

Anarchy and International Law: The Approaches of Hedley Bull and Noam Chomsky

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Jean Allain
School of Law
Queen's University of Belfast

While scholars of international law have shied away from labelling it as such, the international legal order, lacking as it does central law creating, determining, and enforcement mechanisms, and being based on cooperation as opposed to coercion, is quintessentially anarchistic. This understanding, it should be noted, has not escaped theorists of international relations; in fact, it is the opposite. As Hedley Bull relates, whereas “men within each state are subject to a common government, sovereign states in their mutual relations are not. This anarchy it is possible to regard as the central fact of international life and the starting-point of theorising about it”¹. This ‘anarchy *problematique*’ continues to this day to play its part in seeking to understand the manner in which international relations functions in the absence of a central government and the manner in which cooperation manifests itself within an anarchical framework. Yet, this fundamental discussion finds little or no place in the discourse of international law, where more often than not anarchy is the pedestrian synonym of disorder; this, at the expense of its theoretical understanding as an international society based on cooperation, void of central authority.

This Paper contemplates international law in two manners in which an anarchist might consider interesting: first, as a legal system which governs an anarchical society as described by Bull in line with the English School of International Relations which sees in international law an institution of international order; and second, as a manifestation of a State system which, though illegitimate can be utilised, as Noam Chomsky does, for tactical reasons to demonstrate its inconsistencies and thus weakening the system with the ultimate aim being its implosion. For those interested in the approach of Bull, the Paper seeks to highlight the lack of engagement by international legal scholars with anarchy as the fundamental nature of international law. For those interested in Chomsky’s approach, the Paper allows one to consider international law by analogy so as to contemplate what a domestic legal order might resemble functioning on anarchic principles.

Hedley Bull

The English School of International Relations finds its fullest expression in Bull’s 1977 *The Anarchical Society: A Study of Order in World Politics*. This School of thought sees international relations as a system which has been established based on institutions and rules which function in an anarchic manner as between sovereign States to create an international order. The English School thus takes anarchy seriously, as the starting point for theorising about international relations and, to that extent, sees international law as an institution which plays a central role in allowing for cooperation to manifest itself in common rules and values.

For Bull, the international system has at times reflected the Hobbesian and, at times, the Kantian traditions, yet it is best understood conceptually as an international society based on solidarity. This, Bull terms, the Grotian conception of an

¹ Hedley Bull, “Society and Anarchy in International Relations”, Kai Alderson and Andrew Hurrell (eds.), *Hedley Bull on International Society*, 2000, p. 77.

international society, one whose “prescription for international conduct is that all states, in their dealing with one another, are bound by the rules and institutions of the society they form”. He writes:

On the one hand princes and peoples had indeed become independent of one another and of central authorities and were sovereign. But on the other hand they were not in a state of nature, but part of the great society of all mankind, *magna communitas humani generis*. Even without central institutions, rulers and peoples might constitute a society among themselves, an anarchical society or society without government.²

Bull interacts with international law to demonstrate its place within an anarchical order; but also that international law is indeed an anarchical legal system which functions not on the basis of an Austinian notion of ‘a command by a sovereign backed by threat of sanction’; but on a Hartian basis, as a non-coercive legal order. Like H.L.A. Hart, he questions “the assumption that law has to be defined in terms of coercion”.³ Instead, the “first function of international law” Bull writes, “has been to identify, as the supreme normative principle of the political organisation of mankind, the idea of a society of sovereign states”. Amongst these set of rules then are those establishing the State as the main subject of international law, the manner in which consent is established through the sources of law, and the rules laying out State responsibility. The second, has been to state the rules of coexistence, that is those proscribing the use of force, treaty rules, and the “rules relating to sovereignty and independence”. Finally, the third function of international law is “to help mobilise compliance with the rules of international society”, be they laws established under Bull’s rules of coexistence or rules of cooperation.⁴ For Bull, international law carries out a specific function with the international system, that is: “identifying the idea of a society of states as the operational principle of world politics, stating the basic rules of coexistence and facilitating compliance with those and other rules”.

To this day, proponents of the English School of International Relations engage with the ‘anarchy *problematique*’ seeking to explain how the international system functions in the absence of a central authority and in so doing seek to demonstrate the role which international law plays as an institution of international order. This then is one manner in which an anarchist thinker might find international law interesting. The other, which we turn to now, is manifest in the approach to international law which Noam Chomsky has taken; wherein he interprets international law in a manner which seeks to reveal its weakness, so as to turn it against itself.

Noam Chomsky

In contrast to Hedley Bull, Noam Chomsky’s interest in anarchism is to be found in its manifestations at the domestic level. Chomsky’s understanding of anarchism is in line with Rudolf Rocker’s interpretation of this social stream as the “confluence of the two great currents which during and since the French Revolution have found such characteristic expression in the intellectual life of Europe: Socialism and Liberalism”⁵. In essence Chomsky’s traditional understanding of libertarian

² Hedley Bull, “The Importance of Grotius in the Study of International Relations”, Hedley Bull, Benedict Kingsbury and Adam Roberts (eds.), *Hugo Grotius and International Relations*, 1995, p. 72.

³ Hedley Bull, “Society and Anarchy in International Relations”, Alderson & Hurrell, *op. cit.* n. p. 92.

⁴ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 1977, pp. 140-141.

⁵ Noam Chomsky, “Notes on Anarchism (1970)”, Barry Pateman (ed.) *Chomsky on Anarchism*, 2005, p. 123.

socialism, as anarchism, seeks to dismantle structures of hierarchy and authority if they can not be justified; that the State and the economic system are based on coercion and are not in tune with human nature; nor do they provide a fair or equitable distribution of resources.

