, for no govern-

ment can vote funds without considering the possible consequences of the loan. Even Soviet loans, technically free from all "strings," have important political repercussions within the countries to which they are made.

Soviet intervention in the internal affairs of Hungary is brutal and in Poland is obvious. But can the United States avoid all such interference? Does not the situation in Algeria necessitate efforts to influence French governmental policy? Obviously, but there are so many internal constraints that it is done in a halting and ineffective manner. And, if governmental changes may influence the viability of NATO, can the United States remain indifferent? Interference may not ordinarily be as obvious as in the Italian elections of 1948, but one eye must always be alert to the effect of policy upon friendly political parties within allied bloc countries.

In the "balance of power" system, intervention usually occurred in colonial, dependent, or minor areas; in the loose bipolar system positive intervention is more likely to occur within allied bloc nations than in uncommited areas. The competition between the two leading bloc nations will be effective in reducing direct intervention in the ex-colonial areas, as will the proud and new nationalism of these nations. The organic forms of union among the bloc nations will reduce the barriers between members of the blocs and lead to greater sharing of jurisdiction while the most zealous guarding of the nation's "sovereign powers" will occur within the new nations.

The fact that the loose bipolar system has two blocs has a direct bearing on the operation of the system. In the "balance of power" system a minimum number of five major nations probably was necessary for stability. The two blocs of the bipolar system, however, are in direct competition. Neither has an incentive to maintain the other. Rivalry is direct and is limited primarily by the horrors of thermonuclear war. No "balancing" role exists in this system and therefore mediation is not a function of the momentary freedom from commitment of a particular nation. Nor is alignment neutral. Communist nations necessarily tend toward the Soviet bloc. Communist China, for instance, although in many respects physically capable of asserting its independence of Moscow, takes great pains to maintain the priority of the Soviet Union as the leading member of the bloc. And within the free world there is a natural proclivity, except among those whose memories of colonial control remain active, to associate in some way with the United States.

Mediation is thus not a general role of all nations of the loose bipolar system but is a specialized role. Uncommitted nations are often able to exercise this role in the same way in which uncommitted parties are often most useful for mediatory purposes in industrial bargaining. The process of accommodation is a difficult one. The blocs would be in considerably greater trouble with each other if they did not have to appeal to uncommitted listeners or if they could not turn to such uncommitted nations to mediate a compromise. Withdrawal from an announced position may be both difficult and painful if not eased by moral pressure and suasion from independent and neutral bystanders who are able to invoke larger principles as well as their own independent judgment.

Sometimes the most difficult thing is to get contending parties to talk to each other. The uncommitted nations often perform yeoman work here. This task may be done irresponsibly as well as responsibly and it is possible that the greater responsiveness of the democratic nations to world public opinion may yet weigh heavily and negatively in the race for survival. The mediatory function of the uncommitted nations is nonetheless, in principle at least, an important one for the stability of the loose bipolar system.

The position of the uncommitted nations is protected both by its usefulness to the blocs from a mediatory point of view and by the desire of each bloc to keep these areas out of the grasp of the other. Although the uncommitted nations themselves lack important military capabilities, they are often for political, economic, or geographic reasons of considerable importance in the contest between the two blocs. The accession to the Soviet bloc of Southeast Asia, the Near East, or North Africa would be serious for NATO.

Another important agency which performs mediatory functions is the United Nations. Removed from its role as the keeper of peace, a role performed more adequately by the two blocs and the condition of thermonuclear equilibrium, the United Nations can more effectively perform its two remaining roles in the loose bipolar international system, that of mediator and that of forum. In these it helps to reduce tension between the blocs. It may also, under exceptional circumstances, and with the aid of the other bloc, mobilize the international community against one bloc that threatens immediately to undermine world peace. Even here it will play a supporting role to the bloc, as, in the case of Korea, the United Nations played a supporting role to that of the United States.

It is in the nature of the loose bipolar system for the bloc to subordinate the interests of the United Nations to its own interests, for, in the final analysis, the bloc must depend upon its own political and military resources in order to survive. However, it is also to the interest of a bloc to subordinate the interests of the other bloc to those of the United Nations, for in this fashion it can hope to mobilize support against that other bloc. In this way it can best appeal not only to the uncommitted but also to its own bloc members and to the citizens within the nations of the bloc. And the uncommitted nations, of course, have a particularly strong interest in subordinating the interests of both blocs to those of the United Nations, for by this means they can best compensate for their weakness in order to strengthen their position in the international system.

