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International Law Beyond Sovereignty

A Critical Engagement with Monica Hakimi's "Thinking Constructively about International Law"

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Scholarly works on international law appear constantly. From time to time, however, a text emerges that prompts us to look at the entire body of literature through different eyes. Monica Hakimi's article *Thinking Constructively about International Law* is one such contribution. Whether one ultimately agrees with her argument or not, the piece is intellectually stimulating and invites readers to revisit some of the most fundamental assumptions of international legal thought. This contribution argues that Hakimi offers a valuable new lens for reconsidering international legal thought, but questions whether moving beyond sovereignty is either necessary or desirable. Instead of treating sovereignty and alternative forms of authority as mutually exclusive, it suggests that they may be better understood as potentially complementary.

Hakimi's Argument and Her Contributions

Hakimi addresses one of the most fundamental and persistent questions in international legal theory: what makes international law "law", and how should it be understood and evaluated as a legal system? She suggests that all contemporary thinking about international law remains constrained by "sovereigntist" theory. Hakimi reconstructs this theory as a model in which law requires a central authority capable of issuing binding commands and ensuring compliance through coercive means. Law is thus assumed to exist, function effectively, and possess legitimacy only when it emanates from a centralized authority capable of determining binding obligations and securing compliance. It is a mechanism for overcoming an otherwise anarchic environment through hierarchical authority.

Hakimi argues that contemporary approaches to international law all reproduce underlying assumptions of the sovereigntist theory. Formalist approaches preserve it through emphasis on state consent and legal rules deriving from converging sovereign wills. Rationalists understand international law as a coordination mechanism among sovereign actors pursuing their interests. Realists view international law as largely shaped by power politics and state interests, questioning its independent influence on state behaviour. Constructivist and critical scholars, while seeking alternatives to classical theories, often retain assumptions concerning centralized authority and authoritative legal guidance. Despite their differences, all these approaches thus rely on similar conceptual premises concerning law and authority.

Hakimi argues that sovereigntist theory is "bad" (p. 4) on two accounts. First, the theory is analytically misleading, as it evaluates international law against an inappropriate benchmark. International law has historically functioned through decentralized authority structures, dispersed institutional processes, and collective interactions among states and other actors. Attempting to assess it according to a model derived from domestic systems risks obscuring rather than clarifying how it actually functions. Second, the theory is normatively limiting because it narrows the range of possible futures for international law. If this law is seen as deficient due to the lack of centralized authority, reform efforts naturally move toward stronger hierarchy and institutionalization. Hakimi argues that international law should instead develop according to its own characteristics and institutional logic.

Her alternative proposal, inspired by the New Haven school, is to understand international law as a form of social practice that generates authority

through interactions among dispersed actors and institutions. Authority in this account does not depend on a single hierarchical source but may emerge from the practices and interactions of states, international organizations, courts, and other actors participating in the creation, interpretation, and application of legal norms. International law therefore appears not as an incomplete version of domestic law but as a distinct legal order adapted to a decentralized international environment.

Hakimi's analysis makes several important contributions to contemporary international legal scholarship.

First, she provides a new interpretive lens through which established approaches to international legal thought can be reconsidered. By identifying a hidden sovereigntist framework underlying approaches often presented as fundamentally different, she encourages readers to revisit familiar theoretical divisions from a new perspective and to reframe the terms on which many long-standing debates within international legal scholarship have been conducted.

Second, Hakimi brings renewed attention to the concept of sovereignty and its continuing role in international legal thought. She shows that sovereignty continues to structure contemporary approaches to international law even where it is not openly invoked. She also reminds readers that the sovereign state model emerged from specific historical and intellectual circumstances, most notably early modern political thought and the rise of centralized state authority in Europe. It therefore need not automatically be treated as the natural or inevitable framework for understanding international law in the twenty-first century.

Third, Hakimi does not limit herself to criticizing existing approaches but offers an alternative understanding of international law that opens broader conceptual possibilities for its future development. She proposes moving away from viewing law as a hierarchical system of commands toward seeing it as a social practice where authority emerges from interactions among multiple actors and institutions. Although elements of this understanding can be found in earlier approaches, Hakimi reformulates them within contemporary debates on global governance. In doing so, she broadens the analytical horizons of international legal scholarship and encourages a more imaginative thinking about the future of international law.

What Hakimi Rejects: Is Sovereignty Really Dispensable?

Hakimi rejects sovereigntist theory. The persuasiveness of this critique depends on a sufficiently clear understanding of the concept of sovereignty underlying this theory and on demonstrating why the theory is "bad" and obsolete. The article does not fully provide either.

First, concerning the concept of sovereignty, Hakimi appears in most places to understand it as involving a single sovereign authority issuing commands and ensuring compliance through coercion. For instance, she contrasts "the reality of how international law works" with "the fantasy of a single, collective entity unilaterally settling its terms and pushing everyone to comply" (p. 78). If this is the understanding of sovereignty on which the sovereigntist theory relies, then this theory is indeed "bad", as it misrepresents the reality of the international legal order. Yet one may question whether this understanding captures the position held by current international lawyers. Hakimi herself acknowledges that "few today would endorse the theory in its most extreme variant" (p. 6).