Where it may be said that Chomsky diverges from typical anarchist thinking is with regard to tactics, as he is not a pure proponent of the dismantling of the State, but in certain situations, sees the need to strengthen it; or better, to strengthen certain elements of the State:

My short-term goals are to defend and even strengthen elements of state authority which, though illegitimate in fundamental ways, are critically necessary right now to impede the dedicated efforts to 'roll back' the progress that has been achieved in extending democracy and human rights. State authority is now under severe attack in the more democratic societies, but not because it conflicts with the libertarian vision. Rather the opposite; because it offers (weak) protection to some aspects of that vision. Governments have a fatal flaw: unlike the private tyrannies, the institution of state power and authority offer to the despised public an opportunity to play some role, however limited, in managing their own affairs⁶.

Despite the typical rejection of law by anarchist thinkers, Chomsky's 'modified' anarchical thinking explains why he is willing to engage in using international law to critique American foreign policy despite the apparent contradiction in supporting this archetypal statist mechanism. The starting point for considering Chomsky's use of international law as a tool of critique is the Vietnam era and, in particular the legality of the use of force in Vietnam and the issue of war crimes; two themes which he returns to throughout his foreign policy writings. In his 1975 *Power and Progress*, Chomsky considered international law in general terms: "I am not really concerned here with the technicalities, but rather the principles that underlie them". Chomsky explains why he utilises international law as a reference point for analysis: "I will discuss the backgrounds in international law only insofar as they reveal, as I think they do, the principles to which decent people should be committed, and which they should compel their governments to observe"⁷.

In essence, Chomsky moves to support and promote international law for tactical reasons, as a Statist mechanism which, although fundamentally illegitimate, acts to highlight American violations of the use of force and transgressions of the Nuremberg Principles. As such, Chomsky is not interested in international law as an anarchical system – nothing in his writings reveals that he makes the connection – instead he sees international law as a forum for establishing a burden of justification of the exercise of State power as against a set normative markers. By revealing violations of international law, he seeks to bring the very system of international law in to question.

That tactical move on Chomsky's part resulted from the International Court of Justice's handling of the *Nicaragua* case, whereby the United States refused to acknowledge or accept the Court's jurisdiction and, despite this, the World Court found the United States in violation of the laws governing the use of force. In a 1999 book, Chomsky considers various episodes from the 1970s onward and pronounces himself on international law as a yard stick of assessment. That conclusion brings into sharp relief the tenets of his anarchist approach which mandate that power should not go unchallenged and that, for instance, international law must continuously demonstrate its value by justifying its authority:

⁶ Noam Chomsky, "Goals and Visions (1996)", *id.*, p. 193.

⁷ Noam Chomsky, *Power and Prospects: Reflections on Human Nature and the Social Order*, 1996, pp. 205 and 208-209.

Recognized principles of international law and world order, treaty obligations, decisions of the World Court, considered pronouncements of respected commentators – these do not automatically yield general principles or solutions to particular problems. For those who do not adopt the standards of [a] Saddam Hussein, there is a heavy burden of proof to meet in undertaking the threat or use of force. Perhaps the burden can be met, but that has to be shown, not merely proclaimed. [...] The reasons for the actions also have to be assessed – on rational grounds, with attention to historical fact and the documentary record, not simply by adulation of our leaders and the ‘principles and values’ attributed to them by admirers⁸.

Having considered Noam Chomsky’s use of international law, it is clear that he sees value in its use as a critic of State action. Chomsky’s pragmatism in engaging with international law is meant to assist in the implosion of the international legal order by demonstrating its illegitimate nature wherein the powerful do as they wish while the weak must respect the dictates of international law. Chomsky wishes to challenge manifestations of power and hierarchy which appear to be illegitimate; and as such he turns to international law as an object standard to hold States to account. In so doing, he reveals the ultimate paradox of the international order: that the failure of States to respect the principles and precepts manifest in the international legal order leads to the weakening of that public order and within it the seeds of its own destruction.

This study, more than anything seeks to engage seriously with an anarchist thinking and to consider the international system as functioning on the basis of anarchism rightly understood as a decentralised, horizontal system of equal subjects coming together on the basis of cooperation not coercion. It has sought to demonstrate through the writing of Hedley Bull that thinking about the international system as an anarchical society is very much the bread and butter of international relations theorists, but finds limited voice within the scholarly writing of international law. For Noam Chomsky, it is his nuanced libertarian socialism which allows him to engage with the precepts of international law as a standard to measure and critique United States foreign policy. Chomsky’s pragmatism in engaging with international law, though he considers it fundamentally illegitimate, must be understood as a means of using international law as a manifestation of the State against itself. It is clear that Chomsky, though the foremost anarchist thinker of our day, does not consider international law because it governs an anarchical system, instead he wishes to challenge manifestations of power and hierarchy which appear to be illegitimate; and as such turns to international law as an object standard to hold States to account.

This study, in considering two manners in which an anarchist thinker might find international law interesting provides an opening for consideration of the ‘international analogy’ to develop: What does the international anarchic system and the place of international law within it say with regard to an anarchist system being established domestically and the role which law might play within such a society? Further, the study raises the question about theorising about international law and the lack of engagement with the notion of anarchism as a basis of that legal order; whether such theorising would build on the English School or on nineteenth century anarchist thinkers such as Bakunin or Kropotkin.

⁸ Noam Chomsky, *The New Military Humanism: Lessons from Kosovo*, 1999, p. 157.