Unlike the major nations in the "balance of power" international system, the participants in the loose bipolar system do not have a uniform interest or lack of interest in fostering given principles of international law. Instead their interest varies with the role they occupy in the system. The uncommitted nations have the strongest interest in maintaining the normative rules without distinction as to role or size of nations, for observance of these rules corresponds best with the requirements for their safety. So they support doctrines of non-interference, "sovereignty," absence of force, and similar norms. Reliance

upon voting in the General Assembly of the United Nations for the settlement of issues gives greatest importance to their numbers and formal voting equality. The blocs must pay some attention to these principles to attract support from uncommitted nations and to be able to use them against the opposing bloc when conditions so warrant. However, the blocs cannot safely consign their vital interests to the keeping of the General Assembly, for its voting processes may depend upon substantively irrelevant considerations and its formally equal members do not have to take responsibility for the consequences of their decisions. The United States and the Soviet Union may try to prevent others from resorting to force but they cannot themselves renounce the resort to force under conditions necessary to protect their vital interests. Nor can they always refrain from internal interference within another nation. (This interference, except within the Soviet bloc, is seldom likely to be as direct as it was during the Suez crisis of 1956.) For these reasons, the law of war and the right of reprisal may not have changed as much as the authors of the Charter of the United Nations intended.

In attempting to exemplify the relationship between the structure of the international political system and some broad and important elements of international law, significant differences between the "balance of power" international system and the loose bipolar international system have appeared. In the "balance of power" system each major nation had a strong interest in preventing other major nations from interfering in the internal politics of any major nation. This prescription was self-reinforcing because the other members of the international community could always combine against the transgressor. To some extent, although not completely, the norm was applied to other independent states.

In the loose bipolar system, on the other hand, each leading bloc member has a direct interest in interference. And the competitive bloc actor has an interest in permitting this interference when applied within the bloc itself, as the example of Hungary so fully demonstrated. The withdrawal of Hungary from the Soviet bloc would have constituted a deadly threat to the entire satellite empire and the loss of that empire would have threatened the parity of the Soviet bloc. The very considerations which forced Soviet intervention operated to secure American non-intervention. Under these circumstances resort to thermonuclear war made greater sense, if any, for the Soviet Union than for the United States (if we assume—perhaps incorrectly—that the Soviet Union had nuclear parity with the United States at the time) because the loss of the empire would have constituted a vital threat to the Soviet Union while the failure to exploit the loss fully was not a serious threat to the security of the United States.

For political, moral and strategic reasons, the United States cannot intervene in England or France, for instance, by means of military force. It is almost necessarily constrained, therefore, to use subtler but not necessarily less effective measures of political and economic intervention. However, this permits the Soviet Union also to intervene, and, since the intervention is not military,

it is without the consequences American intervention would have had during the Hungarian uprising.

Non-intervention therefore applies primarily to the minor uncommitted areas rather than to the major areas of the world. And even in the uncommitted areas it is not supported by a strong sanction but rests only upon a tenuous and relative "balance" between the United States and the Soviet Union which may collapse at any moment. As a consequence, the legal values associated with non-intervention and those associated with "sovereignty" have less place in the present international world than they had under earlier conditions. Moreover, despite the strong stand of the uncommitted nations in favor of these older values, their stronger objections to the vestiges of colonialism have the function of further restricting national jurisdictions. Although the United Nations is still hedging in the cases of Algeria and Cyprus, the pressures for some form of extra-national intervention are growing. With the decline in the importance of the lone nation, the miracles of transportation and communication, and the spread of American-Soviet rivalry to all areas of the world, almost every situation is invested with an international interest. It is ironic that the writers of the Charter were more conservative than the authors of the League of Nations Covenant in protecting the inviolability of national jurisdiction. Their "realism" has not prevailed, however, against the requirements which inevitably flow from the new structure of international politics. Neither will the restrictions against the use of force and of reprisal have the same importance which the Charter writers intended.