Her discussion of different scholarly approaches suggests a considerably more nuanced picture. These approaches generally do not assume a single sovereign exercising ultimate authority over international law. Rather, they recognize the decentralized and horizontal character of the system while still assigning a foundational role to states. Sovereignty may thus be understood as the condition under which states remain simultaneously sovereign and legally bound participants within the international legal order. If Hakimi's critique is directed against this understanding, then she is correct in suggesting that most approaches remain "sovereigntist" in some sense, not because they subscribe to a model of sovereignty based on singular

command and hierarchy, but because states continue to occupy a foundational role within international law. Yet the article does not demonstrate why such a theory should be seen as "bad." The analysis effectively identifies sovereigntist elements within international legal thought but does not sufficiently explain why their continued presence necessarily misrepresents reality.

That leads us to the second issue. After all, states remain the crucial actors in creating, interpreting, implementing and enforcing international law. Treaties are concluded by states, customary law emerges largely through state practice and *opinio juris*, and most compliance mechanisms continue to rely on state consent and cooperation. Sovereignty, or state-centredness, may therefore not represent an outdated framework imposed upon international law from outside but may instead constitute an important structural feature of the international legal system itself.

The criticism should perhaps not be directed at theories that retain elements of state-centredness as such, but rather at approaches that see nothing beyond states (if such approaches still exist today). Such theories could indeed be considered "bad," not because they would assume a single sovereign authority, but because they would overlook the plurality and diversity of actors and processes that increasingly shape the operation of international law. Such a perspective would risk offering an incomplete account of the international legal order. Yet addressing this limitation would not necessarily require rejecting sovereignty or state-centredness altogether. Rather, it would call for complementing them with a broader understanding of the multiple actors and structures operating within international law.

One might therefore wonder whether Hakimi at times operates within an unnecessarily binary framework: rather than replacing supposedly "bad" sovereigntist theories with a single "good" alternative, the challenge may instead be to recognise that existing theories require refinement and greater nuance. The question, therefore, may not be whether international law should move beyond sovereignty altogether, but rather how sovereignty should be reconceptualised in light of increasingly complex and institutionalised forms of governance. It may ultimately be unnecessary to choose between a fully sovereigntist and a fully post-sovereigntist conception of the international legal order.

What Hakimi Promotes: The Challenges of a Practice-Based Conception of Authority

Hakimi's alternative proposal, although somewhat underdeveloped – with only around 10 of the article's 83 pages devoted to it – is nevertheless intellectually attractive. Yet, it also raises certain conceptual and practical questions.

One question concerns conceptual clarity. Hakimi proposes understanding international law as a form of social authority generated through interactions among states, institutions, and other actors. Yet if authority emerges through dispersed practices and interpretive communities, it becomes less clear what distinguishes legal authority from broader forms of social or political influence. In other words, what makes certain practices specifically legal rather than political, institutional, or normative in the broader sense? Most traditional approaches, despite their shortcomings, at least attempted to identify who possesses authority to make binding decisions and on what basis. A practice-based conception may better capture the realities of international law, but it may also make it more difficult to determine when authority becomes legally binding and according to which criteria it should be evaluated or contested. The challenge, therefore, is not merely to move beyond the sovereigntist framework, but also to provide a sufficiently precise account of how legal authority is constituted and justified in its absence.

Moreover, one may ask what practical implications Hakimi's reconceptualization would have for the operation of international law in concrete situations. International law frequently serves not only to describe relationships of authority but also to allocate responsibilities and identify rights-holders and duty-bearers. This is crucial, for instance, for the protection of vulnerable individuals and groups. Under existing approaches, states are the primary bearers of legal obligations concerning the protection of their rights or access to remedies. If authority is instead understood

as dispersed across interactions among multiple actors and practices, it becomes less clear how responsibility would be allocated. A more practice-based conception may better capture the complexity of contemporary governance structures, but it may also risk obscuring who bears legal obligations and against whom claims can ultimately be directed. For individuals seeking protection, clarity regarding who is responsible may be as important as accurately describing how authority operates in practice.

Conclusions

Hakimi's article is an ambitious and intellectually stimulating contribution that challenges some of the most deeply rooted assumptions of international legal thought. Its greatest strength lies less in proposing an alternative framework as such than in forcing readers to reconsider familiar categories and revisit fundamental questions about law, authority, and sovereignty. Yet the article may ultimately present too sharp a contrast between "bad" sovereigntist theories and a "good" alternative. The challenge for international legal theory may be less to abandon sovereignty than to rethink and refine it within an increasingly complex legal order. Rather than viewing sovereignty and alternative forms of authority as mutually exclusive, it may be more useful to understand them as complementary.

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